

1999 SENATE BILL 157

May 13, 1999 – Introduced by LAW REVISION COMMITTEE. Referred to Committee on Agriculture, Environmental Resources and Campaign Finance Reform.

1 **AN ACT** *to repeal* 26.01 and 28.005; *to renumber* 24.01 (3), 24.01 (6), 24.01 (8)
2 and 24.01 (11); *to amend* 23.093, 23.10 (1), 23.10 (2), 23.10 (4), 23.10 (5), 23.13,
3 23.15 (title), 23.15 (1), 24.01 (intro.), 24.03, 24.251, 24.28, 24.341, 24.39 (1),
4 24.39 (2), 24.39 (4) (a) (intro.), 24.39 (4) (c), 24.39 (4) (e), 24.39 (4) (f), 24.39 (4)
5 (i), 24.53, 24.54 (1), 25.156 (4), 25.29 (1) (a), 25.29 (2), 25.29 (3) (intro.), 25.29
6 (4m), 25.29 (7) (a), 25.29 (7) (b), 26.10, 27.011, 27.016 (6), 29.601 (4), 84.28 (2),
7 95.21 (1) (f) and 347.06 (4); and *to create* 23.05 of the statutes; **relating to:** the
8 placement in the statutes of certain definitions concerning natural resources
9 and public lands administration (suggested as remedial legislation by the
10 board of commissioners of public lands).

Analysis by the Legislative Reference Bureau

Under current law, many of the laws relating to natural resources and public lands administration are contained in chapters 23, 24 and 26 through 29 of the statutes. Many of the definitions of terms used in those chapters are currently located in chapter 24 and apply throughout chapters 23 to 29. This bill places those definitions currently located in chapter 24 that apply to terms used throughout

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chapters 23, 24 and 26 to 29 in chapter 23. Also, the bill provides that these definitions no longer apply to chapter 25, which covers trust funds established by the legislature for the purpose of state finance.

For further information, see NOTES provided by the law revision committee of the joint legislative council.

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

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the board of commissioners of public lands and introduced by the law revision committee under s. 13.83 (1) (c) 4., stats. After careful consideration of the various provisions of the bill, the law revision committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

1 **SECTION 1.** 23.05 of the statutes is created to read:

2 **23.05 Definitions.** In this chapter, ch. 24 and chs. 26 to 29, unless the context
3 requires otherwise or unless otherwise defined:

NOTE: Currently, definitions located at the beginning of ch. 24, stats., relate to natural resources and public lands administration generally, but they currently also apply to ch. 25, which concerns trust funds. Because most of the definitions in ch. 24 are not relevant to ch. 25, this draft provides that these definitions no longer apply to ch. 25.

4 **SECTION 2.** 23.093 of the statutes is amended to read:

5 **23.093 Carp control research.** The department of natural resources may
6 enter into contracts with public or private agencies for the accelerated research and
7 development of a specific toxic material for the control and eradication of carp in the
8 waters of the state.

9 **SECTION 3.** 23.10 (1) of the statutes is amended to read:

10 **23.10 (1)** The department of natural resources shall secure the enforcement of
11 all laws which it is required to administer and bring, or cause to be brought, actions
12 and proceedings in the name of the state for that purpose. The persons appointed
13 by said the department to exercise and perform the powers and duties heretofore

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1 conferred and imposed upon deputy fish and game wardens, shall be known as
2 conservation wardens and shall be subject to ch. 230.

3 **SECTION 4.** 23.10 (2) of the statutes is amended to read:

4 23.10 (2) Whenever the county board of any county by resolution authorizes the
5 appointment of county conservation wardens, and fixes the number of the same, the
6 chairperson of the county board, district attorney and county clerk, acting as a board
7 of appointment, shall select the persons for such positions and certify their names
8 to the department of ~~natural resources~~ which shall, if in its judgment such persons
9 are competent and efficient, issue to them commissions as county conservation
10 wardens. Such wardens have, within their county, all the powers and duties of
11 conservation wardens. Their compensation shall be fixed by the county board in the
12 resolution authorizing their appointment and be paid out of the county treasury.

13 **SECTION 5.** 23.10 (4) of the statutes is amended to read:

14 23.10 (4) All conservation wardens shall, before exercising any of their powers,
15 be provided with a commission issued by the department of ~~natural resources~~ under
16 its seal, substantially as follows:

17 STATE OF WISCONSIN

18 DEPARTMENT OF NATURAL RESOURCES.

19 To all to whom these presents shall come, greeting:

20 Know ye, that reposing special trust and confidence in the integrity and ability
21 of ..., of the county of ..., we do hereby appoint and constitute ... a conservation
22 warden (or county, or special conservation warden) for the (county of ...), state of
23 Wisconsin, and do authorize and empower ... to execute and fulfill the duties of that
24 office according to law, during good behavior and the faithful performance of the
25 duties of that office.

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1 governor's request a copy of any paper, document or record in their respective offices
2 and give the governor orally such information as the governor may call for.

3 **SECTION 8.** 23.15 (title) of the statutes is amended to read:

4 **23.15 (title) Sale of state-owned lands under the jurisdiction of the**
5 **department of natural resources.**

6 **SECTION 9.** 23.15 (1) of the statutes is amended to read:

7 23.15 (1) The natural resources board may sell, at public or private sale, lands
8 and structures owned by the state under the jurisdiction of the department of natural
9 resources when the natural resources board determines that said lands are no longer
10 necessary for the state's use for conservation purposes and, if real property, the real
11 property is not the subject of a petition under s. 16.375 (2).

NOTE: SECTIONS 2 to 9 of the draft change current references to "department of natural resources" in ch. 23 to "department". This is because the definition of department of natural resources, placed at the beginning of ch. 23 by this draft, refers to the department of natural resources as the "department" in chs. 23 through 29.

12 **SECTION 10.** 24.01 (intro.) of the statutes is amended to read:

13 **24.01 Definitions and classification.** (intro.) In chs. 23 to 29 this chapter,
14 unless the context requires otherwise or unless otherwise defined:

15 **SECTION 11.** 24.01 (3) of the statutes is renumbered 23.05 (1).

16 **SECTION 12.** 24.01 (6) of the statutes is renumbered 23.05 (2).

17 **SECTION 13.** 24.01 (8) of the statutes is renumbered 23.05 (3).

18 **SECTION 14.** 24.01 (11) of the statutes is renumbered 23.05 (4).

NOTE: SECTIONS 1 and 11 to 14 renumber definitions which are currently located in ch. 24, stats., and place them in ch. 23, stats. Under current law, these definitions are placed at the beginning of ch. 24. However, because these definitions apply to chs. 23 and 24 and 26 to 29, they are more appropriately placed at the beginning of ch. 23.

19 **SECTION 15.** 24.03 of the statutes is amended to read:

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1 **24.03 Escheats.** The board ~~of commissioners of public lands~~ shall, whenever
2 it shall have reason to believe that any lands have escheated to the state for defect
3 of heirs, cause due inquiry to be made to ascertain the rights of the state, and the
4 attorney general shall bring any suit or action or take any requisite proceeding
5 necessary to protect and secure the rights of the state. The board may either take
6 possession of, or cause to be sued for and recovered as aforesaid when necessary, any
7 real estate believed to have escheated to the state, or may proceed directly to sell all
8 the right, title and interest of the state therein, without first obtaining possession
9 thereof and without establishing title thereto by action.

10 **SECTION 16.** 24.251 of the statutes is amended to read:

11 **24.251 Patents, issuance; county may record.** Whenever it shall appear
12 to the board ~~of commissioners of public lands~~ that all the conditions relating to the
13 issuance of patents have been complied with, the board may issue patents, and the
14 county board of any county may cause such patents to be recorded in the county and
15 pay the cost of such recording.

16 **SECTION 17.** 24.28 of the statutes is amended to read:

17 **24.28 Forfeiture.** In the case of the nonpayment of interest when due
18 according to the terms of the certificate of sale, or of any taxes which before said
19 annual interest is paid shall have been returned to the board ~~of commissioners of~~
20 ~~public lands~~ by the county treasurer as due and unpaid upon such land, or of the
21 principal when required by the board, such certificate shall become void from the
22 time of such failure, and the purchaser, the purchaser's heirs and assigns, shall
23 forfeit all right and interest in the lands described in such certificate; and the board
24 may take immediate possession thereof and may resell the same as hereinafter
25 provided.

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1 **SECTION 18.** 24.341 of the statutes is amended to read:

2 **24.341 Offset to refund on void sales.** Whenever any claim shall be made
3 under s. 24.34, the board of ~~commissioners of public lands~~ shall make an
4 investigation and determination, and offset the value of the use of said land, property
5 removed therefrom and the damage or injury thereto by such claimant, together with
6 interest thereon, against the amounts actually paid to the state and to any other
7 persons on account of the purchase, possession, use, damage or injury to such lands
8 by said claimants. The refund or payment to be made under s. 24.34 shall in no case
9 be more than the excess, if any, of the amounts paid out by such claimant with
10 interest over such offset.

11 **SECTION 19.** 24.39 (1) of the statutes is amended to read:

12 **24.39 (1)** The board of ~~commissioners of public lands~~ may grant leases of parts
13 or parcels of any public lands except state park lands and state forest lands; grant
14 easements, leases to enter upon any of said lands to flow the same or to prospect for
15 and to dig and remove therefrom ore, minerals and other deposits, and sell therefrom
16 such timber as the board shall find necessary to prevent future loss or damage. All
17 sales of standing live timber shall be on a selective cutting basis in line with federal
18 forest practices. Such easements, leases, licenses and sales shall be made only for
19 a full and fair consideration paid or to be paid to the state, the amount and terms
20 whereof shall be fixed by said board, and such easements, leases, licenses and sales
21 shall conform to the requirements, so far as applicable, prescribed by ch. 26 for the
22 exercise by the department of ~~natural resources~~ of similar powers affecting state
23 park lands and state forest lands.

24 **SECTION 20.** 24.39 (2) of the statutes is amended to read:

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1 24.39 (2) In negotiating for such leases, licenses or sales, and in exercising the
2 other powers conferred by this section the board of ~~commissioners of public lands~~
3 shall, so far as it finds it desirable and practicable, request and make proper use of
4 such services and information as the department of ~~natural resources~~ may be able
5 to furnish.

6 **SECTION 21.** 24.39 (4) (a) (intro.) of the statutes is amended to read:

7 24.39 (4) (a) (intro.) Subject to pars. (c) and (d) the board of ~~commissioners of~~
8 ~~public lands~~ may:

9 **SECTION 22.** 24.39 (4) (c) of the statutes is amended to read:

10 24.39 (4) (c) No leases under par. (a) may be executed without a prior finding
11 of the department of ~~natural resources~~ under s. 30.11 (5) that any proposed physical
12 change in the area contemplated as the result of the execution of any term lease is
13 consistent with the public interest in the navigable waters involved.

14 **SECTION 23.** 24.39 (4) (e) of the statutes is amended to read:

15 24.39 (4) (e) Such lease shall be for a term not to exceed 50 years, and shall
16 include therein any and all conditions and terms the board of ~~commissioners of public~~
17 ~~lands~~ believes to be necessary in the public interest. A lessee or the lessee's heirs,
18 successors or assigns of a lease which has reached the end of its term shall have first
19 opportunity to contract with the board of ~~commissioners of public lands~~ for a new
20 lease.

21 **SECTION 24.** 24.39 (4) (f) of the statutes is amended to read:

22 24.39 (4) (f) A municipality may sublease rights leased to it under par. (a) 1.
23 or 2. to corporations or private persons. A municipality may also make physical
24 improvements on and above the bottoms to which rights were leased from the board
25 of commissioners of public lands and may sublease these improvements to

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1 corporations or private persons. Any subleases under this paragraph shall be
2 consistent with this subsection and with whatever standards or restrictions the
3 department of ~~natural resources~~, acting under s. 30.11 (5), may have found at the
4 time of execution of the original lease by the board of ~~commissioners of public lands~~
5 to the municipality.

6 **SECTION 25.** 24.39 (4) (i) of the statutes is amended to read:

7 24.39 (4) (i) All leases entered into by the board of ~~commissioners of public~~
8 ~~lands~~ under this subsection and s. 30.11 shall be deemed to be subject to this section
9 and any other applicable laws of this state or of the United States.

10 **SECTION 26.** 24.53 of the statutes is amended to read:

11 **24.53 Investigate land claims; deduct expenses.** The board of
12 ~~commissioners of public lands~~ shall investigate the rights of the state to school lands,
13 normal school lands, university lands and agricultural college lands. The expenses
14 incurred in making these investigations and taking necessary steps to protect
15 common school lands, normal school lands, university lands and agricultural college
16 lands and timber on those lands, as well as the expense of necessary surveys, records,
17 appraisals and sales, upon the approval of the board, shall be deducted from the gross
18 receipts of the fund to which the proceeds from the sale of the land or timber will be
19 added.

20 **SECTION 27.** 24.54 (1) of the statutes is amended to read:

21 24.54 (1) The department of administration shall provide an office for the
22 board. The board shall conveniently arrange and preserve in that office all records,
23 books, reports, surveys, maps, field notes, plats and other papers pertaining to the
24 public lands owned by the state, including all public lands that have been or shall
25 be received from the United States or any officer of the United States. The board may

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1 perfect the records, books, reports, surveys, maps, field notes, plats and other papers
2 when incomplete, and cause copies of those documents to be made when from injury,
3 loss, use or accident it shall become necessary. Any copy, when certified to be a correct
4 copy by the executive secretary of the board under the executive secretary's signature
5 and the official seal of the office to have been made for any of the causes specified in
6 this subsection, shall have the same force and effect in all courts and places as the
7 original. Any copy from the original records, books, reports, surveys, maps, field
8 notes, plats or other papers, or from any record or paper required by law to be kept
9 in the office, or any copy from a certified copy of one of those documents, when
10 certified by the executive secretary of the board or any member of the board of
11 ~~commissioners of public lands~~ under the official seal of the board, shall be received
12 in evidence with the same effect as the original.

NOTE: In SECTIONS 15 to 27, references to the "department of natural resources", "board of commissioners of public lands", or both, which appear in the statutes affected in those SECTIONS, are deleted and are replaced with the terms "department" and "board", respectively. This change is made because department of natural resources is referred to as the "department" in the definition of the DNR at the beginning of ch. 23, and the term "board of commissioners of public lands" is also referred to as the "board" in the definition of the board of commissioners of public lands in s. 24.01 (2), stats.

13 **SECTION 28.** 25.156 (4) of the statutes is amended to read:

14 25.156 (4) The members of the board shall promulgate rules restricting the
15 executive director, executive assistant to the executive director, internal auditor,
16 chief investment officer, chief financial officer, chief legal counsel, chief risk officer,
17 investment directors and employes from having financial interest, directly or
18 indirectly, in firms or corporations providing services to the ~~department~~ board and
19 governing the receipt of gifts or favors therefrom, and also governing personal
20 investments of all employes including the executive director, executive assistant to
21 the executive director, internal auditor, chief investment officer, chief financial

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1 officer, chief legal counsel, chief risk officer and investment directors to prevent
2 conflicts of interest.

3 **SECTION 29.** 25.29 (1) (a) of the statutes is amended to read:

4 25.29 (1) (a) Except as provided in s. 25.295, all moneys accruing to the state
5 for or in behalf of the department of natural resources under chs. 26, 27, 28, 29 and
6 350, subchs. I and VI of ch. 77 and ss. 23.09 to 23.31, 23.325 to 23.42, 23.50 to 23.99,
7 30.50 to 30.55, 70.58 and 71.10 (5), including grants received from the federal
8 government or any of its agencies except as otherwise provided by law.

9 **SECTION 30.** 25.29 (2) of the statutes is amended to read:

10 25.29 (2) License fees and other state moneys collected by each field employe
11 of the department of natural resources shall be remitted to the department of natural
12 resources within one month after receipt together with a report of the number of
13 licenses issued and details covering the type and the amount of money remitted.

14 **SECTION 31.** 25.29 (3) (intro.) of the statutes is amended to read:

15 25.29 (3) (intro.) Funds accruing to the conservation fund from license fees paid
16 by hunters and from sport and recreation fishing license fees shall not be diverted
17 for any other purpose than those provided by the department of natural resources,
18 except:

19 **SECTION 32.** 25.29 (4m) of the statutes is amended to read:

20 25.29 (4m) Notwithstanding sub. (3), no moneys that accrue to the state for or
21 in behalf of the department of natural resources under ch. 29 may be expended or
22 paid for the enforcement of the treaty-based, off-reservation rights to fish held by
23 members of federally recognized American Indian tribes or bands domiciled in
24 Wisconsin.

25 **SECTION 33.** 25.29 (7) (a) of the statutes is amended to read:

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1 25.29 (7) (a) Eight percent of the tax levied under s. 70.58 or of the funds
2 provided for in lieu of the levy shall be used to acquire and develop forests of the state
3 for the purposes or capable of providing the benefits described under s. 28.04 (2)
4 within areas approved by the department of natural resources and the governor and
5 located within the region composed of Manitowoc, Calumet, Winnebago, Sheboygan,
6 Fond du Lac, Ozaukee, Washington, Dodge, Milwaukee, Waukesha, Jefferson,
7 Racine, Kenosha, Walworth, Rock and Outagamie counties.

8 **SECTION 34.** 25.29 (7) (b) of the statutes is amended to read:

9 25.29 (7) (b) An additional 4% of the tax levied under s. 70.58 or of the funds
10 provided in lieu of the levy shall be used to purchase forests for the state for the
11 purposes or capable of providing the benefits described under s. 28.04 (2) within
12 areas approved by the department of natural resources and the governor and located
13 within the region specified under par. (a).

NOTE: SECTIONS 28 to 34 change the reference in ch. 25 from “department” to
“department of natural resources”. This is because this draft makes the definition of
department of natural resources, in ch. 23 under this draft, inapplicable to ch. 25.
Therefore, the entire term “department of natural resources” must be used when it is
mentioned in ch. 25.

14 **SECTION 35.** 26.01 of the statutes is repealed.

NOTE: This SECTION repeals the definition of department of natural resources in ch.
26. This is because in SECTION 1 of the draft, the definition of “department of natural
resources” placed in ch. 23 is also made applicable to ch. 26.

15 **SECTION 36.** 26.10 of the statutes is amended to read:

16 **26.10 Reports by the department to the board of commissioners of**
17 **public lands.** The department shall report monthly to the board of commissioners
18 of public lands all trespasses committed, all materials seized, all sales made and all
19 moneys received under ss. ~~26.01~~ 26.03 to 26.09.

NOTE: This SECTION deletes a reference to s. 26.01, stats., since this section is
repealed in this draft.

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1 **SECTION 37.** 27.011 of the statutes is amended to read:

2 **27.011 Copper Culture Mounds State Park.** The department of natural
3 resources shall accept a grant of lands in the city of Oconto, Oconto county, and shall
4 develop and maintain it as a state park to be known as Copper Culture Mounds State
5 Park.

NOTE: This SECTION deletes the reference to “department of natural resources” in ch. 27 and replaces it with “department”. The definition of “department of natural resources” at the beginning of ch. 23, in which it is referred to as “the department”, is applicable to ch. 27.

6 **SECTION 38.** 27.016 (6) of the statutes is amended to read:

7 27.016 (6) Annually, on or before January 1, the department shall review all
8 applications received under this section in the previous year and shall make the
9 grants that it approves from the appropriation under s. 20.370 (1) (eq). If insufficient
10 funds are available to pay all approved grants, the natural resources board shall
11 prorate the available funds among the applicants in proportion to the approved grant
12 amounts.

NOTE: In this SECTION, the term “natural resources” modifies “board”. This is necessary because in ch. 27, the term “board” refers to the board of commissioners of public lands, not the board of natural resources.

13 **SECTION 39.** 28.005 of the statutes is repealed.

NOTE: This SECTION repeals the definition of “department of natural resources” in ch. 28. This is because, under SECTION 1, the definition of “department of natural resources” created in ch. 23 applies to ch. 28.

14 **SECTION 40.** 29.601 (4) of the statutes is amended to read:

15 29.601 (4) USE OF PESTICIDES. The department of natural resources, after public
16 hearing, may promulgate rules governing the use of any pesticide which it finds is
17 a serious hazard to wild animals other than those it is intended to control, and the
18 making of reports about the pesticide. In promulgating the rules, the department

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1 to the extent relevant shall consider the need for pesticides to protect the well-being
2 of the general public. “Pesticide” has the meaning given in s. 94.67.

NOTE: This SECTION deletes the reference to “department of natural resources” and replaces it with “department”. The definition of “department of natural resources” at the beginning of ch. 23, in which it is referred to as “the department”, is applicable to ch. 29.

3 **SECTION 41.** 84.28 (2) of the statutes is amended to read:

4 84.28 (2) The department may administer a program for the construction,
5 maintenance and marking of roads, including fire roads, service areas, trailer or
6 vehicle parking stalls or parking areas and other facilities consistent with highway
7 construction and for the marking of scenic routes in the state parks, state forests, the
8 lower Wisconsin state riverway as defined under s. 30.40 (15), state fish hatcheries,
9 other public used areas under the jurisdiction of the department of natural resources
10 and other public lands as defined in ~~ch. 24 s. 23.05 (2)~~, for highways or fire roads
11 leading from the most convenient state trunk highways to such lands, and for the
12 relocation and construction of state trunk highways in or near state parks when
13 required in the interests of public safety. Within the limitations and for the purposes
14 of this section, work may be performed by or under the supervision or authority or
15 with the approval of the department, upon the request for such work filed by the
16 department of natural resources as to the lower Wisconsin state riverway, as defined
17 in s. 30.40 (15), or as to state park or forest lands, or by the board of commissioners
18 of the public lands as to other classes of public lands. Outside the lower Wisconsin
19 state riverway, as defined in s. 30.40 (15), and outside the limits of the park, state
20 forest and public land areas, direct connections to the most convenient state trunk
21 highway may be built or maintained under this section. Roads in unincorporated
22 areas within 5 miles of the boundaries of the Horicon national wildlife refuge or the
23 Horicon marsh wildlife area may be built or maintained under this section upon

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1 request of the town board, if the department of transportation certifies that such
2 roads are or will be used by a substantial number of visitors to such area. Costs
3 incurred under this section shall be the responsibility of the department of natural
4 resources, commissioners of public lands or town board, as appropriate.

5 **SECTION 42.** 95.21 (1) (f) of the statutes is amended to read:

6 95.21 (1) (f) “Warden” has the meaning designated under s. ~~24.01(11)~~ 23.05 (4).

7 **SECTION 43.** 347.06 (4) of the statutes is amended to read:

8 347.06 (4) A duly authorized warden, as defined in s. ~~24.01(11)~~ 23.05 (4), may
9 operate a vehicle owned or leased by the department of natural resources upon a
10 highway during hours of darkness without lighted headlamps, tail lamps or
11 clearance lamps in the performance of the warden’s duties under s. 29.924 (2).

NOTE: SECTIONS 41, 42 and 43 change cross-references to definitions currently
existing in ch. 24 to the renumbered definitions in ch. 23.

12

(END)