



2001 ASSEMBLY BILL 55

February 1, 2001 - Introduced by Representatives BLACK, BOCK, BERCEAU, BOYLE, BALOW, CARPENTER, CULLEN, HEBL, HUBER, KREUSER, LA FAVE, LASSA, J. LEHMAN, MILLER, MEYERHOFER, MORRIS-TATUM, PLOUFF, POCAN, SHERMAN, SHILLING, SINICKI, RICHARDS, TURNER, TRAVIS, YOUNG, WILLIAMS, SCHOOFF and KRUG, cosponsored by Senators GEORGE, SHIBILSKI, RISSER, BAUMGART, BURKE, DECKER, ERPENBACH, GROBSCHMIDT, HANSEN, M. MEYER, MOEN, WIRCH and PLACHE. Referred to Committee on Natural Resources.

1 **AN ACT to amend** 814.245 (2) (d); and **to create** 18.13 (4g), 165.07, 165.075 and
2 165.076 of the statutes; **relating to:** creating an office of public intervenor in
3 the department of justice and making an appropriation.

Analysis by the Legislative Reference Bureau

This bill recreates an office of public intervenor attached to the department of justice (DOJ), with the same duties and authority that existed before 1995 Wisconsin Act 27. That act transferred the office of public intervenor from DOJ to the department of natural resources (DNR), eliminated the public intervenor's authority to formally commence or intervene in lawsuits, and substituted an eight-member board (consisting of four members nominated by the governor and approved by the senate and four members each appointed by the majority and minority leaders of the senate and assembly) for the seven- to nine-member advisory committee (consisting of members appointed by the attorney general). The office of public intervenor and its board were eliminated by 1997 Wisconsin Act 27.

The bill requires the attorney general to appoint an assistant attorney general to serve as the public intervenor. The bill authorizes the public intervenor to do all of the following:

1. Formally commence or intervene in proceedings before any court whenever such intervention is necessary to protect the public rights in water and other natural resources of this state, and requires the public intervenor to intervene in such matters when requested to do so by a division administrator in DNR.

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2. Act as an interested party in actions in which he or she intervenes, with full power to present evidence, subpoena witnesses, cross-examine witnesses, file briefs, and do any other acts appropriate for a party to the proceedings.

3. Appeal administrative rulings to the courts.

The bill requires DNR personnel to notify the public intervenor of all administrative proceedings under the environmental protection chapters and to make such investigations, studies, and reports to assist the public intervenor either before or during such formal intervention.

The bill also requires the attorney general to appoint a public intervenor advisory council consisting of seven to nine members who have a background in or demonstrated experience or records relating to environmental protection or natural resource conservation. In addition, at least one member must have working knowledge of business and at least one member must have knowledge of agriculture. The advisory committee must hold open, publicized meetings and must advise the public intervenor consistent with his or her duties.

The bill authorizes 2.0 attorney positions in DOJ for the purposes of the public intervenor.

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.** 18.13 (4g) of the statutes is created to read:

2 18.13 **(4g)** PUBLIC INTERVENOR. Notwithstanding s. 165.075, the public
3 intervenor does not have authority to initiate any action or proceeding concerning
4 the issuance of obligations by the building commission under this chapter.

5 **SECTION 2.** 165.07 of the statutes is created to read:

6 **165.07 Assistant attorney general — public intervenor.** (1) The attorney
7 general shall designate an assistant attorney general on the attorney general's staff
8 as public intervenor. The head of each agency responsible for proceedings under chs.
9 30, 31, 281 to 285, and 289 to 299, except s. 281.48, shall give notice of those
10 proceedings to the public intervenor, to the administrators of divisions primarily
11 assigned the departmental functions under chs. 29, 281, 285, and 289 to 299, except
12 s. 281.48, and to the natural areas preservation council.

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1 **(2)** The public intervenor shall formally intervene in proceedings described in
2 sub. (1) when requested to do so by an administrator of a division primarily assigned
3 the departmental functions under chs. 29, 281, 285, or 289 to 299, except s. 281.48.
4 The public intervenor may, on the public intervenor's own initiative or upon request
5 of any committee of the legislature, formally intervene in proceedings described in
6 sub. (1) whenever that intervention is needed for the protection of public rights in
7 water and other natural resources, as provided in chs. 30 and 31 and defined by the
8 supreme court.

9 **(3)** Personnel of the department of natural resources shall, upon the request
10 of the public intervenor, make such investigations, studies, and reports as the public
11 intervenor may request in connection with proceedings described in sub. (1), either
12 before or after formal intervention. Personnel of state agencies shall, at the public
13 intervenor's request, provide information, serve as witnesses in proceedings
14 described in sub. (1), and otherwise cooperate in the carrying out of the public
15 intervenor's intervention functions. The public intervenor shall formally intervene
16 by filing a statement to that effect with the examiner or other person immediately
17 in charge of the proceeding. Upon that filing, the public intervenor shall be
18 considered a party in interest with full power to present evidence, subpoena and
19 cross-examine witnesses, submit proof, file briefs, or do any other acts appropriate
20 for a party to the proceedings.

21 **(4)** The public intervenor may appeal from administrative rulings to the courts.
22 In all administrative proceedings and judicial review proceedings, the public
23 intervenor shall be identified as "public intervenor." This section does not preclude
24 or prevent any division of the department of natural resources, or any other

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1 department or independent agency, from appearing by its staff as a party in any
2 proceedings.

3 **SECTION 3.** 165.075 of the statutes is created to read:

4 **165.075 Assistant attorney general; public intervenor; authority.** In
5 carrying out his or her duty to protect public rights in water and other natural
6 resources, the public intervenor has the authority to initiate actions and proceedings
7 before any agency or court in order to raise issues, including issues concerning
8 constitutionality, present evidence and testimony, and make arguments.

9 **SECTION 4.** 165.076 of the statutes is created to read:

10 **165.076 Assistant attorney general; public intervenor; advisory**
11 **committee.** The attorney general shall appoint a public intervenor advisory
12 committee under s. 15.04 (1) (c). The public intervenor advisory committee shall
13 consist of not less than 7 nor more than 9 members. The members shall have
14 backgrounds in or demonstrated experience or records relating to environmental
15 protection or natural resource conservation. At least one of the members shall have
16 working knowledge in business. At least one of the members shall have working
17 knowledge in agriculture. The public intervenor advisory committee shall advise the
18 public intervenor consistent with his or her duty to protect public rights in water and
19 other natural resources. The public intervenor advisory committee shall conduct
20 meetings consistent with subch. V of ch. 19 and shall permit public participation and
21 public comment on public intervenor activities.

22 **SECTION 5.** 814.245 (2) (d) of the statutes is amended to read:

23 814.245 (2) (d) "State agency" does not include the public intervenor or citizens
24 utility board.

25 **SECTION 6. Appropriation changes.**

