



**ASSEMBLY SUBSTITUTE AMENDMENT 2,
TO 1995 ASSEMBLY BILL 585**

November 14, 1995 - Offered by Representative JOHNSRUD.

1 **AN ACT** *to renumber* 29.092 (10); *to amend* 29.092 (10) (title), 29.093 (10) (b),
2 29.415 (1), 29.415 (4) (intro.) and 29.415 (6) (a); and *to create* 20.370 (1) (ft),
3 29.092 (10) (b), 29.415 (2) (am), 29.415 (2) (bn), 29.415 (6m) and 29.415 (6r) of
4 the statutes; **relating to:** incidental takings of wild animals and wild plants of
5 endangered species or threatened species and making an appropriation.

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

6 **SECTION 1.** 20.370 (1) (ft) of the statutes is created to read:

7 20.370 (1) (ft) *Endangered resources — application fees.* All moneys received
8 from application fees under s. 29.092 (10) (b) to be used for the purposes of processing
9 applications under and administering s. 29.415 (6m) and (6r).

10 **SECTION 2.** 29.092 (10) (title) of the statutes is amended to read:

11 29.092 (10) (title) SCIENTIFIC COLLECTOR PERMIT; ENDANGERED SPECIES PERMIT.

12 **SECTION 3.** 29.092 (10) of the statutes is renumbered 29.092 (10) (a).

13 **SECTION 4.** 29.092 (10) (b) of the statutes is created to read:

1 29.092 (10) (b) The nonrefundable application fee for a permit issued under s.
2 29.415 (6m) is \$100.

3 **SECTION 5.** 29.093 (10) (b) of the statutes is amended to read:

4 29.093 (10) (b) *Endangered species permit.* A permit issued under s. 29.415 (6)
5 or (6m) is valid for the period designated by the department.

6 **SECTION 6.** 29.415 (1) of the statutes is amended to read:

7 29.415 (1) PURPOSE. The legislature finds that certain wild animals and wild
8 plants are endangered or threatened and are entitled to preservation and protection
9 as a matter of general state concern. The federal endangered species act of 1973 and
10 the Lacey act together provide for the protection of wild animals and wild plants
11 threatened with worldwide extinction by prohibiting the importation of endangered
12 or threatened wild animals and wild plants and by restricting and regulating
13 interstate and foreign commerce in wild animals and wild plants taken in violation
14 of state, federal and foreign laws. The states, however, must also assume their
15 responsibility for conserving these wild animals and wild plants and for restricting
16 the taking, possession, transportation, processing or sale of endangered or
17 threatened wild animals and wild plants within their respective jurisdictions to
18 assure their continued survival and propagation for the aesthetic, recreational and
19 scientific purposes of future generations. The legislature finds that by ~~eliminating~~
20 restricting the taking, possession or marketing of endangered species in this state
21 and by establishing a program for conservation and restoration of these endangered
22 or threatened species, their potential for continued existence will be strengthened.
23 The legislature further finds that the activities of both individual persons and
24 governmental agencies are tending to destroy the few remaining whole
25 plant-animal communities in this state. Since these communities represent the only

1 standard against which the effects of change can be measured, their preservation is
2 of highest importance, and the legislature urges all persons and agencies to fully
3 consider all decisions in this light.

4 **SECTION 7.** 29.415 (2) (am) of the statutes is created to read:

5 29.415 (2) (am) “State agency” means a board, commission, committee,
6 department or office in the state government. “State agency” does not include the
7 department of natural resources or the office of the governor.

8 **SECTION 8.** 29.415 (2) (bn) of the statutes is created to read:

9 29.415 (2) (bn) “Whole plant–animal community” means a group of species
10 living together in a particular area, time and habitat.

11 **SECTION 9.** 29.415 (4) (intro.) of the statutes is amended to read:

12 29.415 (4) (intro.) Except as provided in sub. (6r) or as permitted by
13 departmental rule or permit:

14 **SECTION 10.** 29.415 (6) (a) of the statutes is amended to read:

15 29.415 (6) (a) The department shall issue a permit, under such terms and
16 conditions as it may prescribe by rule, authorizing the taking, exportation,
17 transportation or possession of any wild animal or wild plant on the list of
18 endangered and threatened species for zoological, educational or scientific purposes,
19 for propagation of such wild animals and wild plants in captivity for preservation
20 purposes, unless such exportation, possession, transportation or taking is prohibited
21 by any federal law or regulation, or any other law of this state.

22 **SECTION 11.** 29.415 (6m) of the statutes is created to read:

23 29.415 (6m) INCIDENTAL TAKINGS; PERMITS. (a) In this subsection and sub. (6r),
24 “taking” means an activity prohibited under sub. (4) (a), (b) or (c).

1 (b) The department may issue a permit, under such terms and conditions as
2 it may prescribe, authorizing a taking that otherwise is prohibited by this section if
3 the taking is not for the purpose of, but will be only incidental to, the carrying out
4 of an otherwise lawful activity.

5 (c) The department may not issue a permit under this subsection unless an
6 applicant for the permit submits to the department a conservation plan and an
7 implementing agreement. The conservation plan shall include all of the following:

8 1. A description of the impact that will likely occur as a result of the taking of
9 an endangered species or threatened species that is specified on the department's
10 endangered and threatened species list.

11 2. The steps that the parties specified under par. (d) will take to minimize and
12 mitigate the impact that the endangered species or the threatened species will suffer.

13 3. A description of the funding that the parties specified under par. (d) will have
14 available to implement the steps specified under subd. 2.

15 4. A description of the alternative actions to the taking that the parties in par.
16 (d) have considered and the reasons that these alternatives will not be utilized.

17 5. Any other measures that the department may determine to be necessary or
18 appropriate.

19 (d) The implementing agreement required under par. (c) shall specifically
20 name, and describe the obligations and responsibilities of, all the parties that will
21 be involved in the taking as authorized by the permit.

22 (e) Upon receipt of an application for a permit and the accompanying
23 conservation plan and implementing agreement for a proposed taking, the
24 department shall publicize the application by announcing the application receipt
25 and by giving a brief description of the proposed taking. The publicity shall be

1 distributed to the news media throughout the state and to any person who wants to
2 receive notification of proposed takings under this subsection and who has so
3 informed the department in writing. The department shall establish a procedure for
4 receipt of public comment on the proposed taking.

5 (f) After having considered the public comment received on the proposed
6 taking, the department shall issue the permit if the department finds, based on the
7 permit application, the conservation plan and the implementing agreement, the
8 taking will meet all of the following requirements:

9 1. The taking will not be the purpose of, but will be only incidental to, the
10 carrying out of a lawful activity.

11 2. The parties specified under par. (d) will, to the maximum extent practicable,
12 minimize and mitigate the impact caused by the taking.

13 3. The parties specified under par. (d) will ensure that adequate funding for the
14 conservation plan will be provided.

15 4. The taking will not appreciably reduce the likelihood of the survival or
16 recovery of the endangered species or threatened species within the state, the whole
17 plant-animal community of which it is a part or the habitat that is critical to its
18 existence.

19 5. Any measures required under par. (c) 5. will be met.

20 (g) The department may require that a party specified under par. (d) make
21 additional assurances that the requirements under par. (f) 1. to 5. will be met before
22 issuing a permit under par. (f).

23 (h) The department shall impose on the permit any terms or conditions that the
24 department finds necessary to ensure that the requirements under par. (f) 1. to 5. will

1 be met. These terms or conditions may include reporting and monitoring
2 requirements.

3 (i) The department shall revoke a permit issued under this subsection if it finds
4 that a party specified under par. (d) fails to comply with the terms and conditions of
5 the permit.

6 (j) A permit issued by the department is not required if a permit under 16 USC
7 1539 has been issued and the department determines that that the federal permit,
8 along with its conservation plan and implementing agreement, comply with the
9 requirements under this subsection.

10 (k) Paragraphs (b) to (j) do not apply to interagency activities under sub. (6r).

11 **SECTION 12.** 29.415 (6r) of the statutes is created to read:

12 29.415 **(6r)** INTERAGENCY CONSULTATION. (a) A state agency shall notify the
13 department at the earliest opportunity of the location, nature and extent of a
14 proposed activity that the state agency may conduct, approve or fund and that may
15 affect an endangered species or threatened species. The department may allow the
16 taking of an endangered species or threatened species if all of the following apply:

17 1. The activity is accomplished in accordance with interagency consultation
18 procedures established by the department and the state agency for the purpose of
19 minimizing any adverse effect on the endangered species or threatened species.

20 2. The activity is not likely to jeopardize the continued existence and recovery
21 of the endangered species or threatened species, or the whole plant-animal
22 community of which it is a part, within this state and the activity is not likely to result
23 in the destruction or adverse modification of a habitat that is critical to the continued
24 existence of the endangered species or the threatened species within the state, as
25 determined by the department under par. (b).

1 3. The benefit to public health, safety or welfare justifies the activity.

2 (b) For purposes of par. (a) 2., the department shall determine whether a
3 habitat is critical to the continued existence of an endangered species or threatened
4 species by considering the endangered species' or threatened species' global and
5 state element ranking as defined by the methodology used by the natural heritage
6 inventory program.

7 (c) The department shall notify the state agency if the department determines
8 that there is reasonable cause for the department to determine that an activity is not
9 being carried out in compliance with this subsection or with any environmental
10 protection requirements developed through interagency consultation procedures. If
11 the secretary of natural resources and the head, as defined in s. 15.01 (8), of the state
12 agency are unable to agree upon methods or time schedules to be used to correct the
13 alleged noncompliance, the department may bring any action or initiate any other
14 proceedings to enforce compliance with this subsection.

15 (d) The department and the state agency shall exchange information and
16 cooperate in the planning and implementation of any activity relating to the taking
17 of any endangered species or threatened species in order to alleviate, to the
18 maximum extent practicable under the circumstances, any potential adverse effect
19 on the endangered species or the threatened species.

20 (e) 1. Except as provided in subd. 2., cooperation between the department and
21 the state agency under par. (d) shall include conducting reasonable surveys and
22 reasonable biological assessments as determined by the department.

23 2. Subdivision 1. does not apply if the department states in writing that it has
24 data that is sufficient to make a determination that the proposed taking will not
25 reduce the likelihood of the survival or recovery of the endangered species or

1 threatened species within the state, the whole plant-animal community of which it
2 is a part or the habitat that is critical to its existence.

3 (em) 1. Before allowing the taking of an endangered species or threatened
4 species under this subsection, the department shall give notice of the proposed
5 activity to the news media throughout the state and to any person who wants to
6 receive notification of proposed takings under this subsection and who has so
7 informed the department in writing. The department shall transmit the notice at
8 least 30 days before allowing the taking except as provided in subd. 2.

9 2. If the department determines that it cannot comply with the 30-day time
10 limit in subd. 1., the department shall transmit the notice as far in advance as is
11 practicable before allowing the taking.

12 (f) In addition to any requirements under s. 1.11, the department may give
13 public notice of and hold public hearings on the activities of state agencies or the
14 department in connection with interagency consultation and cooperation under this
15 subsection.

16 (END)