



2005 SENATE BILL 541

January 31, 2006 - Introduced by Senators KANAVAS, ERPENBACH, BRESKE, BROWN, GROTHMAN, HANSEN, KAPANKE, OLSEN and REYNOLDS, cosponsored by Representatives HONADEL, AINSWORTH, ALBERS, BALLWEG, FRISKE, GIELOW, GRONEMUS, GUNDERSON, HAHN, KRAWCZYK, LEHMAN, MOULTON, MUSSER, NERISON, OTT, PETROWSKI, RICHARDS, SHERIDAN, SHILLING, STASKUNAS, STONE, STRACHOTA, TOWNS, VAN ROY, WARD, WOOD and ZEPNICK. Referred to Committee on Natural Resources and Transportation.

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

Under current law, the Department of Transportation (DOT) is responsible for maintenance of the highway right-of-way on highways that, for maintenance purposes, are under its jurisdiction, which are generally state trunk highways but do not include connecting highways (state trunk highways). DOT must provide for the care and protection of trees and other roadside vegetation, including suitable planting to prevent soil erosion and to beautify the highways. DOT must also cut, trim, or remove, or allow others to cut, trim, or remove, trees and other vegetation in order to provide safety to highway users. DOT is also required to establish procedures for increasing the number of trees planted on state trunk highway rights-of-way.

Current law also prohibits a person from cutting, trimming, removing, or injuring any tree or other vegetation within the right-of-way of a state trunk highway without the consent of DOT. With DOT's approval, an owner of land adjoining a state trunk highway may plant and maintain trees and other vegetation on the side of the highway within ten feet of the owner's land, and these trees and other vegetation may be cut or removed only by the owner or DOT. Under certain

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conditions, a person may cut or trim grass within the highway right-of-way without DOT's consent.

The federal Highway Beautification Act requires states to restrict advertising along interstate and federal-aid primary highways, which includes state trunk highways and connecting highways, and current state law incorporates these requirements. Current law prohibits, with certain exceptions, the erection or maintenance of outdoor advertising signs (signs) within 660 feet of, or beyond 660 feet but visible (and erected for the purpose of being visible) from, the main-traveled way of an interstate or federal-aid primary highway. Exceptions to this prohibition include, with some restrictions, signs advertising activities conducted on the property on which the signs are located; signs located beyond 660 feet of the highway in urban areas; and signs located within 660 feet of the highway in certain business, industrial, or commercial areas.

This bill creates a DOT permit system for the maintenance and removal by sign owners of vegetation obstructing the view of signs along highways under the jurisdiction of DOT for maintenance purposes. Under the bill, DOT may issue permits to sign owners for the trimming, removal, or relocation of vegetation that is located in the right-of-way of a state trunk highway and that obstructs a sign if, within various specified distances along the main-traveled way of the highway, the face of the sign is not viewable because of an obstruction to sight by vegetation in the highway right-of-way. A permit authorizes the sign owner, or a third-party contractor employed by the sign owner, to trim obstructing vegetation or remove or relocate obstructing individual plants to the extent necessary to eliminate the obstruction and restore an unobstructed view of the sign for the applicable specified distance along the highway. A permit must specify the vegetation or the portion of the highway right-of-way to which the permit applies. Each permit must require a sign owner that removes planted vegetation to either relocate the planted vegetation or reimburse DOT for the value of the planted vegetation. DOT must present to the sign owner DOT's calculation of the value of the planted vegetation, and the sign owner may elect to relocate the planted vegetation or to reimburse DOT in the amount calculated by DOT. A permit may not authorize: trimming, removal, or relocation of vegetation located within a municipality and within ten feet of the nearest edge of the highway pavement unless the municipality approves the trimming, removal, or relocation; trimming, removal, or relocation of vegetation in existence prior to the erection of the sign obstructed by the vegetation; or clear-cutting any highway right-of-way.

DOT must grant or deny an application for a permit within 60 days of receiving the application. If an application is incomplete, DOT must return the application within 30 days of receiving the application and inform the applicant of what information must be provided to complete the application. If DOT denies an application, DOT must notify the applicant of reasons for the denial. Under certain conditions, a sign owner applying for a permit must, at the time of the application, provide written notice of the permit application to the owner of any property adjacent to the vegetation that is the subject of the permit application and to the municipality in which this adjacent property is located.

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DOT has authority to supervise and determine how the work authorized under a permit is carried out, and may require as a condition or restriction under any permit that the work authorized under the permit meet standards established by DOT. If a sign owner employs a third-party contractor to perform work authorized under the permit, the sign owner is responsible for any work performed by the contractor that is not authorized by the permit as if the work had been performed directly by the sign owner.

The bill generally does not prevent a sign owner and DOT from voluntarily agreeing to a sign owner's trimming, removal, or relocation, without a permit, of vegetation that obstructs the view of a sign.

If a sign owner is aggrieved by a DOT decision or by DOT's failure to act on an application, the sign owner may seek review through a contested case hearing before the Division of Hearings and Appeals in the Department of Administration and may thereafter seek court review.

Finally, the bill requests the Legislative Audit Bureau to conduct a performance audit of the permit program created under the bill during the 2007-08 fiscal year and to file a report by June 30, 2008.

For further information see the *state and local* 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.** 84.305 of the statutes is created to read:

2 **84.305 Vegetation obstructing view of outdoor advertising signs. (1)**

3 In this section:

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

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

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

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

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

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

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

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

5 (g) “Unzoned commercial or industrial area” means an area that is not zoned
6 by state or local law, regulation, or ordinance, and on which a sign is located within
7 500 feet of one or more permanent structures devoted to an ongoing commercial or
8 industrial activity.

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

12 (i) “Viewing zone” means, with respect to a sign, the area commencing at the
13 point on the main-traveled way of the highway nearest the sign and extending, in
14 a direction opposite of the direction of travel in the nearest through traffic lanes, in
15 a line along the highway parallel to the highway pavement edge for a distance of
16 1,000 feet.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (f) The department shall make every effort to issue permits under this section
25 that authorize the permittee to fully remedy the condition giving rise to the need for

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1 the permit as described under sub. (2) (a) 1. to 4., but the department, in its discretion
2 and for the purpose of causing the least disruption to the landscape design in the
3 highway right-of-way, may issue permits authorizing trimming, removal, or
4 relocation of vegetation in a manner that results in the distance of 243 feet specified
5 in sub. (2) (a) 1., 350 feet specified in sub. (2) (a) 2., 500 feet specified in sub. (2) (a)
6 3., or 600 feet specified in sub. (2) (a) 4., being noncontinuous if the permit allows the
7 permittee to minimize sight obstruction of the sign along the applicable portion of the
8 viewing zone.

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

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

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

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

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

11 (6) The department shall have authority to supervise and determine how the
12 work authorized under a permit issued under this section is carried out. The
13 department may require as a condition or restriction under any permit issued under
14 this section that the work authorized under the permit meet standards established
15 by the department.

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

24 (8) Any person aggrieved by a decision of the department under this section,
25 or by the department's failure to act on an application within the time limits specified

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1 in this section, is entitled, upon request, to a contested case hearing before the
2 division of hearings and appeals in the department of administration, and to judicial
3 review thereof, in accordance with ch. 227.

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

5 227.43 (1) (bg) Assign a hearing examiner to preside over any hearing or review
6 under ss. 84.30 (18), 84.305, 84.31 (6) (a), 85.013 (1), 86.073 (3), 86.16 (5), 86.195 (9)
7 (b), 86.32 (1), 101.935 (2) (b), 101.951 (7) (a) and (b), 114.134 (4) (b), 114.135 (9),
8 114.20 (19), 175.05 (4) (b), 194.145 (1), 194.46, 218.0114 (7) (d) and (12) (b), 218.0116
9 (2), (4), (7) (a), (8) (a) and (10), 218.0131 (3), 218.11 (7) (a) and (b), 218.22 (4) (a) and
10 (b), 218.32 (4) (a) and (b), 218.41 (4), 218.51 (5) (a) and (b), 341.09 (2m) (d), 342.26,
11 343.69 and 348.25 (9).

12 **SECTION 3. Nonstatutory provisions.**

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

20 (END)