

1999 SENATE BILL 54

February 24, 1999 – Introduced by Senators BURKE and RISSER, cosponsored by Representative BOCK. Referred to Committee on Judiciary and Consumer Affairs.

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 and making an appropriation.

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 prior to 1995 Wisconsin Act 27 (the executive biennial budget act). 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 biennial budget act).

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 requires DNR to transfer to DOJ all assets, liabilities and tangible personal property, including records, of the public intervenor that were transferred from DOJ to DNR by 1995 Wisconsin Act 27. The bill also requires DNR to transfer the attorney who previously served as the public intervenor to DOJ.

The bill appropriates \$120,700 to DOJ for fiscal year 1999–2000 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.

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. Written notices of all proceedings under chs. 30, 31, 281 to 285
9 and 289 to 299, except s. 281.48, shall be given to the public intervenor and to the
10 administrators of divisions primarily assigned the departmental functions under

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1 chs. 29, 281, 285 and 289 to 299, except s. 281.48, by the agency head responsible for
2 such proceedings. A copy of such notice shall also be given to the natural areas
3 preservation council.

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

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

24 **(4)** The public intervenor may appeal from administrative rulings to the courts.
25 In all administrative proceedings and judicial review proceedings the public

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1 intervenor shall be identified as “public intervenor”. This section does not preclude
2 or prevent any division of the department of natural resources, or any other
3 department or independent agency, from appearing by its staff as a party in such
4 proceedings.

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

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

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

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

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

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1 814.245 (2) (d) “State agency” does not include the public intervenor or citizens
2 utility board.

SECTION 6. Nonstatutory provisions.

4 (1) TRANSFER OF PUBLIC INTERVENOR PERSONNEL AND EFFECTS.

5 (a) *Assets and liabilities.* On the effective date of this paragraph, the assets and
6 liabilities of the department of natural resources that on October 1, 1997, were
7 primarily related to the functions of the public intervenor, as determined by the
8 secretary of administration, shall become the assets and liabilities of the department
9 of justice.

10 (b) *Transfer of position and employe.* On the effective date of this paragraph,
11 1.0 FTE GPR attorney who on October 1, 1997, had duties primarily related to the
12 public intervenor, as determined by the secretary of administration, is transferred
13 from the department of natural resources to the department of justice. The employe
14 transferred under this paragraph has all the rights and the same status under
15 subchapter V of chapter 111 and chapter 230 of the statutes in the department of
16 justice that the employe enjoyed in the department of natural resources on October
17 1, 1997, or on the effective date of this paragraph, whichever date the secretary of
18 administration determines provides the greatest rights and status.
19 Notwithstanding section 230.28 (4) of the statutes, no employe so transferred who
20 has attained permanent status in class is required to serve a probationary period.

21 (c) *Tangible personal property.* On the effective date of this paragraph, all
22 tangible personal property, including records, of the department of natural resources
23 that on October 1, 1997, was primarily related to the functions of the public
24 intervenor, as determined by the secretary of administration, is transferred to the
25 department of justice.

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

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

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

SECTION 7. Appropriation changes.

22 (1) DEPARTMENT OF JUSTICE. In the schedule under section 20.005 (3) of the
23 statutes for the appropriation to the department of justice under section 20.455 (1)
24 (a) of the statutes, as affected by the acts of 1999, the dollar amount is increased by
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