



## Legislative Fiscal Bureau

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November 30, 2005

TO: Members  
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Assembly Bill 409: Enforcement of Trespass Law by the Department of Natural Resources

Assembly Bill 409 would extend the authority of Department of Natural Resources (DNR) conservation wardens to enforce the trespass law when the trespass is committed by a person engaged in an activity that involves hunting, fishing, trapping, cutting timber, operating ATVs or snowmobiles, or most other outdoor recreational or natural resources activity regulated by laws administered by the DNR. The bill was introduced on May 10, 2005, and was referred to the Assembly Committee on Natural Resources. On September 28, 2005, the bill was recommended for passage by the Committee on a vote of Ayes, 12; Noes, 3. On October 6, 2005, the bill was referred to the Joint Committee on Finance.

### **CURRENT LAW**

The Department's responsibilities include the investigation and enforcement of laws relating to fish and wildlife, recreational vehicles, environmental protection and water regulation and zoning. These activities are performed primarily by conservation wardens whose enforcement authority varies depending on the type, location and severity of the violation. Conservation wardens share responsibilities with park superintendents and forest rangers for public conduct on state lands. When requested, wardens may assist local police and are authorized to respond when any crime is committed in their presence. Currently, DNR wardens do not have the authority to respond independently to reports of trespass violations. However, if the warden is assisting another law enforcement agency at the time, the warden may take action on a trespass complaint at the request of that official (usually the local sheriff's department).

## **SUMMARY OF BILL**

Under the bill, conservation wardens' law enforcement authority would be expanded to include the enforcement of trespass law, when the trespass is committed by a person engaged in an activity under Chapters 23, 26 through 29, 169, or 350 of the statutes (generally involving conservation, hunting, fishing, captive wildlife, trapping, cutting timber, activities on state forest land or in state parks, ATV operation, or snowmobiling). If the violation of trespass law occurs while the individual is engaged in these natural resource activities, the bill would authorize a court to revoke or suspend all of the individual's hunting, fishing, and trapping privileges, including any approvals relating to wild plants, commercial licenses, stocking permits, and any captive wildlife permit related to hunting or trapping for up to three years. Further, the bill would require the court to revoke these same license privileges, and to prohibit the issuance of any further licenses or approvals, for a period of five years if the trespass violator is also convicted of a natural resource crime committed in conjunction with the trespass violation. The bill would also allow wardens to serve citations by mail to nonresidents for all violations that the Department has the authority to issue citations for.

In addition, the bill would require the court to impose a surcharge for a trespass violation that is committed by a person engaged in natural resources activities related to hunting, fishing, trapping, captive wildlife, timber harvest, activities on state forest land or state parks, and ATV or snowmobile use. The surcharge imposed would equal 35% of the amount of the forfeiture for the trespass violation, and would be deposited to the conservation fund. If the forfeiture were suspended in whole or in part, the trespass surcharge would also be reduced in proportion to the suspension. If a deposit is required in response to a trespass citation, the amount of the deposit would include the trespass surcharge under the bill, with the surcharge going to the state if the deposit is forfeited, or returned if the deposit is likewise returned.

Finally, the bill would expand the current law prohibition against operating a snowmobile or all-terrain vehicle (ATV) on land without the consent of the owner or lessee to include any land, rather than "private" property currently.

## **ASSEMBLY AMENDMENT 1**

Assembly Amendment 1 to the bill was offered on October 25, 2005, and therefore was not considered by the Assembly Committee on Natural Resources. The Amendment would delete the provisions of the bill authorizing a court to revoke or suspend all of an individual's hunting, fishing, and trapping privileges for up to three years as a penalty for violating trespass law while engaged in a natural resources activity, as well as the provision requiring the court to revoke these same license privileges, and to prohibit the issuance of any further licenses or approvals, for a period of five years if the trespass violator is also convicted of a natural resource crime committed in conjunction with the trespass violation.

Instead, the Amendment would authorize the court to revoke or suspend any or all fish and game approvals for one year if the individual has not been found guilty of committing a trespass violation in the last ten years (other than the current violation), and if the individual had not been convicted of a crime in conjunction with the current natural resource trespass offense. If the individual had a previous trespass violation in the last ten years or if the individual was convicted of a crime in conjunction with the current natural resource trespass violation, the court could revoke or suspend any or all fish and game approvals for three years under the Amendment. Finally, the Amendment would require the court to revoke or suspend any or all fish and game approvals for five years if the individual had both a prior trespass violation within the last ten years, and was convicted of a crime in conjunction with the current violation.

## **FISCAL EFFECT**

Expanding the authority of wardens to enforce trespass law in cases where the individual involved is engaged in an activity that involves certain natural resources activities is expected to increase demands on DNR law enforcement staff. While the anticipated increase in complaints is uncertain, the results of a Department survey of county sheriff offices indicated that for the 22 counties that tracked detailed citation complaints, there were 324 trespass complaints related to hunting, fishing, and trapping activities received in 2004. If the number of trespass complaints related to natural resources activities per county were similar across all 72 counties, an estimated 1,060 trespass complaints per year may be anticipated. Assuming that it would take approximately three hours for a warden to respond to, investigate, and resolve each complaint, this increase could potentially require approximately 1.5 FTE worth of effort to address the expected increase in complaints. Based on the starting salary and related costs for a conservation warden, costs would be expected to approach \$117,200 annually. The change in enforcement authority may also lead to an increased number of calls to the DNR toll-free hotline from individuals wishing to file trespass complaints. However, as the bill does not provide additional expenditure authority or create new positions, DNR would be required to reallocate existing staff and resources to meet this demand.

The Department has expressed concern over its ability to respond to trespass complaints without additional resources. It should be noted that county sheriff departments, which are currently responsible for responding to all trespass complaints, would retain the ability to enforce any trespass violations under the bill. However, it is unclear whether local law enforcement officials would continue to respond to trespass calls that could otherwise be referred to conservation wardens. Currently, when wardens receive more complaints than they are able to immediately respond to, and other resources are not available, complaints are prioritized and followed up on as time permits. Extending the authority of wardens to independently enforce trespass law in certain instances without providing additional resources may lead to a delay in responding to other natural resources law enforcement complaints, depending on their severity and how many complaints are received at a given time.

It should be noted that additional efficiencies may be expected as a result of the provision under the bill allowing for nonresidents to be mailed a citation rather than to be processed immediately, as is the case under current law. The time required for processing violations committed by nonresidents could be reduced, as the bill would allow conservation wardens to issue citations, rather than complete an arrest and booking, allowing more time for warden patrol and surveillance activities. Allowing nonresidents to be cited, rather than held pending the posting of a bond would be expected to reduce the demands that wildlife offenders place on the courts and on county jail facilities. DNR does not have information on the annual number of nonresident violations readily available.

However, the potential collection of revenues from citations may decrease. Currently, if a nonresident is apprehended for either a civil or criminal offense, the individual is detained and required to post bond. In the case of a civil offense, the amount of the bond is the amount of the forfeiture. The nonresident may choose to enter a plea of no contest, in which case the state retains the amount of the forfeiture, and the matter is considered resolved. However, if a nonresident is arrested for a criminal offense, posts bond, and does not appear in court, the individual will forfeit the amount of the bond. In either instance, the State retains the funds provided as bond by the nonresident. However, if a nonresident were mailed a citation under the bill (rather than being required to immediately post a bond in the amount of the forfeiture), the individual may choose to ignore it and not pay the forfeiture. The State does not have jurisdiction to compel the nonresident to appear, and a limited ability to collect payment for the citation. [Legislative attorneys have suggested a technical modification to this section to clarify the procedures for a conservation warden to serve a complaint. Alternatively, the provision could be deleted from this bill and addressed under AB 26/SB 33 that would authorize Wisconsin participation in the wildlife violator compact.]

Some additional revenue to the state is anticipated. The bill would require the court to impose a 35% surcharge on trespass violations committed by a person engaged in natural resources activities related to hunting, fishing, trapping, captive wildlife, timber harvest, activities on state forest land or state parks, and snowmobiling. Currently, the 2005 uniform bond schedule establishes the base forfeiture for land trespass violations at \$100, which would make the surcharge \$35 per citation. The Department estimates that 24% of complaints related to hunting, fishing, and trapping result in citations. At this rate, approximately 250 citations may be issued for trespass violations per year, generating revenues to the conservation fund of approximately \$8,800.

The bill specifies that these revenues be deposited to the conservation fund. However, the bill would credit surcharge revenues to an annual SEG appropriation for fish and wildlife enforcement purposes. For this type of appropriation, DNR may only expend a specific amount that is appropriated by the Legislature. Consequently, no additional expenditures could be made from the appropriation as a result of the increased revenues unless the amount in the schedule were increased by subsequent legislation. Therefore, it is unclear what is intended by this provision. If the intent is to use the revenues generated by the surcharge to increase funding for conservation law enforcement activities, the bill could be amended to create a new, continuing SEG appropriation

where all surcharge monies received could be used by DNR for this purpose. These funds would be subject to allotment by the Department of Administration, but would not require further legislative approval. Alternatively, the bill could be amended to place surcharge revenues in the appropriate account of the conservation fund for future appropriation by the Legislature.

When DNR surveyed natural resources wardens from other states, they indicated that the ability to respond to trespass complaints led to improved relationships with landowners, particularly in areas of heavy hunting pressure. Further, the high profile trespass and homicide incident in Sawyer County during the fall of 2004 has raised both awareness of, and concern over, this issue. However, expanding warden enforcement authority to include trespass complaints would require redirecting enforcement resources from other activities (such as enforcement of hunting and fishing regulations, recreational vehicle patrol, and public safety education). On the other hand, providing this authority to DNR conservation wardens would be expected to reduce demands somewhat on local law enforcement officials.

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