



1995 ASSEMBLY BILL 585

October 2, 1995 - Introduced by Representatives JOHNSRUD, MUSSER, WARD, ZIEGELBAUER, DUFF, ZUKOWSKI, OWENS, AINSWORTH, BRANDEMUEHL, HASENOHRL, OLSEN, F. LASEE, SILBAUGH, OTT, GROTHMAN, GOETSCH and GUNDERSON, cosponsored by Senators ZIEN, JAUCH, DRZEWIECKI and SCHULTZ. Referred to Committee on Natural Resources.

1 **AN ACT to renumber** 29.092 (10); **to amend** 29.092 (10) (title), 29.093 (10) (b),
2 29.415 (1), 29.415 (4) (intro.) and 29.415 (6) (a); and **to create** 20.370 (1) (ft),
3 29.092 (10) (b), 29.415 (2) (am), 29.415 (2) (bn), 29.415 (6m) and 29.415 (6r) of
4 the statutes; **relating to:** incidental takings of wild animals and wild plants of
5 endangered species or threatened species and making an appropriation.

Analysis by the Legislative Reference Bureau

Current law protects certain wild animals and wild plants that the department of natural resources (DNR) places on the endangered and threatened species lists. Under current law, no person may possess or take an endangered or threatened wild animal and no person may remove or injure an endangered or threatened wild plant if it is not on the person's property. There is an exemption from this prohibition concerning wild plants for a person who is engaged in forestry or agricultural practices or during the construction, operation or maintenance of a utility facility.

This bill creates an additional method for the legal taking of an endangered or threatened wild animal or plant if the taking is not for the purpose of, but is only incidental to, an otherwise lawful activity. Under the bill, DNR may issue such a permit if the parties involved in the taking will minimize and mitigate, to the maximum extent practicable, the impact caused by the taking and the taking will not appreciably reduce the likelihood of the survival of the species in this state. The bill also exempts from this state permitting process a person who has a federal permit that authorizes the incidental taking if the federal permit meets the requirements of state law.

The bill also authorizes the taking of endangered or threatened species by a state agency if the taking complies with procedures established by DNR and the state agency that are for the purpose of minimizing any adverse effect on the species and the activity, if the activity is not likely to jeopardize the existence or recovery of the

species or result in the destruction of its habitat and if the benefit to the public health, safety or welfare justifies the activity.

For further information see the *state and local* 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.** 20.370 (1) (ft) of the statutes is created to read:

2 20.370 (1) (ft) *Endangered resources — application fees.* All moneys received
3 from application fees under s. 29.092 (10) (b) to be used for the purposes of processing
4 applications under and administering s. 29.415 (6m) and (6r).

5 **SECTION 2.** 29.092 (10) (title) of the statutes is amended to read:

6 29.092 (10) (title) SCIENTIFIC COLLECTOR PERMIT; ENDANGERED SPECIES PERMIT.

7 **SECTION 3.** 29.092 (10) of the statutes is renumbered 29.092 (10) (a).

8 **SECTION 4.** 29.092 (10) (b) of the statutes is created to read:

9 29.092 (10) (b) The nonrefundable application fee for a permit issued under s.
10 29.415 (6m) is \$100.

11 **SECTION 5.** 29.093 (10) (b) of the statutes is amended to read:

12 29.093 (10) (b) *Endangered species permit.* A permit issued under s. 29.415 (6)
13 or (6m) is valid for the period designated by the department.

14 **SECTION 6.** 29.415 (1) of the statutes is amended to read:

15 29.415 (1) PURPOSE. The legislature finds that certain wild animals and wild
16 plants are endangered or threatened and are entitled to preservation and protection
17 as a matter of general state concern. The federal endangered species act of 1973 and
18 the Lacey act together provide for the protection of wild animals and wild plants
19 threatened with worldwide extinction by prohibiting the importation of endangered
20 or threatened wild animals and wild plants and by restricting and regulating

1 interstate and foreign commerce in wild animals and wild plants taken in violation
2 of state, federal and foreign laws. The states, however, must also assume their
3 responsibility for conserving these wild animals and wild plants and for restricting
4 the taking, possession, transportation, processing or sale of endangered or
5 threatened wild animals and wild plants within their respective jurisdictions to
6 assure their continued survival and propagation for the aesthetic, recreational and
7 scientific purposes of future generations. The legislature finds that by eliminating
8 restricting the taking, possession or marketing of endangered species in this state
9 and by establishing a program for conservation and restoration of these endangered
10 or threatened species, their potential for continued existence will be strengthened.
11 The legislature further finds that the activities of both individual persons and
12 governmental agencies are tending to destroy the few remaining whole
13 plant-animal communities in this state. Since these communities represent the only
14 standard against which the effects of change can be measured, their preservation is
15 of highest importance, and the legislature urges all persons and agencies to fully
16 consider all decisions in this light.

17 **SECTION 7.** 29.415 (2) (am) of the statutes is created to read:

18 29.415 (2) (am) "State agency" means a board, commission, committee,
19 department or office in the state government. "State agency" does not include the
20 department of natural resources or the office of the governor.

21 **SECTION 8.** 29.415 (2) (bn) of the statutes is created to read:

22 29.415 (2) (bn) "Whole plant-animal community" means a group of species
23 living together in a particular area, time and habitat.

24 **SECTION 9.** 29.415 (4) (intro.) of the statutes is amended to read:

1 29.415 (4) (intro.) Except as provided in sub. (6r) or as permitted by
2 departmental rule or permit:

3 **SECTION 10.** 29.415 (6) (a) of the statutes is amended to read:

4 29.415 (6) (a) The department shall issue a permit, under such terms and
5 conditions as it may prescribe by rule, authorizing the taking, exportation,
6 transportation or possession of any wild animal or wild plant on the list of
7 endangered and threatened species for zoological, educational or scientific purposes,
8 for propagation of such wild animals and wild plants in captivity for preservation
9 purposes, unless such exportation, possession, transportation or taking is prohibited
10 by any federal law or regulation, or any other law of this state.

11 **SECTION 11.** 29.415 (6m) of the statutes is created to read:

12 29.415 (6m) INCIDENTAL TAKINGS; PERMITS. (a) The department may issue a
13 permit, under such terms and conditions as it may prescribe, authorizing a taking
14 that otherwise is prohibited by this section if the taking is not for the purpose of, but
15 will be only incidental to, the carrying out of an otherwise lawful activity.

16 (b) The department may not issue a permit under this subsection unless an
17 applicant for the permit submits to the department a conservation plan and an
18 implementing agreement. The conservation plan shall include all of the following:

19 1. A description of the impact that will likely occur as a result of the taking of
20 an endangered species or threatened species that is specified on the department's
21 endangered and threatened species list.

22 2. The steps that the parties specified under par. (c) will take to minimize and
23 mitigate the impact that the endangered species or the threatened species will suffer.

24 3. A description of the funding that the parties specified under par. (c) will have
25 available to implement the steps specified under subd. 2.

1 4. A description of the alternative actions to the taking that the parties in par.
2 (c) have considered and the reasons that these alternatives will not be utilized.

3 5. Any other measures that the department may determine to be necessary or
4 appropriate.

5 (c) The implementing agreement required under par. (b) shall specifically
6 name, and describe the obligations and responsibilities of, all the parties that will
7 be involved in the taking as authorized by the permit.

8 (d) Upon receipt of an application for a permit and the accompanying
9 conservation plan and implementing agreement for a proposed taking, the
10 department shall publicize the application by announcing the application receipt
11 and by giving a brief description of the proposed taking. The publicity shall be
12 distributed to the news media in the vicinity of the proposed taking. The department
13 shall establish a procedure for receipt of public comment on the proposed taking.

14 (e) After having considered the public comment received on the proposed
15 taking, the department shall issue the permit if the department finds, based on the
16 permit application, the conservation plan and the implementing agreement, the
17 taking will meet all of the following requirements:

18 1. The taking will be not be the purpose of, but will be only incidental to, the
19 carrying out of a lawful activity.

20 2. The parties specified under par. (c) will, to the maximum extent practicable,
21 minimize and mitigate the impact caused by the taking.

22 3. The parties specified under par. (c) will ensure that adequate funding for the
23 conservation plan will be provided.

24 4. The taking will not appreciably reduce the likelihood of the survival or
25 recovery of the endangered species or threatened species within the state, the whole

1 plant-animal community of which it is a part or the habitat that is critical to its
2 existence.

3 5. Any measures required under par. (b) 5. will be met.

4 (f) The department may require that a party specified under par. (c) make
5 additional assurances that the requirements under par. (e) 1. to 5. will be met before
6 issuing a permit under par. (e).

7 (g) The department shall impose on the permit any terms or conditions that the
8 department finds necessary to ensure that the requirements under par. (e) 1. to 5.
9 will be met. These terms or conditions may include reporting and monitoring
10 requirements.

11 (h) The department shall revoke a permit issued under this subsection if it
12 finds that a party specified under par. (c) fails to comply with the terms and
13 conditions of the permit.

14 (i) A permit issued by the department is not required if a permit under 16 USC
15 1539 has been issued and the department determines that that the federal permit,
16 along with its conservation plan and implementing agreement, comply with the
17 requirements under this subsection.

18 (j) This subsection does not apply to interagency activities under sub. (6r).

19 **SECTION 12.** 29.415 (6r) of the statutes is created to read:

20 29.415 (6r) INTERAGENCY CONSULTATION. (a) A state agency shall notify the
21 department at the earliest opportunity of the location, nature and extent of a
22 proposed activity that the state agency may conduct, approve or fund and that may
23 affect an endangered species or threatened species. The department may allow the
24 taking, exportation, transportation or possession of an endangered species or
25 threatened species if all of the following apply:

1 1. The activity is accomplished in accordance with interagency consultation
2 procedures established by the department and the state agency for the purpose of
3 minimizing any adverse effect on the endangered species or threatened species.

4 2. The activity is not likely to jeopardize the continued existence and recovery
5 of the endangered species or threatened species, or the whole plant-animal
6 community of which it is a part, within this state and the activity is not likely to result
7 in the destruction or adverse modification of a habitat that is critical to the continued
8 existence of the endangered species or the threatened species within the state, as
9 determined by the department under par. (b).

10 3. The benefit to public health, safety or welfare justifies the activity.

11 (b) For purposes of par. (a) 2., the department shall determine whether a
12 habitat is critical to the continued existence of an endangered species or threatened
13 species by considering the endangered species' or threatened species' global and
14 state element ranking as defined by the methodology used by the natural heritage
15 inventory program.

16 (c) The department shall notify the state agency if the department determines
17 that there is reasonable cause for the department to determine that an activity is not
18 being carried out in compliance with this subsection or with any environmental
19 protection requirements developed through interagency consultation procedures. If
20 the secretary of natural resources and the head, as defined in s. 15.01 (8), of the state
21 agency are unable to agree upon methods or time schedules to be used to correct the
22 alleged noncompliance, the department may bring any action or initiate any other
23 proceedings to enforce compliance with this subsection.

24 (d) The department and the state agency shall exchange information and
25 cooperate in the planning and implementation of any activity relating to the taking,

1 exportation, transportation or possession of any endangered species or threatened
2 species in order to alleviate, to the extent practicable under the circumstances, any
3 potential adverse effect on the endangered species or the threatened species.

4 (e) Cooperation between the department and the state agency under par. (d)
5 may include conducting reasonable surveys upon the request of the department,
6 unless the department determines that the requirements of public health, safety or
7 welfare outweigh the need for the surveys.

8 (f) Except as may be required under s. 1.11, no public notice or hearing is
9 required in connection with interagency consultation and cooperation under this
10 subsection.

11 (END)