

2005 ASSEMBLY BILL 59

January 27, 2005 – Introduced by Representatives MURSAU, FRISKE, AINSWORTH, ALBERS, GARD, GRONEMUS, GUNDERSON, HAHN, MCCORMICK, MONTGOMERY, MUSSER, OTT, OWENS and VOS, cosponsored by Senator ZIEN. Referred to Committee on Forestry.

1 **AN ACT** *to renumber and amend* 60.61 (2) (a); *to amend* 59.69 (4) (a) and 62.23
 2 (7) (b); and *to create* 823.075 of the statutes; **relating to:** actions against
 3 forestry operations and granting rule-making authority.

Analysis by the Legislative Reference Bureau

Under current law, if a business, property, or action of a person creates a public nuisance, the party damaged by that nuisance can bring an action for the damages caused by the nuisance or to abate the nuisance. A county or municipality may bring an action to abate a public nuisance, such as a place where a controlled substance is illegally distributed, sold, or manufactured. A “nuisance” is generally defined as an action that annoys or disturbs a person in possession of his or her property and makes the use or occupation of that property physically uncomfortable. Currently, nuisances include places where illegal gambling occurs, dilapidated buildings, drug houses, and criminal gang houses.

This bill provides that a forestry operation may not be declared a nuisance if the forestry operation conforms to generally accepted forestry management practices. Under the bill, forestry operations include removal of vegetation or dead trees, noise from forestry equipment, and use of chemicals that are normally used in forestry operations. In addition, the bill provides that a forestry operation that conforms to generally accepted forestry management practices is not a nuisance as a result of any of the following:

1. Change in ownership or size of a forest.
2. Interruption of forestry operations.

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3. Enrollment of part or all of the forest in governmental forestry programs.

4. Adoption of new forestry technology.

The bill also allows a person who is alleged to commit the nuisance to receive his or her costs, including attorney fees, if he or she prevails in the action alleging a nuisance.

Under current law, cities, villages, towns that are authorized to exercise village powers, certain other towns, or counties (political subdivisions) are authorized to enact zoning ordinances that regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards and other open spaces, the density of population, the location and use of buildings, structures, and land for various purposes, and the areas within which activities such as agriculture, forestry, and mining may be conducted.

Under this bill, no political subdivision may enact a zoning ordinance that prohibits forestry operations that are in accordance with generally accepted forestry management practices.

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

1 **SECTION 1.** 59.69 (4) (a) of the statutes is amended to read:

2 59.69 **(4)** (a) The areas within which agriculture, forestry, industry, mining,
3 trades, business and recreation may be conducted, except that no ordinance enacted
4 under this subsection may prohibit forestry operations that are in accordance with
5 generally accepted forestry management practices, as defined under s. 823.075 (1)
6 (d).

7 **SECTION 2.** 60.61 (2) (a) of the statutes is renumbered 60.61 (2) (a) (intro.) and
8 amended to read:

9 60.61 **(2)** (a) (intro.) Regulate, restrict and determine: ~~the~~ all of the following:

10 1. The areas within which agriculture, forestry, mining and recreation may be
11 conducted; the, except that no ordinance enacted under this subsection may prohibit
12 forestry operations that are in accordance with generally accepted forestry
13 management practices, as defined under s. 823.075 (1) (d).

14 2. The location of roads, schools, trades and industries; the,

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1 3. The location, height, bulk, number of stories and size of buildings and other
2 structures; ~~the.~~

3 4. The percentage of a lot which may be occupied; the.

4 5. The size of yards, courts and other open spaces; the.

5 6. The density and distribution of population; the.

6 7. The location of buildings designed for specified uses; the.

7 8. The trades, industries or purposes that may be engaged in or subject to
8 regulation; ~~and the.~~

9 9. The uses for which buildings may not be erected or altered.

10 **SECTION 3.** 62.23 (7) (b) of the statutes is amended to read:

11 62.23 (7) (b) *Districts.* For any and all of said purposes the council may divide
12 the city into districts of such number, shape, and area as may be deemed best suited
13 to carry out the purposes of this section; and within such districts it may regulate and
14 restrict the erection, construction, reconstruction, alteration or use of buildings,
15 structures or land. All such regulations shall be uniform for each class or kind of
16 buildings and for the use of land throughout each district, but the regulations in one
17 district may differ from those in other districts. No ordinance enacted or regulation
18 adopted under this subsection may prohibit forestry operations that are in
19 accordance with generally accepted forestry management practices, as defined
20 under s. 823.075 (1) (d). The council may with the consent of the owners establish
21 special districts, to be called planned development districts, with regulations in each,
22 which in addition to those provided in par. (c), will over a period of time tend to
23 promote the maximum benefit from coordinated area site planning, diversified
24 location of structures and mixed compatible uses. Such regulations shall provide for
25 a safe and efficient system for pedestrian and vehicular traffic, attractive recreation

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1 and landscaped open spaces, economic design and location of public and private
2 utilities and community facilities and insure adequate standards of construction and
3 planning. Such regulations may also provide for the development of the land in such
4 districts with one or more principal structures and related accessory uses, and in
5 such districts the regulations need not be uniform.

6 **SECTION 4.** 823.075 of the statutes is created to read:

7 **823.075 Actions against forestry operations. (1)** In this section:

8 (a) “Department” means the department of natural resources.

9 (b) “Forest” means a parcel of land in which at least 80 percent of the parcel is
10 producing or is capable of producing at least 20 cubic feet of merchantable timber,
11 as defined in s. 77.81 (3), per acre per year.

12 (c) “Forestry operation” means any activity related to the harvesting,
13 reforestation, and other forest management activities, including thinning, pest
14 control, fertilization, and wildlife management.

15 (d) “Generally accepted forestry management practices” means forestry
16 management practices that promote sound management of a forest, as determined
17 by the department by rule.

18 **(2)** A forestry operation is not a nuisance if the forestry operation alleged to be
19 a nuisance conforms to generally accepted forestry management practices.

20 **(3)** A forestry operation that conforms to generally accepted forestry
21 management practices is not a nuisance as a result of any of the following:

22 (a) A change in ownership or size of a forest.

23 (b) Cessation or interruption of forestry operations.

24 (c) Enrollment of all or part of the forest in governmental forestry or
25 conservation programs.

