

2005 Assembly Bill 967

Date of enactment: **May 25, 2006**
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2005 WISCONSIN ACT 465

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

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

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

84.305 Vegetation obstructing view of outdoor advertising signs. (1) In this section:

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

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

(d) "Planted vegetation" means any of the following:

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

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

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

(e) "Sign" has the meaning given in s. 84.30 (2) (j)

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

(g) "Unzoned commercial or industrial area" means an area that is not zoned by state or local law, regulation,

or ordinance, and on which a sign is located within 500 feet of one or more permanent structures devoted to an ongoing commercial or industrial activity.

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

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

(j) "Zoned commercial or industrial areas" has the meaning given in s. 84.30 (2) (L).

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

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

1. The sign is 800 feet or less from another sign and, because of an obstruction to sight by planted vegetation

* Section 991.11, WISCONSIN STATUTES 2003-04 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

in the highway right-of-way, there is no portion of the viewing zone along which, for a distance of 243 continuous feet, the entire face of the sign is viewable.

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

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

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

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

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

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

(c) Any person who makes application for a permit under this section shall, at the time of the application, pro-

vide written notice of the application, including contact information for the department, to all of the following:

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

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

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

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

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

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

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

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

(f) The department shall make every effort to issue permits under this section that authorize the permittee to fully remedy the condition giving rise to the need for the permit as described under sub. (2) (a) 1. to 4., but the department, in its discretion and for the purpose of causing the least disruption to the landscape design in the highway right-of-way, may issue permits authorizing

trimming, removal, or relocation of vegetation in a manner that results in the distance of 243 feet specified in sub. (2) (a) 1., 350 feet specified in sub. (2) (a) 2., 500 feet specified in sub. (2) (a) 3., or 600 feet specified in sub. (2) (a) 4., being noncontinuous if the permit allows the permittee to minimize sight obstruction of the sign along the applicable portion of the viewing zone.

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

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

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

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

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

(6) The department shall have authority to supervise and determine how the work authorized under a permit

issued under this section is carried out. The department may require as a condition or restriction under any permit issued under this section that the work authorized under the permit meet standards established by the department.

(7) Nothing in this section prohibits a sign owner and the department from voluntarily negotiating for, and the department from authorizing without the issuance of a permit under this section, the trimming, removal, or relocation of any vegetation in a highway right-of-way in order to provide an unobstructed view of a sign, except in situations where sub. (3) (d) would apply if a permit were issued under this section. Nothing in this section restricts the department's authority with respect to departmental maintenance operations in the rights-of-way of highways under the department's jurisdiction.

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

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

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

SECTION 3. Nonstatutory provisions.

(1) The joint legislative audit committee is requested to, and may, direct the legislative audit bureau to perform a performance evaluation audit of the program under section 84.305 of the statutes, as created by this act, during the 2007-08 fiscal year, which audit shall include evaluating the overall effectiveness of the program. If the committee directs the legislative audit bureau to perform an audit under this subsection, the bureau shall file its report as described in section 13.94 (1) (b) of the statutes by June 30, 2008.