



**SENATE SUBSTITUTE AMENDMENT 1,
TO 1997 SENATE BILL 8**

December 30, 1997 - Offered by COMMITTEE ON AGRICULTURE AND ENVIRONMENTAL
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.

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

4 **SECTION 1.** 18.13 (4g) of the statutes is created to read:
5 18.13 (4g) PUBLIC INTERVENOR. Notwithstanding s. 165.075, the public
6 intervenor does not have authority to initiate any action or proceeding concerning
7 the issuance of obligations by the building commission under this chapter.

8 **SECTION 2.** 165.07 of the statutes is created to read:
9 **165.07 Assistant attorney general — public intervenor. (1)** The attorney
10 general shall designate an assistant attorney general on the attorney general's staff
11 as public intervenor. Written notices of all proceedings under chs. 30, 31, 281 to 285
12 and 289 to 299, except s. 281.48, shall be given to the public intervenor and to the

1 administrators of divisions primarily assigned the departmental functions under
2 chs. 29, 281, 285 and 289 to 299, except s. 281.48, by the agency head responsible for
3 such proceedings. A copy of such notice shall also be given to the natural areas
4 preservation council.

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

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

24 **(4)** The public intervenor may appeal from administrative rulings to the courts.
25 In all administrative proceedings and judicial review proceedings the public

1 intervenor shall be identified as “public intervenor”. This section does not preclude
2 or prevent any division of the department of natural resources, or any other
3 department or independent agency, from appearing by its staff as a party in such
4 proceedings.

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

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

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

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

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

1 814.245 (2) (d) "State agency" does not include the public intervenor or citizens
2 utility board.

3 **SECTION 6. Nonstatutory provisions.**

4 (1) TRANSFER OF PUBLIC INTERVENOR PERSONNEL AND EFFECTS.

5 (a) *Assets and liabilities.* On the effective date of this paragraph, the assets and
6 liabilities of the department of natural resources that on October 1, 1997, were
7 primarily related to the functions of the public intervenor, as determined by the
8 secretary of administration, shall become the assets and liabilities of the department
9 of justice.

10 (b) *Transfer of position and employe.* On the effective date of this paragraph,
11 1.0 FTE GPR attorney who on October 1, 1997, had duties primarily related to the
12 public intervenor, as determined by the secretary of administration, is transferred
13 from the department of natural resources to the department of justice. The employe
14 transferred under this paragraph has all the rights and the same status under
15 subchapter V of chapter 111 and chapter 230 of the statutes in the department of
16 justice that the employe enjoyed in the department of natural resources on October
17 1, 1997, or on the effective date of this paragraph, whichever date the secretary of
18 administration determines provides the greatest rights and status.
19 Notwithstanding section 230.28 (4) of the statutes, no employe so transferred who
20 has attained permanent status in class is required to serve a probationary period.

21 (c) *Tangible personal property.* On the effective date of this paragraph, all
22 tangible personal property, including records, of the department of natural resources
23 that on October 1, 1997, was primarily related to the functions of the public
24 intervenor, as determined by the secretary of administration, is transferred to the
25 department of justice.

1 (d) *Contracts.* All contracts entered into by the department of natural resources
2 in effect on the effective date of this paragraph that are primarily related to the
3 functions of the public intervenor, as determined by the secretary of administration,
4 remain in effect and are transferred to the department of justice. The department
5 of justice shall carry out any such contractual obligations unless modified or
6 rescinded by the department of justice to the extent allowed under the contract.

7 (e) *Rules and orders.* All rules promulgated by the department of natural
8 resources in effect on the effective date of this paragraph that are primarily related
9 to the functions of the public intervenor, as determined by the secretary of
10 administration, remain in effect until their specified expiration dates or until
11 amended or repealed by the department of justice. All orders issued by the
12 department of natural resources in effect on the effective date of this paragraph that
13 are primarily related to the functions of the public intervenor, as determined by the
14 secretary of administration, remain in effect until their specified expiration dates or
15 until modified or rescinded by the department of justice.

16 (f) *Pending matters.* Any matter pending with the department of natural
17 resources on the effective date of this paragraph that is primarily related to the
18 functions of the public intervenor, as determined by the secretary of administration,
19 is transferred to the department of justice and all materials submitted to or actions
20 taken by the department of natural resources with respect to the pending matter are
21 considered as having been submitted to or taken by the department of justice.

22 **SECTION 7. Appropriation changes.**

23 (1) DEPARTMENT OF JUSTICE. In the schedule under section 20.005 (3) of the
24 statutes for the appropriation to the department of justice under section 20.455 (1)
25 (a) of the statutes, as affected by the acts of 1997, the dollar amount is increased by

