

1999 DRAFTING REQUEST

Bill

Received: **12/28/98**

Received By: **nilsepe**

Wanted: **As time permits**

Identical to LRB:

For: **Brian Burke (608) 266-8535**

By/Representing: **Barry**

This file may be shown to any legislator: **NO**

Drafter: **nilsepe**

May Contact:

Alt. Drafters:

Subject: **Environment - miscellaneous**

Extra Copies: **ISR**

Topic:

create public intervenor

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	nilsepe 12/28/98	jgeller 01/2/99		_____			State
/1			jfrantze 01/4/99	_____	lrb_docadmin 01/4/99	lrb_docadmin 01/6/99	
				_____	lrb_docadmin 01/6/99		

FE Sent For: *2/24/99*

<END>

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 1/4/99

To: Senator Burke

Relating to LRB drafting number: LRB-1459

Topic

create public intervenor

Subject(s)

Environment - miscellaneous

1. **JACKET** the draft for introduction SBurke

in the Senate or the Assembly _____ (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____.

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____.

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Paul E. Nilsen, Legislative Attorney
Telephone: (608) 261-6926

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/?	nilsepe 12/28/98	jgeller 01/2/99		_____			State
/1			jfrantze 01/4/99	_____	lrb_docadmin 01/4/99		

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1?	nilsepe	1 1/2 jlg	2/1/99	2/6/99			

FE Sent For:

<END>

LEGISLATIVE REFERENCE BUREAU

BILL REQUEST FORM

Legal Section, 5th Floor, 100 N. Hamilton St.
(608) 266-3561

PEW

Use of this form is optional. It is often helpful to talk directly with the LRB attorney who will draft the bill.
Use this form only for **BILL** drafts. Attach more pages if necessary.

Date of request: <i>12-28-98</i>	Legislator or agency requesting this draft: <i>SENATOR BURKE</i>
Name/phone number of person submitting request: <i>BARRY, 6-8535</i>	
Persons to contact for questions about this draft (names and phone numbers please): <i>BARRY ASHENFELDER, 6-8535</i>	
Describe the problem, including any helpful examples. How do you want to solve the problem? <i>Please re-draft SSA1 to ¹⁹⁹⁷SB 8, LBs0358/1 as a bill. It is attached.</i>	
If you know of any statute sections that might be affected, please list them or provide a marked (not re-typed) copy.	

Please attach a copy of any correspondence or material that may help us. You may also attach a marked (not re-typed) copy of any LRB draft, or provide its number (e.g., 1997 LRB-2345/1 or 1995 AB-67):

Requests are confidential unless stated otherwise.

May we tell others that we are working on this for you? YES NO
If yes, anyone who asks? YES NO
Any legislator? YES NO ONLY the following persons:

Do you consider this urgent? YES NO If yes, please indicate why:

Is this request of higher priority than other pending request(s) you have made?
 YES NO If yes, please sign your name here:



State of Wisconsin
1997 - 1998 LEGISLATURE

LRBs0358/1
PEN:mfd:ijs

**SENATE SUBSTITUTE AMENDMENT 1,
TO 1997 SENATE BILL 8**

December 30, 1997 – Offered by COMMITTEE ON AGRICULTURE AND ENVIRONMENTAL
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 and making an appropriation.

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

4 **SECTION 1.** 18.13 (4g) of the statutes is created to read:

5 18.13 (4g) PUBLIC INTERVENOR. Notwithstanding s. 165.075, the public
6 intervenor does not have authority to initiate any action or proceeding concerning
7 the issuance of obligations by the building commission under this chapter.

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

9 **165.07 Assistant attorney general — public intervenor.** (1) The attorney
10 general shall designate an assistant attorney general on the attorney general's staff
11 as public intervenor. Written notices of all proceedings under chs. 30, 31, 281 to 285
12 and 289 to 299, except s. 281.48, shall be given to the public intervenor and to the

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

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

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

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:

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

3 **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.

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.

22 **SECTION 7. Appropriation changes.**

23 (1) DEPARTMENT OF JUSTICE. In the schedule under section 20.005 (3) of the
24 statutes for the appropriation to the department of justice under section 20.455 (1)
25 (a) of the statutes, as affected by the acts of 1997, the dollar amount is increased by

1 \$120,700 for fiscal year 1998-99, to increase the authorized FTE positions for the
2 department by 1.0 CPR attorney position on the effective date of this subsection for
3 the purposes of the public intervenor.

4 (END)



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.

SENATE BILL 8

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

SENATE BILL 8

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.

SENATE BILL 8**SECTION 8**

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

SENATE BILL 8

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.**

SENATE BILL 8

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.

SENATE BILL 8

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)

UL3

-1459/1

~~SENATE SUBSTITUTE AMENDMENT 1~~
TO 1997 SENATE BILL 8

1999 Bill

December 30, 1997 - Offered by COMMITTEE ON AGRICULTURE AND ENVIRONMENTAL RESOURCES.

D-note

Regen

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.

insert
Analysis

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

4 SECTION 1. 18.13 (4g) of the statutes is created to read:
5 18.13 (4g) PUBLIC INTERVENOR. Notwithstanding s. 165.075, the public
6 intervenor does not have authority to initiate any action or proceeding concerning
7 the issuance of obligations by the building commission under this chapter.

8 SECTION 2. 165.07 of the statutes is created to read:
9 165.07 Assistant attorney general — public intervenor. (1) The attorney
10 general shall designate an assistant attorney general on the attorney general's staff
11 as public intervenor. Written notices of all proceedings under chs. 30, 31, 281 to 285
12 and 289 to 299, except s. 281.48, shall be given to the public intervenor and to the

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

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

13 (3) Personnel of the department of natural resources shall, upon the request
14 of the public intervenor, make such investigations, studies and reports as the public
15 intervenor may request in connection with proceedings described in sub. (1), either
16 before or after formal intervention. Personnel of state agencies shall at the public
17 intervenor's request provide information, serve as witnesses in proceedings
18 described in sub. (1) and otherwise cooperate in the carrying out of the public
19 intervenor's intervention functions. Formal intervention shall be by filing a
20 statement to that effect with the examiner or other person immediately in charge of
21 the proceeding. Thereupon the public intervenor shall be ~~deemed~~ ^{considered} a party in interest
22 with full power to present evidence, subpoena and cross-examine witnesses, submit
23 proof, file briefs or do any other acts appropriate for a party to the 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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2 or prevent any division of the department of natural resources, or any other
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4 proceedings.

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6 **165.075 Assistant attorney general; public intervenor; authority.** In
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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)^X of the statutes is amended to read:

PROOF
w/STATS

PROF
W/STATS

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

3 **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.

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.

22 **SECTION 7. Appropriation changes.**

23 (1) [✓] DEPARTMENT OF JUSTICE. In the schedule under section 20.005 (3) of the
 24 statutes for the appropriation to the department of justice under section 20.455 (1)

(a) [✓] of the statutes, as affected by the acts of ~~1997~~¹⁹⁹⁹, the dollar amount is increased by

25

1999

①
2
3
4

~~1998-1999~~ 1999-2000 ✓
\$120,700 for fiscal year ~~1998-1999~~, to increase the authorized FTE positions for the department by 1.0 GPR attorney position on the effective date of this subsection for the purposes of the public intervenor.

(END)

Insert
FFP

1999

FFF

LRB _____ / _____

Nonstat File Sequence:

EFFECTIVE DATE

- 1. In the component bar: For the action phrase, execute: ... create → action: → *NS: → effdate
For the text, execute: create → text: → *NS: → effdateA
- 2. Nonstatutory subunits are numbered automatically if "(#1)", "(#2)", etc., is filled in. Below, fill in "_____" or "()" only if a "frozen" number is needed.

SECTION # _____ . Effective date.

(#1) () This act takes effect on ... July 1, 1999, or on the day after publication, whichever is later.

- 1. In the component bar: For the action phrase, execute: .. create → action: → *NS: → effdateE
For the text, execute: create → text: → *NS: → effdate
- 2. Nonstatutory subunits are numbered automatically if "(#1)", "(#2)", etc., is filled in. Below, fill in "_____" or "()" only if a "frozen" number is needed.

SECTION # _____ . Effective dates;

..... This act takes effect on the day after publication, except as follows:

(#1) () The treatment of sections of the statutes takes effect on

- 1. In the component bar: For the budget action phrase, execute:..create → action: → *NS: → 94XX
For the text, execute: create → text: → *NS: → effdate
- 2. Nonstatutory subunits are numbered automatically if "(#1)", "(#2)", etc., is filled in. Below, for the budget, fill in the 9400 department code; and fill in "()" only if a "frozen" number is needed.

SECTION 94 _____ . Effective dates;

(#1) () The treatment of sections of the statutes takes effect on

(end ins)

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB

- 14159 / Min Analysis

Analysis

(DOJ)

insert
analysis

This bill recreates an office of public intervenor attached to the department of justice, 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 the department of justice ~~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} ~~8~~-member board (consisting of ~~4~~ ^{four} members nominated by the governor and approved by the senate and ~~4~~ 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.
- 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 intereenvor 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.

(end insert)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

1459
LRB#0356/1dn

PEN:WJ:ijs

JLg

Tuesday, December 16, 1997 } new date

Senator Burke:

This draft recreates the office of public intervenor that existed prior to 1995 Wisconsin Act 27, which transferred the public intervenor from DOJ to DNR. 1997 Wisconsin Act 27 entirely eliminated the office. The draft recreates the public intervenor advisory committee, rather than the board that directed the public intervenor while attached to DNR. The draft creates and funds only 1.0 FTE GPR attorney position (the office employed 2 attorneys prior to the transfer to DNR) and transfers the individual attorney who served as public intervenor in DNR to DOJ to serve as public intervenor.

Paul E. Nilsen
Legislative Attorney
261 6926

for only
fiscal year
1999-2000 ✓

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1459/1dn
PEN:jlgjf

January 4, 1999

Senator Burke:

This draft recreates the office of public intervenor that existed prior to 1995 Wisconsin Act 27, which transferred the public intervenor from DOJ to DNR. 1997 Wisconsin Act 27 entirely eliminated the office. The draft recreates the public intervenor advisory committee, rather than the board that directed the public intervenor while attached to DNR. The draft creates and funds only 1.0 FTE GPR attorney position (the office employed 2 attorneys prior to the transfer to DNR) for only fiscal year 1999-2000, and transfers the individual attorney who served as public intervenor in DNR to DOJ to serve as public intervenor.

Paul E. Nilsen
Legislative Attorney
261-6926