

2001 DRAFTING REQUEST

Bill

Received: 09/11/2000

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Wanted: As time permits

Identical to LRB:

For: Spencer Black (608) 266-7521

By/Representing:

This file may be shown to any legislator: NO

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Subject: Environment - miscellaneous

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Reestablish public intervenor

Instructions:

1999 AB 162

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>
/?	traderc 10/06/2000	gilfokm 11/15/2000		_____			State
/1			martykr 11/16/2000	_____	lrb_docadmin 11/16/2000	lrb_docadmin 11/28/2000	

FE Sent For:

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<END>

BY
12/1

2001

KG

1999 ASSEMBLY BILL 162

March 4, 1999 - Introduced by Representatives BLACK, BOCK, YOUNG, RICHARDS, MILLER, KRUG, COGGS, CARPENTER, POCAN, HUBER, BERCEAU, CULLEN, PLALE, SCHOOFF, RYBA, WOOD, LA FAVE, J. LEHMAN, TRAVIS, KREUSER, MEYER, PLOUFF, TURNER, REYNOLDS, LASSA, MEYERHOFER, BOYLE, MORRIS-TATUM and HASENOHRL, cosponsored by Senators GEORGE, ERPENBACH, MOEN, BAUMGART, GROBSCHMIDT, MOORE, PLACHE, SHIBILSKI, DECKER, RISSER, ROBSON, WIRCH, JAUCH, BURKE and CLAUSING. Referred to Committee on Natural Resources.

Jan Cat

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

before

*

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:

seven - A

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.

ASSEMBLY BILL 162

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 authorizes ~~two~~ attorney positions in DOJ and appropriates \$482,800 to DOJ for the ~~1999-2001~~ fiscal biennium 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:

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

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

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

165.07 Assistant attorney general — public intervenor. (1) The attorney general shall designate an assistant attorney general on the attorney general's staff

as public intervenor. ~~Written notices of all proceedings under chs. 30, 31, 281 to 285,~~

and 289 to 299, except s. 281.48, shall ~~be given~~ to the public intervenor and to the

administrators of divisions primarily assigned the departmental functions under

8
9

The head of each agency responsible for give notice of those proceedings

ASSEMBLY BILL 162

1 chs. 29, 281, 285, and 289 to 299, except s. 281.48, ~~the~~ the agency head responsible for
2 ~~such proceedings.~~ ^{and} 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 ^{that} such intervention is needed for the protection of ~~the~~ 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. ^{The public intervenor shall} Formally intervention shall be by filing a
19 statement to that effect with the examiner or other person immediately in charge of
20 the proceeding. ^{upon that filing} 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 ^{any} 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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814.245 (2) (d) "State agency" does not include the public intervenor or citizens utility board.

SECTION 6. Nonstatutory provisions.

(1) TRANSFER OF PUBLIC INTERVENOR, ^{personal property} PERSONNEL AND EFFECTS.

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

(b) *Tangible personal property.* ^{subsection} On the effective date of this paragraph, all tangible personal property, including records, of the department of natural resources that on October 1, 1997, was primarily related to the functions of the public intervenor, as determined by the secretary of administration, is transferred to the department of justice.

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

(d) *Rules and orders.* All rules promulgated by the department of natural resources in effect on the effective date of this paragraph that are primarily related to the functions of the public intervenor, as determined by the secretary of administration, remain in effect until their specified expiration dates or until amended or repealed by the department of justice. All orders issued by the

P.W.F.

ASSEMBLY BILL 162

SECTION 6

1 department of natural resources in effect on the effective date of this paragraph that
 2 are primarily related to the functions of the public intervenor, as determined by the
 3 secretary of administration, remain in effect until their specified expiration dates or
 4 until modified or rescinded by the department of justice.

5 (e) *Pending matters.* Any matter pending with the department of natural
 6 resources on the effective date of this paragraph that is primarily related to the
 7 functions of the public intervenor, as determined by the secretary of administration,
 8 is transferred to the department of justice and all materials submitted to or actions
 9 taken by the department of natural resources with respect to the pending matter are
 10 considered as having been submitted to or taken by the department of justice.

SECTION 7. Appropriation changes.

11
 12 (1) DEPARTMENT OF JUSTICE. In the schedule under section 20.005 (3) of the
 13 statutes for the appropriation to the department of justice under section 20.455 (1)
 14 (a) of the statutes, as affected by the acts of ²⁰⁰¹ ~~1999~~, the dollar amount is increased by
 15 \$241,400 for fiscal year ²⁰⁰¹⁻⁰² ~~1999-00~~ and the dollar amount is increased by \$241,400 for
 16 fiscal year ²⁰⁰²⁻⁰³ ~~2000-01~~ to increase the authorized FTE positions for the department by
 17 2.0 GPR attorney positions on the effective date of this subsection for the purposes
 18 of the public intervenor.

SECTION 8. Effective date.

19
 20 (1) This act takes effect on July 1, ²⁰⁰¹ ~~1999~~, ~~or~~ on the day after publication,
 21 whichever is later.

(END)

of the 2001-03 biennial
 budget act, or on the
 day after publication



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
5TH FLOOR
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STEPHEN R. MILLER
CHIEF

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-6948

November 16, 2000

MEMORANDUM

To: Representative Black

From: Rebecca C. Tradewell, Managing Attorney

Re: LRB-0208 Reestablish public intervenor

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 266-7290 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.