

**2005 DRAFTING REQUEST**

**Bill**

Received: 11/22/2004

Received By: rnelson2

Wanted: As time permits

Identical to LRB:

For: Jeffrey Mursau (608) 266-3780

By/Representing: Andy

This file may be shown to any legislator: NO

Drafter: rnelson2

May Contact:

Addl. Drafters:

Subject: Courts - immunity liability

Extra Copies:

Submit via email: YES

Requester's email: Rep.Mursau@legis.state.wi.us

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Actions against forestry operations - nuisances

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**Instructions:**

See Attached 03-3047 and a2249

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**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>
/?	rnelson2 11/22/2004	jdyer 11/22/2004		_____			
/1			chaugen 11/23/2004	_____	lemery 11/23/2004	sbasford 01/05/2005	

FE Sent For:

<END>

↳ Not Needed

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**LRB-0947**

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FE Sent For:

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5  
2003 ASSEMBLY BILL 726

LPS-  
PWF please

January 6, 2004 - Introduced by Representatives SERATTI, FRISKE, AINSWORTH, ALBERS, GARD, GRONEMUS, GUNDERSON, HAHN, HINES, MCCORMICK, MUSSER, OTT, OWENS, PETROWSKI, RHOADES and TOWNSEND, cosponsored by Senators SCHULTZ and ZIEN. Referred to Committee on Forestry.

Regen

- 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 ~~regardless~~ of any of the following:

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

as a result

**ASSEMBLY BILL 726**

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           ~~(c).~~  
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) (c).

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

## ASSEMBLY BILL 726

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) (c). 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



**ASSEMBLY BILL 726**

**SECTION 3**

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<sup>X</sup> of the statutes is created to read:

7 **823.075 Actions against forestry operations.** (1) In this<sup>✓</sup> section:

- 8 (a) "Department" means the department of natural resources.
- 9 (b) "Forest" means a parcel of land in which at least 80 percent<sup>✓</sup> 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.

✓  
 107  
 insert  
 11  
 12 →

13 (c) ~~CO~~<sup>^</sup> "Generally accepted forestry management practices" means forestry  
 14 management practices that ~~maximize~~<sup>promote</sup> sound management of a forest, as determined  
 15 by the department<sup>✓</sup> by rule.

16 (2) A forestry operation is not a nuisance if the forestry operation alleged to be  
 17 a nuisance conforms to generally accepted forestry management practices. <sup>✓</sup>Any of

18 the following are examples of forestry operations that are not a nuisance if conducted  
 19 in conformance with generally accepted forestry management practices:  
 20 (a) Removal of vegetation, dead or live trees, bark, foliage, or wood resulting  
 21 in visual changes in a forest.  
 22 (b) Noise from forestry equipment.  
 23 (c) Removal of vegetation, dead or live trees, bark, foliage, or wood from a forest  
 24 adjoining the property of another person.  
 (d) Use of chemicals that are normally used in forestry operations.



**ASSEMBLY AMENDMENT 1,  
TO 2003 ASSEMBLY BILL 726**

*Insert  
4-11*

February 23, 2004 - Offered by Representatives SERATTI, FRISKE, AINSWORTH, M. WILLIAMS, HUBLER and BOYLE.

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 4, line 11: after that line insert:

3 ~~(b)~~ "Forestry operation" means any activity related to the harvesting,  
4 reforestation, and other forest management activities, including thinning, pest  
5 control, fertilization, and wildlife management.

6 **2.** Page 4, line 13: delete "maximize" and substitute "promote".

7 **3.** Page 4, line 16: delete the material beginning with "Any" and ending with  
8 "operations." on line 24.

9 **4.** Page 5, line 2: delete "regardless" and substitute "as a result".

10 (END)

*Insert  
4-11*

**Basford, Sarah**

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**From:** Potts, Andrew  
**Sent:** Wednesday, January 05, 2005 10:47 AM  
**To:** LRB.Legal  
**Subject:** Draft review: LRB 05-0947/1 Topic: Actions against forestry operations - nuisances

It has been requested by <Potts, Andrew> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 05-0947/1 Topic: Actions against forestry operations - nuisances