

2005 ASSEMBLY BILL 967

1 **AN ACT** *to amend* 227.43 (1) (bg); and *to create* 84.305 of the statutes; **relating**
2 **to:** maintenance and removal of vegetation obstructing the view of outdoor
3 advertising signs along highways under the jurisdiction of the Department of
4 Transportation and an audit of a program of the Department of Transportation.

Analysis by the Legislative Reference Bureau

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

5 **SECTION 1.** 84.305 of the statutes is created to read:

6 **84.305 Vegetation obstructing view of outdoor advertising signs. (1)**

7 In this section:

8 (b) “Main-traveled way” has the meaning given in s. 84.30 (2) (h).

9 (c) “Natural vegetation” means vegetation that the department has allowed to
10 become established and remain in the right-of-way of a highway.

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1 (d) “Planted vegetation” means any of the following:

2 1. Vegetation that has been planted in the right-of-way of a highway as part
3 of a landscape project approved by the department for which there is a project plan.

4 2. Individual trees or shrubs in a landscaped area that the department has
5 allowed to become established naturally and that are specifically noted on a recorded
6 project plan for a landscape project approved by the department.

7 3. Vegetation planted by persons as provided under s. 86.03 (3).

8 (e) “Sign” has the meaning given in s. 84.30 (2) (j)

9 (f) “Specimen tree” means a live tree with a trunk measuring 12 or more inches
10 in diameter as measured at 3 feet from the ground.

11 (g) “Unzoned commercial or industrial area” means an area that is not zoned
12 by state or local law, regulation, or ordinance, and on which a sign is located within
13 500 feet of one or more permanent structures devoted to an ongoing commercial or
14 industrial activity.

15 (h) “Vegetation” means any tree, shrub, hedge, or other woody plant, and
16 includes planted vegetation, natural vegetation, and specimen trees. “Vegetation”
17 does not include grass.

18 (i) “Viewing zone” means, with respect to a sign, the area commencing at the
19 point on the main-traveled way of the highway nearest the sign and extending, in
20 a direction opposite of the direction of travel in the nearest through traffic lanes, in
21 a line along the highway parallel to the highway pavement edge for a distance of
22 1,000 feet.

23 (j) “Zoned commercial or industrial areas” has the meaning given in s. 84.30 (2)
24 (L).

25 (k) “Zoned industrial area” has the meaning given in s. 84.31 (2) (L).

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1 **(2)** (a) Notwithstanding ss. 66.1037 and 86.03, upon application, the
2 department may issue permits to sign owners for the trimming, removal, or
3 relocation of vegetation that is located in the right-of-way of a highway under the
4 jurisdiction of the department for maintenance purposes and that obstructs a sign
5 if any of the following applies:

6 1. The sign is 800 feet or less from another sign and, because of an obstruction
7 to sight by planted vegetation in the highway right-of-way, there is no portion of the
8 viewing zone along which, for a distance of 243 continuous feet, the entire face of the
9 sign is viewable.

10 2. The sign is more than 800 feet from another sign and, because of an
11 obstruction to sight by planted vegetation in the highway right-of-way, there is no
12 portion of the viewing zone along which, for a distance of 350 continuous feet, the
13 entire face of the sign is viewable.

14 3. Subject to par. (b), within a distance of 500 continuous feet along any portion
15 of the viewing zone, any portion of the face of the sign is not viewable because of an
16 obstruction to sight by natural vegetation in the highway right-of-way.

17 4. Subject to par. (b), the sign is located in a zoned industrial area and, within
18 a distance of 600 continuous feet along any portion of the viewing zone, any portion
19 of the face of a sign is not viewable because of an obstruction to sight by natural
20 vegetation in the highway right-of-way.

21 (b) In measuring the distance in continuous feet along the viewing zone under
22 par. (a) 3. and 4., the department shall not include in its measurement any part of
23 the viewing zone where any portion of the face of a sign is not viewable because of
24 an obstruction to sight by a specimen tree in the highway right-of-way.

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1 **(3)** (a) Subject to pars. (d) to (g) and sub. (4), a permit issued under this section
2 authorizes the permittee to trim obstructing vegetation or remove or relocate
3 obstructing individual plants to the extent necessary to eliminate the obstruction
4 and remedy any condition specified under sub. (2) (a) 1. to 4. A permit issued under
5 this section shall specify the vegetation or the portion of the highway right-of-way
6 to which the permit applies.

7 (b) An application for a permit under this section shall specifically describe the
8 work proposed by the applicant. The department shall grant or deny an application
9 for a permit under this section, and notify the applicant of the department's decision,
10 within 60 days of receipt of the application. Within 30 days of receipt of the
11 application, the department shall determine whether the application is complete
12 and, if not, the department shall return the application to the applicant and inform
13 the applicant of what information, specifically described, must be provided by the
14 applicant to complete the application. The department may not deny an application
15 for a permit under this section based solely upon receipt by the department of an
16 objection or complaint from a property owner or municipality receiving notice under
17 par. (c), but the department may consider the objection or complaint in determining
18 whether to grant or deny the application for a permit. If the department denies an
19 application for a permit under this section, the department shall notify the applicant
20 of reasons for the denial.

21 (c) Any person who makes application for a permit under this section shall, at
22 the time of the application, provide written notice of the application, including
23 contact information for the department, to all of the following:

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1 1. The owner of any property adjacent to the vegetation specified in the permit
2 application if the work proposed in the permit application includes removal or
3 relocation of individual plants and any of the following apply:

4 a. The adjacent property is in a zoned commercial or industrial area or an
5 unzoned commercial or industrial area and the sum of the diameters, as measured
6 at 3 feet from the ground, of all trees specified in the permit application having a
7 trunk of at least 4 inches in diameter exceeds 20 inches.

8 b. The adjacent property is not in a zoned commercial or industrial area or an
9 unzoned commercial or industrial area and the sum of the diameters, as measured
10 at 3 feet from the ground, of all trees specified in the permit application having a
11 trunk of at least 4 inches in diameter exceeds 12 inches.

12 2. The municipality in which any property adjacent to the vegetation specified
13 in the permit application is located if any of the following apply:

14 a. The adjacent property is in a zoned commercial or industrial area or an
15 unzoned commercial or industrial area and the sum of the diameters, as measured
16 at 3 feet from the ground, of all trees specified in the permit application having a
17 trunk of at least 4 inches in diameter exceeds 30 inches.

18 b. The adjacent property is not in a zoned commercial or industrial area or an
19 unzoned commercial or industrial area and the sum of the diameters, as measured
20 at 3 feet from the ground, of all trees specified in the permit application having a
21 trunk of at least 4 inches in diameter exceeds 20 inches.

22 (d) A permit issued under this section may not authorize trimming, removal,
23 or relocation of vegetation located within a municipality and within 10 feet of the
24 nearest edge of the highway pavement without prior approval for the trimming,
25 removal, or relocation from the municipality.

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1 (e) A permit issued under this section may not authorize the permittee to trim,
2 remove, or relocate vegetation in existence prior to the erection of the sign obstructed
3 by the vegetation. Nothing in this paragraph prohibits the department from issuing
4 a permit authorizing the trimming, removal, or relocation of vegetation that, at the
5 time the sign was erected, did not obstruct the view of the sign.

6 (f) The department shall make every effort to issue permits under this section
7 that authorize the permittee to fully remedy the condition giving rise to the need for
8 the permit as described under sub. (2) (a) 1. to 4., but the department, in its discretion
9 and for the purpose of causing the least disruption to the landscape design in the
10 highway right-of-way, may issue permits authorizing trimming, removal, or
11 relocation of vegetation in a manner that results in the distance of 243 feet specified
12 in sub. (2) (a) 1., 350 feet specified in sub. (2) (a) 2., 500 feet specified in sub. (2) (a)
13 3., or 600 feet specified in sub. (2) (a) 4., being noncontinuous if the permit allows the
14 permittee to minimize sight obstruction of the sign along the applicable portion of the
15 viewing zone.

16 (g) A permit issued under this section may not authorize the permittee to
17 clear-cut any highway right-of-way. The permit authorizes the permittee to trim,
18 remove, or relocate only the vegetation specified in the permit, or only vegetation
19 within the area of the right-of-way specified in the permit, in accordance with the
20 terms of the permit.

21 **(4)** Each permit issued under this section shall authorize the permittee to
22 employ 3rd-party contractors, including any arborist or landscape contractor, to
23 perform work authorized under the permit. A permittee shall be responsible for any
24 such work performed by a contractor on behalf of the permittee that is not authorized
25 by the permit as if the work were performed directly by the permittee.

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1 **(5)** (a) Each permit issued under this section shall require a permittee that
2 removes planted vegetation to either relocate the planted vegetation or reimburse
3 the department for the value of the planted vegetation. The department shall
4 present to the permittee the department's calculation of the value of the planted
5 vegetation, and the permittee may elect to relocate the planted vegetation or to
6 reimburse the department for the value of the planted vegetation as determined by
7 the department.

8 (b) The department shall determine the value of the planted vegetation, for
9 purposes of par. (a), based upon either the reasonable replacement cost of the
10 vegetation or another suitable method established by the department, which method
11 may include use of a vegetation value chart that is publicly available and generally
12 accepted in the landscaping industry.

13 (c) If the department issues a permit under this section authorizing removal
14 of vegetation, the department shall provide to the permittee prior to commencement
15 of the work an estimate of the value of the vegetation to be removed and a detailed
16 explanation of the department's objectives in planting this vegetation or allowing
17 this vegetation to become established.

18 **(6)** The department shall have authority to supervise and determine how the
19 work authorized under a permit issued under this section is carried out. The
20 department may require as a condition or restriction under any permit issued under
21 this section that the work authorized under the permit meet standards established
22 by the department.

23 **(7)** Nothing in this section prohibits a sign owner and the department from
24 voluntarily negotiating for, and the department from authorizing without the
25 issuance of a permit under this section, the trimming, removal, or relocation of any

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1 vegetation in a highway right-of-way in order to provide an unobstructed view of a
2 sign, except in situations where sub. (3) (d) would apply if a permit were issued under
3 this section. Nothing in this section restricts the department's authority with respect
4 to departmental maintenance operations in the rights-of-way of highways under
5 the department's jurisdiction.

6 **(8)** Any person aggrieved by a decision of the department under this section,
7 or by the department's failure to act on an application within the time limits specified
8 in this section, is entitled, upon request, to a contested case hearing before the
9 division of hearings and appeals in the department of administration, and to judicial
10 review thereof, in accordance with ch. 227.

11 **SECTION 2.** 227.43 (1) (bg) of the statutes is amended to read:

12 227.43 **(1)** (bg) Assign a hearing examiner to preside over any hearing or review
13 under ss. 84.30 (18), 84.305, 84.31 (6) (a), 85.013 (1), 86.073 (3), 86.16 (5), 86.195 (9)
14 (b), 86.32 (1), 101.935 (2) (b), 101.951 (7) (a) and (b), 114.134 (4) (b), 114.135 (9),
15 114.20 (19), 175.05 (4) (b), 194.145 (1), 194.46, 218.0114 (7) (d) and (12) (b), 218.0116
16 (2), (4), (7) (a), (8) (a) and (10), 218.0131 (3), 218.11 (7) (a) and (b), 218.22 (4) (a) and
17 (b), 218.32 (4) (a) and (b), 218.41 (4), 218.51 (5) (a) and (b), 341.09 (2m) (d), 342.26,
18 343.69 and 348.25 (9).

19 **SECTION 3. Nonstatutory provisions.**

20 (1) The joint legislative audit committee is requested to, and may, direct the
21 legislative audit bureau to perform a performance evaluation audit of the program
22 under section 84.305 of the statutes, as created by this act, during the 2007-08 fiscal
23 year, which audit shall include evaluating the overall effectiveness of the program.
24 If the committee directs the legislative audit bureau to perform an audit under this

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1 subsection, the bureau shall file its report as described in section 13.94 (1) (b) of the
2 statutes by June 30, 2008.

3 (END)