

2007 ASSEMBLY BILL 836

February 21, 2008 – Introduced by Representatives MOLEPSKE, SOLETSKI, SMITH, BERCEAU and SINICKI, cosponsored by Senators HANSEN and KAPANKE. Referred to Committee on Transportation.

1 **AN ACT** *to create* 20.115 (7) (i) and 94.697 of the statutes; **relating to:** pesticide
2 use by railroads, granting rule-making authority, and making an
3 appropriation.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Agriculture, Trade and Consumer Protection (DATCP) administers laws that regulate the sale and use of pesticides, including herbicides.

This bill requires a railroad to annually file with DATCP a plan for its pesticide use. The bill requires a railroad to make the plan available to others, including the railroad's employees and those who own land adjacent to the railroad's rights-of-way. The bill generally requires a railroad and any person under contract with the railroad to comply with the plan when applying pesticides to rights-of-way. The bill generally prohibits a railroad from requiring a person to work in an area to which a pesticide has been applied within 48 hours of the application of the pesticide.

The bill requires DATCP to establish, by rule, fees to be paid by railroad companies to cover the costs DATCP incurs under the bill. The bill also authorizes DATCP to promulgate rules to limit the times and weather conditions in which pesticides may be applied by railroads to prevent damage to lands adjoining rights-of-way and to protect the health of employees of railroads and their contractors.

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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:

1 **SECTION 1.** 20.115 (7) (i) of the statutes is created to read:

2 20.115 (7) (i) *Railroad pesticide use.* All moneys received under s. 94.697 (6)
3 (a) for the activities under s. 94.697 related to railroad pesticide use.

4 **SECTION 2.** 94.697 of the statutes is created to read:

5 **94.697 Railroad pesticide use. (1) DEFINITIONS.** In this section:

6 (a) “Railroad” means a person that owns or operates any railroad or part of a
7 railroad as a common carrier in this state.

8 (b) “Structural pest control” means the control of a pest, other than a plant, in
9 or around a building or other structure, including a boxcar.

10 **(2) PLAN REQUIRED.** A railroad shall annually, by March 15, file with the
11 department a plan for its pesticide applications for the 9 months beginning on April
12 1. A railroad shall include all of the following in the plan:

13 (a) A schedule showing the dates, times, and places at which pesticides will be
14 applied.

15 (b) A list of the pesticides that will be used, including ingredient statements
16 and the known long-term and short-term effects on humans of each pesticide.

17 (c) The name, training, and contact information for each commercial applicator
18 for hire with whom the railroad contracts to apply pesticides.

19 **(3) AVAILABILITY OF PLAN.** A railroad shall make the plan under sub. (2) available
20 to persons who own land adjacent to rights-of-way that the railroad owns or

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1 maintains, persons who conduct agricultural activities on land adjacent to the
2 rights-of-way that the railroad owns or maintains, and the railroad's employees.

3 **(4) CONFORMANCE WITH PLAN.** (a) Except as provided in par. (b), a railroad and
4 any person under contract with a railroad may only apply pesticides to a railroad
5 right-of-way in conformance with the plan under sub. (2). A railroad shall ensure
6 that an individual applying pesticides to rights-of-way that the railroad owns or
7 maintains is familiar with and complies with the plan.

8 (b) Paragraph (a) does not apply to any of the following:

9 1. The application of pesticides within 5 feet of the center line of a railroad
10 track.

11 2. The application of pesticides for structural pest control.

12 3. The application of pesticides when applications provided for by the plan
13 under sub. (2) are insufficient to control noxious weeds, as required by s. 66.0407, or
14 to protect public health.

15 4. An application of pesticides that is specifically approved by the department.

16 **(5) EMPLOYEE INFORMATION AND PROTECTION.** (a) A railroad may not require an
17 employee of the railroad or of a contractor, other than an employee who applies a
18 pesticide, to work in an area in which a pesticide has been applied within 48 hours
19 after application of the pesticide.

20 (b) A railroad shall provide an employee of the railroad or of a contractor who
21 is required to work in an area within 168 hours after application of a pesticide to the
22 area with a written description, in easily comprehensible language, of the pesticide
23 used and its known effects on humans.

