

# State of Wisconsin



2009 Senate Bill 123

Date of enactment: **October 28, 2009**  
Date of publication\*: **November 11, 2009**

## 2009 WISCONSIN ACT 55

**AN ACT** to repeal 23.225, 23.245 and 30.715 (title) and (1) to (4); to renumber 30.715 (5); to renumber and amend 30.715 (6); to amend 23.22 (3) (c), 23.22 (6) (b), 23.22 (6) (c), 30.124 (1) (a), 30.1255 (3) (b) and 66.0407 (1) (b); and to create 23.22 (2t), 23.22 (5m), 23.2355, 30.07, 30.80 (5m), 287.07 (7) (cm) and 345.11 (1j) of the statutes; relating to: regulating the transportation of aquatic plants and aquatic animals, the administration of federal funds for the control and eradication of noxious weeds, the placement of vehicles, seaplanes, watercraft, and other objects in navigable waters, the regulation of noxious weeds by municipalities, the disposal of invasive species, providing an exemption from rule-making procedures, requiring the exercise of rule-making authority, and providing a penalty.

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

**SECTION 1.** 23.22 (2t) of the statutes is created to read:

**23.22 (2t) DEPARTMENT POWERS AND COOPERATION.**

(a) Using the procedure under s. 227.24, the department may promulgate an emergency rule to identify, classify, or control an invasive species under sub. (2) (b) 6. Notwithstanding s. 227.24 (1) (a) and (3), the department is not required to provide evidence that promulgating a rule under this paragraph as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this paragraph. Notwithstanding s. 227.24 (1) (c) and (2), an emergency rule promulgated under this paragraph remains in effect until whichever of the following occurs first:

1. The first day of the 25th month beginning after the effective date of the emergency rule.
2. The effective date of the repeal of the emergency rule.

3. The date on which the permanent rule identifying, classifying, or controlling the invasive species, promulgated under sub. (2) (b) 6., takes effect.

(b) The department may hold hearings relating to any aspect of the administration of this section and, in connection with those hearings, compel the attendance of witnesses and the production of evidence.

(c) The department may waive compliance with any requirement under this section or shorten the time periods under this section to the extent necessary to prevent an emergency condition threatening public health, safety, or welfare or the environment.

(d) The department may secure necessary scientific, technical, administrative, and operational services, including laboratory facilities, by contract or otherwise for purposes of this section.

(e) The department may advise and may consult, contract, and cooperate with, other state agencies, local governments, industries, other states, interstate or interlocal agencies, the federal government, and other interested persons or groups for purposes of this section.

\* Section 991.11, WISCONSIN STATUTES 2007-08 : 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].

(f) Every state agency shall cooperate with the department in the administration of this section where the interests of the department and the respective state agency overlap. The cooperating state agencies may provide by agreement for the manner of sharing expenses and responsibilities under this section.

**SECTION 2.** 23.22 (3) (c) of the statutes is amended to read:

23.22 (3) (c) The council shall make recommendations to the department on the establishment of a procedure for awarding cost-sharing grants under sub. (2) (c) to public and private entities for up to 50% 75 percent of the costs of eligible projects to control invasive species. The recommendations shall contain criteria for determining eligibility for these grants and for determining which applicants should be awarded the grants.

**SECTION 3.** 23.22 (5m) of the statutes is created to read:

23.22 (5m) **RULES FOR COMPLIANCE.** In addition to the rules promulgated under sub. (2) (b) 6., the department may promulgate rules establishing procedures for conducting investigations and inspections necessary to obtain compliance with this section.

**SECTION 4.** 23.22 (6) (b) of the statutes is amended to read:

23.22 (6) (b) The department shall submit the biennial report under par. (a) before ~~July~~ October 1 of each even-numbered year. ~~The first biennial report shall be submitted no later than July 1, 2004.~~ Each report shall cover the 24-month period ending on the ~~March 31~~ June 30 that immediately precedes the date of the report.

**SECTION 5.** 23.22 (6) (c) of the statutes is amended to read:

23.22 (6) (c) In addition to the report required under par. (a), the department shall submit an interim performance report to the legislature under s. 13.172 (2), and to the governor and the council, on the progress that has been made on the control of invasive species. The department shall submit this interim performance report before ~~July~~ October 1 of each odd-numbered year. ~~The first interim performance report shall be submitted no later than July 1, 2005.~~ Each interim performance report shall cover the 12-month period ending on the ~~March 31~~ June 30 that immediately precedes the date of the interim performance report.

**SECTION 6.** 23.225 of the statutes is repealed.

**SECTION 7.** 23.2355 of the statutes is created to read:

**23.2355 Weed management grants.** The department, in consultation with the department of agriculture, trade and consumer protection, shall promulgate rules that authorize the department, in consultation with the department of agriculture, trade and consumer protection, to provide funds received from the federal government under 7 USC 7782 to eligible recipients for the control or eradication of noxious weeds. The rules shall

authorize the department and the department of agriculture, trade and consumer protection to use the funds received from the federal government to provide technical assistance and to make grants to eligible recipients to control or eradicate noxious weeds.

**SECTION 8.** 23.245 of the statutes is repealed.

**SECTION 9.** 30.07 of the statutes is created to read:

**30.07 Transportation of aquatic plants and animals; placement of objects in navigable waters.** (1) In this section:

(a) "Aquatic animal" means any animal that lives or grows only in water during any life state and includes that animal's eggs, larvae, or young.

(b) "Aquatic plant" means a submergent, emergent, floating-leaf, or free-floating plant or any part thereof. "Aquatic plant" does not mean wild rice.

(c) "Highway" has the meaning given in s. 340.01 (22), except that it does not include public boat access sites or parking areas for public boat access sites.

(d) "Law enforcement officer" has the meaning given in s. 30.50 (4s).

(e) "Local governmental unit" means a city, village, town, or county; a special purpose district in this state; an agency or corporation of a city, village, town, county, or special purpose district; or a combination or subunit of any of the foregoing.

(f) "Public boat access site" means a site that provides access to a navigable water for boats and that is open to the general public for free or for a charge or that is open only to certain groups of persons for a charge.

(g) "Vehicle" has the meaning given in s. 340.01 (74).

(2) (a) No person may place or operate a vehicle, seaplane, watercraft, or other object of any kind in a navigable water if it has any aquatic plants or aquatic animals attached to the exterior of the vehicle, seaplane, watercraft, or other object. This paragraph does not require a person to remove aquatic plants or aquatic animals from a vehicle, seaplane, watercraft, or other object during the period of time when the vehicle, seaplane, watercraft, or other object is being operated in the same navigable body of water in which the aquatic plants or aquatic animals became attached.

(b) No person may take off with a seaplane, or transport or operate a vehicle, watercraft, or other object of any kind on a highway with aquatic plants or aquatic animals attached to the exterior of the seaplane, vehicle, watercraft, or other object.

(3) A law enforcement officer who has reason to believe that a person is in violation of sub. (2) may order the person to do any of the following:

(a) Remove aquatic plants or aquatic animals from a vehicle, seaplane, watercraft, or other object of any kind before placing it in a navigable water.

(b) Remove aquatic plants or aquatic animals from a seaplane before taking off with the seaplane.

(c) Remove from, or not place in, a navigable water, a vehicle, seaplane, watercraft, or other object of any kind.

(d) Not take off with a seaplane, or transport or operate a vehicle, watercraft, or other object of any kind on a highway.

(4) Subsection (2) does not prohibit a person from doing any of the following:

(am) Transporting or operating commercial aquatic plant harvesting equipment that has aquatic plants or animals attached to the exterior of the equipment if the equipment is owned or operated by a local governmental unit, if the equipment is being transported or operated for the purpose of cleaning the equipment to remove aquatic plants or animals, and if the person transports the equipment to, or operates the equipment at, a suitable location away from any body of water.

(b) Transporting or operating a vehicle, seaplane, watercraft, or other object of any kind with duckweed that is incidentally attached to the exterior of the vehicle, seaplane, watercraft, or other object.

**SECTION 10.** 30.124 (1) (a) of the statutes is amended to read:

30.124 (1) (a) Cut aquatic plants, as defined in s. 30.715 ~~30.07~~ (1) ~~(a)~~ (b), without removing them from the water, for the purpose of improving waterfowl nesting, brood, and migration habitat.

**SECTION 11.** 30.1255 (3) (b) of the statutes is amended to read:

30.1255 (3) (b) The department shall submit the first report required under par. (a) before July 1, 1994, and shall submit subsequent reports before July October 1 of each even-numbered year thereafter. ~~Beginning with the report due before July 1, 2004, the department shall submit each report required under par. (a) as part of the corresponding biennial report under s. 23.22 (6).~~

**SECTION 12.** 30.715 (title) and (1) to (4) of the statutes are repealed.

**SECTION 13.** 30.715 (5) of the statutes is renumbered 30.07 (5).

**SECTION 14.** 30.715 (6) of the statutes is renumbered 30.07 (6) and amended to read:

30.07 (6) No person may refuse to obey the order of a law enforcement officer who is acting under sub. (4) ~~(3)~~.

**SECTION 15.** 30.80 (5m) of the statutes is created to read:

30.80 (5m) Any person violating any provision of s. 30.07 (2) or (6) shall forfeit not more than \$500 for the first offense and shall forfeit not more than \$2,000 upon conviction of the same offense a 2nd or subsequent time within 3 years.

**SECTION 16.** 66.0407 (1) (b) of the statutes is amended to read:

66.0407 (1) (b) "Noxious weed" means Canada thistle, leafy spurge ~~and~~ field bindweed ~~(creeping Jenny)~~, any weed designated as a noxious weed by the department of natural resources by rule, and any other weed the governing body of any municipality or the county board of any county by ordinance or resolution declares to be noxious within its respective boundaries.

**SECTION 17.** 287.07 (7) (cm) of the statutes is created to read:

287.07 (7) (cm) The prohibition in sub. (2) does not apply to the disposal of plants that are classified by the department as invasive species under s. 23.22 (2) or their seeds, if the plants or seeds are not commingled with other yard waste.

**SECTION 18.** 345.11 (1j) of the statutes is created to read:

345.11 (1j) The uniform traffic citation or the citation form under s. 23.54 may be used for violations of s. 30.07. When the uniform traffic citation is used, the report of conviction shall be forwarded to the department of natural resources. When the citation form under s. 23.54 is used, the procedure in ss. 23.50 to 23.85 applies.