

Wisconsin's Major Historic Preservation Statutes

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Chapter 44: Subchapter I, STATE HISTORICAL SOCIETY AND LOCAL HISTORICAL SOCIETIES

44.02 Historical society; duties. The historical society shall:

(21) Serve as the principal historic preservation agency of the state and in that capacity carry out a program of preservation of historic properties as specified under subch. II of ch. 44.

(23) Identify any archeological site, including contiguous land necessary to protect the site, in this state that is listed in the national register of historic places in Wisconsin or the state register of historic places and that is not cataloged under s. 157.70 (2) (a) [NOTE: this is the burial program]. Any information collected under this subsection the disclosure of which would be likely to result in the disturbance of an archeological site is not subject to s. 19.35 (1).

(24) Promulgate by rule procedures, standards, and forms necessary to certify, and shall certify, expenditures for preservation or rehabilitation of historic property for the purposes of ss. 71.07 (9r). These standards shall be substantially similar to the standards used by the secretary of the interior to certify rehabilitations under 26 USC 47(c) (2).

(27) Administer the historical markers program under s. 44.15.

44.15 Historical markers council.

(2) **CREATION.** It is declared to be in the public interest to stimulate interest in and knowledge of the state by marking sites of special historical, architectural, cultural, archeological, ethnic, geological or legendary significance, and maintaining and developing such sites approximately so as to preserve their individual characteristics. The historical markers program is created to call attention to the state's historical, cultural, and natural heritage through a system of markers and plaques and to supplement, wherever possible, information contained in the state register of historic places. It is the purpose of the program to significantly increase the number of historical, cultural, and natural heritage sites that are marked in this state.

(3) **MARKERS AND PLAQUES.**

(a) The historical society shall do all of the following:

1. Plan, develop, and publicize a uniform system of marking for state and local sites of historical, architectural, cultural, archeological, ethnic, geological, and legendary significance. The marking system shall constitute large markers of standard design, in one or more sizes, with narrative text describing the associated site.

2. Plan, develop, and publicize a system of plaques for the districts, sites, buildings, structures, and objects listed on the state register of historic places and a system of plaques for marking state and local sites of special historical, architectural, cultural, archeological, ethnic, geological, or legendary significance. The system of plaques shall constitute small plaques of various types, each with a standard design, intended to identify the district, site, building, structure, or object, and generally without narrative text. Any narrative text included on a plaque shall be standardized for a specific type of plaque. The historical society shall consider and respond to reasonable requests to establish new types of plaques.

3. Establish criteria for the selection of appropriate sites for markers and plaques under this subsection. This historical society shall accept applications for approval of the placement of markers and plaques, and for any narrative text for markers. The historical society shall approve those applications that meet the criteria established by the historical society.

4. Prepare the text for a book listing the locations and text of all markers in this state.

(b) The markers and plaques approved by the historical society under this subsection may not be used to mark sites other than those approved by the historical society and shall be used subject to any conditions established by the historical society. No marker or plaque may include the name of the current owner of the property. Without the approval of the historical society, no person may erect or use a marker or plaque that is identical to or misleadingly resembles the markers and plaques approved under this subsection. The historical society may require the removal of any marker or plaque that does not meet the requirements of this subsection.

(4) **STATE-FUNDED MARKERS.** The historical society may identify and authorize construction of individual markers or plaques, or any series of markers or plaques, to be funded from the appropriation

under s. 20.245 (1) (a). No matching funds are required for a marker or plaque that is constructed under this subsection. Funds under this subsection may be used for the purchase of plaques to be installed on historical properties and for the construction of markers or plaques in other states or countries.

(5) MAINTENANCE. Any approval issued for a marker or plaque by the historical society under this section shall include a requirement that the applicant maintain the marker or plaque, and shall also include authorization permitting the historical society or council, if necessary, to enter the property and maintain the marker or plaque. The historical society may issue orders to maintain markers and plaques, and may maintain markers or plaques.

(6) STATE-OWNED PROPERTY. Each board, commission, committee, department, or officer in state government shall cooperate with the historical society in the placement of markers or plaques on state-owned property, and shall place and maintain such markers or plaques, as supplied by the historical society, at locations identified by the historical society.

(7) DONATIONS; ASSISTANCE.

(a) The historical society may accept gifts, appropriations, and bequests made to it for the purposes of this section and use them as far as practicable in accordance with the wishes of the donor.

(b) The historical society may accept the aid, support and cooperation of county, city, village or town agencies, or private agencies or persons in executing its projects.

(8) COOPERATION OF STATE AGENCIES. All state departments, independent agencies and institutions are directed to cooperate with the council in the performance of its duties. Applicable laws shall be liberally construed in favor of such cooperation.

(9) RULES. In consultation with the council, the historical society shall promulgate rules to implement and administer the program. The rules shall include all of the following:

- (a) Policies and procedures for the uniform systems of markers and plaques under sub. (3)(a)1 and 2.
- (b) Criteria for the selection of appropriate sites for markers and plaques under sub. (3)(a)3.

Chapter 44: Subchapter II, Historic Preservation Program

44.30 Public policy. The legislature finds that the historic architectural, archeological and cultural heritage of the state is among the most important assets of the state and furthermore that the social, economic and physical development of contemporary society threatens to destroy the remaining vestiges of this heritage. It is therefore declared to be the public policy and in the public interest of this state to engage in a comprehensive program of historic preservation to promote the use and conservation of such property representative of both the rural and urban heritage of the state for education, inspiration, pleasure and enrichment of the citizens of this state.

History: 1987 a. 395 s. 24.

44.31 Definitions. In this subchapter:

- (1) "Adverse effect" means any of the following:
 - (a) Physical destruction, damage or alteration of any part of a property which would adversely affect the historic significance of that property.
 - (b) Isolation of a property from or alteration of the character of the property's setting when that character contributes to the property's qualification as a listed property.
 - (c) Introduction of visual, audible or atmospheric elements that are out of character with a property or alter its setting.
 - (d) Neglect of a property resulting in its deterioration or destruction.
- (1m) "Director" means the director of the historical society.
- (2) "Historic preservation" means the research, protection, restoration and rehabilitation of historic properties.
- (3) "Historic property" means any building, structure, object, district, area or site, whether on or beneath the surface of land or water, that is significant in the history, prehistory, architecture, archeology or culture of this state, its rural and urban communities or the nation.

(4) "Listed property" means property which is listed in the national register of historic places in Wisconsin or the state register of historic places, or both.

(5) "National register of historic places in Wisconsin" means those places in Wisconsin which are listed on the national register of historic places maintained by the U.S. department of the interior.

(6) "Political subdivision" means a city, village, town or county.

(7) "Officer" means the state historic preservation officer.

(8) "Owned or leased" includes:

(a) An ownership interest involving the holding of title.

(b) A leasehold interest.

(c) Ownership of a beneficial interest.

(d) Any beneficial use not involving the holding of title.

(10) "State agency" means any office, department, independent agency, or attached board or commission within the executive branch of state government, or any special purpose authority created by statute.

(11) "State review board" means the historic preservation review board.

(12) "Wisconsin inventory of historic places" or "the inventory" means the listing of places that have been identified by the officer as being of some historic significance.

History: 1987 a. 395 ss. 25 to 27, 35; 1989 a. 31

44.32 Officer. The director or his or her designee shall serve as the state historic preservation officer.

History: 1987 a. 395 s. 28.

44.33 Duties of the state review board. The state review board shall:

(1) Approve, upon the recommendation of the officer, nominations to the national register of historic places in Wisconsin and the state register of historic places.

(2) Review the state surveys and inventories of historic properties undertaken under s. 44.34.

(3) Review and approve the content of the state preservation plan developed under s. 44.34

(4) Review and approve the distribution of federal grants-in-aid for preservation.

(5) Recommend the removal of properties from the national register of historic places in Wisconsin or the state register of historic places.

(6) Act in an advisory capacity to the state historical society.

(7) Notify planning departments of affected political subdivisions, local landmarks commissions and local historical societies regarding properties being considered for nomination to the national register of historic places in Wisconsin or the state register of historic places that are within their jurisdictions, and request them to forward comments regarding nominations from affected neighborhood groups, public bodies and interested citizens.

History: 1987 a. 395 s. 29.

44.34 Duties of the state historical society. The state historical society shall:

(1) Conduct an ongoing statewide survey to identify and document historic properties, including all those owned by the state, its instrumentalities and political subdivisions.

(2) Prepare, update and maintain the Wisconsin inventory of historic places.

(3) Maintain, publish and disseminate the national and state registers of historic places in Wisconsin and lists or descriptions of properties in the national and state registers of historic places in Wisconsin which may be of interest to the general public.

(4) Serve as the state's principal agency for administration of historic preservation activities and programs of the federal government and maintain the state's eligibility to participate in the programs.

(5) Prepare the state preservation plan and annually review it.

(6) Undertake a program of technical assistance to localities and private parties in furtherance of local and private historic preservation programs.

(7) Administer the distribution of grants-in-aid using federal funds in furtherance of preservation and restoration of historic properties in accordance with federal law and regulations of the federal government.

(8) Cooperate with federal, state, and local government agencies in the planning and conduct of specific undertakings affecting historic properties and preservation objectives, and in overall land use planning.

(9) Cooperate with local landmarks commissions and historical societies in coordinating their activities with the state plan and programs for historic preservation.

(10) Review and comment upon those actions of any state agency or political subdivision which may have an adverse effect upon historic properties and ameliorate the adverse effects, if any, in the manner specified in ss. 44.39 to 44.42.

(11) Certify historic preservation ordinances.

(12) Prepare and distribute to all cities, villages, and counties, no later than January 1, 1992, a model historic preservation ordinance.

History: 1987 a. 395 s. 30; 1989 a. 290; 1991 a. 39 s. 1164; 1999 a.9; 2001 a. 16.

44.36 State register of historic places.

(1) STATE REGISTER. The state historical society shall maintain, publish and disseminate the state register of historic places.

(2) CRITERIA OF SIGNIFICANCE.

(a) The state register of historic places shall include districts, sites, buildings, structures and objects which are significant in national, state or local history, architecture, archeology, engineering and culture. The quality of significance is present in districts, sites, buildings, structures and objects that possess integrity of location, design, setting, materials, workmanship, feeling and association and that satisfy any of the following conditions:

1. Association with events that have made a significant contribution to the broad patterns of history.
2. Association with the lives of persons significant in the past.
3. Embodiment of the distinctive characteristics of a type, period or method of construction or that represent the work of a master or that possess high artistic values.
4. Representation of a significant and distinguishable entity whose components may lack individual distinction.
5. Yielding, or likely to yield, information important in prehistory or history.

(b) (b) No cemetery, birthplace or grave of a historical figure, property owned by a religious institution or used for religious purposes, reconstructed historic building, property primarily commemorative in nature or property that has achieved significance within the past 50 years may be considered eligible for the state register of historic places unless it is an integral part of a district that meets the criteria of significance under par. (a) or unless it falls within at least one of the following categories:

1. A religious property deriving primary significance from architectural or artistic distinction or historical importance.
2. A birthplace or grave of a historical figure of outstanding importance if there is no appropriate site or building directly associated with his or her productive life in the vicinity of that birthplace or grave.
3. A cemetery which derives its primary significance from the grave of a person of transcendent importance, age, distinctive design features or association with historic events.
4. A reconstructed building when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan and when no other building or structure with the same association has survived.
5. A property primarily commemorative in intent if design, age, tradition or symbolic value has invested it with its own exceptional significance.
6. A property achieving significance within the past 50 years if it is of exceptional importance.

(3) PROCEDURES. The state historical society shall promulgate by rule procedures for nominations to and removals from the state register of historic places. The procedures shall be consistent with and, to the extent possible, shall be coordinated with the procedures for nominations to and removals

from the national register of historic places maintained by the U.S. department of the interior. The rules shall include standards for documenting nominations to the state register.

(4) NOMINATIONS.

(a) Any person may nominate a district, site, building, structure or object to the state register of historic places.

(b) The state historical society may reject any nomination which is not adequately documented.

(c) A nomination to the state register of historic places does not constitute a nomination to the national register of historic places.

(5) STATE REGISTER OF HISTORIC PLACES.

(a) The state historical society shall include in the state register of historic places:

1. Any property listed in the national register of historic places in Wisconsin on January 1, 1989.

2. Any property nominated and approved under this section.

3. Any property nominated under this section if the nomination is accompanied by a request for interim listing and the officer determines, based on evidence submitted with the nomination, that the state review board is reasonably likely to approve the nomination under s. 44.33 (1). An interim listing under this subdivision expires on the first day of the 12th month after it is first included in the state register of historic places and is not renewable.

(b) The list of properties in the state register of historic places is not a rule under s. 227.01 (13).

The state historical society shall publish the list of properties on the state register of historic places in the Wisconsin administrative code as an appendix to the rules promulgated under this section.

History: 1987 a. 395.

44.39 State agency cooperation.

(1) LEAD AGENCY. The state historical society shall serve as the central unit of state government to coordinate the activities of all state agencies in connection with historic properties, to serve as the repository of information concerning historic properties owned or leased by the state, to collect and disseminate to state agencies information concerning appropriate means for managing and improving historic properties and to take any other action necessary to implement this section and s. 44.41.

(2) IDENTIFICATION OF AFFECTED STATE AGENCIES. The state historical society shall identify every state agency which has any power or duty under s. 44.40 or 44.41 and shall notify each identified state agency of its powers and duties.

(3) APPOINTMENT OF STATE AGENCY HISTORIC PRESERVATION OFFICER; DUTIES. Every state agency notified under sub. (2) shall appoint one of its employees or officers, who has authority in the agency to affect the management of that agency's resources and to directly influence that agency's decision making, to serve as that agency's historic preservation officer. That state agency historic preservation officer shall coordinate all functions of that state agency related to historic properties and shall serve as the liaison between that state agency and the state historical society.

(4) COOPERATION. All state agencies shall cooperate with each other and with the state historical society to achieve the objectives of ss. 44.39 to 44.41.

(5) WAIVER OF COMPLIANCE. (a) If the department of health and family services or the department of corrections determines that public safety may be jeopardized by compliance with any requirement of this section or s. 44.40 or 44.41, the department may request a waiver of compliance from the building commission. The building commission may grant a waiver of compliance.

(b) If a waiver of compliance is granted by the building commission under par. (a), the applicable agency shall notify the officer of any proposed action to be taken under the waiver that may affect a historic property. The officer shall be notified at least 30 days before the proposed action is taken and, during the period before the proposed action is taken, the applicable agency shall allow the historical society to document the condition of the historic property.

History: 1987 a. 395; 1989 a. 31; 1995 a. 27 ss. 1993j, 9126 (19).

44.40 State agency decisions; negotiation.

(1) Each state agency shall consider whether any proposed action of the state agency will affect any historic property that is a listed property, on the inventory or on the list of locally designated historic

places under s. 44.45. If the state agency determines that its proposed action will affect any historic property, it shall notify the officer.

(lm) The historical society and a state agency notified under s. 44.39 (2) jointly shall identify actions of the state agency that may cause or permit an adverse effect on historic property including, but not limited to, any state agency action that involves the exercise of state agency authority in the issuance of a permit, license, authorization, variance or exception or in any grant of financial assistance and any state agency action related to property owned by the state agency or related to its long-range planning and facilities development.

(2)(a) Upon receipt of a notice under sub. (1) the officer shall determine whether the proposed action will have an adverse effect upon a historic property that is any of the following:

1. A listed property.
2. On the inventory.
3. On the list of locally designated historic places under s. 44.45.

(b) The officer shall make the determination under par. (a) within 30 days of receipt of the notice under sub. (1) or notify the state agency that an extension of time, not to exceed 30 days, is necessary to make the determination. If the officer notifies the state agency of an extension, he or she shall include in the notice the reasons for the extension.

(3) If the officer determines under sub. (2) that the proposed action will have an adverse effect on the historic property, the officer may require negotiations with the state agency to reduce such effects. If the negotiations result in an agreement as to the means of reducing such effects, the agreement shall be incorporated into the state agency's proposed action. The officer shall prepare a written report on the effects and the status of all negotiations. The officer shall submit the report to the governor and the chief clerk of each house of the legislature for distribution to the appropriate standing committees under s. 13.172 (3).

(4) A state agency may deny or impose conditions on a permit, license, authorization, variance, exception, or award of financial assistance identified under sub. (1m) in order to reduce any adverse effect on historic property.

(5) This section does not apply to any state agency action which is subject to 16 USC 461 to 470mm.

History: 1989 a. 31 s. 851.

44.41 Protection and use of state agency property.

(1) LONG-RANGE PLANS. Each state agency which owns listed property shall develop a long-range plan for the management, preservation and improvement of that property. The state agency shall develop the long-range plan as part of the long-range public building program under s. 13.48. The long-range plan shall, to the greatest possible extent, result in preservation of that property.

(2) USE OF LISTED PROPERTY. Before purchasing, constructing a building which is not a listed property, each state agency shall consider using a building which is listed property. A state agency shall use such a building to the maximum extent feasible if the building is appropriate for or can be adapted to meet the needs of the state agency, can be acquired and occupied at a cost which is within the budget of the state agency, is at an appropriate location and meets other requirements of the state agency.

(3) PROTECTION OF LISTED PROPERTY. If a state agency transfers or sells any listed property, it shall reserve a conservation easement under s. 700.40, to be transferred to and held by the state historical society, which secures the right of the historical society to preserve and maintain that property. The state historical society shall establish a form for that conservation easement and provide copies of that form to every state agency.

History: 1987 a. 395.

44.42 Negotiations with political subdivisions and school boards.

(1) Upon receipt of a notice from a political subdivision under s. 66.1111 (4) or a school board under s. 120.12 (21) concerning a proposed action affecting a historic property, the officer shall determine whether the action would have an adverse effect upon a historic property which is:

- (a) A listed property.
- (b) On the list of locally designated historic places under s. 44.45.

(2) The officer shall, within 30 days of receipt of the notice under s. 66.1111 (4) or 120.12 (21), reach a determination under sb. (1) or notify the political subdivision or school board in writing that an extension of time, not to exceed 30 additional days, will be required to make adequate determinations and the reasons for requiring the extension. If the officer determines that the proposed action which is the subject of that notice will have an adverse effect on the property which would be subject to that action, the officer may require negotiations with the political subdivision or school board proposing such action in an attempt to reduce such effects. If the negotiations result in an agreement as to the means of reducing such effects, that agreement shall be incorporated into the proposed action of the political subdivision or school board. The officer shall prepare a written report on the effects and the status of all negotiations. The officer shall submit the report to the governor and to the chief clerk of each house of the legislature for distribution to the appropriate standing committees under s. 13.172 (3).

History: 1987 a. 395, 1989 a. 31; 1991 a. 39, s. 1164s.

44.44 Certification of historic preservation ordinances.

(1) The state historical society shall certify a historic preservation ordinance if the ordinance does all of the following:

(a) Contains criteria for the designation, on the register of a political subdivision, of historic structures and historic districts which are substantially similar to the criteria for inclusion in the national register of historic places in Wisconsin.

(b) Provides a procedure for the designation of historic structures or historic districts which includes, at a minimum, a nomination process, public notice of nominations and an opportunity for written and oral public comment on nominations.

(c) Provides for the exercise of control by a political subdivision by ordinance, to achieve the purpose of preserving and rehabilitating historic structures and historic districts.

(d) Creates a historic preservation commission in the political subdivision.

(2) The owner of a building designated as a historic building on the register of historic property of a political subdivision shall provide any information or materials regarding the ordinance which are requested by the state historical society in determining whether to certify the ordinance.

History: 1987 a. 395 s. 32.

44.45 List of locally designated historic places.

(1) DEFINITION. In this section, "list" means the list of locally designated historic places under sub. (2).

(2) PUBLICATION OF LIST. The state historical society shall maintain, publish and disseminate a list of locally designated historic places. The list may include any listed property.

(3) CONTENTS OF LIST. If a political subdivision has a historic preservation ordinance which is certified under s. 44.44, that political subdivision may submit to the state historical society information on any historic place which it has designated. If the process for designating that place complies with that ordinance, the state historical society shall include that place on the list.

(4) PROMULGATION OF LIST.

(a) The state historical society shall establish the form on which a political subdivision submits information under sub. (3).

(b) The list is not a rule under s. 227.13. The state historical society shall publish the list as an appendix to the rules promulgated under s. 44.36.

(c) The state historical society shall update the list as necessary to add additional locally designated historic places to the list or to delete designations which do not meet the requirements of this section.

History: 1987 a. 395.

44.47 Field archeology. This state reserves to itself the exclusive right and privilege of field archeology on state sites, and establishes regulations for field archeology on sites owned by political subdivisions, in order to protect and preserve archeological and scientific information, matter and objects. It is a declaration of legislative intent that persons practicing field archeology on private owned land are encouraged to pursue their field archeology in accordance with this section, and that the looting of all archeological remains be strongly discouraged. Persons having knowledge of the location of

archeological sites are encouraged to communicate such information to the state archeologist. This section is not intended to burden persons who wish to use state public property for recreational and other lawful purposes or to unnecessarily restrict the use of state public property.

(1) DEFINITIONS. As used in this section:

(a) "Archeological methods" means scientific procedures used in field archeology by recognized professional authorities on archeology.

(b) "Archeological site" means any land or the bed of any stream or lake where there are objects or other evidence of archeological interest, aboriginal mounds and earthworks, ancient burial grounds, prehistoric and historic ruins, Indian mounds, historic and prehistoric watercraft and associated objects, aircraft and other archeological and historical features.

(bm) "Council" means the submerged cultural resources council.

(c) "Data" means field notes, photographs, maps and other records relating to field archeology.

(d) "Field archeology" means the study of the traces of human culture by means of surveying, digging, sampling, excavating or removing objects.

(e) "Local site" or "local archeological site" means an archeological site owned by a political subdivision.

(f) "Object" means an article, implement or other item of archeological interest. "Object" does not include human remains, as defined in s. 157.70(1)(f).

(g) "Scientific institutions" means museums, historical societies, foundations for archeological study, state agencies and scholarly groups with professional standing and physical facilities for the display, study and preservation of objects of archeological interest.

(h) "State site" or "state archeological site" means an archeological site owned by this state.

(i) "Submerged cultural resource" means an archeological site or historic property that is located beneath the surface of a lake or stream.

(2) UNLICENSED FIELD ARCHEOLOGY PROHIBITED. No person other than the state archeologist and individuals licensed by the director may engage in any field archeology on any state site or site owned by a political subdivision.

(3) STATE ARCHEOLOGIST.

(a) Appointment. The state archeologist shall be a qualified archeologist residing in this state and shall be appointed by the director.

(b) Duties and powers of state archeologist. The state archeologist shall:

1. Sponsor, engage in and direct fundamental research into the archeology of this state and encourage and coordinate archeological research and investigation undertaken within the state.

2. Cooperate with other state agencies and political subdivisions which have authority in areas where archeological sites are located, or which have the responsibility for marking sites or arranging for their being viewed by the public.

3. Encourage the preservation of archeological sites located on privately owned property.

4. Protect objects of archeological significance discovered by field archeology at state sites or discovered during the course of any public construction or demolition work on state sites, and encourage the protection of such objects discovered during the course of any other construction or demolition work.

5. Cooperate with the historical society, public and private institutions of higher education in this state, and other custodians to preserve objects of archeological significance, together with the data relating thereto.

6. Encourage the dissemination of archeological facts through the publication of reports of archeological research conducted within the state.

7. Approve permits for qualified persons to engage in field archeology as provided in sub(4) and to otherwise carry out and enforce this section.

8. Administer the state archeology program under s. 44.48 (2).

(4) PERMITS.

(a) The director, acting as an agent of this state, may issue upon such terms and conditions, including restriction to a specific state site on land, as he or she designates, to a qualified natural

person approved by the state archeologist, a permit to engage in field archeology on state sites and sites owned by political subdivisions. If a state site or the area described in an application is under the jurisdiction of any other state agency or if the field archeology to be licensed interferes with a project of any other state agency, the director shall first obtain the approval of that state agency. The director may not issue a permit for field archeology on a site owned by a political subdivision without the written approval of the political subdivision which owns the site. No state agency or political subdivision may withhold that approval without good cause. The director by rule may establish fees for processing applications, for permits or for renewal of permits.

(b) If a site is located on privately owned land, any person wishing to dig or excavate at such a site is strongly encouraged to secure a permit under this section. The applicant for a permit must submit the written consent of the owner.

(c) The director may waive sub.(3)(b)7 in an emergency in which objects of archeological interest are found in the course of construction or demolition work, or in other situations in which time is of the essence to save objects or gather data.

(d) The director, upon the recommendation of the state archeologist the state agency administering the state site or the political subdivision which owns the site, may revoke or suspend a permit because of the improper conduct of the permittee, the use of improper or substandard archeological methods or for other good cause.

(5) OWNERSHIP, CUSTODY AND USE OF OBJECTS AND DATA. The state reserves to itself the title to all objects found and data gathered in field archeology on state sites. Although a permit may name a custodian other than the historical society, title to the objects and data discovered at state sites is reserved to the historical society as trustee for the state. Physical possession of such objects shall revert to the state if such custodian ceases to exist, or if the director, on the recommendation of the state archeologist, finds that the custodian is not properly caring for them or keeping them conveniently available for study by students of archeology.

(5m) SUBMERGED CULTURAL RESOURCES. (a) There is established, to be administered by the historical society and the department of natural resources, a program for submerged cultural resources of this state.

(b) The historical society, in consultation with the department of natural resources, shall coordinate the activities of the state relating to the preservation, management, and public use of submerged cultural resources. The historical society may enter into agreements with federal and state agencies, political subdivisions, and nonprofit organizations regarding the preservation, management, and use of submerged cultural resources and the management of bottomland preserves. On or before February 1 of each odd-numbered year, the historical society shall submit a report to the governor and to the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under s. 13.172 (3), on submerged cultural resources activities and implementation under this subsection.

(c) The historical society and department of natural resources may by rule designate areas of the bed of any stream or lake as bottomland preserves, for the purpose of enhancing preservation, management, and public use of any submerged cultural resources within the bottomland preserve. A bottomland preserve may encompass more than one object or archeological site.

(d) Before designation of an area as a bottomland preserve, the historical society shall consider all of the following:

1. If the preserve will provide preservation, management, and public use of submerged cultural resources.
2. The extent to which an inventory of submerged cultural resources has been conducted for the area within the proposed bottomland preserve.
3. Whether a plan has been prepared for the management of submerged cultural resources within the proposed bottomland preserve and for the recreational management and development of the proposed bottomland preserve.
4. The existence of an entity that will assume responsibility for the management of the bottomland preserve.
5. The availability of existing or planned facilities necessary for recreational uses of the bottomland preserve, including roads, boat landings, marinas, boat and diving charter services, hotels, medical decompression facilities, and rescue agencies.

(e) The historical society and department of natural resources may promulgate rules relating to the access, use, stewardship, management, protection, and recreational development of bottomland preserves, and the preservation, conservation, curation, and display of submerged cultural resources and objects removed from underwater archeological sites.

(f) The council shall:

1. Make recommendations to the historical society and the department of natural resources regarding the creation and management of bottomland preserves.

2. As requested by the state archeologist, review applications for archeological permits and make recommendations regarding issuance of permits.

3. As requested by the secretary of natural resources, review applications for archeological permits for the recovery of abandoned property, including nonhistorical shipwrecks of potential recreational value, and make recommendations regarding issuance of permits.

4. Advise the historical society and department of natural resources regarding the administration of this program.

(6) COOPERATION OF STATE AGENCIES AND POLITICAL SUBDIVISIONS. All state agencies and political subdivisions whose activities may be affected under this section shall cooperate with the historical society and the state archeologist to carry out this section.

(7) PENALTIES.

(a) 1. Whoever violates sub. (2) or any rules promulgated under sub. (5m) (e) shall forfeit not less than \$100 nor more than \$500.

2. Whoever intentionally defaces, injures, destroys, displaces or removes any archeological object or data belonging to the state, or intentionally interferes with evidence or work on any state site or site owned by a political subdivision for which a permit has been issued under this section or intentionally violates any other provision of this section or any rules promulgated under sub. (5m) (e) shall be fined not less than \$1,000 nor more than \$5,000.

3. Whoever removes any archeological object from a state site or site owned by a political subdivision for commercial gain in violation of this section or any rules promulgated under sub. (5m) (e) shall forfeit an amount not to exceed 2 times the gross value gained or the gross loss caused by the disturbance, whichever is the greater, plus court costs and the costs of investigation and prosecution, reasonably incurred.

(b) The director may refuse to issue or renew or may suspend or revoke the permit of any person who has violated this section or any rules promulgated under sub. (5m) (e). The director may refuse to name a school or scientific institution as the custodian of objects or data under any permit or agreement, if that school or scientific institution has failed in its duty to care for and preserve objects or data belonging to the state or has failed to make such objects or data conveniently available to the public.

(8) REVIEW BOARD. Appeals from decisions of the director shall be made to a review board composed of 3 persons: a member of the Wisconsin archeological society, a member of the Wisconsin archeological survey, and a member of the board of curators of the historical society. Each board member shall be chosen by the organization which he represents and shall serve without compensation. The review board shall submit its recommendations on all appeals to the board of curators of the historical society for final decision.

(9) HUMAN BURIAL SITES. If a permit is required for field archeology activities at a human burial site under s. 157.70, this section applies to any objects not related to the burial except that a permit is not required under this section.

History: 1975 c. 365; 1985 a. 316; 1987 a. 395 ss. 12 to 16.39; Stats. 1987 s. 44.47; History: 1991 a. 39, s. 1165h.

[This section applies to vessels and their contents, located on state sites, if the vessels or contents have archeological interest, except when federal admiralty law takes precedence or when the vessel or object is properly claimed by the owner as specified in 20.909 or 170.07 to 170.10.59 Atty. Gen. 18.]

44.48 Archeological resources.

(1) MAPPING

(a) The state historical society shall prepare maps of the archeological resources of this state.

(b) Using the best methods practicable with the funds available for that purpose, the state historical society shall prepare:

1. Initial archeological resources maps based on currently available information.
2. Updated archeological resources maps based on any additional information that is available, including on-site surveys.

(c) The director may keep any specific information regarding archeological resources closed to the public if the director determines that disclosure of the information would be likely to result in disturbance of the archeological resources.

(2) STATE ARCHEOLOGY PROGRAM. The state historical society shall establish and administer a state archeology program. The state historical society may designate qualified archeologists or institutions to undertake on behalf of the historical society specified archeological surveys, studies, excavations or other activities. The state historical society may designate regions of the state within which the designated archeologists or institutions may work.

History: 1987 a. 395.

Chapter 13: LEGISLATIVE BRANCH

13.48 Long-range public building program.

(1m) HISTORIC PROPERTIES.

(a) In this subsection, "historic property" means any building, structure, or site which is any of the following:

1. Listed on, or has been nominated by the state historical society for listing on, the national register of historic places in Wisconsin or the state register of historic places.
2. Included in a district which is listed on, or has been nominated by the state historical society for listing on, the national register of historic places in Wisconsin or the state register of historic places, and has been determined by the state historical society to contribute to the historic significance of the district.
3. Included on a list of properties which have been determined by the state historical society to be eligible for listing on the national register of historic places in Wisconsin or the state register of historic places.

(b) The long-range public building program shall recognize the importance of historic properties and shall include a program of preservation and restoration of those historic properties under the control of the state as provided in s. 44.41, including criteria for determining which historic properties should be preserved and restored.

(c) The long-range public building program shall require the biennial review of each historic property under the control of the state to determine the current uses of the property and state agency compliance with the requirements of the long-range program.

(d) The building commission shall allocate, from that portion of the state building program funding which is available to all state agencies, an amount of funds deemed necessary by the building commission for the preservation, restoration, and maintenance of historic properties under the control of the state.

Chapter 15: STRUCTURE OF THE EXECUTIVE BRANCH

15.705 Historical society; attached boards.

(1) **BURIAL SITES PRESERVATION BOARD.** There is created a burial sites preservation board attached to the historical society under s. 15.03, consisting of the state archeologist, as a nonvoting member, the director of the historical society if the director is not serving as the state historic preservation officer, the state historic preservation officer, or her or his formally appointed designee, who shall be a nonvoting member unless the director of the historical society is serving as the state historic preservation officer, and the following members appointed for 3-year terms:

(a) Three members, selected from a list of names submitted by the Wisconsin archeological survey, who shall have professional qualifications in the fields of archeology, physical anthropology, history or a related field.

(b) Three members who shall be members of federally recognized Indian tribes or bands in this state, selected from names submitted by the Great Lakes inter-tribal council and the Menominee tribe. Each such member shall be knowledgeable in the field of tribal preservation planning, history, archeology or a related field or shall be an elder, traditional person or spiritual leader of his or her tribe.

(2) **HISTORIC PRESERVATION REVIEW BOARD.** There is created a historic preservation review board attached to the historical society under s. 15.03, consisting of 15 members appointed for staggered two-year terms. At least 9 members shall be persons with professional qualifications in the fields of architecture, archeology, art history and history and up to 6 members may be persons qualified in related fields including, but not limited to, landscape architecture, urban and regional planning, law or real estate.

History: 1977 v. 29; 1979 c. 110; 1981 v. 237; 1985 a. 316.

CHAPTER 23: CONSERVATION (DNR)

23.095 Protection of natural resources.

(1) Definitions. In this section:

(a) "Damage" means to commit a physical act that unreasonably destroys, molests, defaces, removes or wastes.

(b) "Discharge" has the meaning given s. 292.01 (3).

(c) "Hazardous substance" has the meaning given s. 285.01 (21).

(1g) General prohibition. No person may damage or attempt to damage any natural resource within the state.

(1m) Prohibition on department land.

(a) No person may damage or attempt to damage any natural resource or any archaeological feature located on state-owned lands that are under the supervision, management and control of the department except as authorized by the department.

(b) Paragraph (a) does not apply to state-owned lands that are beds of navigable waters.

(2m) Prohibition on land in Kickapoo valley reserve.

(3) Penalties.

(d) 1. No person may damage or attempt to damage any natural resource or archaeological feature located in the Kickapoo valley reserve s. 41.41 (2).

Except as provided in subds. 2. and 3., if a person sub. (1m) or (2m) and the violation involves damaging or attempting to damage an archaeological feature, the person shall forfeit not less than \$100 nor more than \$10,000.

2. Except as provided in subd. 3., if a person sub. (1m) or (2m) and the violation involves intentionally damaging or intentionally attempting to damage an archaeological feature, the person shall be fined not more than \$10,000 or imprisoned for not more than 9 months or both.

3. If a person violates sub. (2m) and the violation involves intentionally damaging or attempting to damage an archaeological feature in the pursuit of commercial gain, the person shall, in addition to the penalty imposed under subd. 2., be fined an amount 2 times the gross value gained or the gross loss caused by the violation, whichever is the greater, plus court costs and the costs of investigation and prosecution, reasonably incurred.

(4) Exceptions.

(a) This section does not apply to any person upon whom liability is imposed under 42 USC 9607 (a) for injury to, destruction of or loss of natural resources within the state.

(b) If a natural resource or archaeological feature is damaged by the discharge of a hazardous substance, this section does not apply to the person who caused the discharge unless the person who caused the discharge did so with the intent to damage the natural resource or archaeological feature or to any other person who possesses or controls the hazardous substance subsequent to the discharge.

History: 1975 c. 365; 1995 a391; 1997 a35,194.

Cross Reference: See also s NR 19.001, Wis. admin. code.

23.79 Judgment. (3) In addition to and monetary penalties, the court may order the defendant to perform or refrain from performing such acts as may be necessary to fully protect and effectuate the public interest. The court may order abatement or a nuisance, restoration of a natural resource, restoration of an **archeological feature** subject to the prohibition under s. 23.095 (1m), or other appropriate action designed to eliminate or minimize any environmental damage caused by the defendant.

Chapter 29 FISH AND GAME

29.921 Warrants; arrests; police powers.

(2) Field archaeology. The department and any of its wardens may execute and serve warrants and processes issued for violations of s. 44.47 occurring on the bed of any stream or lake in the same manner as any constable may serve and execute the process; and may arrest a person, with or without a warrant, who is detected committing such a violation, or whom the warden has probable cause to believe is guilty of a violation of s. 44.47, and may take the person before any court in the county where the violation was committed and make proper complaint. For the purpose of s. 44.47, any warden may stop and board any boat and stop any vehicle, if the warden reasonably suspects that there is a violation of s. 44.47.

29.927 Public Nuisances

(11) Any motor vehicle, boat, aircraft, remote sensing equipment, navigational device, survey equipment, scuba gear or other equipment or device used in the commission of a crime relating to a submerged cultural resource in violation of s. 44.47.

29.931(2) Seizure and confiscation of objects; sale of perishable property.

(a) The department and its wardens shall seize and hold, subject to the order of the court for the county in which the alleged offense was committed, any vehicle, boat or object declared by this chapter to be a public nuisance, or which they have probable cause to believe is being used in violation of this chapter or ch. 169 or s. 167.31, 287.81, 940.24, 941.20, 948.60, 948.605 948.61, is being used in the commission of a crime involving an animal normally found in the wild in violation of s. 951.09, or is being used in the commission of a crime relating to a submerged cultural resource in violation of s. 44.47. If it is proven that the vehicle, boat or object is a public nuisance or that within 6 months previous to the seizure the vehicle, boat or object was used in violation of this chapter or ch. 169 or s. 167.31, 287.81, 940.24, 941.20, 948.60, 948.605 948.61, was used in the commission of a crime involving an animal normally found in the wild in violation s. 951.09, or was used in the commission of a crime relating to a submerged cultural resource in violation s. 44.47, it shall be confiscated if the court directs in its order for judgment.

Chapter 30 NAVIGABLE WATERS, HARBORS, AND NAVIGATION

30.121 Regulation of boathouses and houseboats.

(3) Maintenance. The riparian owner of any boathouse or fixed houseboat extending beyond the ordinary high-water mark of any navigable waterway may repair and maintain the boathouse or fixed houseboat if the cost of the repair or maintenance does not exceed 50% of the equalized assessed value of the boathouse or fixed houseboat. If the boathouse or fixed houseboat is not subject to assessment, the owner may make repairs if the cost of the repair or maintenance does not exceed 50% of the current fair market value of the boathouse or fixed houseboat.

(3g) Exception; historical or cultural value. Subsection (3) does not apply to the repair or maintenance of a boathouse or a fixed houseboat if the boathouse or fixed houseboat has a historic or cultural value, as determined by the state historical society or a local or county historical society established s. 44.03.

(5) APPLICABILITY. Boathouses or fixed houseboats owned by the state or by local unit of government shall comply with this section. This section does not apply to any structure listed on the national register of historic places in Wisconsin or the state register of historic places.

Chapter 59 COUNTIES

59.69 Planning and zoning authority.

(4)(L) Places, structures or objects with a special character, historic interest, aesthetic interest or other significant value, historic landmarks and historic districts.

(m) Burial sites, as defined in s. 157.70 (1) (b).

(4m) HISTORIC PRESERVATION. Any county, as an exercise of its zoning and police powers for the purpose of promoting the health, safety, and general welfare of the community and of the state, may regulate by ordinance any place, structure, or object with a special character, historic interest, esthetic interest, or other significant value, for the purpose of preserving the place, structure, or object and its significant characteristics. The county may create a landmarks commission to designate historic landmarks and establish historic districts. The county may regulate all historic landmarks and all property within each historic district to preserve the historic landmarks and property within the district and the character of the district.

Chapter 60 TOWNS Subchapter VIII, Land Use and Planning

60.61 General zoning authority.

(2) EXTENT OF AUTHORITY. ... if a town is located in a county which has not adopted a county zoning ordinance under s. 59.69, the town board, by ordinance, may:

(h) Provide for the preservation of burial sites, as defined in s. 157.70 (1) (b).

60.64 Historic preservation.

The town board, in the exercise of its zoning and police powers for the purpose of promoting the health, safety, and general welfare of the community and of the state, may regulate any place, structure, or object with a special character, historic interest, esthetic interest, or other significant value, for the purpose of preserving the place, structure, or object and its significant characteristics. The town board may create a landmarks commission to designate historic landmarks and establish historic districts. The board may regulate all historic landmarks and all property within each historic district to preserve the historic landmarks and property within the district and the character of the district.

Chapter 62 CITIES

62.23 City planning

(7) ZONING

(c) Purposes in view. Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote health and the general welfare; to provide adequate light and air, including access to sunlight for solar collectors and to wind for wind energy systems; to encourage the protection of groundwater resources; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements; and **to preserve burial sites, as defined in s. 157.70 (1) (b)**. Such regulations shall be made with reasonable consideration, among other things, of the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land through such city.

(em) Historic preservation. A city, as an exercise of its zoning and police powers for the purpose of promoting the health, safety, and general welfare of the community and of the state, may regulate by ordinance, or if a city contains any property that is listed on the national register of historic places in Wisconsin or the state register of historic places shall, not later than 1995, enact an ordinance to regulate, any place, structure, or object with a special character, historic, archeological or esthetic interest, or other significant value, for the purpose of preserving the place, structure, or object and its significant characteristics. A city may create a landmarks commission to designate historic or archeological landmarks and establish historic districts. A city may regulate, or if the city contains

any property that is listed on the national register of historic places in Wisconsin or the state register of historic places shall regulate, all historic or archeological landmarks and all property within each historic district to preserve the historic landmarks and property within the district and the character of the district.

Chapter 66 GENERAL MUNICIPALITY LAW

66.0413 Razing buildings.

(3) Razing historic buildings.

(a) In this subsection:

1. "Cost of repairs" includes the estimated cost of repairs that are necessary to comply with applicable building codes, or other ordinances or regulations, governing the repair or renovation of a historic building.

1m. "Historic building" means any building or object listed on, or any building or object within and contributing to a historic district listed on, the national register of historic places in Wisconsin, the state register of historic places or a list of historic places maintained by a municipality.

2. "Municipality" means a city, village, county or town.

(b) The state historical society shall notify a municipality of any historic building located in the municipality. If a historic district lies within a municipality, the historical society shall furnish to the municipality a map delineating the boundaries of the district.

(c) If an order is issued under this section to raze and remove a historic building and restore the site to a dust-free and erosion-free condition, an application is made for a permit to raze and remove a historic building and restore the site to a dust-free and erosion-free condition or a municipality intends to raze and remove a municipally owned historic building and restore the site to a dust-free and erosion-free condition, the municipality in which the historic building is located shall notify the state historical society of the order, application or intent. No historic building may be razed and removed nor the site restored to a dust-free and erosion-free condition for 30 days after the notice is given, unless a shorter period is authorized by the state historical society. If the state historical society authorizes a shorter period, however, such a period shall be subject to any applicable local ordinance. During the 30-day period, the state historical society shall have access to the historic building to create or preserve a historic record. If the state historical society completes its creation or preservation of a historic record, or decides not to create or preserve a historic record, before the end of the 30-day period, the society may waive its right to access the building and may authorize the person who intends to raze and remove the building, and restore the site to a dust-free and erosion-free condition, to proceed before the end of such period, except that such a person shall be subject to any applicable local ordinance.

(d) If a municipal governing body, inspector of buildings or designated officer determines that the cost of repairs to a historic building would be less than 85% of the assessed value of the building divided by the ratio of the assessed value to the recommended value as last published by the department of revenue for the municipality within which the historic building is located, the repairs are presumed reasonable.

66.1007 Architectural conservancy districts.

(1) In this section:

(a) "Architectural conservancy district" means an area within a municipality consisting of contiguous parcels subject to general real estate taxes, other than railroad rights-of-way.

(b) "Board" means an architectural conservancy district board appointed under sub. (3) (a).

(c) "Chief executive officer" means a mayor, city manager, village president or town chairperson.

(cm) "Historic property" means any building or structure that is any of the following:

1. Listed on, or has been nominated by the state historical society for listing on, the national register of historic places in Wisconsin or the state register of historic places.

2. Included in a district that is listed on, or has been nominated by the state historical society for listing on, the national register of historic places in Wisconsin or the state register of historic places, and has been determined by the state historical society to contribute to the historic significance of the district.

3. Included on a list of properties that have been determined by the state historical society to be eligible for listing on the national register of historic places in Wisconsin or the state register of historic places.

(d) "Local legislative body" means a common council, village board of trustees or town board of supervisors.

(e) "Municipality" means a city, village or town.

(f) "Operating plan" means a plan that is adopted or amended under this section for the development, redevelopment, maintenance, operation and promotion of an architectural conservancy district and that includes all of the following:

1. The special assessment method applicable to the architectural conservancy district.

2. The kind, number and location of all proposed expenditures within the architectural conservancy district.

3. A description of the methods of financing all estimated expenditures and the time when related costs will be incurred.

4. A description of how the creation of the architectural conservancy district promotes the orderly development of the municipality, including its relationship to any municipal master plan.

5. A legal opinion that subs. 1 to 4 have been compiled with.

(g) "Planning commission" means a plan commission under s. 62.23 or, if one does not exist, board of public land commissioners or, if neither exists, a planning committee of the local legislative body.

(2) A municipality may create an architectural conservancy district and adopt its operating plan if all of the following are met:

(a) An owner of real property located in the proposed architectural conservancy district designated under par. (b) petitions the municipality for creation of an architectural conservancy district.

(am) At least 50% of the properties included within the proposed architectural conservancy district are historic properties.

(b) The planning commission designates a proposed architectural conservancy district and adopts its proposed initial operating plan.

(c) At last 30 days before the creation of the architectural conservancy district and adoption of its initial operating plan by the municipality, the planning commission holds a public hearing on the proposed architectural conservancy district and initial operating plan. Notice of the hearing shall be published as a class 2 notice under ch. 985. Before publication of the notice, a copy of that notice, a copy of the proposed initial operating plan and a copy of a detail map showing the boundaries of the proposed architectural conservancy district shall be sent by certified mail to all owners of real property within the proposed architectural conservancy district. The notice shall state the boundaries of the proposed architectural conservancy district and shall indicate that copies of the proposed initial operating plan are available on request from the planning commission.

(d) Within 30 days after the hearing under par. (c), the owners of property to be assessed under the proposed initial operating plan having a valuation equal to more than 40% of the valuation of all property to be assessed under the proposed initial operating plan, using the method of valuation specified in the proposed initial operating plan, or the owners of property to be assessed under the proposed initial operating plan having an assessed valuation equal to more than 40% of the assessed valuation of all property to be assessed under the proposed initial operating plan, have not filed a petition with the planning commission protesting the proposed architectural conservancy district or its proposed initial operating plan.

(e) The local legislative body vote to adopt the proposed initial operating plan for the municipality.

(3) (a) The chief executive officer shall appoint members to an architectural conservancy district board to implement the operating plan. Board members shall be confirmed by the local legislative body and shall serve staggered terms designated by the local legislative body. The board shall have at least 5 members. A majority of board members shall own or occupy real property in the architectural conservancy district.

(b) The board shall annually consider and may make changes to the operating plan, which may include termination of the plan, for its architectural conservancy district. The board shall then submit the operating plan to the local legislative body for its approval. If the local legislative body disapproves the operating plan, the board shall consider and may make changes to the operating plan and may continue to resubmit the operating plan until local legislative body approval is obtained. Any change to the special assessment method applicable to the architectural conservancy district shall be approved by the by the local legislative body.

(c) The board shall prepare and make available to the public annual report describing the current status of the architectural conservancy district, including expenditures and revenues. The report shall include an independent certified audit of the implementation of the operating plan that shall be obtained by the municipality. The municipality shall obtain an additional independent certified audit upon termination of the architectural conservancy district.

(d) Either the board or the municipality, as specified in the operating plan as adopted, or as amended and approved under par. (b), shall have all powers necessary or convenient to implement the operating plan, including the power to contract.

(4) All special assessments received from an architectural conservancy district, all other appropriations by the municipality and all other moneys received for the benefit of the architectural conservancy district shall be placed in a segregated account in the municipal treasury. No disbursements from the account may be made except to reimburse the municipality for appropriations other than special assessments, to pay the costs of audits required under sub. (3) (c) or on order of the board for the purpose of implementing the operating plan. On termination of the architectural conservancy district by the municipality, all moneys collected by special assessment that remain in the account shall be disbursed to the owners of specially assessed property in the architectural conservancy district in the same proportion as the last collected special assessment.

(5) A municipality shall terminate an architectural conservancy district if the owners of property assessed under the operating plan having a valuation equal to more than 50% of the valuation of all property assessed under the operating plan, using the method of valuation specified in the operating plan, or the owners of property assessed under the operating plan having an assessed valuation equal to more than 50% of the assessed valuation of all property assessed under the operating plan, file a petition with the planning commission requesting termination of the architectural conservancy district, subject to all of the following conditions:

(a) A petition may not be filed under this subsection earlier than one year after the date on which the municipality first adopts the operating plan for the architectural conservancy district.

(b) On and after the date on which a petition is filed under this subsection, neither the board nor the municipality may enter into any new obligations by contract or otherwise to implement the operating plan until 30 days after the date of hearing under par (c) and unless the architectural conservancy district is not terminated under par. (e).

(c) Within 30 days after the filing of a petition under this subsection, the planning commission shall hold a public hearing on the proposed termination. Notice of the hearing shall be published as a class 2 notice under ch. 985. Before publication of the notice, a copy of that notice, a copy of the operating plan and a copy of a detail map showing the boundaries of the architectural conservancy district shall be sent by certified mail to all owners of real property within the architectural conservancy district. The notice shall state the boundaries of the architectural conservancy district and shall indicate that copies of the operating plan are available on request from the planning commission.

(d) Within 30 days after the hearing held under par. (c), every owner of property assessed under the operating plan may end written notice to the planning commission indicating, if the owner signed a petition under this subsection, that the owner retracts the owner's request to terminate the architectural conservancy district or, if the owner did not sign the petition, that the owner requests termination of the architectural conservancy district.

(e) If on the 31st day after the hearing held under par. (c), the owners of property assessed under the operating plan having a valuation equal to more than 50% of the valuation of all property assessed under the operating plan, using the method of valuation specified in the operating plan, or the owners of property assessed under the operating plan having an assessed valuation equal to more than 50% of the assessed valuation of all property assessed under the operating plan, after adding subsequent

notifications under par. (d) and after subtracting any retraction under par. (d), have requested the termination of the architectural conservancy district, the municipality shall terminate the architectural conservancy district on the date that the obligation with the latest completion date entered into to implement the operating plan expires.

(6) (a) A municipality may terminate an architectural conservancy district at any time.

(b) This section does not limit the authorities of a municipality to regulate the use of or specially assess real property.

History: 1991 a. 269. 1999 a. 150 s. 540; Stats. 1999 s. 66.1007.

66.1105 Tax increment law.

(2) DEFINITIONS

(f)1. "Project costs" mean any expenditures made or estimated to be made or monetary obligations incurred or estimated to be incurred by the city which are listed in a project plan as costs of public works or improvements within a tax incremental district or, to the extent provided subd. 1. k., without the district, plus any incidental costs, diminished by any income, special assessments, or other revenues, including user fees or charges, other than tax increments, received or reasonably expected to be received by the city in connection with the implementation of the plan. For any tax incremental district for which a project plan is approved on or after July 31, 1981, only a proportionate share of the costs permitted under this subdivision may be included as project costs to the extent that they benefit the tax incremental district. To the extent the costs benefit the municipality outside the tax incremental district, a proportionate share of the cost is not a project cost. "Project costs" include:

a. Capital costs including, but not limited to, the actual costs of the construction of public works or improvements, new buildings, structures, and fixtures; the demolition, alteration, remodeling, repair, or reconstruction of existing buildings, structures, and fixtures **other than the demolition of listed properties as defined in s. 44.31 (4)**; the acquisition of equipment to service the district; and the clearing and grading of land.

66.1111 Historic Properties

(1) DEFINITIONS. In this section:

(a) "Historic Property" has the meaning given under s. 44.31 (3).

(b) "Political subdivision" means a city, village, town, or county.

(2) ACQUISITION OF PROPERTY. A political subdivision may acquire by gift, purchase, or condemnation any property right in historic property, whether the property is real or personal.

(3) OWNERSHIP, USE AND DISPOSITION OF PROPERTY.

(a) A political subdivision may preserve or rehabilitate any historic property which it owns, construct buildings on that property, own and maintain that property for public purposes or lease or convey that property.

(b) If a political subdivision leases to another person historic property, the political subdivision shall include provisions in the lease which protect the historic character and qualities of that property. If the political subdivision conveys historic property, the political subdivision shall obtain a conservation easement under s. 700.40 to protect the historic character and qualities of the property.

(4) CONSIDERATION OF EFFECTS ON HISTORIC PROPERTIES.

(a) In the earliest stage of planning any action related to the following, a political subdivision shall determine if its proposed action will affect any historic property which is a listed property, as defined under s. 44.31 (4), or which is on the list of locally designated historic places under s. 44.45:

1. Long-range planning for facilities development.
2. Any action under sub. (3).
3. Razing any historic property which it owns.

(b) A political subdivision shall notify the state historic preservation officer of any proposed action which it determines under par. (a) would affect any historic property.

(5) GRANTS. A political subdivision may make grants of funds to any public or private entity for the purpose of preserving or rehabilitating historic property.

Chapter 70 GENERAL PROPERTY TAXES

70.11 Property exempted from taxation. The property described in this section is exempted from general property taxes . . . if it was exempt for the previous year and its use, occupancy or ownership did not change in a way that makes it taxable; if the property was taxable for the previous year, the use, occupancy or ownership of the property changed in a way that makes it exempt and its owner, on or before March 1, files with the assessor of the taxation district where the property is located a form that the department of revenue prescribes . . . Property exempted from general property taxes is:

(13) CEMETERIES: Land owned by cemetery associations and used exclusively as public burial grounds and tombs and monuments therein, and privately owned burial lots; land adjoining such burial grounds, owned and occupied exclusively by the association for cemetery purposes; personal property owned by any cemetery association and necessary for the care and management of burial grounds; *burial sites and contiguous lands which are cataloged under s. 157.70 (2) (a)*.

(13m) ARCHEOLOGICAL SITES. Archeological sites and contiguous lands identified under s. 44.02 (23) if the property is subject to a permanent easement, covenant, or similar restriction running with the land and if that easement, covenant, or restriction is held by the state historical society or by an entity approved by the state historical society and protects the archeological features of the property.

History: 1991 a. 39, s. 1707 [added covenant requirement].

(34) HISTORIC PROPERTIES.

(a) Real property all of which fulfills all of the following requirements:

1. Is listed on the national register of historic places in Wisconsin or the state register of historic places.

2. Is a public building, as defined in s. 101.01 (12).

3. Is owned or leased by an organization that is exempt from taxation under section 501 of the internal revenue code as amended to December 31, 1986.

4. Is used for civic, governmental, cultural, or educational purposes.

5. Is subject to an easement, covenant, or similar restriction running with the land that is held by or approved by the state historical society or by an entity approved by the state historical society, that protects the historic features of the property and that will remain effective for at least 20 years after January 1, 1989.

(35) CULTURAL AND ARCHITECTURAL LANDMARKS. Property described in s. 234.935 (1).

History: 1991 a. 39, s. 1710m.

[**70.11 (35) NOTE:** § 234.935 repealed by 1999 Act 9 Section 2398—Project under 234.935 had been established in 1997]

Chapter 71 INCOME AND FRANCHISE TAXES FOR STATE AND LOCAL REVENUES

Subchapter I: TAXATION OF INDIVIDUALS AND FIDUCIARIES

71.07 (9m) Supplement to federal historic rehabilitation credit.

(a) Any person may credit against taxes otherwise due under this chapter, up to the amount of those taxes, an amount equal to 5% of the costs of qualified rehabilitation expenditures, as defined in section 48 (g) (2) of the internal revenue code, for certified historic structures on property located in this state if the physical work of construction or destruction in preparation for construction begins after December 31, 1988, and the rehabilitated property is placed in service after June 30, 1989.

(c) No person may claim the credit under this subsection unless the claimant includes with the claimant's return evidence that the rehabilitation was approved by the secretary of the interior under 36 CFR 67.6 before the physical work of construction, or destruction in preparation for construction, began.

(d) The Wisconsin adjusted basis of the building shall be reduced by the amount of any credit awarded under this subsection. The Wisconsin adjusted basis of a partner's interest in a partnership, of a

member's interest in a limited liability company or of stock in a tax-option corporation shall be adjusted to take into account adjustments made under this paragraph.

(e) The provisions of s. 71.28 (4) (e), (f), (g), and (h), as they apply to the credit under s. 71.28 (4), apply to the credit under this subsection.

(f) A partnership, limited liability company or tax-option corporation may not claim the credit under this subsection. The individual partners, members in a limited liability company or shareholders in a tax-option corporation may claim the credit under this subsection based on eligible costs incurred by the partnership, company or tax-option corporation, in proportion to the ownership interest of each partner, member or shareholder. The partnership, limited liability company or tax-option corporation shall calculate the amount of the credit which may be claimed by each partner, member or shareholder and shall provide that information to the partner, member or shareholder.

71.07 (9r) State historic rehabilitation credit.

(a) For taxable years beginning on or after August 1, 1988, any person may credit against taxes otherwise due under s. 71.02 an amount equal to 25% of the costs of preservation or rehabilitation of historic property located in this state, including architectural fees and costs incurred in preparing nomination forms for listing in the national register of historic places in Wisconsin or the state register of historic places, if the nomination is made within 5 years prior to submission of a preservation or rehabilitation plan under par. (b) 3. b., and if the physical work of construction or destruction in preparation for construction begins after December 31, 1988, except that the credit may not exceed \$10,000, or \$5,000 for married persons filing separately, for any preservation or rehabilitation project.

(b) The department of revenue shall approve the credit under this subsection if all of the following conditions are met:

1. The costs are incurred and the claim is submitted by the owner of the historic property.
 - 1m. The costs included in the claim relate only to preservation or rehabilitation work done to any of the following:
 - a. The exterior of the historic property.
 - b. The interior of a window sash if work is done to the exterior of the window sash.
 - c. Structural elements of the historic property.
 - d. The heating or ventilating systems.
 - e. Electrical or plumbing systems, but not electrical or plumbing fixtures.
2. The historic property, including outbuildings that contribute to the significance of the historic property, is an owner-occupied personal residence if the residence is not actively used in a trade or business, held for the production of income, or held for sale or other disposition in the ordinary course of the claimant's trade or business.
3. The state historical society certifies that:
 - a. The property is listed on the national register of historic places in Wisconsin or the state register of historic places, or is determined by the state historical society to be eligible for listing on the national register of historic places in Wisconsin or the state register of historic places, or is located in a district which is listed in the national register of historic places in Wisconsin or the state register of historic places and is certified by the state historic preservation officer as being of historic significance to the district, or is an outbuilding of an otherwise eligible property certified by the state historic preservation officer as contributing to the historic significance of the property.
 - b. The proposed preservation or rehabilitation plan complies with standards promulgation under s. 44.02 (24) and the completed preservation or rehabilitation substantially complies with the proposed plan.
4. The preservation or rehabilitation work is completed within 2 years after the date that the physical work of construction or destruction in preparation for construction begins, except in the case of any preservation or rehabilitation which is initially planned for completion in phases, in which case the work shall be completed within 5 years after the date that the physical work of construction or destruction in preparation for construction begins.

5. The expenditures for preservation or rehabilitation of the historic property exceed \$10,000.

6. The costs are not incurred to acquire any building or interest in a building or to enlarge an existing building.

8. The costs were not incurred before the state historical society approved the proposed preservation or rehabilitation plan under subd. 3. b.

(c) The Wisconsin adjusted basis of the historic property shall be reduced by the amount of any credit awarded under this subsection.

(f) No natural person may claim a credit under this subsection and under sub. (9m) for the same expenses.

(g) The provisions of s. 71.28 (4) (f), (g) and (h), as they apply to the credit under s. 71.28 (4), apply to the credit under this subsection. [NOTE: See these provisions below.]

(i) If the historic property is owned by 2 or more natural persons that hold legal title or equitable title as a land contract vendee and are not joint tenants, tenants in common or spouses owning marital property, the credit under this subsection may be claimed as follows:

1. For projects benefiting one owner, a natural person may claim the credit based on eligible costs incurred individually.

2. For projects benefiting 2 or more owners, a natural person may claim the credit based on eligible costs incurred by the benefiting owners in proportion to the natural person's ownership interest.

(j) No natural person may claim the credit under this subsection for any of the following:

1. Rehabilitation of a personal residence if the claimant claimed a credit under this subsection for the rehabilitation of another personal residence within the 5 preceding taxable years.

2. Rehabilitation of historic property if the historic property was acquired by the claimant under an agreement requiring the claimant to sell or otherwise dispose of the historic property back to the previous owner within 5 years after the date that the historic property was acquired.

(k) A natural person who receives a credit under this subsection shall add to his or her liability for taxes imposed under s. 71.02 one of the following percentages of the amount of the credits received under this subsection for rehabilitating or preserving the property if, within 5 years after the date on which the preservation or rehabilitation work that was the basis of the credit is completed, the person either sells or conveys the property by deed or land contract or the state historical society certifies to the department of revenue that the historic property has been altered to the extent that it does not comply with the standards promulgated under s. 44.02 (24).

1. If the sale, conveyance or noncompliance occurs during the first year after the date on which the preservation or rehabilitation is completed, 100%

2. If the sale, conveyance or noncompliance occurs during the 2nd year after the date on which the preservation or rehabilitation is completed, 80%

3. If the sale, conveyance or noncompliance occurs during the 3rd year after the date on which the preservation or rehabilitation is completed, 60%

4. If the sale, conveyance or noncompliance occurs during the 4th year after the date on which the preservation or rehabilitation is completed, 40%

5. If the sale, conveyance or noncompliance occurs during the 5th year after the date on which the preservation or rehabilitation is completed, 20%

See also ch. HS 3, Wis. admin. code.

History: 1991 a. 39, ss. 1770-1779m, 1993 a. 471.

71.28 (4) Research Credit [NOTE: These provisions are included to clarify s. 71.07(9r) (g), above.]

(e) Change of business or ownership. In the case of a change in ownership or business of a corporation, section 383 of the internal revenue code, as limited by this subsection, applies to the carry-over of unused credits.

(f) Carry-over. If the credit computed under par. (a) is not entirely offset against Wisconsin income or franchise taxes otherwise due, the unused balance may be carried and credited against

Wisconsin income or franchise taxes otherwise due for the following 15 taxable years to the extent not offset by these taxes otherwise due in all intervening years between the year in which the expense was incurred and the year in which the carry-forward credit is claimed.

(g) Administration. The department of revenue has full power to administer the credit provided in this subsection and may take any action, conduct any proceeding and proceed as it is authorized in respect to income and franchise taxes imposed in this chapter. The income and franchise tax provisions in this chapter relating to assessments, refunds, appeals, collection, interest and penalties apply to the credit under this subsection.

(h) Timely claim. No credit may be allowed under this subsection unless it is claimed within the period specified under s. 71.75 (2).

CHAPTER 73 TAX APPEALS COMMISSION AND DEPARTMENT OF REVENUE

73.03 Powers and duties defined. It shall be the duty of the department of revenue, and it shall have power and authority:

(2a) To prepare, have published and distribute to each property tax assessor and to others who so request assessment manuals. The manual shall incorporate standards, which the department of revenue and the state historical society of Wisconsin shall develop, for the assessment of nonhistoric property in historic districts and for the assessment of historic property, including but not limited to property that is being preserved or restored; property that is subject to a protective easement, covenant, or other restriction for historic preservation purposes; property that is listed in the national register of historic places in Wisconsin or in this state's register of historic places and property that is designated as a historic landmark and is subject to restrictions imposed by a municipality or by a landmarks commission. The manual shall incorporate general guidelines about ways to determine whether property is taxable in part under s. 70.1105 and examples of the ways that s. 70.1105 applies in specific situations. ...

History: 1991 a. 39, s. 1897t.

Chapter 87 FLOOD CONTROL

87.304 Regulation of historic property in floodplains.

(1) DEFINITIONS. In this section:

(a) "Historic Property" means any building, structure, or object that is any of the following:

1. Individually listed in the national register of historic places in Wisconsin or the state register of historic places.

2. Included in a district which is listed on the national register of historic places in Wisconsin and has been determined by the state historical society to contribute to the historic significance of the district.

3. Individually listed on the list of locally designated historic places under s. 44.45.

(b) "National register of historic places in Wisconsin has the meaning given in s. 44.31 (5).

(2) TREATMENT OF HISTORIC PROPERTY.

(a) The department [of natural resources] shall by rule promulgate procedures for use by cities, villages, and counties in doing all of the following:

1. Issuing variances to floodplain zoning ordinances that will be consistent with 44 CFR 606 but that will allow repair or rehabilitation of historic properties in floodplains to the maximum extent feasible.

2. Providing sufficient measures for public safety and protection for property in floodplains.

(b) The rules promulgated under par. (a) may include different procedures for floodway and flood-fringe areas.

History: 1991 a. 39, s. 2205am.

87.305 Use of certain facilities on St. Feriole Island.

(1) **Department approval.** Notwithstanding s. 87.30 or any rule promulgated, order issued or ordinance adopted under that section, the department shall authorize the connection of a sanitary sewer line from the

sewerage treatment plant in the city of Prairie du Chien and connection of the public water system of the city of Prairie du Chien to the railroad depot and the Dousman hotel on St. Feriole island and shall authorize historic use of the Dousman hotel as a hotel, as defined under s. 254.61 (3), if all of the following conditions are met:

(a) The department approves the developer's plans and specifications for floodproofing the railroad depot and the Dousman hotel.

(b) The department approves the city of Prairie du Chien's flood warning system and emergency evacuation plan and the city of Prairie du Chien agrees to test the evacuation plan at least once each year.

(c) The department informs the U.S. army corps of engineers, the department of transportation, the division of emergency management and the state historical society of its intention to authorize connection of sewer service and a water system to the railroad depot and the Dousman hotel and occupancy of the hotel and either:

1. Those agencies do not object within 30 days after receiving a copy of the notice; or

2. Any objections of those agencies are resolved in negotiations between those agencies, the city of Prairie du Chien and the developer.

(d) The state historic preservation officer reviews the developer's plans for preservation or rehabilitation of the Dousman hotel and certifies that the preservation or rehabilitation will be consistent with the standards used by the U.S. secretary of the interior to certify rehabilitations under 26 USC 47 (c) (2).

(2) Revocation of approval. The department may revoke the approval granted under sub. (1) if any of the following occur:

(a) A floodproofing and flood warning system are not constructed substantially as designed in the plans and specifications approved by the department sub. (1) (a).

(b) The owner or operator of the railroad depot and the Dousman hotel fails to maintain the floodproofing system substantially as designed in the plans and specifications approved by the department under sub. (1) (a).

(c) The city of Prairie du Chien fails to maintain the flood warning system and to test the emergency evacuation plan at least once each year.

(d) The state historic preservation officer determines that the preservation or rehabilitation of the Dousman hotel is not consistent with the standards used by the U.S. secretary of the interior to certify rehabilitations under 26 USC 47(c) (2).

History: 1987 a. 282; 1993 a. 27; 1995 a252.

Chapter 101 DEPARTMENT OF INDUSTRY, LABOR, AND HUMAN RELATIONS

101.121 State historic building code

(1) PURPOSE. It is the purpose of this section to provide alternative standards, when necessary, for the preservation or restoration of buildings or structures designated as historic buildings. The development and application of these alternative standards is a matter of statewide concern. These alternative standards are intended to facilitate the restoration of historic buildings so as to preserve their original or restored architectural elements and features, to encourage energy conservation, to permit a cost-effective approach to preservation and restoration and to provide for the health, safety, and welfare of occupants and visitors in historic buildings.

(2) DEFINITIONS. In this section:

(a) "Certified local register of historic property" means a register of historic property which is part of a historic preservation ordinance promulgated by a city, village, town, or county if the ordinance is certified under s. 44.44.

(am) "Historic building" means any building or structure that is significant in the history, architecture, or culture of this state, its rural or urban communities, or the nation.

(b) "National register of historic places in Wisconsin" means the places in Wisconsin that are listed in the national register of historic places maintained by the U. S. department of the interior.

(c) "Qualified historic building" means a historic building which:

1. Is listed on, or has been nominated by the state historical society for listing on, the national register of historic places in Wisconsin or the state register of historic places;
 2. Is included in a district which is listed on, or has been nominated by the state historical society for listing on, the national register of historic places in Wisconsin or the state register of historic places, and has been determined by the state historical society to contributed to the historic significance of the district;
 - 2m. Is determined by the state historical society to be eligible for listing on the national register of historic places in Wisconsin or the state register of historic places;
 3. Is listed on a certified local register of historic property; or
 4. Is included in a district which is listed on a certified local register of historic property, and has been determined by the city, village town, or county to contribute to the historic significance of the district.
- (d) "State register of historic places" means the places in Wisconsin listed by the state historical society under s. 44.36, except for a place listed as an interim listing by the state historical society under s. 44.36 (5) (a) 3.

(3) Rules.

(a) For any rule under this chapter or ch. 145 which applies to buildings, the department may provide an alternative rule which accomplishes the same general purpose and applies only to qualified historic buildings. These alternative rules shall permit, to the maximum extent possible, the use of original or duplicates of original materials, the maintenance of the original appearance of all components of a historic building and the use of original construction techniques. The department shall consult with the historic building code council regarding the development of alternative rules. All alternative rules taken together constitute the historic building code.

(b) In order to permit the proper preservation or restoration of a qualified historic building, the department may grant a variance to any rule or alternative rule under this chapter or ch. 145 if the owner demonstrates that an alternative proposed by the owner accomplishes the same purpose as the rule or alternative rule. With respect to any variances requested under this chapter or ch. 145, the department shall give priority to processing variance requests by owners of qualified historic buildings. The department shall maintain a list of variances granted under this paragraph to owners of qualified historic buildings.

(4) Election.

(a) Except as provided in par. (b), the owner of any qualified historic building may elect to be subject to the historic building code promulgated under sub. (3). Except as provided in s. 101.127, no owner who elects to be subject to the historic building code may be required to comply with any provision of any other building code, including but not limited to any county or municipal building code, or of any other local ordinance or regulation, if that provision concerns a matter dealt with in the historic building code.

(b) Paragraph (a) does not apply to any owner of a nursing home as defined in s. 50.01 (3), a hospital as defined in s. 50.33 (2) (a) and (c) or an approved public or private treatment facility for alcoholics as defined in s. 51.45 (2) (b) and (c).

History: 1981 c. 341; 1981 c. 391 s. 210; 1983 a. 189 s. 329 (5); 1985 a. 332; 1987 a. 395; 1991 a. 39; 1993 a. 471.

See also ch. Comm 70, Wis. admin. code.

101.1215 Abrasive cleaning of historic buildings.

(1) In this section:

(a) "Abrasive cleaning method" means any cleaning procedure that uses any of the following methods or tools:

1. Abrasive materials, including sand, glass beads, ground slag, volcanic ash, crushed nutshells, rice husks, ground corncobs or crushed eggshells, carried in high-pressure or low-pressure air or water.

2. High-pressure water.

(b) "Qualified historic building" has the meaning given in s. 101.121 (2) (c).

(2) No person may use an abrasive cleaning method on the exterior of qualified historic buildings, except as authorized by department rule.

(3) The department, in consultation with the state historical society and the department of administration, shall promulgate rules on the use of abrasive cleaning methods on the exterior of qualified historic buildings. The department may permit the use of any specific abrasive cleaning method only if it determines that the abrasive cleaning method will not cause irreparable damage to the building material to which it is applied.

(4) (a) Any person who uses an abrasive cleaning method in violation of this section may be required to forfeit not less than \$100 nor more than \$1,000 for each offense. Each day of continue violation constitutes a separate offense.

(b) Any owner of a qualified historic building who causes or permits the use of an abrasive cleaning method in violation of this section may be required to forfeit not less than \$100 nor more than \$1,000 for each offense. Each day of continued violation constitutes a separate offense.

History: 1993 a. 471, s. 13.

Chapter 119 FIRST CLASS CITY SCHOOL SYSTEM

119.16 (10) School facilities.

(a) The board may not demolish any school facility that is 50 years old or older without the approval of the city historic preservation commission. [NOTE: Effective 7/1/90, amended, by 1989 a. 290, to change reference from state historical society to the city's commission.]

Chapter 120 SCHOOL DISTRICT GOVERNMENT

120.12 School board duties. The school board of a common or union high school district shall:

(21) CONSIDERATION OF EFFECTS ON HISTORIC PROPERTIES.

(a) At the earliest stage of planning any action related to the following, determine if its proposed action will affect any historic property that is a listed property, as defined under s. 44.31 (4), or that is on the list of locally designated historic places under s. 44.45:

1. Long-range planning for facilities development.
2. Razing and historic property that it owns.

(b) Notify the state historic preservation officer of any proposed action that the school board determines under par. (a) would affect any historic property.

History: 1991 a. 39, s. 2439m.

Chapter 157 DISPOSITION OF HUMAN REMAINS

Subchapter III: BURIAL SITES PRESERVATION

157.70 Burial sites preservation.

(1) DEFINITIONS. In this section:

- (a) "Board" means the burial site preservation board.
- (b) "Burial site" means any place where human remains are buried.
- (c) "Cataloged" means recorded under sub. (2)(a), (4)(e) or (6)(c).
- (cm) "Dedicated" has the meaning given in s. 157.061 (4).
- (d) "Director" means the director of the historical society or his or her formally appointed designee.
- (e) "Disturb" includes defacing, mutilating, injuring, exposing, removing, destroying, desecrating or molesting in any way.
- (f) "Human remains" means any part of the body of a deceased person in any stage of decomposition.
- (g) "Interest" means an interest based on any of the following:
 1. Direct kinship.
 2. A cultural, tribal or religious affiliation.
 3. A scientific, environmental or educational purpose.

4. Land use.
5. A commercial purpose not related to land use which is consistent with the purposes of this section.
6. Any other interest which the board deems to be in the public interest.
- (h) "Owner" means a person who owns or leases land on which a burial site is located.
- (hm) "Person" includes the state.

(i) "Qualified archeologist" means an individual who has a graduate degree in archeology, anthropology or a closely related field and at least one year of full-time professional experience or equivalent specialized training in archeological or physical anthropological research, administration or management, at least 4 months of supervised field and analytic experience in general North American archeology or physical anthropology and a demonstrated ability to carry research to completion.

(1m) Applicability. This section does not apply to the disturbance of cataloged land contiguous to a cataloged burial site if the cataloged burial site was recorded under sub. (2) (i) before the effective date of this subsection.

(2) DIRECTOR'S DUTIES. The director shall:

(a) Under a special inspection warrant as required under s.66.0119, identify and record in a catalog burial sites in this state and, for burial sites which are not dedicated, sufficient contiguous land necessary to protect the burial site from disturbance, and notify in writing every owner of a burial site or of such land so recorded and any county or local historical society in the county where the burial site or the land is located. Any information in the catalog related to the location of any burial site, the disclosure of which would be likely to result in the disturbance of the burial site, or the cataloged land contiguous to the burial site, is not subject to s. 19.35(1). The notice shall include information about the permit required under sub.(5) and the toll free number the owner may call for more information. In this paragraph, "sufficient contiguous land" means land that is within at least 5 feet from any part of a burial site.

(b) Identify and record in a catalog burial sites likely to be of archeological interest or areas likely to contain burial sites. Any information in the catalog related to the location of any burial site likely to be of archeological interest or of any area likely to contain a burial site, the disclosure of which would be likely to result in the disturbance of the burial site or the cataloged land contiguous to a cataloged burial site, is not subject to s. 19.35 (1).

(c) Make recommendations concerning burial sites on private property for acquisition by the state or other public agencies to preserve the burial sites.

(d) Provide for and publicize a telephone service which allows any person in this state to call, without charge, the director to report a discovery or disturbance of a burial site.

(e) Establish a registry for any person whom the board determines to have an interest in a cataloged burial site or class of cataloged burial sites under sub. (2m) (b) or (c). The registry shall include the name of every person whom the board determines to have an interest in the preservation of a burial site or in providing for the reinterment of the human remains and objects related to burial in the burial site if the burial site is disturbed and identify the burial site in which the person is determined to have an interest. Any information in the registry related to the location of any burial site, the disclosure of which would be likely to result in disturbance of the burial site, is not subject to disclosure under to s. 19.35 (1).

(f) Assist owners in identifying persons to be notified under sub. (5) (b) 2.

(g) Assist Indian tribes, state agencies and other persons in any negotiation with any federal agency for the preservation of burial sites and human remains.

(h) Mediate, upon application of any owner or person in the registry under par. (e), any dispute related to the disturbance or proposed disturbance of a burial site.

(i) Cause a cataloged burial site to be recorded by the register of deeds of the county in which the burial site is located. The historical society shall reimburse the county for the cost of recording under this paragraph from the appropriation under s. 20.245 (1) (a).

(2m) BOARD DUTIES. The board shall:

(a) Meet at least every 3 months.

(b) Determine which Indian tribes in this state have an interest in any cataloged burial site or class of cataloged burial sites and notify the director for entry in the registry under sub. (2) (e).

(c) Determine which applicants for entry in the registry under sub. (2p) have an interest in a cataloged burial site or class of cataloged burial sites.

(d) As it deems necessary, review determinations of the director and the division of hearings and appeals in the department of administration under sub. (5).

(e) As it deems necessary, review disposition actions taken by the director under sub. (6).

(f) As it deems appropriate, approve transfers of burial sites under sub. (6m) (b) 2.

(2p) APPLICATION FOR REGISTRY. Any person may apply to the board for entry in the registry and shall indicate in which burial site she or he is claiming an interest.

(2r) SITE DISTURBANCE PROHIBITED. Except as provided under subs. (4) and (5) and §§ 157.111 and 157.112, no person may intentionally cause or permit the disturbance of a burial site or cataloged land contiguous to a cataloged burial site. This subsection does not prohibit normal agricultural or silvacultural practices which do not disturb the human remains in a burial site or the surface characteristics of a burial site.

(3) REPORT OF DISTURBED BURIAL SITES.

(a) Except as provided under s. 979.01, a person shall immediately notify the director if the person knows or has reasonable grounds to believe that a burial site or the cataloged land contiguous to a cataloged burial site is being disturbed or may be disturbed contrary to the requirements of subs. (4) and (5).

(b) Upon receipt of any notice under par. (a), the director shall determine if the burial site which is the subject of the notice has been cataloged under sub. (2) (a).

(4) PROCEDURE FOR UNCATALOGED BURIAL SITES.

(a) If the director determines that a burial site reported under sub. (3) is not cataloged under sub. (2) (a), he or she shall immediately notify the owner of the burial site of the procedure under this subsection and of the liabilities and penalties which apply for failure to comply with the procedure. If the director deems it appropriate, he or she may give notice to the board, and to any person who has or may have an interest in the burial site, that a burial site has been reported under sub. (3).

(b) No owner who has received notice under par. (a) may in any way intentionally cause or permit any activity which would disturb the burial site which is the subject of the notice unless authorized by the director under par. (c) 2 or (d).

(c) 1. Using information available concerning the burial site and the proposed activity, the director shall determine whether the proposed activity will disturb the burial site and whether the registry under sub. (2) (e) shows that any person has an interest in the burial site.

2. If the director determines that the proposed activity will not disturb the burial site or will disturb a burial site in which no person is shown on the registry under sub. (2) (e) to have an interest, he or she shall notify the owner of the owner's right to cause or permit the activity.

3. If the director determines that the proposed activity will disturb a burial site in which any other person who is not the owner is shown on the registry under sub. (2) (e) to have an interest and that the interest is substantial, the director shall notify the owner that the owner may not cause or permit the activity unless the owner does one of the following:

a. Authorizes the director or a qualified archeologist approved by the director to excavate the burial site to remove and analyze any human remains and objects related to the burial in the burial site from the burial site within a reasonable time, beginning within 30 days of when ground conditions permit, for disposition under sub. (6).

b. Changes the proposed activity so as not to disturb any burial site.

(d) If the director determines that an owner has satisfied the requirements under par. (c) 3, he or she shall notify the owner of the owner's right to cause or permit any activity which is in keeping with the owner's action under par. (c) 3.

(e) If under par. (c) 3, all human remains and objects related to the burial in a burial site reported under sub.(3) (a) are not removed from the burial site, the director shall enter the burial site into the record prepared under sub. (2) (a).

(f) The director shall submit a written report to the board of any determination which he or she makes under this subsection.

(5) PROCEDURE FOR CATALOGED BURIAL SITES.

(a) No person may intentionally cause or permit the disturbance of a cataloged burial site or the cataloged land contiguous to a cataloged burial site without a permit from the director issued under this subsection.

(b) Any person who intends to cause or permit any activity on a cataloged burial site or on cataloged land contiguous to a cataloged burial site which in any way might disturb the burial site or the land shall:

1. Apply to the director for a permit to disturb the burial site or the land. The application shall include the purpose of the disturbance and the names and addresses of any persons notified under subd. 2. The director shall send the applicant the names of any person in the registry with an interest in the burial site.

2. On a form provided by the director, notify any person whose name the director has send under subd. 1 of the proposed disturbance. The notice to any person under this subdivision shall include information on the notified person's right to a hearing on whether the director should grant a permit to disturb the burial site or the land.

(c) 1. Upon request of the applicant or any person notified under par. (b), or if the director determines that a hearing is necessary, the director shall request the division of hearings and appeals in the department of administration to conduct a hearing on whether a permit should be issued to disturb the burial site or the land which is the subject of the request. If in any part of the hearing the location of a burial site is the subject of the testimony, such part of the hearing shall be conducted in a session closed to the public and the record of such part of the hearing shall be exempt from disclosure under s. 19.35 (1).

1m. If a hearing is not requested or determined to be necessary under subd. 1, the director shall determine whether a permit should be issued to disturb the burial site or the land which is the subject of the application under par. (b) 1. If the director determines that the benefits to the permit applicant in disturbing the burial site or the land outweigh the benefits to all other persons shown on the registry under sub. (2) (e) to have an interest in not disturbing the burial site or the land, the director shall grant a permit to disturb the burial site or the land. In making the determination, the director shall consider the interest of the public in addition to any other interests. If the director determines that any of the following classes of interest are represented, the director shall weigh the interests in the following order of priority:

- a. Direct kinship.
- b. A cultural, tribal or religious affiliation.
- c. A scientific, environmental or educational purpose.
- cm. Historical and esthetic significance of the burial site.
- d. Land use.
- e. A commercial purpose not related to land use which is consistent with the purposes of this section.
- f. Any other interest which the director deems to be in the public interest.

2. If a hearing is requested or determined to be necessary under subd. 1, the division of hearings and appeals in the department of administration shall conduct a hearing to determine whether the benefits to the permit applicant in disturbing the burial site or the land outweigh the benefits to all other persons shown on the registry under sub. (2) (e) to have an interest in not disturbing the burial site or the land. If the division finds in favor of the applicant, the division shall issue a determination in favor of granting a permit to disturb a burial site or the land which is the subject of the hearing under this paragraph. In making the determination, the division shall consider the interest of the public in addition to the interests of the parties. If any of the following classes of interest are represented in the hearing, the division shall weight the interests in the following order of priority:

- a. Direct kinship.
- b. A cultural, tribal or religious affiliation.
- c. A scientific, environmental or educational purpose.
- cm. Historical and esthetic significance of the burial site.
- d. Land use.

e. A commercial purpose not related to land use which is consistent with the purposes of this section.

f. Any other interest which the board deems to be in the public interest.

2m. If the division makes a determination for granting a permit to disturb a burial site which is the subject of the hearing under this paragraph, the division may determine the person to whom the human remains and objects related to the burial in the burial site should be transferred for analysis and reinterment or other appropriate disposition when the burial site is disturbed. In making such a determination, the division shall follow the order of priority prescribed in sub. (6) (a).

3. If the determination under subd. 1m or 2 is for granting a permit to disturb a burial site which is the subject of the hearing under this paragraph, the director shall grant the permit if the owner authorizes the director or a qualified archeologist approved by the director to excavate the burial site to remove, within a reasonable time, beginning within 30 days of when ground conditions permit, for disposition under sub. (6), any human remains and objects related to the burial in the burial site to be disturbed under the permit.

4. A permit issued under this subsection may be subject to any condition or exemption deemed necessary to limit the disturbance of a burial site or the land or to minimize any other burden on any person affected by granting the permit.

5. Any party in a hearing under this paragraph may appeal the determination under subd. 1m or 2 to the board.

(d) 1. The director may charge a fee to recover the cost of excavation of a cataloged burial site under par. (c) 3 on the basis of the historical society's assessment of the costs associated with excavation of the cataloged site.

2. The director may charge a fee to recover costs incurred by the historical society to analyze and reinter or otherwise dispose of human remains and other material under par. (c) 2m.

(6) DISPOSITION OF HUMAN REMAINS REMOVED FROM BURIAL SITES.

(a) If human remains and objects related to the burial in the site are removed from a burial site under sub. (4) (c) 3. a or (5) (c) 3 and the division has not determined under sub. (5) (c) 2m the person to whom such remains and objects should be transferred for analysis and reinterment or other appropriate disposition, the director shall notify any person in the registry under sub. (2) (e) with an interest in the analysis and reinterment or appropriate disposition of such human remains and objects. The director shall transfer the remains and objects to such person for appropriate reinterment or other appropriate disposition upon receipt of a written application by any person with an interest in the analysis and reinterment or other appropriate disposition based on the following, in the order of priority stated, when persons in prior classes are not available at the time of application and in the absence of actual notice of opposition by a member of the same or a prior class:

1. Direct kinship.

2. A cultural, tribal or religious affiliation.

3. A scientific, environmental or educational purpose.

4. Any other interest which the board deems to be in the public interest.

(b) If the director cannot identify any person with an interest in reintering the human remains and objects received under par. (a), the director shall provide for reinterment or other disposition of the human remains and objects in an appropriate manner.

(c) The director shall enter into the catalog prepared under sub. (2) (a) the site of any reinterment under par. (a) or (b).

(d) The director shall submit to the board a written report of any disposition action taken under this subsection.

(e) The board may review and modify any disposition action taken by the director under this subsection.

(6m) BURIAL SITES ON PUBLIC LANDS.

(a) In this subsection, "municipality" has the meaning given under s.66.0621 (1) (a) and includes the state.

(b) Notwithstanding any other provision of this section, a municipality.

1. May not transfer any burial site to any person who is not a municipality unless the transfer provides for preservation of the burial site from any disturbance by any person and unless the transfer is approved by the board.

2. Shall endeavor to take positive action to preserve any burial site on land it owns through appropriate land use management including but not limited to appropriate multiuse purposes such as nature preserves.

(7) ACTION BY ATTORNEY GENERAL. Upon request of the board, the attorney general or the district attorney of the proper county shall aid in any investigation, inspection, hearing or trial had under the provisions of this section and shall institute and prosecute all necessary actions or proceedings for the enforcement of such provisions and for the punishment of violations of the same. The attorney general or district attorney so requested shall report to or confer with the board regarding the request within 30 days after receipt of the request.

(8) REMEDIES. Any person who intentionally disturbs, without the authorization of the director under sub. (4) (c) 2 or (d), a burial site which is not cataloged or who intentionally disturbs, without a permit issued under sub. (5), a cataloged burial site or the cataloged land contiguous to a cataloged burial site is liable for attorney fees and damages or other appropriate relief to any person with an interest in preserving the burial site or in reintering the human remains and objects related to the burial in the burial site. Any person with an interest in preserving a burial site or in reintering the human remains in the burial site may bring an action for an injunction to prevent disturbance to the burial site or the cataloged land contiguous to a cataloged burial site or to obtain the human remains and objects related to the burial in the burial site for appropriate reinterment, in the order of priority specified in sub. (6) (a).

(9) PRESERVATION OF RIGHTS. The transfer of title to any property shall not change the rights and duties of any person under this section.

(10) PENALTIES

(a) Any person who fails to report the disturbance of a burial site or the cataloged land contiguous to a cataloged burial site as required under sub. (3) shall forfeit not less than \$100 nor more than \$1,000.

(b) Any person who intentionally disturbs a burial site which is not cataloged without the authorization of the director under sub. (4) (c) 2 or (d) shall forfeit not less than \$500 nor more than \$2,000 if the burial site is not dedicated or shall forfeit not less than \$1,000 nor more than \$10,000 if the burial site is dedicated.

(c) Any owner who intentionally causes or permits any activity which disturbs a burial site after receiving notice from the director under sub. (4) (a) without the authorization required under sub. (4) (c) 2 or (d) shall forfeit not less than \$1,000 nor more than \$10,000.

(d) Any person who intentionally causes or permits any activity which disturbs a cataloged burial site or the cataloged land contiguous to a cataloged burial site without a permit issued under sub. (5) shall forfeit not less than \$1,000 nor more than \$10,000.

(e) Any person who disturbs a burial site for commercial gain not related to use of the land where a burial site is located or who disturbs a cataloged burial site for commercial gain related to use of the land where a burial site is located in violation of this section may be fined not to exceed 2 times the gross value gained or 2 times the gross loss caused by the disturbance, whichever is the greater, plus court costs and the costs of investigation and prosecution, reasonably incurred, or imprisoned for not more than one year in the county jail or both. In calculating the amount of the fine based on personal injury, any measurement of pain and suffering shall be excluded.

History: 1985 a. 316, 1989 a. 31 ss. 2413 to 2417s; 1991 a. 39, ss. 2695w-2696c.

Chapter 234 HOUSING AND ECONOMIC DEVELOPMENT AUTHORITY

234.49 Housing rehabilitation.

(2) Powers of [Wisconsin housing and economic development] authority.

(a) The authority has the following powers for the purpose of implementing this section, in addition to all other powers granted by this chapter:

9. To specify a rate of interest for a housing rehabilitation loan which is lower than the ordinary current rate for housing rehabilitation loans, if a substantial portion of the loan proceeds will be used for any of the following:

- d. The authentic renovation of a listed property, as defined in s. 44.31 (4), if the building is located on its original site.

Chapter 700 INTERESTS IN PROPERTY

700.40 Uniform conservation easement act.

(1) DEFINITIONS. In this section, unless the context otherwise requires:

(a) "Conservation easement" means a holder's nonpossessory interest in real property imposing any limitation or affirmative obligation the purpose of which includes retaining or protecting natural, scenic, or open space values of real property, assuring the availability of real property for agricultural, forest, recreational, or open space use, protecting natural resources, maintaining or enhancing air or water quality, preserving a **burial site**, as defined in s. 157.70 (1) (b), or preserving the **historical, architectural, archeological, or cultural aspects** of real property.

(b) "Holder" means either of the following:

1. Any governmental body empowered to hold an interest in real property under the laws of this state or the United States.

2. Any charitable corporation, charitable association, or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic, or open space values of real property, assuring the availability of real property for agricultural, forest, recreational, or open space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the **historical, architectural, archeological, or cultural aspects** of real property.

(c) "Third-party enforcement right" means a right provided in a conservation easement empowering a governmental body, charitable corporation, charitable association or charitable trust, which, although eligible to be a holder, is not a holder, to enforce any term of the easement.

(2) CREATION, CONVEYANCE, ACCEPTANCE, AND DURATION.

(a) Except as otherwise provided in this section, a conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affect in the same manner as any other easement.

(b) No right or duty in favor of or against a holder and no right in favor of a person having a 3rd-party enforcement right arises under a conservation easement prior to its acceptance by that holder and recordation of that acceptance.

(c) Except as provided in sub. (3) (b), a conservation easement is unlimited in duration unless the conservation easement otherwise provides.

(d) No conservation easement may impair an interest in real property existing at the time the conservation easement is created, unless the owner of that interest is a party to the conservation easement or consents to it.

(3) ACTIONS.

(a) An action affecting a conservation easement may be brought by any of the following:

1. An owner of an interest in the real property burdened by the conservation easement.
2. A holder of the conservation easement.
3. A person having a 3rd-party enforcement right.
4. A person authorized by other law.

(b) This section does not affect the power of a court to modify or terminate a conservation easement in accordance with any principle of law or equity.

(4) VALIDITY OF CONSERVATION EASEMENT. A conservation easement is valid even though any of the following apply:

- (a) It is not appurtenant to an interest in real property.
- (b) It can be or is assigned to another holder.
- (c) It is not of a character recognized traditionally at common law.
- (d) It imposes a negative burden.

(e) It imposes affirmative obligations upon the owner of any interest in the burdened property or upon the holder.

(f) The benefit does not touch or concern real property.

(g) There is not privity of estate or of contract.

(5) EFFECT ON ENFORCEABLE INTERESTS. Nothing in this section invalidates any interest, whether designated as a conservation easement, covenant, equitable servitude, restriction, easement, or otherwise, which is otherwise enforceable under the laws of this state.

(5) UNIFORM APPLICATION AND CONSTRUCTION. This section shall be applied and construed so as to make uniform the laws relating to conservation easements among states enacting substantially identical laws.

History: 1981 c. 261; 1985 a. 316.

Chapter 943 CRIMES AGAINST PROPERTY

943.01 Damage to property.

(1) Whoever intentionally causes damage to any physical property of another without the person's consent is guilty of a Class A misdemeanor.

(2) Any person violating sub. (1) under any of the following circumstances is guilty of a class D felony:

(f) 1. In this paragraph, "rock art" means an archeological site that contains paintings, carvings, or other deliberate modifications of an immobile rock surface, such as a cave, overhang, boulder, or bluff face, to produce symbols, stories, messages, designs, or pictures. "Rock art site" includes artifacts and other cultural items, modified soils, bone, and other objects or archeological interest that are located adjacent to the paintings, carvings, or other deliberate rock surface modifications.

2. The property damaged is a rock art site, any portion of a rock art site, or any object that is part of a rock art site, if the rock art site is listed on the national register of historic places in Wisconsin, as defined in s. 44.31 (5), or the state register of historic places under s. 44.36.

History: 1995 Assembly Bill 707 □ 1995 a. 208 (April 10, 1996)

943.014 Demolition of historic building without authorization.

(1) In this section, "historic building" means any building or structure within and contributing to a historic district that is listed on, or any building or structure within and contributing to a historic district that is listed on, the national register of historic places in Wisconsin or the state register of historic places or any building that is included on a list of historic places designated by a city, village, town, or county.

(2) Whoever intentionally demolishes a historic building without a permit issued by a city, village, town, or county or without an order issued under s. 66.0413 is guilty of a Class A misdemeanor.

(3) Subsection (2) does not apply to any person if he or she acts as part of a state agency action and the state agency has complied with ss. 44.39 to 44.42 regarding the action.

History: 1995 Senate Bill 145 □ 1995 a. 466 (June 27, 1996), 2001 a. 109 (penalty amended to Class A misdemeanor, effective 2/1/03)