



WISCONSIN LEGISLATIVE COUNCIL REPORT TO THE LEGISLATURE

Legislation on Conservation Laws Enforcement

- 2001 Assembly Bill 300, Relating to the Designation and Duties of Chief Warden, Deputy Chief Warden, Internal Affairs Officer, and Complaint Officer Within the Department of Natural Resources
- 2001 Assembly Bill 301, Relating to Authorizing Conservation Wardens to Enforce the Trespass Law and Prohibitions on Shooting at Caged or Staked Wild Animals and to Make Arrests Under Warrants Issued for Felonies or Misdemeanors

June 4, 2001

RL 2001-09

**LEGISLATION ON
CONSERVATION LAWS ENFORCEMENT**

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June 4, 2001

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PART I

KEY PROVISIONS OF LEGISLATION

The proposals recommended by the Special Committee on Conservation Laws Enforcement do the following:

A. 2001 ASSEMBLY BILL 300

Designation of Chief Warden and Deputy Wardens; Duties

- Requires the Department of Natural Resources (DNR) to designate a conservation warden as the chief warden and permits the DNR to designate one or more deputy chief wardens.
- Provides that the chief warden will have the duty to direct, supervise and control conservation wardens in the performance of their duties as wardens.
- Provides that the chief warden must designate an internal affairs officer to investigate complaints against conservation wardens when the chief warden determines an investigation is necessary and designate a complaint officer to resolve complaints against conservation wardens.

B. 1999 ASSEMBLY BILL 301

Trespass Law

- Authorizes conservation wardens to enforce violations of s. 943.13, Stats., the trespass law, subject to the limitation that they may do so only if a warden determines, while carrying out his or her other statutory duties, that a violation has been committed. This change will leave primary enforcement of the trespass law with sheriff's and police departments.

Shooting at Staked or Caged Wild Animals

- Authorizes conservation wardens to enforce s. 951.09, Stats., relating to shooting at caged or staked animals, when the animal involved is a wild animal. This change will allow conservation wardens to issue citations for shooting at caged or staked wild animals where the shooting is not pursuant to a game farm or shooting preserve license issued by the DNR or the shooting is not of wild game in its wild state.

Arrests Under Misdemeanor Warrants

- Authorizes conservation wardens to make arrests pursuant to an arrest warrant for any crime (a felony or misdemeanor) if the conservation warden has completed an approved law enforcement training program, been certified as qualified to be a law

enforcement officer and complied with applicable requirements. This change will expand the current authority of conservation wardens to make arrests under felony warrants by adding arrests under misdemeanor warrants.

PART II
COMMITTEE ACTIVITY

A. ASSIGNMENT

The Joint Legislative Council established the Special Committee on Conservation Laws Enforcement and appointed its chairperson by a June 24, 1998 mail ballot. The Joint Legislative Council directed the Special Committee to study staffing levels and duties of conservation wardens as they relate to the enforcement of fish and game and other natural resource-related laws and to consider means and methods of ensuring the adequacy of such enforcement.

The members of the Special Committee were appointed by an August 21, 1998 mail ballot. The membership of the Special Committee consisted of three Senators, seven Representatives, and nine Public Members. A list of the committee members is included as **Appendix 3** to this report.

B. SUMMARY OF MEETINGS

The Special Committee held six meetings at the State Capitol in Madison on the following dates:

September 30, 1998	December 16, 1998
October 29, 1998	January 20, 1999
November 17, 1998	February 24, 1999

At the September 30, 1998 meeting, the committee staff described the history of Wisconsin conservation laws enforcement, including the development of conservation laws in Wisconsin, changes in the duties of conservation wardens during the period from 1949 to 1998, increases in the number of conservation wardens and other conservation-related enforcement personnel, and the appointment and current duties of conservation wardens under Wisconsin statutes. Staff also described the funding and a workload analysis of DNR law enforcement personnel and conservation warden recruitment, testing and training.

The committee also heard a presentation from Thomas L. Harelson, Chief, Bureau of Law Enforcement, Division of Enforcement and Science, DNR. He distributed materials to the committee including: (1) issue briefs on technology, warden support, warden staffing and telephone workload; (2) information on warden staffing and the warden shortage problem; (3) information on improving productivity of conservation wardens through support staff services; (4) a description of partner support provided to the DNR by volunteers; (5) information on warden retirements and projected retirements from 1994 through 2028; (6) a chart on complaints received by DNR; and (7) a paper on the economic importance of sport fishing to the state.

At the October 29, 1998 meeting, the committee heard presentations from Don Bezruki and Paul Stuiber, Directors, Program Evaluation Division, Legislative Audit Bureau (LAB), on the LAB's audit of fish and wildlife programs (LAB Report 98-9).

Thomas L. Harelson, Chief, and John T. Daniel, Deputy Chief, Bureau of Law Enforcement, Division of Enforcement and Science, DNR, made presentations to the committee on time reporting by wardens and the daily log that wardens fill out for every day of the month. They also discussed the expense reports filled out by wardens and policies relating to reimbursement for meals and overtime. The presentations also discussed various issues regarding the technology initiatives requested by DNR wardens. The committee also reviewed information relating to and restrictions on the use of the natural resources-related fines and forfeitures, liability of volunteers who support DNR programs, the new fishing and hunting license sales system and the economic importance of hunting to the state.

At its November 17, 1998 meeting, the committee heard a presentation by Michael A. Lutz, Attorney, Bureau of Legal Services, DNR, on training of conservation wardens in criminal law and issues relating to search and seizure. The committee heard presentations by Douglas D. Hoskins, Southeast Regional Warden, David E. Rasmussen, West Central Regional Warden and Randall J. Stark, South Central Regional Warden, on the varying duties in environment and other enforcement areas within the regions. Joel C. McOlash, Door County Warden, Northeast Region, described the discipline process and his perspectives as a union steward.

The committee reviewed comparative data relating to Wisconsin's warden staff and the warden staffs of other states, information on retirement benefits for DNR employees who serve as special conservation wardens on a part-time basis, DNR's structure, the distribution of law enforcement personnel, complaint procedures against wardens and Wisconsin's new trespass law.

At its December 16, 1998 meeting, George E. Meyer, Secretary of Natural Resources, presented information on the 18 new warden positions funded in the recently enacted budget adjustment bill. He discussed suggestions for committee recommendations made by committee members with particular emphasis on the environmental programs within the DNR and issues relating to the difficulties there would be enforcing environmental laws if those duties were removed from the wardens' responsibilities. He reviewed other suggestions made to the committee regarding trespass law enforcement, DNR service center hours and funding issues for law enforcement. He concluded by responding to questions from the committee.

The committee also reviewed staff papers relating to funding and workload of DNR law enforcement personnel and suggestions for committee recommendations made by committee members.

At its January 20, 1999 meeting, the committee discussed information relating to Wisconsin wardens' wages in comparison with wages paid by surrounding states and the U.S. Fish and Wildlife Service, additional suggestions made by committee members and preliminary drafts of legislation relating to creating the office of chief warden and giving conservation wardens the authority to enforce the trespass law. The committee also reviewed motions relating to the DNR budget request for mobile data computers for wardens.

At its February 24, 1999 meeting, the committee reviewed drafts prepared by staff relating to authorizing conservation wardens to enforce trespass laws, allowing conservation wardens to enforce prohibitions on shooting at caged or staked animals and enabling

conservation wardens to make arrests under misdemeanor warrants; limiting administrative expenses paid from the Fish and Wildlife Account; and creating the office of chief warden. After discussion and revision of these drafts, the committee gave preliminary approval to five drafts and to three letters relating to computers for DNR wardens, suggestions for ways in which DNR can assist wardens in their duties and financing of computer training costs.

By an April 30, 1999 mail ballot, the committee approved three drafts relating to conservation laws, which combined the five drafts considered at the February 24, 1999 meeting, and approved the three letters.

PART III

RECOMMENDATIONS

This Part of the Report provides background information on, and a description of, the three bills recommended by the Special Committee on Conservation Laws Enforcement for introduction in the 2001-02 Session of the Legislature.

A. 2001 ASSEMBLY BILL 300

1. Background

Although Wisconsin for many years has had a chief warden, there is currently no statutory provision requiring the appointment of a chief warden. The number of conservation wardens has grown over time to 209 positions and the DNR warden staff has at least 38 specific statutory duties, in addition to their permissive powers and their general enforcement duties under eight chapters of the statutes. The current DNR organizational structure provides for five regions, each headed by a regional warden, who is under the direction and supervision of the regional administrator. The “chief warden” appointed by the secretary of the DNR has no statutory authority over the regional wardens, the warden supervisors or field wardens. In addition, wardens may have duties assigned to them by the regional administrators and the chief warden has no authority over, and is not responsible for, the actions of conservation wardens in carrying out those duties.

The Special Committee concluded that it would be appropriate to require by statute that the DNR must designate a conservation warden as chief warden and permit the DNR to appoint one or more deputy chief wardens.

In addition, the Committee learned that the chief warden has no disciplinary authority over conservation wardens nor does he or she have any responsibility to investigate or resolve complaints against conservation wardens. The Committee determined that the chief warden should be required to designate a person as an internal affairs officer to investigate complaints against conservation wardens when an investigation is determined by the chief warden to be necessary, and to designate a complaint officer who will intervene and work with citizens to resolve complaints against, or involving, conservation wardens.

2. Description of Bill

Assembly Bill 300 requires the DNR to designate a conservation warden as the chief warden and permits it to designate one or more deputy chief wardens. The chief warden will have the duty to direct, supervise and control conservation wardens in their performance of their duties. The chief warden is required to designate an internal affairs officer to investigate complaints against conservation wardens when the chief warden determines an investigation is necessary. Further, the chief warden is required to designate a complaint officer to resolve complaints against conservation wardens.

This bill does not affect the direction and supervision of the chief warden by the Secretary of Natural Resources, the Deputy Secretary and the appropriate division administrator.

B. 2001 ASSEMBLY BILL 301

1. Background

In the process of reviewing the duties of conservation wardens, the Committee noted that there are omissions in their statutory authority that should be remedied.

Currently, conservation wardens are not authorized to enforce violations of s. 943.13, Stats., the trespass law. For example, during the deer hunting season, if a conservation warden, while examining licenses and ensuring that hunters comply with safety and deer hunting laws, receives a complaint from the owner of the premises that the hunters are trespassing, the warden has no authority to issue a citation.

Currently under s. 951.09, Stats., shooting any animal that is staked out, caged or otherwise intentionally confined in a man-made enclosure, regardless of size, is illegal unless the shooting is of wild game in its wild state or the shooting is of wild birds and waterfowl at licensed game farms or licensed shooting preserves. The penalty for violation is a Class C forfeiture (an amount not to exceed \$500). Any person who intentionally or negligently violates the law is guilty of a Class A misdemeanor, which is punishable by a fine not to exceed \$10,000 or imprisonment not to exceed nine months, or both. However, a conservation warden has no authority to enforce the statute, even if wild animals are involved.

Currently, a conservation warden who has completed an approved law enforcement training program, been certified as qualified to be a law enforcement officer and complied with other requirements is authorized to arrest a person pursuant to an arrest warrant for a felony or to arrest a person who has committed a crime in the presence of a warden. However, a conservation warden may not arrest a person who is the subject of an arrest warrant for a misdemeanor.

2. Description of Bill

a. Enforcement of Trespass Law

Assembly Bill 301 authorizes conservation wardens to enforce violations of s. 943.13, Stats., the trespass law. However, the bill authorizes a warden to do so only if the warden determines, while carrying out his or her statutory duties, that a violation has been committed. The authority to issue citations and to arrest for violations is discretionary. The DNR and its wardens are not the primary enforcers of the trespass law; the primary duty to respond to trespass complaints remains with sheriffs' and police departments.

b. Shooting Caged or Staked Wild Animals

Assembly Bill 301 authorizes a conservation warden to enforce the prohibition contained in s. 951.09, Stats., against shooting at a caged or staked animal: (1) if the animal is a wild animal; (2) the shooting is not pursuant to a game farm or shooting preserve license

issued by the DNR; and (3) the animal is not in its “wild state.” If the animal is not a wild animal, enforcement of s. 951.09, Stats., will remain with sheriff’s and police departments.

c. Misdemeanor Warrant Enforcement

Assembly Bill 301 authorizes a conservation warden to arrest a person who is the subject of an arrest warrant for any crime (a felony or misdemeanor) just as he or she may currently do for a felony or for a case in which a person has committed a crime in the presence of the warden. The conservation warden must have completed an approved law enforcement training program, been certified as qualified to be a law enforcement officer and complied with applicable statutory requirements in order to affect such an arrest.

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Committee and Joint Legislative Council Votes

The bills described in this report were first introduced in the 1999 Legislative Session. None of the proposals passed in the 1999 Session. On March 14, 2001, the Joint Legislative Council voted unanimously to reintroduce the bills into the 2001-02 Legislature. The votes by the Special Committee and the Joint Legislative Council for introduction of these proposals in the 1999 Session are listed below.

The bills are essentially the same as the proposals introduced in the 1999 Session. Some changes to Assembly Bill 300 and Assembly Bill 301 were necessary as the result of legislation enacted in the 1999 Session.

Votes on 2001 Assembly Bill 300

By a mail ballot, dated April 30, 1999, the Special Committee on Conservation Laws Enforcement voted to recommend LRB-3063/1 (as WLCS: 0012/2), relating to the designation and duties of chief warden, deputy chief warden, internal affairs officer and complaint officer within the department of natural resources by a vote of Ayes, 18 (Reps. Johnsrud, Hubler, Ainsworth, Albers, Gunderson, Kreuser and Meyer; Sens. Schultz, Drzewiecki and Wirch; and Public Members Bortz, Buss, Jarvis, Ladd, Moustakis, Rutledge, Sromek and Steinhorst); Noes, 0; and Not Voting, 1 (Public Member Adkins).

At its September 22, 1999 meeting, the Joint Legislative Council voted to introduce 1999 Assembly Bill 490 (LRB-3063/1) by a vote of Ayes, 19 (Sens. Risser, Burke, Chvala, Cowles, Ellis, Erpenbach, Grobschmidt, Rosenzweig and Zien; and Reps. Kelso, Bock, Foti, Freese, Gard, Huber, Jensen, Krug, Seratti and Stone); Noes, 1 (Rep. Schneider); and Absent, 2 (Sens. George and Robson).

Votes on 2001 Assembly Bill 301

By a mail ballot, dated April 30, 1999, the Special Committee on Conservation Laws Enforcement voted to recommend LRB-3062/2 (as WLCS: 0118/1), relating to limiting administrative expenses paid from the fish and wildlife account of the conservation fund and creating new conservation warden positions by a vote of Ayes, 18 (Reps. Johnsrud, Hubler, Ainsworth, Albers, Gunderson, Kreuser and Meyer; Sens. Schultz, Drzewiecki and Wirch; and Public Members Bortz, Buss, Jarvis, Ladd, Moustakis, Rutledge, Sromek and Steinhorst); Noes, 0; and Not Voting, 1 (Public Member Adkins).

At its September 22, 1999 meeting, the Joint Legislative Council voted to introduce 1999 Assembly Bill 492 (LRB-3062/2) by a vote of Ayes, 19 (Sens. Risser, Burke, Chvala, Cowles, Ellis, Erpenbach, Grobschmidt, Rosenzweig and Zien; and Reps. Kelso, Bock, Foti, Freese, Gard, Huber, Jensen, Krug, Seratti and Stone); Noes, 1 (Rep. Schneider); and Absent, 2 (Sens. George and Robson).

JOINT LEGISLATIVE COUNCIL

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This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the cochairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees.

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SPECIAL COMMITTEE ON

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STUDY ASSIGNMENT: The Committee is directed to study staffing levels and duties of conservation wardens as they relate to the enforcement of fish and game and other natural resource-related laws, and to consider means and methods of ensuring the adequacy of such enforcement. The Special Committee shall report its recommendations to the Joint Legislative Council by May 1, 1999. [Based on July 25, 1997, March 25, 1998 and May 27, 1998 letters from Sen. Dale Schultz.]

Established and Chairperson appointed by a June 24, 1998 mail ballot; members appointed by an August 21, 1998 mail ballot.

19 MEMBERS: 3 Senators, 7 Representatives; and 9 Public Members.

LEGISLATIVE COUNCIL STAFF: Gordon Anderson, Senior Staff Attorney and Rachel Veum, Administrative Staff.

(1) Resigned from the Committee on February 24, 1999.

Committee Materials List

Staff Materials

1. Staff Brief 98–1, *Wisconsin Conservation Laws Enforcement* (September 22, 1998).
2. Memo No. 1, *Information Relating to Funding and Work Load Analysis of the Department of Natural Resources' Law Enforcement Personnel* (September 22, 1998).
3. Memo No. 2, *Information Relating to Conservation Warden Recruitment Testing and Training* (September 22, 1998).
4. Memo No. 3, *Materials Provided by the Department of Natural Resources* (October 21, 1998).
5. Memo No. 4, *Information Relating to, and Restrictions on Use of, Natural Resource–Related Fines and Forfeitures* (October 21, 1998).
6. Memo No. 5, *Information Relating to Liability of Volunteers Who Support Department of Natural Resources Programs* (October 22, 1998).
7. Memo No. 6, *Comparative Data Relating to Wisconsin's Warden Staff and the Warden Staffs of Other States* (November 9, 1998).
8. Memo No. 7, *Retirement Benefits for Department of Natural Resources (DNR) Employees Who Serve as Special Conservation Wardens on a Part–Time Basis* (November 10, 1998).
9. Memo No. 8, *Information Relating to Department of Natural Resources Structure, Distribution of Law Enforcement Personnel and Complaint Procedures Against Wardens* (November 10, 1998).
10. Information Memorandum 96–20, *Trespass to Land (1995 Wisconsin Act 451)* (July 15, 1996).
11. Memo No. 9, *Information Relating to Funding and Work Load of Law Enforcement Personnel in the Department of Natural Resources* (December 8, 1998).
12. Memo No. 10, *Suggestions for Committee Recommendations Made by Committee Members* (December 9, 1998).
13. Memo No. 11, *Suggestions by Committee Members for Committee Recommendations* (January 13, 1999).
14. Memo No. 12, *Proposed Increases in the Number of Conservation Wardens* (February 17, 1999).

15. Memo No. 13, *Preliminary Actions Taken by the Special Committee at Its February 24, 1999 Meeting* (February 26, 1999).

Other Materials

1. Packet of materials provided by Tom Harelson, Chief Warden, Bureau of Law Enforcement, DNR, at the September 30, 1998 meeting.

- a. Report, *Warden Staffing*, prepared by Tom Harelson, Chief Warden, Bureau of Law Enforcement, DNR (undated).
- b. Issue Brief, *Technology*, prepared by Tom Harelson, Chief Warden, Bureau of Law Enforcement, DNR (undated).
- c. Issue Brief, *Warden Support*, prepared by Tom Harelson, Chief Warden, Bureau of Law Enforcement, DNR (undated).
- d. Issue Brief, *Warden Staffing*, prepared by Tom Harelson, Chief Warden, Bureau of Law Enforcement, DNR (undated).
- e. Issue Brief, *Phone Workload*, prepared by Tom Harelson, Chief Warden, Bureau of Law Enforcement, DNR (undated).
- f. Handout, *Summary of Warden Shortage Problem*, prepared by DNR staff (undated).
- g. Memorandum, *Warden Staffing Report*, from Tom Harelson, Chief Warden, Bureau of Law Enforcement, DNR (January 15, 1998).
- h. Table, *FY98 Description of Partner Support*, prepared by DNR staff (undated).
- i. Chart, *Warden Retirements*, prepared by DNR staff (undated).
- j. Chart, *Method of Reporting*, prepared by DNR staff (undated).
- k. Report, *Improving Productivity of Conservation Wardens Through Support Staff Services*, prepared by Thomas R. Hansen, Warden Supervisor, DNR (undated).
- l. Pamphlet, *The Economic Importance of Sport Fishing*, prepared by the American Sport Fishing Association (undated).

2. Brochure, *New Fishing & Hunting License Sales System*, prepared by DNR (undated).

3. Pamphlet, *The Economic Importance of Hunting*, prepared by the International Association of Fish and Wildlife Agencies (undated).

4. Legislative Audit Bureau Report 98–9, *Funding Fish and Wildlife Programs* (October 29, 1998).
5. *Wisconsin Game Warden*, Volume 8, No. 2 (Fall/Winter 1998).
6. Form 4100–75 (warden’s time report), submitted by Tom Harelson, DNR (June 1996).
7. Chart, *DNR Law Enforcement Training Costs for Development of Computer Skills*, submitted by John T. Daniel, Deputy Chief, Bureau of Law Enforcement, Division of Enforcement and Science, DNR (undated).
8. Letter, from Paul J. Stuiber, Program Evaluation Director, Legislative Audit Bureau (November 25, 1998).
9. Letter, from John W. Welter, Chair, Wisconsin Trout Unlimited (December 11, 1998).
10. Chart, *Comparison of Conservation Warden Time with Environmental Wardens and Environmental Enforcement Specialists*, submitted by John Daniel, DNR (undated).
11. Memorandum, *DNR Positions Having Some Duties Related to Environmental Law*, from Russ Kava, Fiscal Analyst, Legislative Fiscal Bureau (December 16, 1998).
12. Letter, from James L. Saari, Chairman, Snowmobile Recreation Council (December 21, 1998).
13. Table, *Wage Comparisons, Wisconsin Wardens vs Contiguous States Wardens*, submitted by Public Member David Ladd (undated).
14. Memorandum, *Amendment to Chapter 951, Stats.–Corrected Copy*, from Michael A. Lutz (February 15, 1999).
15. Option Paper, *1–800 Number to Answer All Violation Complaints (Tip) Calls From Public*, prepared by John Daniel, Deputy Chief Warden, DNR.
16. Letter, from John Daniel, Bureau of Law Enforcement, DNR (February 16, 1999).
17. Memorandum, *Suggestions by Committee Members for Committee Recommendations*, from Jennifer Sunstrom, Legislative Assistant, Wisconsin Counties Association (February 24, 1999).
18. Memorandum, *Administrative Funding from the Fish and Wildlife Account*, from Russ Kava, Fiscal Analyst, Legislative Fiscal Bureau (February 24, 1999).
19. Handout, *Environmental Enforcement*, submitted by Tim Coughlin, Environmental Enforcement Lead Worker, South Central Region, DNR (February 24, 1999).