

1977 Assembly Bill 510

Date published: September 22, 1977

**CHAPTER 87, Laws of 1977**  
**(Vetoed in Part)**

AN ACT to repeal 195.40; and to create 15.137 (4), 20.115 (1) (L) and 93.35 of the statutes, relating to creating a council on weather modification, authorizing the department of agriculture to issue licenses and permits for weather modification operations and eliminating registration with the public service commission, granting rule-making authority, providing a penalty and making an appropriation.

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

SECTION 1. 15.137 (4) of the statutes is created to read:

15.137 (4) COUNCIL ON WEATHER MODIFICATION. There is created in the department of agriculture a council on weather modification consisting of the secretary of the department, 4 persons who are farmers and 4 persons who are knowledgeable about or experienced in meteorology or weather modification, appointed for staggered 2-year terms.

SECTION 2. 20.115 (1) (L) of the statutes is created to read:

20.115 (1) (L) *Weather modification regulation.* All moneys received under s. 93.35 from weather modification licenses and permits for administering the weather modification program established under s. 93.35.

SECTION 3. 93.35 of the statutes is created to read:

**93.35 Weather modification.** (1) DEFINITIONS. In this section:

(a) "Council" means the council on weather modification established under s. 15.137 (4).

(b) "Operation" means the performance of any weather modification activity undertaken for the purpose of producing or attempting to produce any form of modifying effect upon the weather within a specified geographical area over a specified time interval.

(c) "Weather modification" means any activity performed with the intention of producing artificial changes in the composition, motions and resulting behavior of the atmosphere.

(2) WEATHER MODIFICATION LICENSE AND PERMIT REQUIRED. No person may engage in weather modification activities without obtaining a professional weather

modification license under sub. (4) and a weather modification operational permit under sub. (6).

(3) EXEMPTIONS. (a) A person may engage in the following activities without obtaining a license and permit under this section:

1. Activities for protection against fire, frost or fog.
2. Activities normally conducted for purposes other than inducing, increasing, decreasing or preventing hail, precipitation or tornadoes.

(b) The department may, by rule, exempt any other activities under this subsection deemed necessary.

(c) Activities exempted under this subsection shall be conducted so as not to interfere with authorized weather modification operations.

(4) PROFESSIONAL WEATHER MODIFICATION LICENSE; FEES. (a) The department, with the advice of the council, shall prescribe by rule, the procedure and criteria for issuance of professional weather modification licenses under this section. The criteria shall be consistent with qualifications recognized by national or international professional and scientific associations concerned with weather modification and meteorology and shall carry out the purposes of this section.

(b) A person may obtain a license under this subsection by demonstrating to the satisfaction of the department, competence necessary to engage in weather modification operations and payment of \$100 for an annual license which expires on October 31 of each year. Renewal licenses are \$20 annually. A renewal license shall be issued in the same manner as an initial license.

(5) LICENSE SUSPENSION; REVOCATION; NONRENEWAL. The department may suspend, revoke or refuse to renew a license for any of the following reasons:

- (a) Incompetency.
- (b) Dishonest practice.
- (c) False or fraudulent representation in obtaining a permit.
- (d) Failure to comply with any of the provisions of this section or any rules promulgated under this section.
- (e) Aiding other persons to fail to comply with any of the provisions of this section or any rules promulgated under this section.

(6) WEATHER MODIFICATION PERMIT; FEES; SCOPE. (a) The department, with the advice of the council, shall prescribe, by rule, the procedure and criteria for issuance of weather modification permits under this section. The criteria shall be designed to carry out the purposes of this section.

(b) An applicant for a permit shall file with the department an application containing the following information:

1. Applicant's name and address.
2. Name and address of the person on whose behalf the operation is to be conducted.
3. Indication that the applicant holds, or if the applicant is an organization rather than an individual, demonstration that the individual in control of the project holds a valid license issued under sub. (4).
4. Proof of financial responsibility under sub. (7).
5. A complete operational plan for the project including a specific statement of the nature and object of the plan, a map of the proposed operating area which specifies the primary target area and the area reasonably expected to be affected, a statement of the approximate time of the operation, a list of materials and methods to be used in conducting the operation, an emergency shutdown procedure which states conditions

under which operations must be suspended because of possible danger to the public health, safety and welfare or to the environment.

6. Any other detailed information required by the department.

Vetoed  
in Part

(c) The department shall give public notice by newspaper, radio or television announcement in the area of the state reasonably expected to be affected by operations conducted under a permit that it is considering an application for a permit, and ~~may~~ hold a public hearing for the purpose of obtaining information from the public concerning the effects of issuing or refusing to issue the permit.

(d) The department may issue the operational permit if it determines that:

1. The applicant holds, or if the applicant is an organization rather than an individual, demonstrates that the individual in control of the project holds a valid professional weather modification license issued under sub. (4);

2. The applicant has furnished proof of financial responsibility in accordance with sub. (7);

3. The project is reasonably conceived to improve water quality or quantity, reduce losses from weather hazards, provide economic benefits to the people of this state, advance or enhance scientific knowledge or otherwise carry out the objectives and purposes of this section;

4. The project is designed to include adequate safeguards to minimize possible damage to the public health, safety or welfare or to the environment;

5. The project will not adversely affect another operation for which a permit has been issued;

6. The applicant has complied with the permit fee requirement under par. (g); and

7. The applicant has complied with and the project conforms to such other criteria for issuance of permits as have been established by rules and regulations of the department under this section.

(e) In order to carry out the objectives and purposes of this section, the department may, with the advice of the council, condition and limit permits as to primary target area, time of the operation, materials and methods to be used in conducting the operation, emergency shutdown procedure and any other operational requirements as may be established by the department with the advice of the council.

(f) The department shall issue only one permit at a time for operations in any geographic area if 2 or more operations conducted within the conditions and limits of the permits might adversely interfere with each other.

(g) The fee for each permit or renewal of a permit is \$100, payable to the department prior to permit issuance or renewal. If the cost of the operation is more than \$10,000 and the operation will be conducted under contract, the permit fee shall be equivalent to one percent of the value of the contract. If the operation will not be conducted under contract and is estimated, by the department, to cost more than \$10,000, the permit fee shall be equivalent to one percent of the estimated costs.

(h) A separate permit is required for each operation. When an operation is conducted under contract, a permit is required for each separate contract. Each permit or renewal permit shall expire one year from the date of its issuance. The department may conditionally approve a project for a continuous time period in excess of one year's duration. Permits for the operations must be renewed annually. In approving the renewal of a permit for a continuous program, the department shall review and approve the permittee's operational record, and then may issue a renewal of the permit for the operation to continue.

(i) The permittee shall confine his or her activities within the limits specified in the permit, except to the extent that the limits are modified by the department. The permittee shall comply with any conditions of the permit as originally issued or as subsequently modified by the department.

(7) **PROOF OF FINANCIAL RESPONSIBILITY.** Proof of financial responsibility is made by showing to the satisfaction of the department that the permittee has the ability to respond in damages to liability which might reasonably result from the operation for which the permit is sought. Proof of financial responsibility may, but shall not be required to, be shown by:

(a) Presentation to the department of proof of a prepaid noncancellable insurance policy against liabilities in an amount set by the department; or

(b) Filing with the department a corporate surety bond, cash or negotiable securities in an amount approved by the department.

(8) **MODIFICATION OF PERMIT.** (a) The department may revise the conditions and limits of a permit if:

1. The permittee is given notice and a reasonable opportunity for a hearing on the need for a revision; and

2. It appears to the department that a modification of the conditions and limits of a permit is necessary to protect the public health, safety and welfare or the environment.

(b) If it appears to the department that an emergency situation exists or is impending which could endanger the public health, safety or welfare or the environment, the department may, without prior notice or a hearing, immediately modify the conditions and limits of a permit, or order temporary suspension of the permit. The issuance of such an order shall include notice of a hearing to be held within 10 days thereafter on the question of permanently modifying the conditions and limits or continuing the suspension of the permit. Failure to comply with an order temporarily suspending an operation or modifying the conditions and limits of a permit shall be grounds for immediate revocation of the permit and of the license of the person controlling the operation.

(c) It shall be the responsibility of the permittee to notify the department of any emergency which can reasonably be foreseen, or of any existing emergency situations which might be caused or affected by the operation. Failure by the permittee to so notify the department of any existing emergency, or any impending emergency which should have been foreseen, may be grounds, at the discretion of the department, for revocation of the permit and of the license of the person controlling the operation.

(9) **SUSPENSION, REVOCATION, REFUSAL TO RENEW PERMIT.** (a) The department may suspend or revoke a permit if it appears that the permittee no longer has the qualifications necessary for the issuance of an original permit or has violated any provision of this section or of any of the rules and regulations issued under this section.

(b) The department may refuse to renew a permit if it appears from the operational records and reports of the permittee that an original permit would not be issuable for the operation, or if the permittee has violated any provision of this section or of any of the rules issued under this section.

(10) **RESTORATION OF LICENSE OR PERMIT.** (a) At any time after the suspension or revocation of a license or permit the department may restore it to the licensee or permittee upon a finding that the requirements for issuance of an original license or permit have been met by the licensee or permittee.

(b) At any time after the refusal to renew a license or permit the department may renew it upon a finding that the requirements for issuance of an original license or permit have been met by the licensee or permittee.

(11) **DECISION REVIEW.** Any decision made by the department under this section is reviewable under ch. 227.

(12) **RECORDS AND REPORTS.** (a) In order to aid in research and development of weather modification and to aid in the protection of the public health, safety and welfare and the environment, any person conducting any weather modification in this state or elsewhere by undertaking operations within this state shall keep records and

file reports at times and in the manner and form as may be required by rules issued under this section.

(b) Record and report forms may be developed by the department showing the method of weather modification employed in the operation, the type of equipment used, the kind and amount of each material used, the times and places the equipment was operated, the times when there was modifiable weather but the permittee did not operate and the reasons for not operating, the name and address of each individual, other than the licensee, who participates or assists in the operation, the manner in which operations do not conform to the conditions and limits of the permit as established under sub. (6) or as modified under sub. (8), weather observations and records specified by the department and any other necessary data the department may, by rule, require.

(c) The records and reports which are in the custody of the department and which have been filed with it under this section or under the rules made under this section shall be kept open for public examination as public documents.

(13) **STATE IMMUNITY.** Nothing in this section shall be construed to impose or accept any liability or responsibility by the state, its agencies and the officers and employes of the state or its agencies for any injury caused by any persons who conduct weather modification operations.

(14) **LIABILITY.** (a) An operation conducted under the license and permit requirements of this section is not an ultrahazardous or an abnormally dangerous activity which makes the licensee or permittee subject to liability without fault.

(b) Dissemination of materials and substances into the atmosphere by a permittee acting within the conditions and limits of his or her permit shall not give rise to the contention that the use of the atmosphere constitutes trespass.

(c) Except as provided in pars. (a) and (b) and in sub. (13) nothing in this section shall prevent any person adversely affected by a weather modification operation from recovering damages resulting from intentional harmful actions or negligent conduct by a permittee.

(d) Failure to obtain a license and permit before conducting an operation, or operational activities which knowingly constitute a violation of the conditions or limits of a permit, shall constitute negligence.

(e) The fact that a person holds a license or was issued a permit under this section, or that the person has complied with the rules made by the department under this section, is not admissible as a defense in any legal action which may be brought against the person.

(15) **ENFORCEMENT; PENALTY.** (a) Any person who violates this section or any rules promulgated under this section shall be fined not more than \$1,000 or imprisoned for not more than 6 months or both.

(b) The department may apply to a court of competent jurisdiction for an injunction, either temporary or permanent, to restrain violations of this section or rules promulgated under this section.

SECTION 4. 195.40 of the statutes is repealed.

SECTION 5. **Initial appointments.** The initial appointments to the council on weather modification created by section 15.137 (4) of the statutes shall be made so 2 farmers and 2 persons knowledgeable about or experienced in meteorology or weather modification shall each be appointed for a one-year term.