

## CHAPTER 23

### CONSERVATION

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**Cross Reference:** See definitions in 24.01.

**23.09 Conservation. (1) PURPOSES.** The purpose of this section is to provide an adequate and flexible system for the protection, development and use of forests, fish and game, lakes, streams, plant life, flowers and other outdoor resources in this state.

**(2) DEPARTMENTAL RULES; STUDIES; SURVEYS; SERVICES; POWERS; LONG-RANGE PLANNING.** The department may make such rules, inaugurate such studies, investigations and surveys, and establish such services as it deems necessary to carry out the provisions and purposes of this section. The department shall establish long-range plans, projects and priorities for conservation. The department may:

(b) *Game refuges.* Designate such localities as it shall find to be reasonably necessary to secure perpetuation of any species of game or bird, and the maintenance of an adequate supply thereof, as game or bird refuges for the purpose of providing safe retreats in which game or birds may rest and replenish adjacent hunting grounds.

1. The subquota prescribed by the department for wild geese to be taken at the Necedah refuge shall be not less than 10% nor more than 40% of the entire quota for the state as prescribed by the U.S. department of interior, bureau of sport fisheries and wildlife.

(c) *Fish refuges.* Designate such localities as it shall find to be reasonably necessary to secure the perpetuation of any species of fish and the maintenance of an adequate supply thereof, as fish refuges, for the purpose of providing safe retreats in which fish may breed and replenish adjacent fishing waters.

(d) *Lands, acquisition.* Acquire by purchase, lease or agreement, and receive by gifts or devise, lands or waters

suitable for the purposes enumerated in this paragraph, and maintain such lands and waters for such purposes; and may condemn lands or waters suitable for such purposes after obtaining approval of the appropriate standing committees of each house of the legislature as determined by the presiding officer thereof:

1. For state forests for the purpose of growing timber, demonstrating forestry methods, protecting watersheds or providing public recreation.

2. For state parks for the purpose of preserving scenic or historical values or natural wonders.

3. For public shooting, trapping or fishing grounds or waters for the purpose of providing areas in which any citizen may hunt, trap or fish.

4. For fish hatcheries and game farms.

5. For forest nurseries and experimental stations.

6. For preservation of any species defined in s. 29.415 (2).

7. For state recreation areas as defined in s. 23.091.

8. For state natural areas as authorized under s. 23.27 (4) and for state natural areas as authorized under s. 23.27 (5) except that land may not be acquired through condemnation under the authority of s. 23.27 (5).

9. For any other purpose for which gift lands are suitable, as determined by the department.

10. For the ice age trail as designated under s. 23.17 (2).

(e) *Lands, blocking.* Extend and consolidate lands or waters suitable for the above purposes by exchange of other lands or waters under its supervision.

(f) *Propagation, game and fish.* Capture, propagate, transport, sell or exchange any species of game or fish needed for stocking or restocking any lands or waters of the state.

(g) *Forest protection.* Establish and maintain an efficient fire fighting system for the protection of forests.

(h) *Cooperation.* Enter into cooperative agreements with persons or governmental agencies for purposes consistent with the purposes and provisions of this section, including agreements with the highway authorities with regard to planting trees or other vegetation in or along highways, or furnishing stock for such planting.

(i) *Camp fires.* Regulate camp fires and smoking in the woods at such times and in such designated localities, as it may find reasonably necessary to reduce the danger of destructive forest fires.

(j) *Burnings.* Regulate the burning of rubbish, slashings and marshes or other areas as it may find reasonably necessary to reduce the danger of destructive fires.

(k) *Research.* Conduct research to improve management of natural resources, disseminate information to the residents of Wisconsin on natural resources matters and receive funds from any public or private source for research projects.

(m) *Lake and stream classification.* Develop a program for classifying lakes and streams by use and to make recommendations to municipalities and other state agencies for protection and development of recreational waters.

(n) *Donation of facilities, accept.* Accept donations of buildings, facilities and structures constructed upon lands owned by this state and under the jurisdiction of the department. The donor of such buildings, facilities and structures may contract for this construction according to plans and specifications provided by the department or may enter into a contract for professional architectural and engineering services to develop plans and specifications of such buildings, facilities and structures and contract for the construction of same. Upon the completion of construction satisfactory to the department, title of such buildings, facilities and structures shall vest in the state of Wisconsin. No person shall construct any building, facility or structure under this paragraph without the prior approval of the department regarding plans and specifications, materials, suitability, design, capacity or location. The plans and specifications for any building, structure or facility donated under this paragraph shall also be subject to the approval of the building commission.

(o) *Gifts and grants.* Accept and administer any gifts, grants, bequests and devises, including funds made available to the department by the federal government under any act of congress relating to any of the functions of the department. All funds included in such gifts, grants, bequests and devises received or expected to be received by the department in a biennium shall be included in the statement of its actual and estimated receipts and disbursements for such biennium required to be contained in the biennial state budget report under s. 16.46, and shall be deemed to be and treated the same as other actual and estimated receipts and disbursements of the department. The department may acknowledge the receipt of any funding from a particular person or group in any department pamphlet, bulletin or other publication.

**(3) INTERDEPARTMENTAL COOPERATION.** The department shall cooperate with the several state departments and officials in the conduct of matters in which the interests of the respective departments or officials overlap. The cooperating agencies may provide by agreement for the manner of sharing expenses and responsibilities under this subsection.

**(4) RESCUES, EMERGENCIES AND DISASTERS.** The department may on its own motion and shall, when so directed by the governor, assist other state, county, and local governmental agencies or do all things reasonably necessary in the rescue of persons lost in the forests of the state, or who may be otherwise in danger of loss of life, in the recovery of the bodies of drowned persons, and in cases of emergency or

disaster, by assigning equipment and employes of the department to such rescue, recovery, emergency, and disaster relief missions.

**(6) INTERPRETATION, LIMITATIONS.** This section shall not be construed as authorizing the department to change any penalty for violating any game law or regulation, or change the amount of any license established by the legislature, or to extend any open season or bag limit on migratory birds prescribed by federal law or regulations, or to contract any indebtedness or obligation beyond the appropriations made by the legislature.

**(7) PENALTIES.** Any person violating any rule of the department under this chapter shall forfeit not more than \$100.

**(8) WAYS TO WATERS.** The county board of any county may condemn a right of way for any public highway to any navigable stream, lake or other navigable waters. Such right of way shall be not less than 60 feet in width, and may be condemned in the manner provided by ch. 32; but the legality or constitutionality of this provision shall in nowise affect the legality or constitutionality of the rest of this section.

**(10) CONSERVATION EASEMENTS AND RIGHTS IN PROPERTY.** Confirming all the powers hereinabove granted to the department and in furtherance thereof, the department may acquire any and all easements in the furtherance of public rights, including the right of access and use of lands and waters for hunting and fishing and the enjoyment of scenic beauty, together with the right to acquire all negative easements, restrictive covenants, covenants running with the land, and all rights for use of property of any nature whatsoever, however denominated, which may be lawfully acquired for the benefit of the public. The department also may grant leases and easements to properties and other lands under its management and control under such covenants as will preserve and protect such properties and lands for the purposes for which they were acquired.

**(11) AIDS TO COUNTIES FOR THE DEVELOPMENT OF RECREATION FACILITIES.** (a) The county board of any county which, by resolution, indicates its desire to develop outdoor recreation facilities on county lands entered under s. 28.11 may make application to the department for the apportionment of funds for state aids to counties for such purposes.

(b) In this subsection, "outdoor recreational facilities" includes picnic and camping grounds, hiking trails, trail-side campsites and shelters, cross-country ski trails, bridle trails, nature trails, snowmobile trails and areas, beaches and bath houses, toilets, shelters, wells and pumps, and fireplaces. Costs associated with the operation and maintenance of recreational facilities are not eligible for aids under this section. Costs associated with the development of facilities for spectator sports are not eligible for aids under this section.

(c) The state aids granted under this section shall be no greater than but may be less than one-half the cost of such project as determined by the department.

(d) Applications shall be made in the manner and on forms prescribed by the department. The department shall thereupon make such investigations as it deems necessary to satisfy itself that the project will best serve the public interest and need. Upon approval of the project the department shall encumber a sum not more than one-half of the cost estimate of such project. When the project is completed, the department shall pay to the county not more than one-half the actual cost of such project. The department may inform itself and require any necessary evidence from the county to substantiate the cost before payment is made.

(e) The department in making its deliberations shall give careful consideration to whether or not the proposal is an integral part of an official comprehensive land and water use

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plan for the area as well as the relationship of the project to similar projects on other public lands. If requests for state aids exceed the funds allotted to the department for this program, those requests which form an integral part of a comprehensive plan shall be given first priority.

(f) Recreation facilities developed under the assistance of this section shall not be converted to uses which are inconsistent with the purposes of this section without the approval of the department. The department shall not issue such approval unless there is evidence that such other uses are essential to and in accordance with an official comprehensive plan for the area. The department shall require that the proceeds from the disposal of facilities developed under this section shall be used to further the objectives of this section.

**(12) COUNTY FISH AND GAME PROJECTS.** (a) The county board of any county which, by resolution, indicates its desire to plan and carry out a program of coordinated fish management projects or game management projects may make application to the department for the allocation and apportionment of funds for state aids appropriated for such purposes by s. 20.370 (4) (as).

(b) Fish management projects and game management projects include but are not limited because of enumeration to: game food seeding; browse improvement cutting; prescribed burning for game habitat improvement; creating game cover brush piles; creation of impoundments, construction, nature trails; game and fish habitat creation or improvement; lake, stream and spring pond rehabilitation and improvement; construction of fish shelters; stream side fencing; rough fish control; and other approved fish and game management projects.

(c) State aid under this subsection to any county shall be distributed by the department according to the procedures adopted by the natural resources board. State aid granted to any county under this subsection shall be matched by the county and the state's share may not exceed one-half of the actual cost of the project. Personnel, equipment and materials furnished by the county may be included in computing the county share contribution.

(d) Application shall be made in the manner and on forms prescribed by the department. The department shall make such investigations as it deems necessary to satisfy itself that the project will best serve the public interest and need and shall also consider the relationship of the project to similar projects on other public lands. Upon approval of the project the department shall encumber a sum not more than one-half of the cost estimate of such project. The department may inform itself and require any necessary evidence from the county to substantiate the cost before payment is made.

(e) Recreation facilities developed under the assistance of this subsection shall not be converted to uses which are inconsistent with the purposes of this subsection without the approval of the department. The department shall require that the proceeds from the disposal of facilities developed under this subsection shall be used to further the objectives of this subsection.

(f) Any county may cooperate with and participate in approved projects in any other county under this subsection.

**(13) BONG AIR BASE.** The department may acquire by gift, purchase or otherwise the federally-owned lands, improvements and appurtenances thereto within the Bong air base in Kenosha county which may be disposed of by the federal government to be used by the department for any of the purposes in sub. (2) (d). The department may establish zones within the boundaries of the Bong air base which offer a wide range of variable opportunities for active outdoor recreation

consistent with sub. (2) (d) and may promulgate rules to control the activities within the zones.

**(17m) GRANTS TO COUNTIES FOR THE DEVELOPMENT OF HABITAT ON COUNTY FORESTS.** (a) The county board of any county, which by resolution indicates its desire to improve the natural environment for game and nongame species on county lands entered under s. 28.11, may make application to the department for the allocation of funds appropriated for such purposes by s. 20.370 (4) (bq).

(b) The annual appropriation for each county shall not exceed 5 cents for each acre entered under s. 28.11, but any funds remaining from the appropriation made by s. 20.370 (4) (bq) and unallocated to the counties on March 31 of each year may be allotted to any county in an amount not to exceed an additional 5 cents per acre under the procedure established in this subsection. These aids shall be used to undertake management activities provided in the comprehensive county forest land use plan and included in the annual work plan and budget.

(c) Management operations shall be limited to approved projects designed to benefit both game and nongame species and the natural environment.

(d) Application shall be made in the manner and on forms prescribed by the department. The department shall investigate all project proposals to satisfy itself that the project is feasible, desirable and consistent with such plans. If the department so finds, it may make advance payment as it determines to be reasonable and proper to the game management fund account of any county.

(e) All payments made to counties under this subsection shall be deposited in the "County Game Management Fund".

(f) Completion of such projects authorized by the department shall be certified by a representative of the department. All records of receipts and expenditures from the county game management fund account shall be available to the department for inspection and audit at any time.

(g) Any unauthorized expenditures from the county game management fund shall be restored to such fund upon demand by the department and if not restored shall become a charge against the county and the secretary of state shall include such unpaid sums in the state tax levy of the respective counties in subsequent years.

(h) Any county game management fund unencumbered balances which are no longer required for the purposes of this subsection shall be paid to the department upon demand and if not so repaid shall become a charge against the county and the secretary of state shall include such unpaid sums in the state tax levy of the respective counties in subsequent years.

(i) Expenditures under this subsection on any land withdrawn from s. 28.11 and the title to which is transferred by the county to other than a public agency shall be reimbursed to the department in an amount not to exceed the prorated value of the remaining useful lifetime of the habitat development.

**(20) Aids for the acquisition and development of local parks.**

(a) Any city, village, town or county may apply for state aids for the acquisition and development of recreational lands and rights in lands for the development of its park system in accordance with priorities based on comprehensive plans submitted with the application and consistent with the outdoor recreation program under s. 23.30. The application shall be made in the manner the department prescribes.

(b) State aid under this subsection is limited to no more than 50% of the cost of acquiring and developing recreation lands and other outdoor recreation facilities. Costs associated with operation and maintenance of parks and other outdoor recreational facilities established under this subsec-

tion are not eligible for state aid. Administrative costs of acquiring lands or land rights are not included in the "cost of land" eligible for state aid under this subsection. Title to lands or rights in lands acquired under this subsection shall vest in the local unit of government, but such land shall not be converted to uses inconsistent with this subsection without prior approval of the state and proceeds from the sale or other disposal of such lands shall be used to promote the objectives of this subsection.

**(21) CREATION OF NEW LAKES.** The department may create new lakes on lands under its supervision and control.

**(22) CONSERVATION WORK PROJECTS.** The department may develop and conduct a program of conservation work projects within a reasonable transportation distance from any city of the 1st class.

**(23) YOUTH CAMPS.** The department may establish and operate youth conservation camps for boys and girls. The camps shall be operated in areas suitable for constructive employment in conservation projects, and boys and girls employed shall be deemed to be in the unclassified service. The department may acquire by fee or by lease all lands and facilities necessary for the establishment of camps.

**(25) MOTORCYCLE RECREATIONAL PROGRAM.** (a) The department shall administer an off-the-road Type 1 motorcycle recreational aid program from moneys appropriated under s. 20.370 (4) (bv). The department shall distribute these funds to towns, villages, cities, counties and federal agencies for the acquisition, development, operation and maintenance of off-the-road Type 1 motorcycle trails and facilities. The department may distribute these funds before July 1, 1989, to towns, villages, cities, counties and federal agencies for the acquisition, development, operation and maintenance of all-terrain vehicle areas and trails if these areas and trails are also available for use by off-the-road Type 1 motorcycles. In addition, the department may expend moneys appropriated under s. 20.370 (4) (bv) for the development and maintenance of existing off-the-road Type 1 motorcycle trails at the Black River state forest and the Bong state recreation area.

(b) The department shall promulgate rules and develop guidelines to administer this subsection.

(c) The state or its agencies shall not be liable for any injury to any person or damage to any property in connection with or arising out of the use of any lands acquired, developed or operated under this subsection by a town, village, city or county.

(d) The off-the-road vehicle council shall carry out studies and make recommendations to the department concerning the implementation of the program authorized under par. (a).

(e) The department shall administer a local park aid program from moneys appropriated under s. 20.370 (4) (bw). The department shall provide these funds to any town, village, city or county, if the applicant submits an application by March 15 of each year, beginning in 1989, for a state grant of up to 50% of the total project costs for the development of a local park. The maximum grant amount under this program for any project is limited to 30% of the s. 20.370 (4) (bw) biennial appropriation amount. Grants shall be awarded on a statewide priority basis, with highest priority given to projects involving the development of a local park that provides water-based public recreation opportunities. The application shall be in the form and include the information that the department prescribes.

NOTE: Par. (e) is shown as affected by 1987 Wis. Act 27, s. 543q, eff. 7-1-89. Prior to that date, par. (e) reads:

"(e) The department shall administer a waterfront park aid program from moneys appropriated under s. 20.370 (4) (bp) and (bw). The department shall provide these funds to any town, village, city or county for the development of a waterfront park. There is no maximum grant amount under this program for any

project. Grants shall be awarded by the Wisconsin waterways commission and with highest priority given to projects involving the development of a waterfront park that provides water-based public recreation opportunities in counties with a population of 500,000 or more. The application shall be in the form and include the information that the department prescribes."

**(26) AIDS TO COUNTIES FOR SNOWMOBILE PURPOSES.** (a) 1. In this subsection, "maintain" or "maintenance" includes the purchase of liability insurance.

2. The procedures in sub. (11) (a), (d), (e) and (f) shall apply to this subsection except that the department shall consult with the snowmobile recreational council before adopting snowmobile trail construction standards, the restriction in sub. (11) (a) as to county lands is not applicable, the restriction in sub. (11) (d) as to encumbrance of funds is not applicable and the restriction in sub. (11) (e) as to requests for state aids exceeding available funds is not applicable.

(am) Counties may receive aids under this subsection distributed in accordance with s. 350.12 (4) to:

1. Purchase lands or secure easements, leases, permits or other appropriate agreements, written or oral, permitting use of private property for snowmobile trails, facilities and areas, if such easements, leases, permits or other agreements provide public access to the trail, facility or area. No lands purchased or leases, easements, permits or agreements secured under authority of this section may be acquired by the county through condemnation. Counties shall certify to the department that such lands, easements, leases, permits or other appropriate agreements have been secured. However, when bridges, culverts, toilet facilities, parking lots or shelters are to be constructed under this section and the improvements are estimated to cost in excess of \$3,000, the land underlying such improvements must be purchased by the county or secured by the county by written easements or leases having a term of not less than 3 years.

2. Enter into agreements with the department to use for snowmobile trails, facilities or areas lands owned or leased by the department. No lands of the department to be used for snowmobiling purposes within the meaning of this subsection may be obtained through condemnation.

3. Develop and maintain snowmobile trails, facilities and areas on public lands designated by the county board or trails or areas under subd. 1 or 2.

4. Enforce laws in or on snowmobile trails, facilities or areas. As used in this subdivision, "facility" means a parking area, shelter or toilet.

5. Undertake major reconstruction or rehabilitation projects to improve bridges on existing approved trails.

(b) The county board of any county, which, by resolution, indicates its desire to receive aids under this subsection shall apply to the department on forms prescribed by the department and submit required documentation as set forth by rule on or before April 15, beginning in 1978. A decision on an aid application shall be made by the department on or before July 1, beginning in 1978.

(c) Distribution of snowmobile trail funds shall be made on the basis of a priority system according to the following priority-ranked purposes:

1. Maintenance of existing approved trails.
2. Purchase of land rights.
3. Club signing program.
4. Major bridge reconstruction or rehabilitation.
5. Route signing program.
6. Development of new trails.

(d) Distribution of snowmobile trail development funds shall be limited to trails which provide a primary access route through one county and connect with another county's trails, provide access from population centers to main access trails or support a high volume of use. Counties applying for aid

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for snowmobile trail development shall identify the type of trail for which aid is being sought on the forms under par. (b).

(e) Distribution of snowmobile trail development funds shall be made on the basis of a priority system according to the following priority-ranked criteria:

1. Trails in counties where there are no funded trails or trails are in short supply in comparison to demand.

2. Trails to be developed on public-owned or long-term easement land.

3. Trails which can be developed to provide more trail miles for less cost.

(f) 1. Except as provided under subd. 2, the maximum amount allowed for general trail development including bridge construction is \$500 per mile.

2. The maximum amount allowed for general trail development including bridge construction may exceed \$500 per mile if the amount is recommended by the snowmobile recreation council and approved by the department.

**History:** 1971 c. 40 s. 93; 1971 c. 125 s. 522 (1); 1971 c. 215, 277, 326; 1973 c. 251, 298, 333; 1975 c. 39 ss. 249, 249a, 250m, 734; 1975 c. 91, 200, 224, 365; 1977 c. 29, 402, 406; 1979 c. 34 ss. 699m to 701g, 2102 (39) (a); 1979 c. 89; 1981 c. 20 ss. 598 to 599s, 2202 (38) (c); 1981 c. 295; 1981 c. 390 s. 252; 1983 a. 27, 243; 1985 a. 29, 65, 322; 1985 a. 332 ss. 34, 251 (1); 1987 a. 27, 98, 295, 403.

A determination of necessity of condemning lands for conservation purposes is not invalidated by a showing that the board considered the question of whether the legislature might later decide to use the land for other purposes. *Herro v. Natural Resources Bd.* 53 W (2d) 157, 192 NW (2d) 104.

Property acquisition by department where there is bona fide intent not to condemn discussed. 68 Atty. Gen. 3.

**23.091 Recreation areas. (1) DESIGNATION.** The department may acquire, develop, operate and maintain state recreation areas. State lands and waters may be designated as state recreation areas that are environmentally adaptable to multiple recreational uses, or are so located to provide regional or urban recreational opportunities or for preservation.

**(2) MASTER PLAN.** The department may designate a recreational area only after a master plan for use and management of the area is prepared, public hearings on the plan are held in the county where the largest portion of land in the project is located, the procedures prescribed in s. 1.11 are complied with, and the plan is approved by the natural resources board.

**(3) USE ZONES.** The department may establish use zones within state recreation areas providing for the full range of recreational uses, including hunting and fishing. It may promulgate rules to control uses within zones and may limit the number of persons using any zone. Such use zones shall be consistent with the activities identified in the master plan formulated under sub. (2).

**History:** 1977 c. 29; 1985 a. 332 s. 251 (1); 1987 a. 298.

**23.093 Carp control research.** The department of natural resources may enter into contracts with public or private agencies for the accelerated research and development of a specific toxic material for the control and eradication of carp in the waters of the state.

**23.095 Malicious waste of natural resources. (1)** It is unlawful to unreasonably waste, injure, destroy or impair any natural resource within the state.

**(2)** It is the purpose of this section to promote and secure the conservation of the natural resources within the state in the interests of the public welfare.

**(3)** Any person who violates this section shall forfeit not more than \$50.

**History:** 1975 c. 365.

**23.10 Conservation wardens. (1)** The department of natural resources shall secure the enforcement of all laws which it is required to administer and bring, or cause to be brought,

actions and proceedings in the name of the state for that purpose. The persons appointed by said department to exercise and perform the powers and duties heretofore conferred and imposed upon deputy fish and game wardens, shall be known as conservation wardens and shall be subject to ch. 230.

**(2)** Whenever the county board of any county by resolution authorizes the appointment of county conservation wardens, and fixes the number of the same, the chairperson of the county board, district attorney and county clerk, acting as a board of appointment, shall select the persons for such positions and certify their names to the department of natural resources which shall, in its judgment such persons are competent and efficient, issue to them commissions as county conservation wardens. Such wardens have, within their county, all the powers and duties of conservation wardens. Their compensation shall be fixed by the county board in the resolution authorizing their appointment and be paid out of the county treasury.

**(4)** All conservation wardens shall, before exercising any of their powers, be provided with a commission issued by the department of natural resources under its seal, substantially as follows:

STATE OF WISCONSIN

DEPARTMENT OF NATURAL RESOURCES.

To all to whom these presents shall come, greeting:

Know ye, that reposing special trust and confidence in the integrity and ability of ....., of the county of ....., we do hereby appoint and constitute him a conservation warden (or county, or special conservation warden) for the (county of .....), state of Wisconsin, and do authorize and empower him to execute and fulfill the duties of that office according to law, during good behavior and the faithful performance of his duties.

In testimony whereof, the secretary has hereunto affixed his signature and the official seal of the department, at its office in the city of Madison, Wisconsin, this .... day of ....., 19...

(Seal)

STATE OF WISCONSIN

DEPARTMENT OF NATURAL RESOURCES.

By .... ..

**(5)** The department of natural resources shall furnish to each conservation warden at the time of his appointment, a pocket identification folder in form and substance as follows: A leather-covered folder, size when folded, 3 by 4 inches; on one of the inner sides thereof shall be securely fastened a photograph of such appointee to be furnished by him, and partly on the photograph and partly on the margin of such folder shall be an impression of the seal of the department of natural resources; such appointee shall also affix his signature below the photograph on such folder; on the other inner side of such folder shall be securely fastened a miniature true copy of the commission issued to such appointee, which shall be signed by the secretary. Such appointee, when on official duty, shall at all times carry such identification folder on his person, and shall on demand exhibit the same to any person to whom he may represent himself as a conservation warden. The cost of such identification folder shall be charged to the appropriation for the department.

**(6)** All conservation wardens shall make full and complete reports of their transactions as such, according to the demand of the department and shall at all times be subject to its direction and control in the performance of their duties. They shall also gather and transmit all statistical information relative to such matters within their charge as the department directs. In its report under s. 15.04 (1) (d) the department shall include information covering all its work and such other

information as is valuable to the state in relation thereto and an itemized statement of receipts and disbursements.

**History:** 1971 c. 164; 1977 c. 196 s. 131; 1983 a. 192 s. 303 (2).

**23.11 General powers. (1)** In addition to the powers and duties heretofore conferred and imposed upon said department by this chapter it shall have and take the general care, protection and supervision of all state parks, of all state fish hatcheries and lands used therewith, of all state forests, and of all lands owned by the state or in which it has any interests, except lands the care and supervision of which are vested in some other officer, body or board; and said department is granted such further powers as may be necessary or convenient to enable it to exercise the functions and perform the duties required of it by this chapter and by other provisions of law. But it may not perform any act upon state lands held for sale that will diminish their salable value.

**(2)** Whenever any lands placed by law under the care and supervision of the department are inaccessible because surrounded by lands belonging to individuals or corporations, and whenever in the opinion of the department the usefulness or value of such lands, whether so surrounded or not, will be increased by access thereto over lands not belonging to the state, the department may acquire such lands as may be necessary to construct highways that will furnish the needed access.

**(4)** The department shall have police supervision over all state-owned lands and property under its supervision, management and control, and its duly appointed agents or representatives may arrest, with or without warrant, any person within such area, committing an offense against the laws of this state or in violation of any rule of the department in force in such area, and deliver such person to the proper court of the county wherein such offense has been committed and make and execute a complaint charging such person with the offense committed. The district attorney of the county wherein such offense has been committed shall appear and prosecute all actions arising under this subsection.

**(5)** The department may require an applicant for a permit or statutory approval which the department, by order, may grant, to submit an environmental impact report if the area affected exceeds 40 acres or the estimated cost of the project exceeds \$25,000.

**History:** 1971 c. 273; 1983 a. 524.

Under (4), DNR wardens have general law enforcement authority on state-owned lands and property under DNR's supervision, management and control. 68 Atty. Gen. 326.

**23.115 Designation of trails, etc. (1)** The department shall designate trails, campgrounds, picnic areas and other special use areas for property under its control. These trails, campgrounds, picnic areas and other special use areas shall be designated on maps available at the department's district office, on a sign outside the office on the property or on signs placed by the trails, campgrounds, picnic areas or other use areas at the option of the department.

**(2)** The department shall inspect trail signs and designated features twice a year, once before July 1 and once after July 1.

**History:** 1977 c. 418; 1983 a. 418 s. 3; Stats. 1983 s. 23.115.

**23.12 Bylaws.** Said natural resources board may make and establish such rules and bylaws, not inconsistent with law, as it deems useful to itself and its subordinates in the conduct of the business entrusted to it.

**23.13 Governor to be informed.** The board of commissioners of public lands and the department of natural resources shall furnish to the governor upon his request a copy of any

paper, document or record in their respective offices and give him orally such information as he may call for.

**History:** 1971 c. 164.

**23.14 Approval required before new lands acquired.** Prior to the initial acquisition of any lands by the department after July 1, 1977, for any new facility or project, the proposed initial acquisition shall be submitted to the governor for his or her approval. New facilities or projects include, without limitation because of enumeration, state parks, state forests, recreation areas, public shooting, trapping or fishing grounds or waters, fish hatcheries, game farms, forest nurseries, experimental stations, endangered species preservation areas, picnic and camping grounds, hiking trails, cross-country ski trails, bridle trails, nature trails, bicycle trails, snowmobile trails, youth camps, natural areas and wild rivers.

**History:** 1977 c. 29; 1985 a. 29; 1987 a. 98.

**23.15 Sale of state-owned lands under the jurisdiction of the department of natural resources. (1)** The natural resources board may sell, at public or private sale, lands and structures owned by the state under the jurisdiction of the department of natural resources when the natural resources board determines that said lands are no longer necessary for the state's use for conservation purposes.

**(2)** Said natural resources board shall present to the governor a full and complete report of the lands to be sold, the reason for the sale, the price for which said lands should be sold together with an application for the sale of the same. The governor shall thereupon make such investigation as he deems necessary respecting said lands to be sold and approve or disapprove such application. If he shall approve the same, a permit shall be issued by him for such sale on the terms set forth in the application.

**(3)** Upon completion of such sale, the chairman and secretary of the natural resources board, or the secretary of natural resources, if he is duly authorized by the natural resources board, shall execute such instruments as are necessary to transfer title and the natural resources board or its duly authorized agents shall deliver the same to the purchaser upon payment of the amount set forth in the application.

**(4)** Said natural resources board effecting the sale of any such lands and structures shall, upon receiving payment therefor, deposit the funds in the conservation fund to be used exclusively for the purpose of purchasing other areas of land for the creating and establishing of public hunting and fishing grounds, wildlife and fish refuges and state parks.

**(5) (a)** In this subsection, "surplus land" means land under the jurisdiction of the department which is unused and not needed for department operations or included in the department's plan for construction or development.

**(b)** Biennially, beginning on January 1, 1984, the department shall submit to the state building commission and the joint committee on finance an inventory of surplus land containing the description, location and fair market value of each parcel.

**History:** 1983 a. 27; 1983 a. 423 s. 3; Stats. 1983 s. 23.15.

**23.17 Ice age trail. (1) DEFINITION.** In this section:

**(a)** "Municipality" means a city, village, town, county or special purpose district.

**(b)** "State agency" has the meaning designated under s. 16.01 (1).

**(2) DESIGNATION.** The ice age national scenic trail, as provided for in 16 USC 1244 (a) (10), plus the lands adjacent to each side of that trail designated by the department, is

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designated a state scenic trail, to be known as the "Ice Age Trail".

**(3) DUTIES OF THE DEPARTMENT.** The department shall:

(a) Encourage other state agencies, municipalities, organizations and individuals to participate in planning, establishing, developing and maintaining the ice age trail.

(b) Provide information to any person involved in planning, establishing, developing or maintaining the ice age trail regarding trail design, signs, interpretive markers and any other aspects of the ice age trail in which uniformity is desirable.

(c) Encourage municipalities to develop land use plans which preserve rights-of-way for future establishment of the ice age trail.

(d) Prepare a trail management plan and plan for interpretive markers for the ice age trail, in cooperation with the national park service, federal department of the interior.

(e) Coordinate the activities of all state agencies which own property that includes any existing or planned portion of the ice age trail and maintain regular contact with such agencies.

(f) Identify portions of the ice age trail which are proposed to be located on state-owned property, especially highway rights-of-way, and contact state agencies which own such property as soon as possible so that adequate plans for the location of the trail on state property may be developed and the trail location may be altered if the use of state property proves to be impossible.

(g) Coordinate its planning efforts relating to the location, development and maintenance of the ice age trail with the efforts of the national park service, federal department of the interior and any statewide nonprofit organization established for the purpose of planning, developing and maintaining the ice age trail.

**(4) POWERS OF THE DEPARTMENT.** The department may develop the ice age trail on lands under its ownership along the trail route.

**(5) STATE LAND.** (a) A state agency may not refuse to permit construction of a portion of the ice age trail on property owned by the state agency if the state agency determines that the trail does not conflict with other existing or proposed uses of the property.

(b) Each state agency shall consider the ice age trail in the long-range plans for property owned by the state agency.

**(6) OTHER TRAILS.** (a) This section does not limit the authority of the department to designate other trails under s. 23.115.

(b) This section does not preclude any portion of the ice age trail from being designated as a part of the national trails system.

History: 1987 a. 98, 399.

**23.18 Milwaukee river revitalization council.** The Milwaukee river revitalization council shall do all of the following:

**(1)** Advise the department of natural resources, the governor and the legislature on matters relating to the environmental, recreational and economic revitalization of the Milwaukee river basin.

**(2)** Assist the department of natural resources to:

(a) Develop, provide and disseminate information on the environmental, recreational, economic and developmental interests of the Milwaukee river basin.

(b) Assist local governmental agencies during the planning and implementation of specific programs and activities.

(c) Develop proposals to maximize the use of available local, state, federal and private resources to further the revitalization of the Milwaukee river basin.

(d) Develop a Milwaukee river riverway plan that allows and encourages multiple recreational entrepreneurial and cultural activities to take place near the Milwaukee river.

(e) Establish a mechanism that allows the plan under par. (d) to be implemented in an aggressive and deliberate fashion.

History: 1987 a. 399.

**23.20 Use of department gravel pits.** The department may permit any town, county or state agency to obtain gravel, sand, fill dirt or other fill material needed for road purposes from any department-owned gravel pit or similar facility if this material is unavailable from private vendors within a reasonable distance of the worksite. The department may require environmental safeguards before permitting a town, county or state agency to obtain this material. The department shall charge a fee for this material commensurate with the fee charged by private vendors.

History: 1981 c. 131; 1985 a. 202.

**23.23 Purple loosestrife. (1)** In this section, "purple loosestrife" means any nonnative member of the genus *Lythrum*.

**(2)** The department shall make a reasonable effort to conduct research to determine alternative methods to contain and control purple loosestrife in the most environmentally sound manner.

**(3) (a)** The department shall make a reasonable effort to develop a statewide program to control purple loosestrife on both public and private lands, as provided in this subsection.

(b) The department shall make a reasonable effort to implement control and quarantine methods on public lands as soon as practicable. The department shall make a reasonable effort to employ the least environmentally harmful methods available that are effective, based on research conducted under sub. (2).

(c) The department may conduct a pilot project using employes or other persons to engage in labor intensive efforts to control purple loosestrife on all public lands.

(d) The department shall request permission from private landowners to enter onto the land to control stands of purple loosestrife which significantly threaten environmental resources or which threaten to invade a nearby watershed or subwatershed. If the landowner denies the department permission to enter onto the land, the department may not enter the land but shall inform the landowner of the seminars available under sub. (4) (c).

(e) The department may provide grants to other public agencies to allow the public agencies to control purple loosestrife on lands under their control.

**(4) (a)** The department shall make a reasonable effort to develop a statewide education program on the effects of purple loosestrife, as provided in this subsection.

(b) The department shall make a reasonable effort to educate the authorities in charge of the maintenance of all federal, state and county trunk highways and all forest and park land in this state on methods to identify and control purple loosestrife and multiflora rose. The department of transportation and all other authorities in charge of the maintenance of highways, forests and parks may cooperate with the department in efforts under this paragraph.

(c) The department shall make a reasonable effort to educate private landowners on methods to identify and control purple loosestrife. The department shall make a reasonable effort to conduct seminars periodically, at times determined by the department, to train private landowners in environmentally sound methods to identify and control purple loosestrife.

History: 1987 a. 41.

**23.25 Geographic powers and duties. (1)** The department shall:

(a) Determine the correct and most appropriate names of the lakes, streams, places and other geographic features in the state, and the spelling thereof;

(b) Pass upon and give names to lakes, streams, places and other geographic features in the state for which no single generally accepted name has been in use;

(c) In cooperation with county boards and with their approval, change the names of lakes, streams, places and other geographic features with the end in view of eliminating, as far as possible, duplication of names within the state;

(d) Prepare and publish an official state dictionary of geographic names and publish the same, either as a completed whole or in parts when ready;

(e) Serve as the state representative of the U.S. geographic board and cooperate with the said board to the end that there shall be no conflict between the state and federal designations of geographic features in the state.

(2) Whenever the department has given a name to any lake, stream, place or other geographic feature within the state, or determined the correct spelling of any such name, it shall be used in all maps, reports and other publications thereafter issued by the state or any of its political subdivisions, and shall be deemed the official name of such geographic feature.

(3) No person shall in any advertisement or publication attempt to modify local usage or name unnamed geographic features without first obtaining the approval of the department. In case of a violation of this subsection, the department may announce its disapproval and thereafter adopt an official name for such feature.

**23.26 Natural areas preservation council.** The natural areas preservation council shall:

(1) Make recommendations to the department concerning the suitability of natural areas offered as donations by individuals or organizations for inclusion in the state natural areas system, make recommendations to the department concerning the purchase of natural areas to be included in the state natural areas system and make recommendations concerning the suitability of natural areas offered as dedications by individuals or organizations for inclusion in the state natural areas system.

(2) Make recommendations to appropriate federal agencies or national scientific organizations of natural areas in the state that are considered worthy to be listed as natural areas or scientific areas of national importance.

(3) Advise the department and other agencies on matters pertaining to the acquisition, development, utilization, maintenance and withdrawal of state natural areas, including determinations as to the extent of multiple use that may be allowed on state natural areas that are a part of a state park, state forest, public hunting ground or similar areas under state ownership or control.

(4) Prepare and publish an official list of research natural and other natural areas in the state natural area system available for research and the teaching of conservation and natural history, and recommend publication of studies made in connection with these areas.

(5) Cooperate with federal agencies, other states, counties or organizations concerned with preservation of natural areas.

(6) Take such other action as is deemed advisable to facilitate the administration, development, maintenance or protection of natural areas and the state natural areas system.

History: 1985 a. 29; Stats. 1985 s. 23.26.

**23.265 Great Lakes fish and water resources council. (1)**

The Great Lakes fish and water resources council shall advise state departments and agencies in activities related to the management of the fish and water resources with regard to the contamination of the Great Lakes and its tributaries. The council shall study, assess and recommend solutions and policy alternatives with regard to the economic, health and environmental impact of conventional and toxic water pollutants on commercial, charters and sports fishing and state tourism and the associated impacts on consumers of fish.

(2) In August 1986, 1987 and 1988 and in June 1989, the Great Lakes fish and water resources council shall submit to the governor, to the head of each agency specified under s. 15.347 (1) (a) 3 to 6 and to the chief clerk of each house of the legislature for distribution to the appropriate standing committees under s. 13.172 (3) a report which summarizes the operations and activities of the council during the previous fiscal year or, on June 1989, since the previous report, describes the state of Great Lakes fish and water resources and its management and sets forth the recommendations of the council. The report shall include a description of the current water quality of the Great Lakes and its tributaries, an assessment of fish and water resource management programs and a list and description of current and anticipated fish and water resource management problems.

(3) Subsections (1) and (2) do not apply after June 30, 1989.

History: 1985 a. 29.

**23.27 Natural areas; definitions; importance; inventory; acquisition; sales. (1) DEFINITIONS.** As used in this section and ss. 23.28 and 23.29:

(a) "Council" means the natural areas preservation council.

(b) "Dedicated state natural areas" means land accepted and recorded for dedication under the Wisconsin natural areas heritage program as provided under s. 23.29 (16).

(c) "Dedication" means the transfer of land or a permanent interest in land to the state of Wisconsin to be held in trust for the people of Wisconsin by the department in a manner which ensures the protection and stewardship of the area and natural values associated with the area. "Dedication" also means the binding unilateral declaration by the state that land under the ownership of the state is to be held in trust for the people of Wisconsin by the department in a manner which ensures the protection and stewardship of the area and natural values associated with the area.

(d) "Designated state natural area" means a natural area designated as a state natural area under s. 23.28 (1).

(e) "Natural area" means an area of land or water which has educational or scientific value or is important as a reservoir of the state's genetic or biologic diversity and includes any buffer area necessary to protect the area's natural values. Frequently, "natural areas" are important as a reserve for native biotic communities. Frequently, "natural areas" provide habitat for endangered, threatened or critical species or for species of special concern to scientists. In some cases, "natural areas" include areas with highly significant geological or archaeological features. Generally, "natural areas" are areas which largely escaped unnatural environmental disturbance or which exhibit little evidence of recent environmental disturbance so that recovery of natural conditions has occurred.

(f) "Natural values" includes any important values and characteristics listed under sub. (2) (a) to (i) which enable an area to be considered a natural area.

(g) "Research natural area" means all or part of a state natural area identified by the department, with the advice of

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the council, as a natural area especially suitable or important for scientific research.

(h) "State natural area", unless otherwise limited, means any designated state natural area or dedicated state natural area.

(i) "Stewardship" means the continuing obligation to provide the necessary maintenance, management, protection, husbandry and support for a natural area and natural values associated with that area.

**(2) IMPORTANCE.** The department, with the advice of the council, shall maintain a system to evaluate the importance of natural areas. The system shall include standards for determining low, high and critical levels of importance for natural areas. This system shall consider the following natural values:

(a) The value of the area as a preserve or reservoir which exhibits an outstanding or high quality example of a native plant or animal community.

(b) The value of the area as a preserve or reservoir for any endangered, threatened or critical species or for a species of special concern to scientists.

(c) The value of the area as a preserve or reservoir of genetic or biological diversity.

(d) The degree to which the area was subject to unnatural environmental disturbance and the degree of recovery.

(e) The value of the area for educational or scientific research purposes and as a reference site for comparison with areas subjected to environmental disturbance.

(f) The value of the area for educational or scientific research purposes because of important or unusual characteristics.

(g) The significance or uniqueness of the area in the locality, region and state.

(h) The existence of highly significant geological or archaeological features.

(i) The value of the area for public educational purposes, including the value of the area in promoting public awareness, appreciation, understanding and respect for the state's natural heritage.

**(3) NATURAL HERITAGE INVENTORY PROGRAM.** The department, with the advice of the council, shall conduct a natural heritage inventory program. The department shall cooperate with the department of administration acting under s. 16.967 in conducting this program. This program shall establish a system for determining the existence and location of natural areas, the degree of endangerment of natural areas, an evaluation of the importance of natural areas, information related to the associated natural values of natural areas and other information and data related to natural areas. This program shall establish a system for determining the existence and location of native plant and animal communities and endangered, threatened and critical species, the degree of endangerment of these communities and species, the existence and location of habitat areas associated with these communities and species and other information and data related to these communities and species. This program shall establish and coordinate standards for the collection, storage, recall and display of data related to the natural heritage inventory. The department shall make information from the natural heritage inventory program available to any individual or public or private agency for research, educational, environmental, land management or similar authorized purposes. Notwithstanding s. 19.35, the natural heritage inventory and related data are not public records and the department may refuse to release information for any purpose which is not authorized.

**(4) NATURAL AREAS LAND ACQUISITION; CONTINUING COMMITMENT.** It is the intent of the legislature to continue natural areas land acquisition activities from moneys available from the appropriation under ss. 20.370 (1) (kb) and 20.866 (2) (ts). This commitment is separate from and in addition to the commitment to acquire natural areas under the Wisconsin natural areas heritage program.

**(5) NATURAL AREAS LAND ACQUISITION; COMMITMENT UNDER THE WISCONSIN NATURAL AREAS HERITAGE PROGRAM.** It is the intent of the legislature to initiate additional natural areas land acquisition activities with moneys available from the appropriations under ss. 20.370 (1) (fg) and 20.866 (2) (tt) under the Wisconsin natural areas heritage program. This commitment is separate from and in addition to the continuing commitment under sub. (4). Moneys available from the appropriations under ss. 20.370 (1) (fg) and 20.866 (2) (tt) under the Wisconsin natural areas heritage program may not be used to acquire land through condemnation. The department may not acquire land under this subsection unless the land is suitable for dedication under the Wisconsin natural areas heritage program and upon purchase or as soon after purchase as practicable the department shall take all necessary action to dedicate the land under the Wisconsin natural areas heritage program.

**(6) SALE; CREDIT.** Moneys received by the state from the sale of any area on state-owned land under the department's management or control which is withdrawn from the state natural areas system shall be credited to the appropriation under s. 20.370 (1) (fh). An amount equal to the value of any area on state-owned land under the department's management or control which is withdrawn from the state natural areas system but remains in state ownership shall be credited to the appropriation under s. 20.370 (1) (fh).

**History:** 1985 a. 29; 1987 a. 27.

**23.28 State natural areas; designated state natural areas.**

**(1) DESIGNATION.** The department, with the advice of the council, may designate any natural area with a high or critical level of importance on state-owned land under the department's management or control as a state natural area. The department, with the advice of the council, may designate any natural area with a high or critical level of importance on land other than state-owned land but under the department's management or control as a state natural area. The department, with the advice of the council, may designate a natural area with a high or critical level of importance on land under the management or control of another state agency, a federal, county, city, village, town or other public agency or a nonprofit organization as a state natural area if that area is protected by a voluntary, written stewardship agreement between the owner or manager and the department.

**(2) STEWARDSHIP.** The department is responsible for the stewardship of designated state natural areas unless a written stewardship agreement specifies otherwise.

**(3) PROTECTION OF NATURAL VALUES; RESEARCH NATURAL AREAS.** The department shall not permit any use of a designated state natural area which is inconsistent with or injurious to its natural values. The department may establish use zones, may control uses within a zone and may limit the number of persons using a zone in a designated state natural area. The department, with the advice of the council, may classify certain designated state natural areas as research natural areas and may establish special use regulations for these areas.

**History:** 1985 a. 29; 1987 a. 399.

**23.29 Wisconsin natural areas heritage program. (1) INTENT.** It is the intent of the legislature to encourage private

contributions and land dedications under the Wisconsin natural areas heritage program. It is the intent of the legislature to match private contributions and the value of land dedications with state funds in addition to funds normally appropriated for natural areas land acquisition activities.

**(2) CONTRIBUTIONS; STATE MATCH.** The department may accept contributions and gifts for the Wisconsin natural areas heritage program. The department shall convert donations of land which it determines, with the advice of the council, are not appropriate for the Wisconsin natural areas heritage program into cash. The department shall convert other noncash contributions into cash. These moneys shall be deposited in the general fund and credited to the appropriation under s. 20.370 (1) (fg). These moneys shall be matched by an equal amount released from the appropriation under s. 20.866 (2) (tt) to be used for natural areas land acquisition activities under s. 23.27 (5).

**(3) LAND DEDICATIONS; VALUATION; STATE MATCH.** The department shall determine the value of land accepted for dedication under the Wisconsin natural areas heritage program. If the land dedication involves the transfer of the title in fee simple absolute or other arrangement for the transfer of all interest in the land to the state, the valuation shall be based on the fair market value of the land prior to the transfer. If the land dedication involves the transfer of a partial interest in land to the state, the valuation shall be based on the extent to which the fair market value of the land is diminished by that transfer and the associated articles of dedication. If the land dedication involves a sale of land to the department at less than the fair market value, the valuation of the dedication shall be based on the difference between the purchase price and the fair market value. An amount equal to the value of land accepted for dedication under the Wisconsin natural areas heritage program shall be released from the appropriation under s. 20.866 (2) (tt) to be used for natural areas land acquisition activities under s. 23.27 (5). This subsection does not apply to dedications of land under the ownership of the state.

**(4) LAND DEDICATIONS; ELIGIBLE LAND.** The department may not accept land for dedication under the Wisconsin natural areas heritage program unless the land is a natural area with a high or critical level of importance as determined by the department with the advice of the council.

**(5) LAND DEDICATIONS; TRANSFER OF INTEREST.** The department may not accept land for dedication under the Wisconsin natural areas heritage program unless all interest in the land or a partial interest in the land is transferred to the state to be held in trust for the people by the department. This subsection does not apply to land under the ownership of the state.

**(6) LAND DEDICATIONS; STATE LAND.** Land under the ownership of the state and under the control or management of the department may be accepted for dedication under the Wisconsin natural areas heritage program. Land under the ownership of the state but under the management or control of another agency may be accepted for dedication under the Wisconsin natural areas heritage program if the appropriate agency transfers sufficient permanent and irrevocable authority over the management and control of that land to the department.

**(7) LAND DEDICATIONS; PERMANENT AND IRREVOCABLE.** Except as permitted under this subsection, the department may not accept land for dedication under the Wisconsin natural areas heritage program unless the land dedication is permanent and irrevocable. The department may not accept land for dedication under the Wisconsin natural areas heritage program if the dedication or any provision in the articles of

dedication include any reversionary right or any provision which extinguishes the dedication at a certain time or upon the development of certain conditions, except that the department may authorize a revision or extinction if the land is withdrawn from the Wisconsin natural areas heritage program as provided under subs. (19) and (20). The department may not accept land for dedication under the Wisconsin natural areas heritage program if the articles of dedication allow for amendment or revision except as provided under subs. (17) and (18).

**(8) LAND DEDICATIONS; PUBLIC TRUST.** The department may not accept land for dedication under the Wisconsin natural areas heritage program unless the land dedication provides that the interest in land which is transferred to or held by the state is to be held in trust for the people by the department.

**(9) LAND DEDICATIONS; STEWARDSHIP.** The department may not accept land for dedication under the Wisconsin natural areas heritage program unless adequate provisions for the stewardship are provided. If the land dedication involves the transfer of title in fee simple absolute or other arrangement for the transfer of all interest in the land to the state, the department has stewardship responsibility. If the land dedication involves the transfer of a partial interest in the land to the state, stewardship responsibility shall be assigned to the person retaining an interest in the land and his or her successors or to the department. Even if stewardship responsibility is assigned to a person retaining an interest in the land and his or her successors, the department has ultimate responsibility to ensure that stewardship is provided and, if it is not, the department shall assume stewardship responsibility and shall recover the costs involved from the party originally responsible. If the land dedication involves state-owned land under the management or control of the department, the department has stewardship responsibility. The department may enter into contracts or agreements with other agencies or persons to act as its agent and to ensure that stewardship is provided for a dedicated state natural area or to assume stewardship responsibility for a dedicated state natural area. In no case may the department abrogate its ultimate stewardship responsibility or its obligation as a trustee of the land.

**(10) PROTECTION OF NATURAL VALUES; RESEARCH NATURAL AREAS.** The department may not accept land for dedication under the Wisconsin natural areas heritage program unless adequate authorization is given to the department to protect natural values and to restrict any use of the natural area which is inconsistent with or injurious to its natural values. If authorized by the articles of dedication, the department may establish use zones, may control uses within a zone and may limit the number of persons using a zone in a dedicated state natural area. If authorized in the articles of dedication, the department, with the advice of the council, may classify certain dedicated state natural areas as research natural areas and may establish special use regulations for these areas.

**(11) LAND DEDICATIONS; PARTIAL INTEREST; LAND OF OTHER STATE AGENCIES; ACCESS.** The department may not accept land for dedication under the Wisconsin natural areas heritage program if the land dedication involves the transfer of a partial interest in the land to the state unless adequate provisions for access are provided. Land under the ownership of the state but under the management and control of another state agency may not be accepted for dedication under the Wisconsin natural areas heritage program unless adequate provisions for access are provided. Adequate provisions for access are required to include provisions which guarantee access to the land by the department and its agents

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at reasonable times to inspect the land and to determine if the articles of dedication are being violated. Adequate provisions for access are required to include provisions which guarantee to the department and its agents access and rights to the land necessary to exercise stewardship responsibilities. Adequate provisions for access may not be required to include any provision permitting public access to the land although the department shall encourage public access provisions wherever possible and consistent with preservation of natural values associated with the land. If public access is permitted, the department shall consider this as a factor when making its valuation under sub. (3). Even if public access is permitted, the department may limit access at its discretion to protect natural values associated with the land or to facilitate stewardship or administration.

**(12) LAND DEDICATION; PARTIAL INTEREST; LAND OF OTHER STATE AGENCIES; NOTICE PRIOR TO SALE OR TRANSFER.** The department may not accept land for dedication under the Wisconsin natural areas heritage program if the land dedication involves the transfer of a partial interest in the land to the state unless adequate provisions for notice are provided. Land under the ownership of the state but under the management and control of another state agency may not be accepted for dedication under the Wisconsin natural areas heritage program unless adequate provisions for notice are provided. At a minimum, adequate provisions for notice shall require 30 days' notice to the department before any sale, transfer or conveyance of the land or an interest in the land. The department may not regulate or prohibit the sale, transfer or conveyance of a dedicated state natural area or an interest in a dedicated state natural area but the department may ensure that the grantee, lessee or other party is informed of the dedication and understands that restrictions, conditions, obligations, covenants and other provisions in the dedication and articles of dedication run with the land and are binding on subsequent grantees, lessees and similar parties. No sale, transfer or conveyance of a dedicated state natural area may violate the dedication or the articles of dedication. The register of deeds shall notify the department if a dedicated state natural area is transferred by will or as part of an estate.

**(13) ARTICLES OF DEDICATION; REQUIREMENT; APPROVAL.** The department may not accept land for dedication under the Wisconsin natural areas heritage program unless articles of dedication in the proper form and with the required contents are prepared and approved. The department and the person making the land dedication are required to approve articles of dedication if the land dedication involves the transfer of all or a partial interest in the land. The department and the appropriate state agency are required to approve articles of dedication if the land dedication involves land under the ownership of the state but under the control or management of a state agency other than the department. The department is required to approve articles of dedication if the land dedication involves only land under the ownership and control of the state and under the management or control of the department. The department shall seek the advice of the council in making approvals under this subsection.

**(14) ARTICLES OF DEDICATION; FORM.** Articles of dedication are not in proper form unless they are prepared as a conservation easement under s. 700.40 or in another form acceptable to the department. Articles of dedication are not in proper form unless they run with the land and are binding on all subsequent purchasers or any other successor to an interest in the land. Articles of dedication are not in proper form unless the articles qualify as an instrument which is valid and meets the requirements for recording under s. 706.04.

**(15) ARTICLES OF DEDICATION; CONTENTS.** The department may not approve articles of dedication unless they contain:

(a) *Public purpose.* A statement of public purposes served by the dedication.

(b) *Identification of natural values.* An identification of natural values associated with the land.

(c) *Conveyance.* A conveyance or other instrument if necessary to transfer interest in the land as required under sub. (5).

(d) *Permanent protection.* Restrictions, conditions, covenants and other provisions governing the use of the land so that natural values associated with the land are ensured of permanent protection.

(e) *Stewardship.* Restrictions, conditions, obligations, covenants or other provisions governing the obligation to provide stewardship as required under sub. (9).

(f) *Authorization.* Authorization to the department to ensure protection of natural values as required under sub. (10).

(g) *Access.* Adequate provisions for access if required under sub. (11).

(h) *Notification of sales and transfers.* Adequate provisions for notice if required under sub. (12).

(i) *Amendment.* A provision specifying that no amendment or revision to the articles of dedication may occur except as provided under subs. (17) and (18).

(j) *Withdrawal.* A provision specifying that no withdrawal of the land from the dedicated state natural areas system may occur except as provided under subs. (19) and (20).

**(16) ACCEPTANCE; RECORDING.** The department may not accept land for dedication under the Wisconsin natural areas heritage program unless the governor approves the dedication in writing. If the department and the governor approve, a land dedication under the Wisconsin natural areas heritage program is final with the recording of the dedication and articles of dedication in the office of the register of deeds. At the time of recording, the land is a dedicated state natural area and shall remain so unless withdrawn under subs. (19) and (20).

**(17) ARTICLES OF DEDICATION; AMENDMENT; JUSTIFICATION.** The articles of dedication may not be amended or revised unless the amendment or revision serves a valid public purpose, no prudent alternative exists and the amendment or revision would not significantly injure or damage the natural values which enabled the area to be considered a state natural area.

**(18) ARTICLES OF DEDICATION; AMENDMENT; PROCEDURE.** The articles of dedication may not be amended or revised until and unless:

(a) *Agreement.* The department and any other party with a property interest in the dedicated state natural area agree to the proposed amendment or revision.

(b) *Findings.* The department issues written findings justifying the proposed amendment or revision under sub. (17).

(c) *Notice and hearing.* A public hearing is conducted in the county where the dedicated state natural area is located following publication of a class 1 notice, under ch. 985, which announces the hearing and summarizes the department's findings.

(d) *Standing committee approval.* The appropriate standing committee in each house of the legislature, as determined by each presiding officer, approves the proposed amendment or revision.

(e) *Approval by governor.* The governor approves the proposed amendment or revision.

(f) *Recording.* The amendment or revision is recorded in the office of the register of deeds.

**(19) WITHDRAWAL; JUSTIFICATION.** The department may not withdraw a dedicated state natural area from the dedicated state natural areas system unless:

(a) *Extinction of natural values.* The natural values which enabled the area to be considered a dedicated state natural area no longer exist or were destroyed or damaged to such an extent that the area has no importance or has a low level of importance as determined by the department with the advice of the council.

(b) *Superseding public purpose.* The withdrawal serves a superseding and imperative public purpose and no prudent alternative exists.

**(20) WITHDRAWAL; PROCEDURE.** The department may not withdraw a dedicated state natural area from the state natural areas system until and unless:

(a) *Findings.* The department issues written findings justifying the proposed withdrawal under sub. (19) (a) or (b).

(b) *Notice and hearing.* A public hearing is conducted in the county where the dedicated state natural area is located following publication of a class 1 notice, under ch. 985, which announces the hearing and summarizes the department's findings.

(c) *Standing committee approval.* The appropriate standing committee in each house of the legislature, as determined by each presiding officer, approves the proposed withdrawal.

(d) *Approval by governor.* The governor approves the proposed withdrawal.

(e) *Recording.* The withdrawal is recorded with the register of deeds.

**(21) RESTRICTIONS.** A dedicated state natural area is not subject to condemnation for use for any purpose unless the area is withdrawn from the state natural areas system under subs. (19) and (20). The department may not impose restrictions on a person who retains a property interest in a dedicated state natural area unless the department has authority under the dedication or articles of dedication or unless the person who retains the property interest agrees.

**(22) DEPARTMENT AUTHORITY.** The department shall administer this section and shall encourage and facilitate the voluntary dedication of lands under the Wisconsin natural areas heritage program. The department may promulgate rules and establish procedures to aid in the administration and enforcement of this section. The department may provide legal advice and may prepare model articles of dedication to facilitate the dedication of lands under the Wisconsin natural areas heritage program.

**(23) ENFORCEMENT.** The department and its agents, the department of justice and peace officers, as defined under s. 939.22 (22), have jurisdiction on dedicated state natural areas in the geographic jurisdiction to enforce articles of dedication and restrictions authorized under sub. (21).

**(24) INJUNCTIVE RELIEF; RECOVERY OF COSTS; PUNITIVE DAMAGES.** The department, or the department of justice on its own initiative or at the request of the department, may initiate an action seeking injunctive relief against any person violating the articles of dedication of a dedicated state natural area or restrictions authorized under sub. (21). Any citizen may initiate an action seeking injunctive relief against any person violating the articles of dedication of a dedicated state natural area as a beneficiary of the interest in that land held in the public trust. The department, or the department of justice at the department's request, may initiate an action to recover costs for stewardship expenses from the party originally responsible under sub. (9). The department, or the department of justice at the department's request, may initiate an action for punitive damages against any person violating the articles of dedication of a dedicated state natural area.

Punitive damages are in addition to any penalty imposed under sub. (25).

**(25) PENALTY.** Any person who violates this section, a rule promulgated under this section, the articles of dedication of a dedicated state natural area or any restrictions authorized under sub. (21) shall forfeit not more than \$10,000. Each violation and each day of violation constitutes a separate offense.

*History:* 1985 a. 29; 1987 a. 403.

**23.293 State ice age trail area dedication. (1) DEFINITIONS.** In this section:

(a) "Dedicated ice age trail area" means land accepted and recorded for dedication under the ice age trail program under this section.

(b) "Dedication" means all of the following:

1. The transfer of land or a permanent interest in land to this state to be held in trust for the people of this state by the department in a manner which ensures the stewardship of the area.

2. The binding unilateral declaration by the state that land under the ownership of the state is to be held in trust for the people of this state by the department in a manner which ensures the stewardship of the area.

(c) "State ice age trail area" means the trail designated under s. 23.17 (2).

(d) "Stewardship" means the continuing obligation to provide the necessary maintenance, management, protection, husbandry and support.

**(2) MAP.** The department shall develop a map which designates the state ice age trail areas.

**(3) STEWARDSHIP.** The department is responsible for the stewardship of state ice age trail area lands.

**(4) CONTRIBUTIONS AND GIFTS; STATE MATCH.** The department may accept contributions and gifts for the ice age trail program. The department may convert gifts of land which it determines are not appropriate for the ice age trail program into cash. The department may convert other noncash contributions and gifts into cash. These moneys shall be deposited in the general fund and credited to the appropriation under s. 20.370 (1) (gg). The value of all contributions and gifts shall be matched by an amount equal to 50% of that value released from the appropriation under s. 20.866 (2) (tw) to be used for land acquisition and development activities under s. 23.17.

**(5) LAND DEDICATIONS; VALUATION; STATE MATCH.** The department shall determine the value of land accepted for dedication under the ice age trail program. If the land dedication involves the transfer of the title in fee simple absolute or other arrangement for the transfer of all interest in the land to the state, the valuation shall be based on the fair market value of the land before the transfer. If the land dedication involves the transfer of a partial interest in land to the state, the valuation shall be based on the extent to which the fair market value of the land is diminished by that transfer and the associated articles of dedication. If the land dedication involves a sale of land to the department at less than the fair market value, the valuation of the dedication shall be based on the difference between the purchase price and the fair market value. An amount equal to 50% of the value of land accepted for dedication under the ice age trail program shall be released from the appropriation under s. 20.866 (2) (tw) to be used for ice age trail acquisition activities under s. 23.17. This subsection does not apply to dedications of land under the ownership of the state.

**(6) LAND DEDICATIONS; ELIGIBILITY AND ACCEPTANCE.** The department shall accept land except as provided by sub. (7),

(8), (9), (10) or (12), within the state ice age trail area for dedication unless the long-term stewardship of the dedicated land cannot reasonably be assured.

**(7) LAND DEDICATIONS; TRANSFER OF INTEREST.** The department may not accept land for dedication under the ice age trail program unless all interest in the land or a partial interest in the land is transferred to the state to be held in trust for the people of this state by the department. This subsection does not apply to land under the ownership of the state.

**(8) LAND DEDICATIONS; STATE LAND.** Land under the ownership of the state and under the control or management of the department may be accepted for dedication under the ice age trail program. Land under the ownership of the state but under the management or control of another agency may be accepted for dedication under the ice age trail program if the appropriate agency transfers sufficient permanent and irrevocable authority over the management and control of that land to the department.

**(9) LAND DEDICATIONS; PERMANENT AND IRREVOCABLE.** Except as permitted under this subsection, the department may not accept land for dedication under the ice age trail program unless the land dedication is permanent and irrevocable. The department may not accept land for dedication under the ice age trail program if the dedication or any provision in the articles of dedication include any reversionary right or any provision which extinguishes the dedication at a certain time or upon the development of certain conditions, except that the department may authorize a reversion or extinction if the land is withdrawn from the ice age trail program as provided under subs. (16) and (17). The department may not accept land for dedication under the ice age trail program if the articles of dedication allow for amendment or revision except as provided under subs. (14) and (15).

**(10) LAND DEDICATIONS; PUBLIC TRUST.** The department may not accept land for dedication under the ice age trail program unless the land dedication provides that the interest in land which is transferred to or held by the state is to be held in trust for the people of this state by the department.

**(11) LAND DEDICATIONS; STEWARDSHIP.** The department may enter into contracts or agreements with other agencies or persons to act as its agent and to ensure that stewardship is provided for a dedicated ice age trail area or to assume stewardship responsibility for a dedicated ice age trail area. In no case may the department abrogate its ultimate stewardship responsibility or its obligation as a trustee of the land.

**(12) LAND DEDICATION; PARTIAL INTEREST; LAND OF OTHER STATE AGENCIES; NOTICE PRIOR TO SALE OR TRANSFER.** The department may not accept land for dedication under the ice age trail program if the land dedication involves the transfer of a partial interest in the land to the state unless adequate provisions for notice are provided. Land under the ownership of the state but under the management and control of another state agency may not be accepted for dedication under the ice age trail program unless adequate provisions for notice are provided. At a minimum, adequate provisions for notice shall require 30 days' notice to the department before any sale, transfer or conveyance of the land or an interest in the land. The department may not regulate or prohibit the sale, transfer or conveyance of a dedicated ice age trail area or an interest in a dedicated ice age trail area but the department may ensure that the grantee, lessee or other party is informed of the dedication and understands that restrictions, conditions, obligations, covenants and other provisions in the dedication and articles of dedication run with the land and are binding on subsequent grantees, lessees and similar parties. No sale, transfer or conveyance of a dedicated ice age trail area may violate the dedication or the articles of dedica-

tion. The register of deeds shall notify the department if a dedicated ice age trail area is transferred by will or as part of an estate.

**(13) ARTICLES OF DEDICATION; FORM.** Articles of dedication are not in proper form unless they are prepared as a conservation easement under s. 700.40 or in another form acceptable to the department. Articles of dedication are not in proper form unless they run with the land and are binding on all subsequent purchasers or any other successor to an interest in the land. Articles of dedication are not in proper form unless the articles qualify as an instrument which is valid and meets the requirements for recording under s. 706.04.

**(14) ARTICLES OF DEDICATION; AMENDMENT; JUSTIFICATION.** The articles of dedication may not be amended or revised unless the amendment or revision serves a valid public purpose, no prudent alternative exists and the amendment or revision would not significantly injure or damage the ice age trail.

**(15) ARTICLES OF DEDICATION; AMENDMENT; PROCEDURE.** The articles of dedication may not be amended or revised until and unless:

(a) *Agreement.* The department and any other party with a property interest in the dedicated ice age trail area agree to the proposed amendment or revision.

(b) *Findings.* The department issues written findings justifying the proposed amendment or revision under sub. (14).

(c) *Notice and hearing.* A public hearing is conducted in the county where the dedicated ice age trail area is located following publication of a class 1 notice, under ch. 985, which announces the hearing and summarizes the department's findings.

(d) *Standing committee approval.* The appropriate standing committee in each house of the legislature, as determined by each presiding officer, approves the proposed amendment or revision.

(e) *Approval by governor.* The governor approves the proposed amendment or revision.

(f) *Recording.* The amendment or revision is recorded in the office of the register of deeds.

**(16) WITHDRAWAL; JUSTIFICATION.** The department may not withdraw a state ice age trail area from the state ice age trail areas system unless:

(a) *Extinction of value.* The value which enabled the area to be considered a dedicated ice age trail area no longer exists or was destroyed or damaged to such an extent that the area has no importance or has a low level of importance as determined by the department.

(b) *Superseding public purpose.* The withdrawal serves a superseding and imperative public purpose and no prudent alternative exists.

**(17) WITHDRAWAL; PROCEDURE.** The department may not withdraw a dedicated ice age trail area from the state ice age trail areas system until and unless:

(a) *Findings.* The department issues written findings justifying the proposed withdrawal under sub. (16) (a) or (b).

(b) *Notice and hearing.* A public hearing is conducted in the county where the dedicated ice age trail area is located following publication of a class 1 notice, under ch. 985, which announces the hearing and summarizes the department's findings.

(c) *Standing committee approval.* The appropriate standing committee in each house of the legislature, as determined by each presiding officer, approves the proposed withdrawal.

(d) *Approval by governor.* The governor approves the proposed withdrawal.

(e) *Recording.* The withdrawal is recorded with the register of deeds.

(18) **DEPARTMENT AUTHORITY.** The department shall administer this section and shall encourage and facilitate the voluntary dedication of lands under the ice age trail program. The department may promulgate rules and establish procedures to aid in the administration and enforcement of this section. The department may provide legal advice and may prepare model articles of dedication to facilitate the dedication of lands under the ice age trail program.

(19) **ENFORCEMENT.** The department and its agents, the department of justice and peace officers, as defined under s. 939.22 (22), have jurisdiction on dedicated ice age trail areas.

(20) **INJUNCTIVE RELIEF; RECOVERY OF COSTS.** The department, or the department of justice on its own initiative or at the request of the department, may initiate an action seeking injunctive relief against any person violating the articles of dedication of a dedicated ice age trail area.

**History:** 1987 a. 399.

**23.30 Outdoor recreation program. (1) PURPOSE.** The purpose of this section is to promote, encourage, coordinate and implement a comprehensive long-range plan to acquire, maintain and develop for public use those areas of the state best adapted to the development of a comprehensive system of state and local outdoor recreation facilities and services in all fields, including, without limitation because of enumeration, parks, forests, camping grounds, fishing and hunting grounds, trails, trail-side campsites and shelters, cross-country ski trails, bridle trails, related historical sites, highway scenic easements, natural areas and local recreation programs, except spectator sports, and to facilitate and encourage the fullest beneficial public use of these areas.

(2) **ESTABLISHED.** The outdoor recreation program is established as a continuing program to financially assist the state and local agency outdoor recreation program, including, without limitation because of enumeration, lake rehabilitation, coho salmon production, wildlife management on county forests, public access, state park and forest recreation areas, fish and game habitat areas, youth conservation camps, creation of new lakes, lake and stream classification, highway scenic easements, natural areas, state aids for local governmental parks and other outdoor recreational facilities, acquisition and development, state aids for county forest recreation areas development, related historic sites, tourist information sites; recreational planning; scenic or wild river preservation and use; and conservation work program.

(3) **NATURAL RESOURCES BOARD.** The natural resources board is the body through which all governmental agencies and nongovernmental agencies may coordinate their policies, plans and activities with regard to Wisconsin outdoor recreation resources. To this end it shall:

(a) Consider and recommend to the governor and legislature broad policies and standards to guide the comprehensive development of all outdoor recreation resources in Wisconsin, including, without limitation because of enumeration, outdoor recreation development in relation to state population patterns, low-cost sewage system studies, the several outdoor recreation activities, outdoor recreation development to aid the state recreation industry, and policies and standards to coordinate the respective outdoor recreation development programs of federal, state and local governmental agencies and the recreation programs operated by private enterprise.

(b) Coordinate the development of a comprehensive long-range plan for the acquisition and development of areas necessary for a state-wide system of recreational facilities. The comprehensive plan shall be based upon the outdoor recreation plans of the several state agencies and local gov-

ernmental agencies, and shall be coordinated and modified as the board deems necessary to comply with its policies and standards.

(c) Recommend to the legislature outdoor recreation program appropriations and allocations which, in conjunction with other financial sources supporting outdoor recreation resources, are necessary to carry out plans coordinated by the board.

(d) Consider progress reports from state agencies to determine that all state appropriations for outdoor recreation are being so expended that the policies and plans formulated by the board will be accomplished.

(f) Advise federal agencies concerned of the pattern in which all federal outdoor recreation resources financial assistance and loan programs to state and local governmental agencies and to nongovernmental associations and private individuals will most completely implement the policies and plans of the board.

(g) Negotiate agreements between agencies concerned when in the board's judgment there is an overlap of authority or responsibilities in the completion of a project.

(h) Accept on behalf of the state and allocate to the appropriate state agency any gifts and grants of money, property or services made for the purposes of outdoor recreation in Wisconsin. The proceeds of such gifts and grants may be expended for the purpose of the gift or grant.

**History:** 1971 c. 125; 1985 a. 29; 1987 a. 98.

ORAP funds may be used for the planting of trees and shrubs along state highways and to mark scenic easements as part of the state's beautification and outdoor recreation programs. 62 Atty. Gen. 135.

ORAP funds may be used to restore deteriorated milldams provided a public use is evident. 63 Atty. Gen. 245.

See note to 28.04, citing 63 Atty. Gen. 519.

**23.305 Leasing of department land for recreational purposes. (1)** In this section, "spectator sports" means events or contests in which the general public spectates but does not participate, including without limitation because of enumeration:

- (a) Water ski shows.
- (b) Baseball games.
- (c) Volleyball games.
- (d) Snowmobile derbies.
- (e) Motorboat races.
- (f) Snowshoe races.
- (g) Cross-country ski races.
- (h) Dogsled races.
- (i) Canoe or kayak races.

(2) Notwithstanding ss. 23.30 and 28.04, the department may lease state park land or state forest land to towns, villages or counties for outdoor recreational purposes associated with spectator sports.

(3) The lease shall be for a term not to exceed 15 years. The lease shall contain covenants to protect the department from all liability and costs associated with use of the land and to guard against trespass and waste. The rents arising from the lease shall be paid into the state treasury and credited to the proper fund.

**History:** 1985 a. 29.

**23.31 Recreation resources facilities. (1)** (a) To provide and develop recreation resources facilities within this state, the natural resources board, subject to the limits provided in s. 20.866 (2) (tp), (ts) and (tt), may direct that state debt be contracted for providing recreation resources facilities or making additions to existing recreation resources facilities.

(b) With their biennial budget request to the department of administration, the natural resources board shall include its request and plan for recreational acquisition and development funding under s. 23.30. This plan shall be approved by

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the governor and shall contain the policies regarding the priority types of land to be acquired and the nature and categories of the developments to be undertaken. Changes in priority types of land to be acquired and in categories of developments may not be made without approval of the governor. Any deviation which the governor approves shall be reviewed by the joint committee on finance.

(2) (a) The debt shall be contracted for in the manner and form the legislature prescribes.

(b) It is the intent of the legislature that state debt not to exceed \$56,055,000 in the 12-year period from 1969 to 1981 may be incurred for the comprehensive provision of outdoor recreation facilities as provided under s. 23.30 but any unappropriated or uncommitted portion of this debt shall be continued beyond 1981.

(c) It is the intent of the legislature that state debt not to exceed \$60,000,000 in the 10-year period from July 1, 1981 to July 1, 1991, may be incurred to support outdoor recreation land acquisition activities.

**History:** 1971 c. 125; 1971 c. 211 s. 126; 1973 c. 90; 1977 c. 418; 1979 c. 34, 221; 1981 c. 20; 1985 a. 29.

**23.32 Wetlands mapping. (1)** In this section "wetland" means an area where water is at, near, or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which has soils indicative of wet conditions.

(2) (a) For the purpose of advancing the conservation of wetland resources the department shall prepare or cause to be prepared maps that, at a minimum, identify as accurately as is practicable the individual wetlands in the state which have an area of 5 acres or more.

(b) Mapping priorities, technical methods and standards to be used in delineating wetlands and a long-term schedule which will result in completion of the mapping effort at the earliest possible date, but not later than July 1, 1984, shall be developed by the department in cooperation with those other state agencies having mapping, aerial photography and comprehensive planning responsibilities.

(c) Wetland maps shall be prepared utilizing the best methods practicable with the funds available for that purpose and shall be based upon data such as soil surveys, aerial photographs and existing wetland surveys and may be supplemented by on-site surveys and other studies.

(d) The department shall cooperate with the department of administration acting under s. 16.967 in conducting wetland mapping activities or any related land resource data collection activities.

**History:** 1977 c. 374; 1979 c. 221; 1983 a. 27; 1985 a. 29.

**23.33 All-terrain vehicles. (1) DEFINITIONS.** As used in this section:

(a) "Accompanied" means being subject to continuous verbal direction or control.

(am) "Alcohol beverages" has the meaning specified under s. 125.02 (1).

(b) "All-terrain vehicle" has the meaning specified under s. 340.01 (2g).

(c) "All-terrain vehicle route" means a highway or sidewalk designated for use by all-terrain vehicle operators by the governmental agency having jurisdiction as authorized under this section.

(d) "All-terrain vehicle trail" means a marked corridor on public property or on private lands subject to public easement or lease, designated for use by all-terrain vehicle operators by the governmental agency having jurisdiction, but excluding roadways of highways except those roadways which are not seasonally maintained for motor vehicle traffic.

(dm) "Approved public treatment facility" has the meaning specified under s. 51.45 (2) (c).

(e) "Controlled substance" has the meaning specified under s. 161.01 (4).

(h) "Immediate family" means persons who are related as spouses, as siblings or as parent and child.

(i) "Intoxicant" means any alcohol beverage, controlled substance or other drug or any combination thereof.

(ic) "Intoxicated operation of an all-terrain vehicle law" means sub. (4c) or a local ordinance in conformity therewith or, if the operation of an all-terrain vehicle is involved, s. 940.09 or 940.25.

(ig) "Law enforcement officer" has the meaning specified under s. 165.85 (2) (c) and includes a person appointed as a conservation warden by the department under s. 23.10 (1).

(ir) "Operation of an all-terrain vehicle" means controlling the speed or direction of an all-terrain vehicle.

(iw) "Operator" means a person who is engaged in the operation of an all-terrain vehicle, who is responsible for the operation of an all-terrain vehicle or who is supervising the operation of an all-terrain vehicle.

(j) "Owner" means a person who has lawful possession of an all-terrain vehicle by virtue of legal title or equitable interest in the all-terrain vehicle which entitles the person to possession of the all-terrain vehicle.

(je) "Purpose of authorized analysis" means for the purpose of determining or obtaining evidence of the presence, quantity or concentration of any intoxicant in a person's blood, breath or urine.

(jm) "Refusal law" means sub. (4p) (e) or a local ordinance in conformity therewith.

(js) "Test facility" means a test facility or agency prepared to administer tests under s. 343.305 (1).

(k) "Used exclusively for agricultural purposes" means used exclusively for an agricultural use as defined under s. 91.01 (1).

(L) "Used exclusively for commercial purposes" includes use of an all-terrain vehicle by a dealer for demonstration purposes but does not include all-terrain vehicles leased or rented.

(m) "Used exclusively on land under the management and control of a person's immediate family" means use of an all-terrain vehicle only on land owned or leased by the person or a member of the person's immediate family over which the owner or lessee has management and control. This term excludes use of an all-terrain vehicle on land owned or leased by an organization of which the person or a member of the person's immediate family is a member.

(n) "Used exclusively on private property" means use of an all-terrain vehicle by the owner of the all-terrain vehicle or a member of his or her immediate family only on land owned or leased by the all-terrain vehicle owner or a member of his or her immediate family.

**NOTE:** Sub. (1) is shown as affected by 1987 Wis. Act 399, eff. 3-1-89, as follows: Par. (f) was repealed; par. (i) repealed and recreated; and pars. (am), (dm), (ic), (ig), (ir), (iw), (je), (jm) and (js) were created.

(2) **REGISTRATION. (a) Requirement.** No person may operate and no owner may give permission for the operation of any all-terrain vehicle within this state unless the all-terrain vehicle is registered for public use or for private use with the department under this section or is exempt from registration. No person may operate and no owner may give permission for the operation of any all-terrain vehicle on a public all-terrain vehicle route or trail unless the all-terrain vehicle is registered for public use with the department under this section or is exempt from registration.

(b) **Exemptions.** An all-terrain vehicle is exempt from registration if it is:

1. Owned by the United States, another state or a political subdivision thereof, but the exterior of the all-terrain vehicle shall display in a visible manner the name of the owner.

2. Covered by a valid registration in another state, province or country if there is some identification of registration displayed on the all-terrain vehicle and it has not been in this state for more than 15 consecutive days.

3. Used exclusively for racing on a raceway facility.

4. Owned by a political subdivision of the state and used for enforcement or emergency purposes.

5. Specified as exempt from registration by department rule.

(c) *Registration; public use; fee.* Any all-terrain vehicle may be registered for public use. The fee for the issuance or renewal of a registration certificate for public use is \$12.

(d) *Registration; private use; fee.* An all-terrain vehicle used exclusively for commercial purposes, used exclusively for agricultural purposes or used exclusively on private property may be registered for private use. The fee for the issuance or renewal of a registration certificate for private use is \$6.

(e) *Other fees.* The fee for the transfer of an all-terrain vehicle registration certificate is \$2. The fee for the issuance of a duplicate all-terrain vehicle registration certificate or duplicate registration decals or stickers is \$2. The fee for the issuance of registration decals to the state or a county or municipality is \$2.

(f) *Effective periods; public use.* 1. Except as provided under subd. 2, an all-terrain vehicle public-use registration certificate is valid for a 2-year period.

2. The department may specify by rule an annual expiration date for all-terrain vehicle registrations and may reduce the effective period of a registration so it expires on that date.

(g) *Effective period; private use.* An all-terrain vehicle private-use registration certificate is valid from the date of issuance until ownership of the all-terrain vehicle is transferred.

(h) *Procedures; requirements.* The department shall establish by rule procedures and requirements for all-terrain vehicle registration.

**(3) RULES OF OPERATION.** No person may operate an all-terrain vehicle:

(a) In any careless way so as to endanger the person or property of another.

NOTE: Par. (b) was repealed by 1987 Wis. Act 399, eff. 3-1-89.

(c) On the private property of another without the consent of the owner or lessee. Failure to post private property does not imply consent for all-terrain vehicle use.

(d) On Indian lands without the consent of the tribal governing body or Indian owner. Failure to post Indian lands does not imply consent for all-terrain vehicle use.

(e) With any firearm in his or her possession unless it is unloaded and enclosed in a carrying case, or any bow unless it is unstrung or enclosed in a carrying case.

(f) To drive or pursue any animal except as a part of normal farming operations involving the driving of livestock.

(g) When within 150 feet of a dwelling at a speed exceeding 10 miles per hour.

(h) On the frozen surface of public waters within 100 feet of a person not in or on an all-terrain vehicle or motor vehicle or within 100 feet of a fishing shanty at a speed exceeding 10 miles per hour.

(i) In a manner which violates operation rules promulgated by the department.

**(4) OPERATION ON OR NEAR HIGHWAYS.** (a) *Freeways.* No person may operate an all-terrain vehicle upon any part of any freeway which is a part of the federal system of interstate and defense highways. No person may operate an all-terrain

vehicle upon any part of any other freeway unless the department of transportation authorizes all-terrain vehicle use on that freeway.

(b) *Other highways; operation restricted.* All-terrain vehicles may not be operated on highways except as authorized under pars. (d) and (e) or as authorized by rules promulgated by the department and approved by the department of transportation.

(c) *Exceptions; municipal, state and utility operations; races and derbies.* 1. Paragraphs (a) and (b) do not apply to the operator of an all-terrain vehicle owned by a municipality, state agency or public utility while the operator is engaged in emergency operations or in operations directly related to the functions of the municipality, state agency or public utility if safety does not require strict adherence to these restrictions.

2. Paragraph (b) does not apply to a highway blocked off for special all-terrain vehicle events. A county, town, city or village may block off highways under its jurisdiction for the purpose of allowing special all-terrain vehicle events. No state trunk highway or connecting highway, or part thereof, may be blocked off by any county, town, city or village for any all-terrain vehicle race or derby. A county, town, city or village shall notify the local police department and the county sheriff's office at least one week in advance of the time and place of any all-terrain vehicle race or derby which may result in any street, or part thereof, of the county, town, city or village being blocked off.

(d) *Operation on roadway.* All-terrain vehicles may be operated on the roadway portion of any highway only in the following situations:

1. To cross a roadway. The crossing of a roadway is authorized only if the crossing is done in the most direct manner practical, if the crossing is made at a place where no obstruction prevents a quick and safe crossing and if the operator stops the all-terrain vehicle prior to the crossing and yields the right-of-way to other vehicles and pedestrians using the roadway.

2. On any roadway which is not seasonally maintained for motor vehicle traffic. Operation on this type of roadway is authorized only during the seasons when no maintenance occurs and only if the roadway is not officially closed to all-terrain vehicle traffic.

3. To cross a bridge, culvert or railroad right-of-way. The crossing of a bridge, culvert or railroad right-of-way is not authorized if the roadway is officially closed to all-terrain vehicle traffic. The crossing is authorized only if the crossing is done in the most direct manner practical, if the crossing is made at a place where no obstruction prevents a quick and safe crossing and if the operator stops the all-terrain vehicle prior to the crossing and yields the right-of-way to other vehicles and pedestrians using the roadway.

4. On roadways which are designated as all-terrain vehicle routes. Operation of all-terrain vehicles on a roadway which is an all-terrain vehicle route is authorized only for the extreme right side of the roadway except that left turns may be made from any part of the roadway which is safe given prevailing conditions.

5. On roadways if the all-terrain vehicle is an implement of husbandry, if the all-terrain vehicle is used exclusively for agricultural purposes and if the all-terrain vehicle is registered for private use under sub. (2) (d). Operation of an all-terrain vehicle which is an implement of husbandry on a roadway is authorized only for the extreme right side of the roadway except that left turns may be made from any part of the roadway which is safe given prevailing conditions.

6. On roadways if the all-terrain vehicle is being operated by a person who holds a Class A permit or a Class B permit

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under s. 29.09 (9) and who is engaging in an activity authorized by the permit.

(e) *Operation adjacent to roadway.* An all-terrain vehicle may be operated adjacent to a roadway on an all-terrain vehicle route or trail if the all-terrain vehicle is operated in the following manner:

1. The all-terrain vehicle is operated at a distance of 10 or more feet from the roadway along U.S. numbered highways and state and county highways. Travel on the median of a divided highway is prohibited except to cross.

2. The all-terrain vehicle is operated outside of the roadway along town highways.

3. During hours of darkness the all-terrain vehicle is operated in the same direction as motor vehicle traffic in the nearest lane, although during daylight hours travel may be in either direction regardless of the flow of motor vehicle traffic.

4. The all-terrain vehicle does not exceed the speed limits of the adjacent roadway.

5. The all-terrain vehicle is operated with due regard to safety and in compliance with rules promulgated by the department and approved by the department of transportation.

**(4c) INTOXICATED OPERATION OF AN ALL-TERRAIN VEHICLE.**

(a) *Operation.* 1. Operating while under the influence of an intoxicant. No person may engage in the operation of an all-terrain vehicle while under the influence of an intoxicant to a degree which renders him or her incapable of safe all-terrain vehicle operation.

2. Operating with alcohol concentrations at or above specified levels. No person may engage in the operation of an all-terrain vehicle while the person has a blood alcohol concentration of 0.1% or more by weight of alcohol in his or her blood. No person may engage in the operation of an all-terrain vehicle while the person has 0.1 grams or more of alcohol in 210 liters of his or her breath.

3. Operating with alcohol concentrations at specified levels; below age 19. If a person has not attained the age of 19, the person may not engage in the operation of an all-terrain vehicle while he or she has a blood alcohol concentration of more than 0.0% but not more than 0.1% by weight of alcohol in his or her blood or more than 0.0 grams but not more than 0.1 grams of alcohol in 210 liters of his or her breath.

4. Related charges. A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of subd. 1 or 2 or both for acts arising out of the same incident or occurrence. If the person is charged with violating both subds. 1 and 2, the offenses shall be joined. If the person is found guilty of both subds. 1 and 2 for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions under sub. (13) (b) 2 and 3. Subdivisions 1 and 2 each require proof of a fact for conviction which the other does not require.

(b) *Causing injury.* 1. Causing injury while under the influence of an intoxicant. No person while under the influence of an intoxicant to a degree which renders him or her incapable of safe all-terrain vehicle operation may cause injury to another person by the operation of an all-terrain vehicle.

2. Causing injury with alcohol concentrations at or above specified levels. No person who has a blood alcohol concentration of 0.1% or more by weight of alcohol in his or her blood may cause injury to another person by the operation of an all-terrain vehicle. No person who has 0.1 grams or more of alcohol in 210 liters of his or her breath may cause injury to another person by the operation of an all-terrain vehicle.

3. Related charges. A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of subd. 1 or 2 or both for acts arising out of the same incident or occurrence. If the person is charged with violating both subds. 1 and 2 in the complaint, the crimes shall be joined under s. 971.12. If the person is found guilty of both subds. 1 and 2 for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions under sub. (13) (b) 2 and 3. Subdivisions 1 and 2 each require proof of a fact for conviction which the other does not require.

4. Defenses. In an action under subd. 1, the defendant has a defense if it appears by a preponderance of the evidence that the injury would have occurred even if the defendant was not under the influence of an intoxicant. In an action under subd. 2, the defendant has a defense if it appears by a preponderance of the evidence that the injury would have occurred even if the defendant did not have a blood alcohol concentration of 0.1% or more by weight of alcohol in his or her blood. In an action under subd. 2, the defendant has a defense if it appears by a preponderance of the evidence that the injury would have occurred even if he or she did not have 0.1 grams or more of alcohol in 210 liters of his or her breath.

**(4g) PRELIMINARY BREATH SCREENING TEST.** (a) *Requirement.* A person shall provide a sample of his or her breath for a preliminary breath screening test if a law enforcement officer has probable cause to believe that the person is violating or has violated the intoxicated operation of an all-terrain vehicle law and if, prior to an arrest, the law enforcement officer requested the person to provide this sample.

(b) *Use of test results.* A law enforcement officer may use the results of a preliminary breath screening test for the purpose of deciding whether or not to arrest a person for a violation of the intoxicated operation of an all-terrain vehicle law or for the purpose of deciding whether or not to request a chemical test under sub. (4p). Following the preliminary breath screening test, chemical tests may be required of the person under sub. (4p).

(c) *Admissibility.* The result of a preliminary breath screening test is not admissible in any action or proceeding except to show probable cause for an arrest, if the arrest is challenged, or to show that a chemical test was properly required of a person under sub. (4p).

(d) *Refusal.* There is no penalty for a violation of par. (a). Subsection (13) (a) and the general penalty provision under s. 939.61 do not apply to that violation.

**(4j) APPLICABILITY OF THE INTOXICATED OPERATION OF AN ALL-TERRAIN VEHICLE LAW.** In addition to being applicable upon highways, the intoxicated operation of an all-terrain vehicle law is applicable upon all premises held out to the public for use of their all-terrain vehicles, whether such premises are publicly or privately owned and whether or not a fee is charged for the use thereof.

**(4L) IMPLIED CONSENT.** Any person who engages in the operation of an all-terrain vehicle upon the public highways of this state, or in those areas enumerated in sub. (4j), is deemed to have given consent to provide one or more samples of his or her breath, blood or urine for the purpose of authorized analysis as required under sub. (4p). Any person who engages in the operation of an all-terrain vehicle within this state is deemed to have given consent to submit to one or more chemical tests of his or her breath, blood or urine for the purpose of authorized analysis as required under sub. (4p).

**(4p) CHEMICAL TESTS.** (a) *Requirement.* 1. Samples; submission to tests. A person shall provide one or more samples of his or her breath, blood or urine for the purpose of authorized analysis if he or she is arrested for a violation of the

intoxicated operation of an all-terrain vehicle law and if he or she is requested to provide the sample by a law enforcement officer. A person shall submit to one or more chemical tests of his or her breath, blood or urine for the purpose of authorized analysis if he or she is arrested for a violation of the intoxicated operation of an all-terrain vehicle law and if he or she is requested to submit to the test by a law enforcement officer.

2. Information. A law enforcement officer requesting a person to provide a sample or to submit to a chemical test under subd. 1 shall inform the person of all of the following at the time of the request and prior to obtaining the sample or administering the test:

a. That he or she is deemed to have consented to tests under sub. (4L).

b. That a refusal to provide a sample or to submit to a chemical test constitutes a violation under par. (c) and is subject to the same penalties and procedures as a violation of sub. (4c) (a) 1.

c. That in addition to the designated chemical test under par. (b) 2, he or she may have an additional chemical test under par. (c) 1.

3. Unconscious person. A person who is unconscious or otherwise not capable of withdrawing consent is presumed not to have withdrawn consent under this paragraph, and if a law enforcement officer has probable cause to believe that the person violated the intoxicated operation of an all-terrain vehicle law, one or more chemical tests may be administered to the person without a request under subd. 1 and without providing information under subd. 2.

(b) *Chemical tests.* 1. Test facility. Upon the request of a law enforcement officer, a test facility shall administer a chemical test of breath, blood or urine for the purpose of authorized analysis. A test facility shall be prepared to administer 2 of the 3 chemical tests of breath, blood or urine for the purpose of authorized analysis. The department may enter into agreements for the cooperative use of test facilities.

2. Designated chemical test. A test facility shall designate one chemical test of breath, blood or urine which it is prepared to administer first for the purpose of authorized analysis.

3. Additional chemical test. A test facility shall specify one chemical test of breath, blood or urine, other than the test designated under subd. 2, which it is prepared to administer for the purpose of authorized analysis as an additional chemical test.

4. Validity; procedure. A chemical test of blood or urine conducted for the purpose of authorized analysis is valid as provided under s. 343.305 (10). The duties and responsibilities of the laboratory of hygiene, department of health and social services and department of transportation under s. 343.305 (10) apply to a chemical test of blood or urine conducted for the purpose of authorized analysis under this subsection. Blood may be withdrawn from a person arrested for a violation of the intoxicated operation of an all-terrain vehicle law only by a physician, registered nurse, medical technologist, physician's assistant or person acting under the direction of a physician and the person who withdraws the blood, the employer of that person and any hospital where blood is withdrawn have immunity from civil or criminal liability as provided under s. 895.53.

5. Report. A test facility which administers a chemical test of breath, blood or urine for the purpose of authorized analysis under this subsection shall prepare a written report which shall include the findings of the chemical test, the identification of the law enforcement officer or the person who requested a chemical test and the identification of the

person who provided the sample or submitted to the chemical test. The test facility shall transmit a copy of the report to the law enforcement officer and the person who provided the sample or submitted to the chemical test.

(c) *Additional and optional chemical tests.* 1. Additional chemical test. If a person is arrested for a violation of the intoxicated operation of an all-terrain vehicle law or is the operator of an all-terrain vehicle involved in an accident resulting in great bodily harm to or the death of someone and if the person is requested to provide a sample or to submit to a test under par. (a) 1, the person may request the test facility to administer the additional chemical test specified under par. (b) 3 or, at his or her own expense, reasonable opportunity to have any qualified person administer a chemical test of his or her breath, blood or urine for the purpose of authorized analysis.

2. Optional test. If a person is arrested for a violation of the intoxicated operation of an all-terrain vehicle law and if the person is not requested to provide a sample or to submit to a test under par. (a) 1, the person may request the test facility to administer a chemical test of his or her breath or, at his or her own expense, reasonable opportunity to have any qualified person administer a chemical test of his or her breath, blood or urine for the purpose of authorized analysis. If a test facility is unable to perform a chemical test of breath, the person may request the test facility to administer the designated chemical test under par. (b) 2 or the additional chemical test under par. (b) 3.

3. Compliance with request. A test facility shall comply with a request under this paragraph to administer any chemical test it is able to perform.

4. Inability to obtain chemical test. The failure or inability of a person to obtain a chemical test at his or her own expense does not preclude the admission of evidence of the results of a chemical test required and administered under pars. (a) and (b).

(d) *Admissibility; effect of test results; other evidence.* The results of a chemical test required or administered under par. (a), (b) or (c) are admissible in any civil or criminal action or proceeding arising out of the acts committed by a person alleged to have violated the intoxicated operation of an all-terrain vehicle law on the issue of whether the person was under the influence of an intoxicant or the issue of whether the person had alcohol concentrations at or above specified levels. Results of these chemical tests shall be given the effect required under s. 885.235. This subsection does not limit the right of a law enforcement officer to obtain evidence by any other lawful means.

(e) *Refusal.* No person may refuse a lawful request to provide one or more samples of his or her breath, blood or urine or to submit to one or more chemical tests under par. (a). A person shall not be deemed to refuse to provide a sample or to submit to a chemical test if it is shown by a preponderance of the evidence that the refusal was due to a physical inability to provide the sample or to submit to the test due to a physical disability or disease unrelated to the use of an intoxicant. Issues in any action concerning violation of par. (a) or this paragraph are limited to:

1. Whether the law enforcement officer had probable cause to believe the person was violating or had violated the intoxicated operation of an all-terrain vehicle law.

2. Whether the person was lawfully placed under arrest for violating the intoxicated operation of an all-terrain vehicle law.

3. Whether the law enforcement officer requested the person to provide a sample or to submit to a chemical test and

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provided the information required under par. (a) 2 or whether the request and information was unnecessary under par. (a) 3.

4. Whether the person refused to provide a sample or to submit to a chemical test.

**(4i) REPORT ARREST TO DEPARTMENT.** If a law enforcement officer arrests a person for a violation of the intoxicated operation of an all-terrain vehicle law or the refusal law, the law enforcement officer shall notify the department of the arrest as soon as practicable.

**(4x) OFFICER'S ACTION AFTER ARREST FOR OPERATING AN ALL-TERRAIN VEHICLE WHILE UNDER INFLUENCE OF INTOXICANT.** A person arrested for a violation of sub. (4c) (a) 1 or 2 or a local ordinance in conformity therewith or sub. (4c) (b) 1 or 2 may not be released until 12 hours have elapsed from the time of his or her arrest or unless a chemical test administered under sub. (4p) (a) 1 shows that there is 0.05% or less by weight of alcohol in the person's blood or 0.05 grams or less of alcohol in 210 liters of the person's breath, but the person may be released to his or her attorney, spouse, relative or other responsible adult at any time after arrest.

**(4z) PUBLIC EDUCATION PROGRAM.** (a) The department shall promulgate rules to provide for a public education program to:

1. Inform all-terrain vehicle operators of the prohibitions and penalties included in the intoxicated operation of an all-terrain vehicle law.

2. Provide for the development of signs briefly explaining the intoxicated operation of an all-terrain vehicle law.

(b) The department shall develop and issue an educational pamphlet on the intoxicated operation of an all-terrain vehicle law to be distributed, beginning in 1989, to persons issued all-terrain vehicle registration certificates.

NOTE: Subs. (4c) to (4z) were created by 1987 Wis. Act 399, eff. 3-1-89.

**(5) AGE RESTRICTIONS; SAFETY CERTIFICATION PROGRAM.** (a) *Age restriction.* No person under 12 years of age may operate an all-terrain vehicle unless he or she is accompanied by a parent, guardian or person over 18 years of age. No person who is under 12 years of age may operate an all-terrain vehicle which is an implement of husbandry on a roadway under the authorization provided under sub. (4) (d) 5 regardless of whether he or she is accompanied by a parent, guardian or person over 18 years of age. No person who is under 12 years of age may operate an all-terrain vehicle on a roadway under the authorization provided under sub. (4) (d) 6 regardless of whether he or she is accompanied by a parent, guardian or person over 18 years of age.

(b) *All-terrain vehicle safety certificate.* A person who is at least 12 years of age but under 16 years of age may not operate an all-terrain vehicle unless he or she holds a valid all-terrain vehicle safety certificate or is accompanied by a person over 18 years of age. A person who is at least 12 years of age but under 16 years of age may not operate an all-terrain vehicle on a roadway under the authorization provided under sub. (4) (d) 6 unless he or she holds a valid all-terrain vehicle safety certificate regardless if he or she is accompanied by a person over 18 years of age. A person who is at least 12 years of age but under 16 years of age may not operate an all-terrain vehicle which is an implement of husbandry on a roadway under the authorization provided under sub. (4) (d) 5 unless he or she holds a valid all-terrain vehicle safety certificate regardless if he or she is accompanied by a person over 18 years of age. A person who is at least 12 years of age but under 16 years of age who holds an all-terrain vehicle safety certificate shall carry it while operating an all-terrain vehicle and shall display it to a law enforcement officer on request. Persons enrolled in a safety certification

program approved by the department may operate an all-terrain vehicle in an area designated by the instructor.

(c) *Exceptions.* Paragraphs (a) and (b) do not apply to a person who uses an all-terrain vehicle exclusively on land under the management and control of the person's immediate family. Paragraphs (a) and (b) do not apply to a person at least 12 years of age but under 16 years of age who holds a valid certificate issued by another state or a province of Canada.

(d) *Safety certification program established.* The department shall establish or supervise the establishment of programs of instruction on all-terrain vehicle laws, including the intoxicated operation of an all-terrain vehicle law, regulations, safety and related subjects. The department may charge or authorize an instruction fee.

NOTE: Par. (d) is shown as amended by 1987 Wis. Act 399, eff. 3-1-89.

**(6) EQUIPMENT REQUIREMENTS.** (a) An all-terrain vehicle operated during hours of darkness or operated during daylight hours on any highway right-of-way is required to display a lighted headlamp and tail lamp.

(b) The headlamp on an all-terrain vehicle is required to display a white light of sufficient illuminating power to reveal any person, vehicle or substantial object at a distance of at least 200 feet ahead of the all-terrain vehicle.

(c) The tail lamp on an all-terrain vehicle is required to display a red light plainly visible during hours of darkness from a distance of 500 feet to the rear.

(d) Every all-terrain vehicle is required to be equipped with at least one brake operated either by hand or by foot.

(e) Every all-terrain vehicle is required to be equipped with a functioning muffler to prevent excessive or unusual noise.

**(7) ACCIDENTS.** (a) If an accident results in the death of any person or in the injury of any person which requires the treatment of the person by a physician, the operator of each all-terrain vehicle involved in the accident shall give notice of the accident to a conservation warden or local law enforcement officer as soon as possible and shall file a written report of the accident with the department on the form provided by it within 10 days after the accident.

(b) If the operator of an all-terrain vehicle is physically incapable of making the report required by this subsection and there was another witness to the accident capable of making the report, the witness may make the report.

**(8) ROUTES AND TRAILS.** (a) *Department authority.* The department shall encourage and supervise a system of all-terrain vehicle routes and trails. The department may establish standards and procedures for certifying the designation of all-terrain vehicle routes and trails.

(b) *Routes.* A town, village, city or county may designate highways as all-terrain vehicle routes. No state trunk highway or connecting highway may be designated as an all-terrain vehicle route unless the department of transportation approves the designation.

(c) *Trails.* A town, village, city, county or the department may designate corridors through land which it owns or controls, or for which it obtains leases, easements or permission, for use as all-terrain vehicle trails.

(d) *Restrictions.* The designating authority may specify effective periods for the use of all-terrain vehicle routes and trails and may restrict or prohibit the operation of all-terrain vehicles during certain periods of the year.

(e) *Signs.* The department, in cooperation with the department of transportation, shall establish uniform all-terrain vehicle route and trail signs and standards.

**(9) ADMINISTRATION; ENFORCEMENT; AIDS.** (a) *Administration and enforcement.* The department may utilize up to 50% of the moneys received from all-terrain vehicle registrations

for the purposes specified under s. 20.370 (3) (as), (4) (fu) and (iq) and (8) (ds) including costs associated with registration, enforcement, safety education, accident reports and analysis, law enforcement aids to counties, aids administration and other similar costs in administering and enforcing this section.

(b) *Trails and projects.* The department shall utilize at least 50% of the moneys received from all-terrain vehicle registrations for the purposes specified under s. 20.370 (1) (ms) and (4) (by) including all-terrain vehicle projects and related costs, including land and easement acquisitions, liability insurance, route and trail development and maintenance, all-terrain vehicle facilities such as toilets, parking areas, riding areas, shelters and improvements and for all-terrain vehicle project aids to towns, villages, cities, counties and federal agencies. Aid may be provided under this paragraph to towns, villages, cities and counties for up to 100% of the cost of placing signs developed under sub. (4z) (a) 2 which briefly explain the intoxicated operation of an all-terrain vehicle law along all-terrain vehicle trails. Aid may be provided for snowmobile routes and trails and off-the-road motorcycle trails and facilities if these routes, trails and facilities are open for use by all-terrain vehicles.

NOTE: Par. (b) is shown as affected by 1987 Wis. Act 399, eff. 3-1-89.

(10) **LIABILITY OF LANDOWNERS.** Section 895.52 applies to this section.

(11) **LOCAL ORDINANCES.** (a) Counties, towns, cities and villages may enact ordinances regulating all-terrain vehicles on all-terrain vehicle trails maintained by or on all-terrain vehicle routes designated by the county, city, town or village.

(am) Any county, town, city or village may enact an ordinance which is in strict conformity with this section and rules promulgated by the department under this section, if the ordinance encompasses all aspects encompassed by this section.

(b) If a county, town, city or village adopts an ordinance regulating all-terrain vehicles, its clerk shall immediately send a copy of the ordinance to the department and to the office of any law enforcement agency of the municipality or county having jurisdiction over any highway designated as an all-terrain vehicle route.

(12) **ENFORCEMENT.** (a) An officer of the state traffic patrol under s. 110.07 (1), inspector under s. 110.07 (3), conservation warden appointed by the department under s. 23.10, county sheriff or municipal peace officer has authority and jurisdiction to enforce this section and ordinances enacted in conformity with this section.

(b) No person operating an all-terrain vehicle may refuse to stop after being requested or signaled to do so by a law enforcement officer.

(13) **PENALTIES.** (a) *Generally.* Except as provided in pars. (b) to (e), any person who violates this section shall forfeit not more than \$250.

(b) *Penalties related to prohibited operation of an all-terrain vehicle; intoxicants; refusal.* 1. Except as provided under subds. 2 and 3, a person who violates sub. (4c) (a) 1 or 2 or (4p) (e) shall forfeit not less than \$150 nor more than \$300.

2. Except as provided under subd. 3, a person who violates sub. (4c) (a) 1 or 2 or (4p) (e) and who, within 5 years prior to the arrest for the current violation, was convicted previously under the intoxicated operation of an all-terrain vehicle law or the refusal law shall be fined not less than \$300 nor more than \$1,000 and shall be imprisoned not less than 5 days nor more than 6 months.

3. A person who violates sub. (4c) (a) 1 or 2 or (4p) (e) and who, within 5 years prior to the arrest for the current

violation, was convicted 2 or more times previously under the intoxicated operation of an all-terrain vehicle law or refusal law shall be fined not less than \$600 nor more than \$2,000 and shall be imprisoned not less than 30 days nor more than one year in the county jail.

4. A person who violates sub. (4c) (a) 3 or (4p) (e) and who has not attained the age of 19 shall forfeit not more than \$50.

(c) *Penalties related to causing injury; intoxicants.* A person who violates sub. (4c) (b) shall be fined not less than \$300 nor more than \$2,000 and may be imprisoned not less than 30 days nor more than one year in the county jail.

(cm) *Sentence of detention.* The legislature intends that courts use the sentencing option under s. 973.03 (4) whenever appropriate for persons subject to par. (b) 2 or 3 or (c). The use of this option can result in significant cost savings for the state and local governments.

(d) *Calculation of previous convictions.* In determining the number of previous convictions under par. (b) 2 and 3, convictions arising out of the same incident or occurrence shall be counted as one previous conviction.

(dm) *Reporting convictions to the department.* Whenever a person is convicted of a violation of the intoxicated operation of an all-terrain vehicle law, the clerk of the court in which the conviction occurred, or the justice, judge or magistrate of a court not having a clerk, shall forward to the department the record of such conviction. The record of conviction forwarded to the department shall state whether the offender was involved in an accident at the time of the offense.

(e) *Alcohol or controlled substances; assessment.* In addition to any other penalty or order, a person who violates sub. (4c) (a) or (b) or (4p) (e) or who violates s. 940.09 or 940.25 if the violation involves the operation of an all-terrain vehicle, shall be ordered by the court to submit to and comply with an assessment by an approved public treatment facility for an examination of the person's use of alcohol or controlled substances. The assessment order shall comply with s. 343.30 (1q) (c) 1. a to c. Intentional failure to comply with an assessment ordered under this paragraph constitutes contempt of court, punishable under ch. 785.

History: 1985 a. 29; 1987 a. 200, 353, 399, 403.

NOTE: Sub. (13) is shown as affected by 1987 Wis. Act 399, eff. 3-1-89. Act 399 renumbered (13) to (13) (a), amended it, and created pars. (b) to (e).

County forest roads open to vehicular traffic are highways which can be designated as routes under (8) (b). OAG 9-88.

**23.35 Olympic ice rink.** (1) The department has sole responsibility for the Olympic ice rink, the land inside the rink and all land and facilities directly related to its operation including mechanical equipment, housing for mechanical equipment, piping and electrical lines. No person may use the Olympic ice rink or land or facilities related to its operation without the approval of the department. The department may lease the Olympic ice rink or land or facilities related to its operation for terms not exceeding 30 years, in accordance with the procedures used for leasing state parks under s. 26.08 (1).

(2) The state fair park board shall make the youth building adjacent to the rink available to the department for use during the skating season. The state fair park board is responsible for grounds maintenance, including snow plowing.

(3) The department shall reimburse the state fair park board for expenses incurred directly as a result of the cooperative efforts required by sub. (2). The state fair park board and the department shall execute a written agreement specifying the details of the cooperation required by this section.

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(4) Operating costs of the Olympic ice rink shall be paid from the appropriation under s. 20.370 (1) (ea), (ed) and (mu).

**History:** 1975 c. 224 s. 105d; 1977 c. 29; 1979 c. 34 s. 2102 (39) (a); 1981 c. 20; 1987 a. 305.

**23.37 Corporations operating ice rinks; financial information. (1)** In this section, "authority" has the meaning given under s. 19.32 (1).

(2) An authority which is a nonprofit corporation operating an ice rink which is owned by the state may withhold from examination and copying under s. 19.35 (1) any of the following:

(a) Information relating to the identification of a person other than an authority who provides, offers to provide or is solicited to provide financial assistance to the corporation.

(b) Information relating to an agreement with a person other than an authority to provide financial assistance to the corporation.

(c) Information relating to a will, bequest or trust made by a person other than an authority for the purpose of providing financial assistance to the corporation.

(d) Information used or intended to be used in connection with the solicitation of gifts or grants to the corporation from persons other than authorities.

**History:** 1987 a. 305.

**23.40 Environmental impact statement. (1) DETERMINATION IF ENVIRONMENTAL IMPACT STATEMENT IS REQUIRED.** Any person who files an application for a permit, license or approval granted or issued by the department, shall submit with the application a statement of the estimated cost of the project or proposed action for which the person seeks a permit, license or approval. The department may seek such further information as it deems necessary to determine whether it must prepare an environmental impact statement under s. 1.11.

(2) **NOTIFICATION; ESTIMATE OF FEE.** (a) If the department is required to prepare an environmental impact statement, it shall notify the person by certified mail.

(b) The department shall indicate the estimated environmental impact statement fee.

(3) **ENVIRONMENTAL IMPACT STATEMENT FEE.** (a) The department shall charge an environmental impact statement fee if it is required to prepare an environmental impact statement or if it enters into a preapplication service agreement.

(b) The amount of the environmental impact statement fee shall equal the full cost of the preparation of the environmental impact statement and the full cost of any preapplication services if the department enters into a preapplication service agreement. These costs shall include the cost of authorized consultant services and the costs of printing and postage.

(c) The department shall determine the manner in which the environmental impact statement fee is to be paid. The department may require periodic payments if preapplication services are provided.

(d) The department shall deposit any environmental impact statement fee in the general fund and shall designate clearly the amount of the fee related to the cost of authorized environmental consultant services and the amount of the fee related to the cost of printing and postage.

(4) **PREAPPLICATION SERVICE AGREEMENT.** The department may enter into an agreement to provide preapplication services necessary to evaluate the environmental impact of a project or proposed activity, monitor major developments and expedite the anticipated preparation of an environmental impact statement if the project or proposed activity is large, complex or environmentally sensitive and if the person plan-

ning the project or proposed activity agrees in writing even though that person has not filed an application for any permit, license or approval granted or issued by the department and no environmental impact statement has been prepared. Preapplication services include preliminary environmental reviews, field studies and investigations, laboratory studies and investigations and advisory services.

(5) **AUTHORIZED ENVIRONMENTAL CONSULTANT SERVICES.** Subject to the requirements of s. 16.87 (2), the department may enter into contracts for environmental consultant services to assist in the preparation of an environmental impact statement or to provide preapplication services. Environmental consultant services include services provided by environmental scientists, engineers and experts.

(6) **EXEMPTION FROM FEE FOR MUNICIPALITIES.** Subsections (2) (b) and (3) do not apply with respect to municipalities, as defined under s. 345.05 (1) (c).

**History:** 1975 c. 39, 199; 1977 c. 29, 418; 1979 c. 221; 1983 a. 189 s. 329 (31); 1987 a. 27.

**23.49 Credit card use charges.** The department shall certify to the state treasurer the amount of charges associated with the use of credit cards and assessed to the department on deposits accepted under s. 23.66 (1m) by conservation wardens, and the state treasurer shall pay the charges from moneys received under s. 59.20 (8) and (8m) and reserved for payment of the charges under ss. 14.58 (21) and 20.585 (1) (jm).

**History:** 1985 a. 29.

**23.50 Procedure in forfeiture actions. (1)** The procedure in ss. 23.50 to 23.85 applies to all actions in circuit court to recover forfeitures, penalty assessments, jail assessments, applicable weapons assessments, applicable natural resources assessments and applicable natural resources restitution payments for violations of ss. 134.60 and 167.31 (2), this chapter and chs. 26 to 31 and 350, and any administrative rules promulgated thereunder and violations of local ordinances enacted by any local authority in accordance with s. 23.33 (11) (am) or 30.77.

(2) All actions to recover these forfeitures, penalty assessments, jail assessments, applicable weapons assessments, applicable natural resources assessments and applicable natural resources restitution payments are civil actions in the name of the state of Wisconsin, shall be heard in the circuit court for the county where the offense occurred, and shall be recovered under the procedure set forth in ss. 23.50 to 23.85.

(3) All actions in municipal court to recover forfeitures, penalty assessments and jail assessments for violations of local ordinances enacted by any local authority in accordance with s. 23.33 (11) (am) or 30.77 shall utilize the procedure in ch. 800. The actions shall be brought before the municipal court having jurisdiction. Provisions relating to citations, arrests, questioning, releases, searches, deposits and stipulations of no contest in ss. 23.51 (1), (3) and (8), 23.53, 23.54, 23.56 to 23.64, 23.66 and 23.67 shall apply to violations of such ordinances.

(4) Where a fine or imprisonment, or both, is imposed by a statute enumerated in sub. (1), the procedure in ch. 968 shall apply.

**History:** 1975 c. 365; 1977 c. 29, 305; 1977 c. 449 ss. 44, 497; 1979 c. 32 s. 92 (17); 1979 c. 34 ss. 703b, 2102 (39) (f); 1981 c. 390; 1985 a. 36; 1987 a. 27; 1987 a. 200 s. 4.

**23.51 Words and phrases defined.** In ss. 23.50 to 23.85 the following words and phrases have the designated meanings unless a different meaning is expressly provided or the context clearly indicates a different meaning:

(1) "Citation" means a pleading of essential facts and applicable law coupled with a demand for judgment, which notifies the person cited of a violation of a statute or rule enumerated in s. 23.50 (1) or of a violation of a local ordinance, and requests the person to appear in court. Part of the citation is a complaint.

(2) "Complaint" means the pleading of essential facts and applicable law coupled with a demand for judgment.

(3) "Enforcing officer" means peace officer as defined by s. 939.22 (22), or a person who has authority to act pursuant to a specific statute.

(3m) "Jail assessment" means the assessment imposed by s. 53.46 (1).

(4) "Natural resources assessment" means the assessment imposed under s. 29.997.

(5) "Natural resources restitution payment" means the payment imposed under s. 29.998.

(6) "Penalty assessment" means the penalty assessment imposed by s. 165.87.

(7) "Summons" means an order to appear in court at a particular time and place. It accompanies the delivery of a complaint but not a citation.

(8) "Violation" means conduct which is prohibited by state law or municipal ordinance and punishable by a forfeiture, a penalty assessment and a jail assessment.

(9) "Weapons assessment" means the assessment imposed under s. 167.31 (5).

**History:** 1975 c. 365; 1977 c. 29; 1979 c. 34; 1985 a. 36; 1985 a. 332 s. 251 (7); 1987 a. 27.

**23.52 Two forms of action.** Actions under this chapter may be commenced by a citation, or by a complaint and summons.

**History:** 1975 c. 365.

**23.53 Use of citation. (1)** The citation created under this section shall, in all actions to recover forfeitures, penalty assessments, jail assessments, applicable weapons assessments, applicable natural resources assessments and applicable natural resources restitution payments for violations of those statutes enumerated in s. 23.50 (1) and any administrative rules promulgated thereunder, be used by any law enforcement officer with authority to enforce those laws, except that the uniform traffic citation created under s. 345.11 may be used by a traffic officer employed under s. 110.07 in enforcing s. 167.31. In accordance with s. 345.11 (1m), the citation shall not be used for violations of ch. 350 relating to highway use. The citation may be used for violations of local ordinances enacted by any local authority in accordance with s. 23.33 (11) (am) or 30.77.

(2) Notwithstanding any other provision of the statutes, the use of the citation by any enforcing officer in connection with a violation is adequate process to give the appropriate court jurisdiction over the person upon the filing with such court of the citation.

**History:** 1975 c. 365; 1977 c. 29; 1979 c. 34; 1985 a. 36; 1987 a. 27; 1987 a. 200 s. 4.

After issuing citation to Indian fisherman, state must prove at pre-trial hearing that enforcement against Indian fishermen is reasonable and necessary. *State v. Peterson*, 98 W (2d) 487, 297 NW (2d) 52 (Ct. App. 1980).

**23.54 Citation form. (1)** The citation shall contain a complaint, a case history and a report of court action on the case.

(2) It must appear on the face of the citation that there is probable cause to believe that a violation has been committed and that the defendant has committed that violation.

(3) The citation form shall provide for the following:

(a) The name, address, social security number and date of birth of the defendant.

(b) The department permit or license number of the defendant, if applicable.

(c) The name and department of the issuing officer.

(d) The violation alleged, the time and place of occurrence, a statement that the defendant committed the violation, the statute, administrative rule or ordinance violated and a designation of the violation in language which can be readily understood by a person making a reasonable effort to do so.

(e) The maximum forfeiture, penalty assessment, jail assessment, applicable weapons assessment, applicable natural resources assessment and applicable natural resources restitution payment for which the defendant might be found liable.

(f) A date, time and place for the court appearance, and a notice to appear.

(g) Provisions for deposit and stipulation in lieu of a court appearance.

(h) Notice that the defendant may make a deposit and thereby obtain release if an arrest has been made.

(i) Notice that if the defendant makes a deposit and fails to appear in court at the time fixed in the citation, the defendant will be deemed to have tendered a plea of no contest and submitted to a forfeiture, a penalty assessment, a jail assessment, any applicable weapons assessment, any applicable natural resources assessment and any applicable natural resources restitution payment plus costs, including any applicable fees prescribed in ch. 814, not to exceed the amount of the deposit. The notice shall also state that the court may decide to summon the defendant rather than accept the deposit and plea.

(j) Notice that if the defendant makes a deposit and signs the stipulation, the defendant will be deemed to have tendered a plea of no contest and submitted to a forfeiture, a penalty assessment, a jail assessment, any applicable weapons assessment, any applicable natural resources assessment and any applicable natural resources restitution payment plus costs, including any applicable fees prescribed in ch. 814, not to exceed the amount of the deposit. The notice shall also state that the court may decide to summon the defendant rather than accept the deposit and stipulation, and that the defendant may, at any time prior to or at the time of the court appearance date, move the court for relief from the effects of the stipulation.

(k) Notice that if the defendant does not make a deposit and fails to appear in court at the time fixed in the citation, the court may issue a summons or an arrest warrant.

(l) Any other pertinent information.

**History:** 1975 c. 365; 1977 c. 29; 1979 c. 34; 1981 c. 317; 1985 a. 36; 1987 a. 27, 399.

**23.55 Complaint and summons forms. (1) COMPLAINT.** It must appear on the face of the complaint that there is probable cause to believe that a violation has been committed and that the defendant has committed it. The complaint shall accompany the summons and shall contain the information set forth in s. 23.54 (3) (a) to (d) and:

(a) The title of the cause, specifying the name of the court and county in which the action is brought and the names and addresses of the parties to the action.

(b) A plain and concise statement of the violation identifying the event or occurrence from which the violation arose and showing that the plaintiff is entitled to relief, the statute upon which the cause of action is based and a demand for a forfeiture, the amount of which shall not exceed the maximum set by the statute involved, a penalty assessment, a jail assessment, any applicable weapons assessment, any applicable natural resources assessment, any applicable natural

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resources restitution payment and such other relief that is sought by the plaintiff.

(c) In an action by or against a corporation the complaint must aver its corporate existence and whether it is a domestic or foreign corporation.

**(2) SUMMONS.** The summons shall contain:

(a) The title of the cause, specifying the name of the court and county in which the action is brought and the names of all parties to the action.

(b) A direction summoning and requiring the defendant to appear in a specified court on a particular date not less than 10 days following service of the summons to answer the accompanying complaint.

(c) A notice that in case of failure to appear, judgment may be rendered against the defendant according to the demand of the complaint, or the court may issue a warrant for the defendant's arrest.

**History:** 1975 c. 365; 1977 c. 29; 1979 c. 34; 1985 a. 36; 1987 a. 27.

**23.56 Arrest with a warrant. (1)** A person may be arrested for a violation of those statutes enumerated in s. 23.50 (1), any administrative rules promulgated thereunder, or any local ordinances enacted by any local authority in accordance with s. 23.33 (11) (am) or 30.77, after a warrant that substantially complies with s. 968.04 has been issued. Except as provided in sub. (2), the person arrested shall be brought without unreasonable delay before a court having jurisdiction to try the action.

**(2)** In actions to collect forfeitures, penalty assessments, jail assessments, applicable weapons assessments, applicable natural resources assessments and applicable natural resources restitution payments, the judge who issues a warrant under sub. (1) may endorse upon the warrant the amount of the deposit. If no endorsement is made, the deposit schedule under s. 23.66 shall apply, unless the court directs that the person be brought before the court.

**History:** 1975 c. 365; 1977 c. 29; 1979 c. 34; 1985 a. 36; 1987 a. 27; 1987 a. 200 s. 4.

**23.57 Arrest without a warrant. (1)** A person may be arrested without a warrant when the arresting officer has probable cause to believe that the person is committing or has committed a violation of those statutes enumerated in s. 23.50 (1), any administrative rules promulgated thereunder, or any local ordinances enacted by any local authority in accordance with s. 23.33 (11) (am) or 30.77; and:

(a) The person refuses to accept a citation or to make a deposit under s. 23.66; or

(b) The person refuses to identify himself or herself satisfactorily or the officer has reasonable grounds to believe that the person is supplying false identification; or

(c) Arrest is necessary to prevent imminent bodily harm to the enforcing officer or to another.

**(2)** In all cases the officer shall bring the person arrested before a judge without unnecessary delay.

**History:** 1975 c. 365; 1987 a. 200 s. 4.

**23.58 Temporary questioning without arrest.** After having identified himself or herself as an enforcing officer, an enforcing officer may stop a person in a public place for a reasonable period of time when the officer reasonably suspects that such person is committing, is about to commit or has committed a violation of those statutes enumerated in s. 23.50 (1), any administrative rules promulgated thereunder, or any local ordinances enacted by any local authority in accordance with s. 23.33 (11) (am) or 30.77. Such a stop may be made only where the enforcing officer has proper authority to make an arrest for such a violation. The officer may demand the name and address of the person and an explanation of the

person's conduct. Such detention and temporary questioning shall be conducted in the vicinity where the person was stopped.

**History:** 1975 c. 365; 1987 a. 200 s. 4.

**23.59 Search during temporary questioning.** When an enforcing officer has stopped a person for temporary questioning pursuant to s. 23.58 and reasonably suspects that he or she or another is in danger of physical injury, the officer may search such person for weapons or any instrument or article or substance readily capable of causing physical injury and of a sort not ordinarily carried in public places by law abiding persons. If the officer finds such a weapon or instrument, or any other property possession of which he or she reasonably believes may constitute the commission of a violation of those statutes enumerated in s. 23.50 (1) or which may constitute a threat to his or her safety, the officer may take it and keep it until the completion of the questioning, at which time he or she shall either return it, if lawfully possessed, or arrest the person so questioned for possession of the weapon, instrument, article or substance, if he or she has the authority to do so, or detain the person until a proper arrest can be made by appropriate authorities. Searches during temporary questioning as provided under this section shall only be conducted by those enforcing officers who have the authority to make arrests for crimes.

**History:** 1975 c. 365.

**23.60 Search incident to the issuance of a lawfully issued citation.** If the enforcing officer has stopped a person to issue a citation pursuant to s. 23.62 and reasonably suspects that he or she or another is in danger of physical injury, the officer may search such person for weapons or any instrument or article or substance readily capable of causing physical injury and of a sort not ordinarily carried in public places by law abiding persons. If the officer finds such a weapon or instrument, or any other property possession of which he or she reasonably believes may constitute the commission of a violation of those statutes enumerated in s. 23.50 (1), or which may constitute a threat to his or her safety, the officer may take it and keep it until he or she has completed issuing the citation, at which time the officer shall either return it, if lawfully possessed, or arrest the person for possession of the weapon, instrument, article or substance, if he or she has the authority to do so, or detain the person until a proper arrest can be made by appropriate authorities.

**History:** 1975 c. 365.

**23.61 Search and seizure; when authorized.** A search of a person, object or place may be made and things may be seized when the search is made:

(1) Incident to a lawful arrest;

(2) With consent;

(3) Pursuant to a valid search warrant;

(4) With the authority and within the scope of a right of lawful inspection;

(5) Incident to the issuance of a lawfully issued citation under s. 23.60;

(6) During an authorized temporary questioning under s. 23.59; or

(7) As otherwise authorized by law.

**History:** 1975 c. 365.

See note to art. I, sec. 11, citing *State v. Erickson*, 101 W (2d) 224, 303 NW (2d) 850 (Ct. App. 1981).

**23.62 Issuance of a citation.** Whenever an enforcing officer has probable cause to believe that a person subject to his or her authority is committing or has committed a violation of those statutes enumerated in s. 23.50 (1), any administrative

rules promulgated thereunder, or any local ordinances enacted by any local authority in accordance with s. 23.33 (1) (am) or 30.77, the officer may proceed in the following manner:

(1) Issue a citation to the defendant in the form specified in s. 23.54, a copy of which shall be filed with the clerk of courts in the county where the violation was committed or with the office of the municipal judge in the case of an ordinance violation;

(2) Proceed, in proper cases, under s. 23.56 or 23.57; or

(3) Bring the information to the district attorney so that he or she may proceed pursuant to s. 23.65.

**History:** 1975 c. 365; 1979 c. 175; 1987 a. 200 s. 4.

**23.63 Officer's action after issuance of citation.** After the enforcing officer has issued a citation, the officer:

(1) May release the defendant;

(2) Shall release the defendant when he or she:

(a) Makes a deposit under s. 23.66; or

(b) Makes a deposit and stipulation of no contest under s. 23.67.

(3) Shall proceed under s. 23.57, if the defendant is not released.

**History:** 1975 c. 365.

**23.64 Deposit after release.** A person who is released under s. 23.63 shall be permitted to make a deposit any time prior to the court appearance date. The deposit shall be made with the clerk of the court of the county in which the violation occurred or the office of the municipal court having jurisdiction.

**History:** 1975 c. 365.

**23.65 Issuance of complaint and summons.** (1) When it appears to the district attorney that a violation of s. 134.60, this chapter or ch. 26, 27, 28, 29, 30, 31 or 350, or any administrative rule promulgated pursuant thereto, has been committed the district attorney may proceed by complaint and summons.

(2) The complaint shall be prepared in the form specified in s. 23.55. After a complaint is prepared, it shall be filed with the judge and a summons shall be issued or the complaint shall be dismissed pursuant to s. 968.03. Such filing commences the action.

(3) If a district attorney refuses or is unavailable to issue a complaint, a circuit judge, after conducting a hearing, may permit the filing of a complaint if he or she finds there is probable cause to believe that the person charged has committed a violation of this chapter or ch. 26, 27, 28, 29, 30, 31 or 350. The district attorney shall be informed of the hearing and may attend.

**History:** 1975 c. 365; 1979 c. 175; 1981 c. 390.

See note to 968.02, citing *Unnamed Petitioners v. Connors*, 136 W (2d) 118, 401 NW (2d) 782 (1987).

**23.66 Deposit.** (1) If under the procedure of s. 23.62 a person is cited or arrested, the person may make a deposit as follows:

(a) By mailing the amount of money the enforcing officer directs and a copy of the citation to the office of the clerk of courts in the county where the offense allegedly occurred or to the office of the municipal court having jurisdiction, or by going to the office of the clerk of courts or municipal court, the office of the sheriff, or any city, village or town police headquarters; or

(b) If the enforcing officer permits, by placing the amount of money the enforcing officer directs in a serially numbered envelope addressed to the clerk of courts in the county where the offense allegedly occurred or to the office of the municipal

court having jurisdiction, sealing the envelope, signing a statement on the back of the envelope stating the amount of money enclosed and returning the envelope to the enforcing officer. The officer shall deliver the envelope and a copy of the citation to the office of the clerk of courts in the county where the offense allegedly occurred or to the office of the municipal court having jurisdiction. The officer shall note on the face of the citation the serial number of the envelope used in making a deposit under this paragraph.

(1m) The enforcing officer or the person receiving the deposit may allow the alleged violator to submit a check, share draft or other draft for the amount of the deposit or make the deposit by use of a credit card.

(2) The person receiving the deposit shall prepare a receipt in triplicate showing the purpose for which the deposit is made, stating that the defendant may inquire at the office of the clerk of court or municipal court regarding the disposition of the deposit, and notifying the defendant that if he or she fails to appear in court at the time fixed in the citation he or she will be deemed to have tendered a plea of no contest and submitted to a forfeiture, a penalty assessment, a jail assessment, any applicable weapons assessment, any applicable natural resources assessment and any applicable natural resources restitution payment plus costs, including any applicable fees prescribed in ch. 814, not to exceed the amount of the deposit which the court may accept. The original of the receipt shall be delivered to the defendant in person or by mail. If the defendant pays by check, share draft or other draft, the check, share draft or other draft or a microfilm copy of the check, share draft or other draft shall be considered a receipt. If the defendant makes the deposit by use of a credit card, the credit charge receipt shall be considered a receipt.

(3) If the court does not accept the deposit as a forfeiture for the offense, a summons shall be issued. If the defendant fails to respond to the summons, an arrest warrant shall be issued.

(4) The basic amount of the deposit shall be determined in accordance with a deposit schedule which the judicial conference shall establish. Annually, the judicial conference shall review and may revise the schedule. In addition to the basic amount determined according to the schedule, the deposit shall include court costs, including any applicable fees prescribed in ch. 814, any applicable penalty assessment, any applicable jail assessment, any applicable weapons assessment, any applicable natural resources assessment and any applicable natural resources restitution payment.

**History:** 1975 c. 365; 1977 c. 29, 449; 1979 c. 34; 1981 c. 317, 391; 1983 a. 368, 456; 1985 a. 29, 36, 332; 1987 a. 27, 399.

**23.67 Deposit and stipulation of no contest.** (1) If pursuant to the procedure of s. 23.62 a person is cited or arrested, such person may make a deposit and stipulation of no contest, and submit them in the same manner as the deposit in s. 23.66.

(2) The deposit and stipulation of no contest may be made at any time prior to the court appearance date. By signing the stipulation, the defendant is deemed to have tendered a plea of no contest and submitted to a forfeiture, a penalty assessment, a jail assessment, any applicable weapons assessment, any applicable natural resources assessment and any applicable natural resources restitution payment plus costs, including any applicable fees prescribed in ch. 814, not to exceed the amount of the deposit.

(3) The person receiving the deposit and stipulation of no contest shall prepare a receipt in triplicate showing the purpose for which the deposit is made, stating that the defendant may inquire at the office of the clerk of court or municipal court regarding the disposition of the deposit, and

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notifying the defendant that if the stipulation of no contest is accepted by the court the defendant will be deemed to have submitted to a forfeiture, a penalty assessment, a jail assessment, any applicable weapons assessment, any applicable natural resources assessment and any applicable natural resources restitution payment plus costs, including any applicable fees prescribed in ch. 814, not to exceed the amount of the deposit. Delivery of the receipt shall be made in the same manner as in s. 23.66.

(4) If the court does not accept the deposit and stipulation of no contest, a summons shall be issued. If the defendant fails to respond to the summons, an arrest warrant shall be issued.

(5) The defendant may, within 10 days after signing the stipulation or at the time of the court appearance date, move the court for relief from the effects of the stipulation, pursuant to s. 23.75 (3) (c).

**History:** 1975 c. 365; 1977 c. 29; 1979 c. 34; 1981 c. 317; 1985 a. 36; 1987 a. 27, 399.

**23.68 Pleading.** The citation or complaint issued pursuant to s. 23.62 or 23.65 may serve as the initial pleading and, notwithstanding any other provisions of the statutes, shall be deemed adequate process to give the appropriate court jurisdiction over the person upon the filing of the citation or complaint with such court.

**History:** 1975 c. 365.

**23.69 Motions.** Any motion which is capable of determination without the trial of the general issue shall be made before trial.

**History:** 1975 c. 365.

**23.70 Arraignment; plea. (1)** If the defendant appears in response to a citation or a summons, or is arrested and brought before a court with jurisdiction to try the case, the defendant shall be informed that he or she is entitled to a jury trial and then asked whether he or she wishes to plead. If the defendant wishes to plead, he or she may plead guilty, not guilty or no contest.

(2) If the defendant pleads guilty or no contest, the court may accept the plea, find the defendant guilty and proceed under s. 23.78.

**History:** 1975 c. 365.

**23.71 Not guilty plea; immediate trial.** If the defendant pleads not guilty and states that he or she waives the right to jury trial and wishes an immediate trial, the case may be tried forthwith if the state consents.

**History:** 1975 c. 365.

**23.72 Not guilty plea.** If the defendant pleads not guilty the court shall set a date for trial or advise the defendant that he or she will be notified of the date set for trial. The defendant shall be released upon payment of a deposit as set forth in s. 23.66, or the court may release the defendant on his or her own recognizance. If a defendant fails to appear at the date set under this section, the court may issue a warrant under ch. 968 and, if the defendant has posted a deposit for appearance at that date, the court may order the deposit forfeited.

**History:** 1975 c. 365.

**23.73 Discovery.** Neither party is entitled to pretrial discovery except that if the defendant moves within 10 days after the alleged violation and shows cause therefor, the court may order that the defendant be allowed to inspect and test under such conditions as the court prescribes, any devices used by the plaintiff to determine whether a violation has been

committed and may inspect the reports of experts relating to those devices.

**History:** 1975 c. 365.

**23.74 Mode of trial. (1)** The defendant shall be informed of the right to a jury trial in circuit court on payment of fees required by s. 23.77 (1).

(2) If both parties, in a court of record, request a trial by the court or if neither demands a trial by jury, the right to a trial by jury is waived.

**History:** 1975 c. 365; 1977 c. 305; 1977 c. 449 s. 497.

**23.75 Proceedings in court. (1)** If the defendant appears in court at the time directed in the citation or summons, the case shall be tried as provided by law.

(2) If the defendant fails to appear in court at the time fixed in the complaint and summons, judgment may be rendered against the defendant according to the demand of the complaint, or the court may issue a warrant for the defendant's arrest.

(3) If the defendant fails to appear in court at the time fixed in the citation or by subsequent postponement, the following procedure shall apply:

(a) If the defendant has not made a deposit, the court may issue a summons or an arrest warrant.

(b) If the defendant has made a deposit, the citation may serve as the initial pleading and the defendant shall be deemed to have tendered a plea of no contest and submitted to a forfeiture, a penalty assessment, a jail assessment, any applicable weapons assessment, any applicable natural resources assessment and any applicable natural resources restitution payment plus any applicable fees prescribed in ch. 814, not exceeding the amount of the deposit. The court may either accept the plea of no contest and enter judgment accordingly, or reject the plea and issue a summons. If the defendant fails to appear in response to the summons, the court shall issue an arrest warrant. If the court accepts the plea of no contest, the defendant may move within 90 days after the date set for appearance to withdraw the plea of no contest, open the judgment and enter a plea of not guilty if the defendant shows to the satisfaction of the court that failure to appear was due to mistake, inadvertence, surprise or excusable neglect. If a party is relieved from the plea of no contest, the court or judge may order a written complaint to be filed and set the matter for trial. After trial the costs and fees shall be taxed as provided by law. If on reopening the defendant is found not guilty, the court shall delete the record of conviction and shall order the defendant's deposit returned.

(c) If the defendant has made a deposit and stipulation of no contest, the citation may serve as the initial pleading and the defendant shall be deemed to have tendered a plea of no contest and submitted to a forfeiture, a penalty assessment, a jail assessment, any applicable weapons assessment, any applicable natural resources assessment and any applicable natural resources restitution payment plus any applicable fees prescribed in ch. 814, not exceeding the amount of the deposit. The court may either accept the plea of no contest and enter judgment accordingly, or reject the plea and issue a summons. If the defendant fails to appear in response to the summons, the court shall issue an arrest warrant. After signing a stipulation of no contest, the defendant may, at any time prior to or at the time of the court appearance date, move the court for relief from the effect of the stipulation. The court may act on the motion, with or without notice, for cause shown by affidavit and upon just terms, and relieve the defendant from the stipulation and the effects thereof. If the defendant is relieved from the stipulation of no contest, the court may order a citation or complaint to be filed and set the

matter for trial. After trial the costs and fees shall be taxed as provided by law.

(4) If a citation or summons is issued to a defendant and he or she is unable to appear in court on the day specified, the defendant may enter a plea of not guilty by mailing to the judge at the address indicated on the citation or summons a letter stating such plea. The letter must show the defendant's return address. Such letter may include a request for trial during normal daytime business hours. Upon receipt of the letter, the judge shall reply by letter to the defendant's address setting forth a time and place for trial, such time to be during normal business hours if so requested. The date of the trial shall be at least 10 days from the mailing by the judge. Nothing in this subsection forbids the setting of the trial at any time convenient to all parties concerned.

(5) Costs shall not be taxed against the plaintiff.

**History:** 1975 c. 365; 1977 c. 29; 1979 c. 34; 1981 c. 317; 1985 a. 36; 1987 a. 27, 399.

**23.76 Burden of proof.** In all actions under this chapter, the state must convince the trier of fact to a reasonable certainty of every element of the offense by evidence that is clear, satisfactory and convincing.

**History:** 1975 c. 365.

**23.77 Jury trial. (1)** If in circuit court either party files a written demand for a jury trial within 20 days after the court appearance date and immediately pays the fee prescribed in s. 814.61 (4), the court shall place the case on the jury calendar. The number of jurors shall be determined under s. 756.096 (3) (b). If no party demands a jury of 12, the right to trial by jury of 12 is waived forever.

(2) If there is a demand for a trial by a jury of 12, the procedure applicable to jury trials in civil actions shall apply.

(3) (a) If there is a demand for a trial by jury of 6, the provisions of s. 345.43 (3) (a) and (b) are applicable.

(b) Jurors may all be residents of a municipality in which the court is held unless the defendant demands a countywide jury. For this purpose the municipal jury list of s. 345.43 (3) (c) shall be used.

**History:** 1975 c. 365; 1977 c. 305, 318, 447; 1977 c. 449 s. 497; 1979 c. 175 s. 53; 1981 c. 317.

**23.78 Verdict.** A verdict is valid if agreed to by five-sixths of the jury. If a verdict relates to more than one count, it shall be valid as to any count if any five-sixths of the jury agree thereto. The form of the verdict shall be guilty or not guilty. The amount of the forfeiture shall be stated by the court after a finding of guilty.

**History:** 1975 c. 365.

**23.79 Judgment. (1)** If the defendant is found guilty, the court may enter judgment against the defendant for a monetary amount not to exceed the maximum forfeiture provided by the statute for the violation, the penalty assessment, the jail assessment, any applicable weapons assessment, any applicable natural resources assessment, any applicable natural resources restitution payment and for costs.

(2) The payment of any judgment may be suspended or deferred for not more than 90 days in the discretion of the court. In cases where a deposit has been made, any forfeitures, penalty assessments, jail assessments, weapons assessments, natural resources assessments, natural resources restitution payments and costs shall be taken out of the deposit and the balance, if any, returned to the defendant.

(3) In addition to any 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 of a

nuisance, restoration of a natural resource, or other appropriate action designed to eliminate or minimize any environmental damage caused by the defendant.

(4) The court may, where provided by law, revoke or suspend any or all privileges and licenses.

(5) All civil remedies are available in order to enforce the judgment of the court, including the power of contempt under ch. 785.

**History:** 1975 c. 365; 1977 c. 29; 1979 c. 32 s. 92 (13); 1979 c. 34; 1985 a. 36; 1987 a. 27.

**23.80 Judgment against a corporation or municipality. (1)** If a corporation or municipality fails to appear within the time required by the citation or summons, the default of such corporation or municipality may be recorded and the charge against it taken as true and judgment shall be rendered accordingly.

(2) Upon default of the defendant corporation or municipality, or upon conviction, judgment for the amount of the forfeiture, the penalty assessment, the jail assessment, any applicable weapons assessment, any applicable natural resources assessment and any applicable natural resources restitution payment shall be entered.

**History:** 1975 c. 365; 1977 c. 29; 1979 c. 34; 1985 a. 36; 1987 a. 27.

**23.81 Effect of plea of no contest.** Forfeiture of deposit under s. 23.75 (3) (b), an accepted plea of no contest under s. 23.70, or a stipulation of no contest under s. 23.75 (3) (c) to a charge of violation of a natural resources law shall not be admissible in evidence as an admission against interest in any action or proceeding arising out of the same occurrence.

**History:** 1975 c. 365.

**23.82 Fees.** Fees in forfeiture actions under this chapter are prescribed in s. 814.63.

**History:** 1975 c. 365; 1977 c. 305, 318, 449; 1981 c. 317.

**23.83 Appeal. (1) JURISDICTION ON APPEAL.** Appeal may be taken by either party. On appeal from the circuit court, the appeal is to the court of appeals.

(2) **STAY OF EXECUTION.** The amount of undertaking required to stay execution on appeal shall not exceed the amount of the maximum forfeiture, applicable weapons assessment, applicable natural resources assessment and applicable natural resources restitution payment plus court costs.

(3) **PROCEDURE ON APPEAL.** An appeal to the court of appeals shall be in accordance with chs. 808 and 809.

**History:** 1975 c. 365, 421; 1977 c. 187, 305, 449; 1979 c. 34; 1985 a. 36.

**23.84 Forfeitures and assessments collected; to whom paid.** Except for actions in municipal court, all moneys collected in favor of the state or a municipality for forfeiture, penalty assessment, jail assessment, applicable weapons assessment, applicable natural resources assessment and applicable natural resources restitution payment shall be paid by the officer who collects the same to the appropriate municipal or county treasurer, within 20 days after its receipt by the officer, except that all jail assessments shall be paid to the county treasurer. In case of any failure in the payment, the municipal or county treasurer may collect the payment from the officer by an action in the treasurer's name of office and upon the official bond of the officer, with interest at the rate of 12% per year from the time when it should have been paid.

**History:** 1975 c. 365; 1977 c. 29, 305; 1979 c. 34; 1979 c. 110 s. 60 (13); 1985 a. 36; 1987 a. 27.

**23.85 Statement to county board; payment to state.** Every county treasurer shall, on the first day of the annual meeting of the county board of supervisors, submit to it a verified

statement of all forfeitures, penalty assessments, jail assessments, weapons assessments, natural resources assessments and natural resources restitution payments money received during the year next preceding. The county clerk shall deduct all expenses incurred by the county in recovering those forfeitures, penalty assessments, weapons assessments, natural resources assessments and natural resources restitution payments from the aggregate amount so received, and shall immediately certify to the county treasurer the amount of clear proceeds of those forfeitures, penalty assessments, weapons assessments, natural resources assessments and natural resources restitution payments, so ascertained, who shall pay the proceeds to the state treasurer as provided in s. 59.20. Jail assessments shall be treated separately as provided in s. 53.46.

**History:** 1975 c. 365; 1977 c. 29; 1979 c. 34; 1985 a. 36; 1987 a. 27.

**23.90 Place of trial. (1)** Civil actions shall be tried in the county where the offense was committed, except as otherwise provided.

**(2)** Where 2 or more acts are requisite to the commission of any offense, the trial may be in any county in which any of such acts occurred.

**(3)** Where an offense is committed on or within one-fourth of a mile of the boundary of 2 or more counties, the defendant may be tried in any of such counties.

**(4)** If an offense is commenced outside the state and is consummated within the state, the defendant may be tried in the county where the offense was consummated.

**(5)** If an offense is committed on boundary waters at a place where 2 or more counties have common jurisdiction under s. 2.03 or 2.04 or under any other law, the prosecution may be in either county. The county whose process against the offender is first served shall be conclusively presumed to be the county in which the offense was committed.

**History:** 1975 c. 365.

**23.99 Parties to a violation. (1)** Whoever is concerned in the commission of a violation of this chapter for which a forfeiture is imposed is a principal and may be charged with and convicted of the violation although he or she did not directly commit it and although the person who directly committed it has not been convicted of the violation.

**(2)** A person is concerned in the commission of the violation if the person:

(a) Directly commits the violation;

(b) Aids and abets the commission of it; or

(c) Is a party to a conspiracy with another to commit it or advises, hires or counsels or otherwise procures another to commit it.

**History:** 1975 c. 365.