

State of Wisconsin



2011 Assembly Bill 216

Date of enactment: April 6, 2012
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2011 WISCONSIN ACT 230

AN ACT *to repeal* 84.305 (1) (c), 84.305 (1) (d), 84.305 (1) (f), 84.305 (1) (k), 84.305 (2) (a) 1., 84.305 (2) (a) 2., 84.305 (2) (a) 4., 84.305 (2) (b), 84.305 (3) (c), 84.305 (3) (f), 84.305 (5) (b) and 84.305 (5) (c); *to renumber and amend* 84.305 (3) (e) and 84.305 (6); *to consolidate, renumber and amend* 84.305 (2) (a) (intro.) and 3.; *to amend* 84.305 (1) (e), 84.305 (1) (h), 84.305 (3) (a), 84.305 (3) (b), 84.305 (3) (d), 84.305 (3) (g), 84.305 (5) (a) and 84.305 (7); and *to create* 84.305 (1) (cm), 84.305 (2m) (b) and (c), 84.305 (3) (h), 84.305 (5) (ag) and (ar), 84.305 (5) (d) and 84.305 (5) (e) of the statutes; **relating to:** maintenance and removal of vegetation obstructing the view of outdoor advertising signs along highways under the jurisdiction of the Department of Transportation.

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

SECTION 1. 84.305 (1) (c) of the statutes is repealed.

SECTION 2. 84.305 (1) (cm) of the statutes is created to read:

84.305 (1) (cm) "Natural snow fence" means vegetation in a highway right-of-way that functions as a berm or barrier to inhibit the accumulation of snow on the highway during the winter season.

SECTION 3. 84.305 (1) (d) of the statutes is repealed.

SECTION 4. 84.305 (1) (e) of the statutes is amended to read:

84.305 (1) (e) "Sign" has the meaning given in s. 84.30 (2) (j), but also includes any sign that is attached to a building or similar structure, that is within 100 feet of a highway right-of-way, and that advertises activities conducted on the property on which it is located.

SECTION 5. 84.305 (1) (f) of the statutes is repealed.

SECTION 6. 84.305 (1) (h) of the statutes is amended to read:

84.305 (1) (h) "Vegetation" means any tree, shrub, hedge, or other woody plant, and includes planted vege-

~~tation, natural vegetation, and specimen trees. "Vegetation" does not include or grass.~~

SECTION 7. 84.305 (1) (k) of the statutes is repealed.

SECTION 8. 84.305 (2) (a) (intro.) and 3. of the statutes are consolidated, renumbered 84.305 (2) and amended to read:

84.305 (2) Notwithstanding ss. 66.1037 and 86.03, and subject to sub. (2m), upon application, the department ~~may~~ shall issue permits to sign owners for the trimming, ~~or removal, or relocation~~ of vegetation that is located in the right-of-way of a highway under the jurisdiction of the department for maintenance purposes and that obstructs a sign if ~~any of the following applies:~~ 3. Subject to par. (b), within a distance of 500 continuous feet along any portion of the viewing zone, any portion of the face of the sign is not viewable because of an obstruction to sight by natural vegetation in the highway right-of-way.

SECTION 9. 84.305 (2) (a) 1. of the statutes is repealed.

SECTION 10. 84.305 (2) (a) 2. of the statutes is repealed.

* Section 991.11, WISCONSIN STATUTES 2009-10 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

SECTION 11. 84.305 (2) (a) 4. of the statutes is repealed.

SECTION 12. 84.305 (2) (b) of the statutes is repealed.

SECTION 13. 84.305 (2m) (b) and (c) of the statutes are created to read:

84.305 (2m) (b) The department may impose on a permit under this section any condition or restriction determined to be necessary or suitable by the department if the permit application seeks authorization for the trimming or removal of vegetation at or with respect to any of the following:

1. An archaeological site or site of a federally recognized American Indian tribe or band.
2. A location that is part of a known habitat of endangered species or threatened species under s. 29.604.
3. Vegetation that serves as a junkyard screen, as described in s. 84.31.

(c) The department may deny an application under this section for a permit for a sign for which the department has issued a removal order and the removal order was received by the sign owner prior to the department's receipt of the application.

SECTION 14. 84.305 (3) (a) of the statutes is amended to read:

84.305 (3) (a) Subject to pars. (d) to ~~(g)~~ (h) and sub-~~subs. (2m) (b), (4), and (6)~~, a permit issued under this section authorizes the permittee to trim ~~obstructing~~ vegetation or remove ~~or relocate~~ obstructing individual plants to the extent necessary to eliminate the obstruction and ~~remedy any condition specified under sub. (2) (a) 1. to 4.~~ provide an unobstructed view of a sign for 500 continuous feet within the viewing zone. A permit issued under this section shall specify the vegetation or the portion of the highway right-of-way to which the permit applies.

SECTION 15. 84.305 (3) (b) of the statutes is amended to read:

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

application for a permit under this section, the department shall notify the applicant of reasons for the denial.

SECTION 16. 84.305 (3) (c) of the statutes is repealed.

SECTION 17. 84.305 (3) (d) of the statutes is amended to read:

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

SECTION 18. 84.305 (3) (e) of the statutes is renumbered 84.305 (2m) (a) and amended to read:

84.305 (2m) (a) ~~A permit issued under this section may not authorize the permittee to trim, remove, or relocate vegetation in existence prior to the erection of the sign obstructed by the vegetation. Nothing in this paragraph prohibits the~~ The department from issuing ~~may not issue~~ a permit under this section authorizing the trimming, or removal, ~~or relocation~~ of vegetation that, ~~at the time the sign was erected, did not obstruct~~ obstructing the view of ~~the a sign if the department first collected a permit fee under s. 84.30 (10m) for that sign within the immediately preceding 5 years. This paragraph does not apply with respect to a sign that is attached to a building or similar structure, that is within 100 feet of a highway right-of-way, and that advertises activities conducted on the property on which it is located.~~

SECTION 19. 84.305 (3) (f) of the statutes is repealed.

SECTION 20. 84.305 (3) (g) of the statutes is amended to read:

84.305 (3) (g) A permit issued under this section may not authorize the permittee to clear-cut any highway right-of-way. The permit authorizes the permittee to trim, or remove, ~~or relocate~~ only the vegetation specified in the permit, or only vegetation within the area of the right-of-way specified in the permit, in accordance with the terms of the permit. All trimming of vegetation authorized under a permit shall be performed in compliance with applicable standards of the American National Standards Institute, but if the trimming cannot be accomplished in compliance with these standards, the vegetation may be removed and replaced as provided in sub. (5).

SECTION 21. 84.305 (3) (h) of the statutes is created to read:

84.305 (3) (h) All trimming and removal of vegetation under a permit issued under sub. (2), and all planting of vegetation under sub. (5), shall be conducted within the hours of the day and days of the week specified by the department in the permit.

SECTION 22. 84.305 (5) (a) of the statutes is amended to read:

84.305 (5) (a) ~~Each~~ Subject to par. (ar), each permit issued under this section shall require a permittee that

removes planted vegetation to either relocate the planted vegetation or reimburse the department for the value of the planted vegetation. The department shall present to the permittee the department's calculation of the value of the planted vegetation, and the permittee may elect to relocate the planted vegetation or to reimburse the department for the value of the planted vegetation as determined by the department any tree with a diameter of 4 inches or more as measured at 3 feet from the ground, or any other vegetation with a diameter of 4 inches or more, to plant comparable replacement vegetation to compensate for all such vegetation removed, in compliance with the requirements under pars. (d) and (e).

SECTION 23. 84.305 (5) (ag) and (ar) of the statutes are created to read:

84.305 (5) (ag) Each permit issued under this section shall require a permittee that removes vegetation to also remove the vegetation's stump, to grade level, and to dispose of all vegetation removed, including the stump, at a location away from the highway right-of-way.

(ar) The department may require that, if vegetation that serves as a natural snow fence cannot be trimmed in compliance with the standards specified in sub. (3) (g) and is removed, this vegetation shall be replaced with an equally effective, substitute means of controlling blowing and drifting snow, which means may be synthetic or artificial.

SECTION 24. 84.305 (5) (b) of the statutes is repealed.

SECTION 25. 84.305 (5) (c) of the statutes is repealed.

SECTION 26. 84.305 (5) (d) of the statutes is created to read:

84.305 (5) (d) 1. In planting replacement vegetation under par. (a), the permittee shall determine the diameters of all trees with a diameter of 4 inches or more, as measured at 3 feet from the ground, and of all other vegetation with a diameter of 4 inches or more, that was removed and shall calculate the sum total of these diameters for each category of vegetation, such as for trees, for shrubs, and for hedges. In calculating the sum total of these diameters, the permittee shall not include in the calculation the diameter of any vegetation that was dead, diseased, or determined to be an invasive species at the time of its removal.

2. The permittee shall plant sufficient replacement vegetation with a diameter of at least 2 inches so that the sum total of the diameters of the replacement vegetation, for each category of vegetation, at least equals the sum total of the diameters as calculated under subd. 1. for that category.

SECTION 27. 84.305 (5) (e) of the statutes is created to read:

84.305 (5) (e) 1. Subject to subd. 2., the department shall determine where replacement vegetation required under this subsection is to be planted.

2. Replacement vegetation required under this subsection shall be planted in the highway right-of-way not farther than 10 miles from the location of the removed vegetation being replaced. Replacement vegetation may not be planted in front of a sign.

SECTION 28. 84.305 (6) of the statutes is renumbered 84.305 (6) (a) and amended to read:

84.305 (6) (a) The department shall have authority to supervise and determine how the work authorized under a permit issued under this section is carried out.

(b) The department may ~~require as a~~ impose any condition or restriction ~~under any~~ on a permit issued under this section that ~~the work authorized under the permit meet standards established by the department~~ customarily imposes in connection with work performed on highway rights-of-way.

SECTION 29. 84.305 (7) of the statutes is amended to read:

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

SECTION 30. Effective date.

(1) This act takes effect on the 30th day after the day of publication.