



## 1997 ASSEMBLY BILL 71

February 10, 1997 - Introduced by Representatives BLACK, LORGE, PLOUFF, CARPENTER, RYBA, BOYLE, BOCK, LA FAVE, MURAT, R. YOUNG, NOTESTEIN, REYNOLDS, R. POTTER, RILEY, HUBER, CULLEN, J. LEHMAN, HASENOHRL, BAUMGART, DUEHOLM, SPRINGER, ZIEGELBAUER, BALDWIN and VANDER LOOP, cosponsored by Senators C. POTTER, SHIBILSKI, WINEKE, DECKER, RISSER, MOEN, CLAUSING and PLACHE. Referred to Committee on Finance.

1     **AN ACT to repeal** 15.05 (1) (c); **to renumber** 23.39 (5); **to renumber and amend**  
2           15.345 (4), 23.39 (title), 23.39 (1), 23.39 (2) (a), 23.39 (2) (b), 23.39 (3) and 23.39  
3           (4); **to amend** 15.05 (1) (b), 18.13 (4) and 814.245 (2) (d); and **to create** 15.05  
4           (1) (bn), 15.07 (1) (b) 22. and 165.076 of the statutes; **relating to:** transferring  
5           the public intervenor to the department of justice, the appointment of the  
6           secretary of natural resources and making an appropriation.

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### ***Analysis by the Legislative Reference Bureau***

Current law requires the secretary of natural resources to designate an attorney in the department of natural resources (DNR) as the public intervenor. With the approval of the 8-member public intervenor board, which consists of gubernatorial and legislative appointees, the public intervenor may intervene in administrative proceedings, including contested case hearings and rule-making proceedings, consistent with the public intervenor's duty to protect public rights in water and other natural resources.

This bill restores the duties and authority of the public intervenor that existed before 1995 Wisconsin Act 27 (executive budget act). The bill transfers the public intervenor from DNR to the department of justice. The bill generally authorizes the public intervenor to formally commence and intervene in all proceedings before any court where the intervention is needed to protect public rights in water and other natural resources. The bill directs the attorney general to appoint the public intervenor.

**ASSEMBLY BILL 71**

Under current law, DNR is administered by a secretary who is nominated by the governor, and with the advice and consent of the senate appointed, to serve at the pleasure of the governor. The bill restores the authority to appoint the secretary of DNR to the governing board of DNR.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1           **SECTION 1.** 15.05 (1) (b) of the statutes is amended to read:

2           15.05 (1) (b) Except as provided in pars. ~~(e)~~ and par. (d), if a department is under  
3 the direction and supervision of a board, the board shall appoint a secretary to serve  
4 at the pleasure of the board outside the classified service. In such departments, the  
5 powers and duties of the board shall be regulatory, advisory and policy-making, and  
6 not administrative. All of the administrative powers and duties of the department  
7 are vested in the secretary, to be administered by him or her under the direction of  
8 the board. The secretary, with the approval of the board, shall promulgate rules for  
9 administering the department and performing the duties assigned to the  
10 department.

11           **SECTION 2.** 15.05 (1) (bn) of the statutes is created to read:

12           15.05 (1) (bn) Notwithstanding the requirement under par. (b) that the  
13 secretary of natural resources be appointed by the natural resources board, the  
14 secretary of natural resources who is appointed by the governor and who is holding  
15 office on the effective date of this paragraph .... [revisor inserts date], shall continue  
16 to serve until the secretary vacates his or her office or is removed from office by the  
17 natural resources board.

18           **SECTION 3.** 15.05 (1) (c) of the statutes is repealed.

19           **SECTION 4.** 15.07 (1) (b) 22. of the statutes is created to read:

**ASSEMBLY BILL 71**

1           15.07 (1) (b) 22. The 2 members of the public intervenor board appointed under  
2 s. 15.255 (2) (b) 3.

3           **SECTION 5.** 15.345 (4) of the statutes is renumbered 15.255 (2), and 15.255 (2)  
4 (a) and (b) 1., as renumbered, are amended to read:

5           15.255 (2) (a) There is created a public intervenor board attached to the  
6 department of ~~natural resources~~ justice under s. 15.03.

7           (b) 1. Two members nominated by the attorney general and with the advice and  
8 consent of the senate appointed.

9           **SECTION 6.** 18.13 (4) of the statutes is amended to read:

10           18.13 (4) PUBLIC INTERVENOR. Notwithstanding s. ~~23.39 (2) (b)~~ 165.075, the  
11 public intervenor does not have authority to initiate any action or proceeding  
12 concerning the issuance of obligations by the building commission under this  
13 chapter.

14           **SECTION 7.** 23.39 (title) of the statutes is renumbered 165.07 (title) and  
15 amended to read:

16           **165.07 (title) Public Assistant attorney general — public intervenor.**

17           **SECTION 8.** 23.39 (1) of the statutes is renumbered 165.07 (1) and amended to  
18 read:

19           165.07 (1) The ~~secretary~~ attorney general shall designate an assistant attorney  
20 ~~in general on the department~~ attorney general's staff as public intervenor. Written  
21 notices of all ~~administrative~~ proceedings under chs. 30, 31, 281 to 285 and 289 to 299,  
22 except s. 281.48, shall be given to the public intervenor and to the administrators of  
23 divisions primarily assigned the departmental functions under chs. 29, 281, 285 and  
24 289 to 299, except s. 281.48, by the agency head responsible for such proceedings.  
25 A copy of such notice shall also be given to the natural areas preservation council.

**ASSEMBLY BILL 71****SECTION 9**

1           **SECTION 9.** 23.39 (2) (a) of the statutes is renumbered 165.07 (2) and amended  
2 to read:

3           165.07 (2) ~~With the approval of the public intervenor board the~~ The public  
4 intervenor shall formally intervene in administrative such proceedings when  
5 requested to do so by an administrator of a division primarily assigned the  
6 departmental functions under chs. 29, 281, 285 or 289 to 299, except s. 281.48. ~~With~~  
7 ~~the approval of the public intervenor board, the~~ The public intervenor may, on the  
8 public intervenor's own initiative or upon request of any committee of the legislature,  
9 formally intervene in all administrative such proceedings where such intervention  
10 is needed for the protection of "public rights" in water and other natural resources,  
11 as provided in chs. 30 and 31 and defined by the supreme court.

12           **SECTION 10.** 23.39 (2) (b) of the statutes is renumbered 165.075 and amended  
13 to read:

14           **165.075** (title) **Assistant attorney general; public intervenor; authority.**  
15 In carrying out his or her duty to protect public rights in water and other natural  
16 resources, ~~with the approval of the public intervenor board~~ the public intervenor has  
17 the authority to initiate actions and proceedings before any agency or court in order  
18 to raise issues, including issues concerning constitutionality, present evidence and  
19 testimony and make arguments.

20           **SECTION 11.** 23.39 (3) of the statutes is renumbered 165.07 (3) and amended  
21 to read:

22           165.07 (3) Personnel of the department of natural resources shall, upon the  
23 request of the public intervenor, make such investigations, studies and reports as the  
24 public intervenor may request in connection with administrative such proceedings,  
25 either before or after formal intervention. Personnel of state agencies shall at the

**ASSEMBLY BILL 71**

1 public intervenor's request provide information, serve as witnesses in such  
2 proceedings and otherwise cooperate in the carrying out of the public intervenor's  
3 intervention functions. Formal intervention shall be by filing a statement to that  
4 effect with the examiner or other person immediately in charge of the proceeding.  
5 Thereupon the public intervenor shall be deemed a party in interest with full power  
6 to present evidence, subpoena and cross-examine witnesses, submit proof, file briefs  
7 or do any other acts appropriate for a party to the proceedings.

8 **SECTION 12.** 23.39 (4) of the statutes is renumbered 165.07 (4) and amended  
9 to read:

10 165.07 (4) The public intervenor may not appeal from administrative rulings  
11 to the courts. In all administrative proceedings and judicial review proceedings the  
12 public intervenor shall be identified as "public intervenor". This section does not  
13 preclude or prevent any division of the department of natural resources, or any other  
14 department or independent agency from appearing by its staff as a party in  
15 administrative such proceedings.

16 **SECTION 13.** 23.39 (5) of the statutes is renumbered 165.07 (5).

17 **SECTION 14.** 165.076 of the statutes is created to read:

18 **165.076 Assistant attorney general; public intervenor; advisory**  
19 **committee.** The attorney general shall appoint a public intervenor advisory  
20 committee under s. 15.04 (1) (c). The public intervenor advisory committee shall  
21 consist of not less than 7 nor more than 9 members. The members shall have  
22 backgrounds in or demonstrated experience or records relating to environmental  
23 protection or natural resource conservation. At least one of the members shall have  
24 working knowledge in business. At least one of the members shall have working  
25 knowledge in agriculture. The public intervenor advisory committee shall advise the

**ASSEMBLY BILL 71****SECTION 14**

1 public intervenor consistent with his or her duty to protect public rights in water and  
2 other natural resources. The public intervenor advisory committee shall conduct  
3 meetings consistent with subch. V of ch. 19 and shall permit public participation and  
4 public comment on public intervenor activities.

5 **SECTION 15.** 814.245 (2) (d) of the statutes is amended to read:

6 814.245 (2) (d) "State agency" does not include the public intervenor or citizens  
7 utility board.

8 **SECTION 16. Appropriation changes.**

9 (1) DEPARTMENT OF NATURAL RESOURCES. In the schedule under section 20.005  
10 (3) of the statutes for the appropriation to the department of natural resources under  
11 section 20.370 (8) (ma) of the statutes, as affected by the acts of 1995 and 1997, the  
12 dollar amount is decreased by \$120,700 for fiscal year 1996-97 to eliminate funding  
13 for 1.0 FTE GPR attorney position, for the purpose of the public intervenor.

14 (2) DEPARTMENT OF JUSTICE. In the schedule under section 20.005 (3) of the  
15 statutes for the appropriation to the department of justice under section 20.455 (1)  
16 (a) of the statutes, as affected by the acts of 1995 and 1997, the dollar amount is  
17 increased by \$120,700 for fiscal year 1996-97, for the purposes of the public  
18 intervenor.

19 **SECTION 17. Nonstatutory provisions.**

20 (1) TRANSFER OF PUBLIC INTERVENOR.

21 (a) *Assets and liabilities.* On the effective date of this paragraph, the assets and  
22 liabilities of the department of natural resources that are primarily related to the  
23 functions of the public intervenor, as determined by the secretary of administration,  
24 shall become the assets and liabilities of the department of justice.

**ASSEMBLY BILL 71**

1           (b) *Transfer of position and employe.* On the effective date of this paragraph,  
2           1.0 FTE GPR attorney position having duties primarily related to the public  
3           intervenor, as determined by the secretary of administration, is transferred from the  
4           department of natural resources to the department of justice. The employe  
5           transferred under this paragraph has all the rights and the same status under  
6           subchapter V of chapter 111 and chapter 230 of the statutes in the department of  
7           justice that the employe enjoyed in the department of natural resources immediately  
8           before the transfer. Notwithstanding section 230.28 (4) of the statutes, no employe  
9           so transferred who has attained permanent status in class is required to serve a  
10          probationary period.

11          (c) *Tangible personal property.* On the effective date of this paragraph, all  
12          tangible personal property, including records, of the department of natural resources  
13          that is primarily related to the functions of the public intervenor, as determined by  
14          the secretary of administration, is transferred to the department of justice.

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

21          (e) *Rules and orders.* All rules promulgated by the department of natural  
22          resources in effect on the effective date of this paragraph that are primarily related  
23          to the functions of the public intervenor, as determined by the secretary of  
24          administration, remain in effect until their specified expiration dates or until  
25          amended or repealed by the department of justice. All orders issued by the

**ASSEMBLY BILL 71****SECTION 17**

1 department of natural resources in effect on the effective date of this paragraph that  
2 are primarily related to the functions of the public intervenor, as determined by the  
3 secretary of administration, remain in effect until their specified expiration dates or  
4 until modified or rescinded by the department of justice.

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

11 (END)