

1999 SENATE BILL 371

February 8, 2000 – Introduced by JOINT LEGISLATIVE COUNCIL. Referred to Economic Development, Housing and Government Operations.

1 **AN ACT** *to renumber* 101.121 (4) (a); *to renumber and amend* 101.63 (1) and
2 254.61 (1) (f); *to consolidate, renumber and amend* 66.05 (10) (a) and (b); *to*
3 **amend** 59.69 (4m), 60.64, 62.23 (7) (em), 66.05 (1m) (a), 66.05 (3), 66.05 (9) (c),
4 71.07 (9m) (c), 71.28 (6) (c), 71.47 (6) (c), 101.05 (2), 101.122 (4) (b) 1., 101.19 (1)
5 (intro.), 101.63 (1m) and 823.21; and *to create* 20.245 (3) (f), 44.46, 66.038,
6 71.21 (6), 101.121 (3) (c), 101.121 (4) (a) 2., 101.121 (5), 101.121 (7), 101.132
7 (1m), 101.132 (2) (b) 3m., 101.19 (1m), 101.63 (1) (a) and (b), 101.975 (4) and
8 254.61 (1) (f) 2. of the statutes; **relating to:** regulation of historic buildings, the
9 historic building code, requiring a liberal interpretation of local regulations
10 applicable to historic buildings and structures and making appropriations.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the joint legislative council in the bill.

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For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

PREFATORY NOTE: This bill was prepared for the joint legislative council's special committee on the historic building code. The bill has the following key provisions:

Historic Building Code

Requires the department of commerce, in cooperation with the state historical society, to develop a pamphlet to inform owners of historic buildings about the scope and applicability of the historic building code.

Requires the department of commerce to interpret the historic building code liberally to facilitate the preservation and restoration of historic buildings.

Creates a process for the department of commerce to review decisions by local governments regarding compliance with a local ordinance or regulation, to determine if the local ordinance or regulation is in conflict with the historic building code. Also, this bill provides an informal process for the state historical society to review decisions of the department of commerce and local units of government regarding historic buildings and to negotiate possible changes in those decisions.

Allows local governments by ordinance to establish alternate standards for handrails and guardrails of historic buildings that are converted from single-family to multi-family use.

Requires the department of commerce to waive plan review and inspection fees for a preservation or restoration project affecting a building that is more than 100 years old and is listed or eligible for listing on the national or state register of historic places.

Other Structural Regulations

Modifies the current bed and breakfast statutes to allow structural additions, in buildings at least 50 years old, that would otherwise be prohibited by current statutes.

Requires consistency under state law with current federal law for certain housing accessibility requirements for physically disabled persons in certain historic buildings.

Requires local units of government to interpret liberally the local regulations that apply to historic structures in order to facilitate the preservation and restoration of historic buildings and structures.

Demolition of Historic Buildings

Provides that a municipal order to raze a historic building may be appealed by representatives of a local historical society or by the owner of a historic building that is within 200 yards of the building subject to the order.

Requires additional notice and the opportunity to request a public hearing with respect to municipal orders, permits or actions to raze historic buildings or buildings that are more than 50 years old.

Income Tax Credits for Historic Buildings

Makes the state income tax credit that supplements the federal income tax credit for renovation of historic buildings available earlier in the renovation process, by making it available when the state historic preservation officer approves the application, rather than upon final approval by the U.S. secretary of the interior.

Allows partners who share in the costs of renovating historic buildings to allocate among themselves the state supplemental income tax credit for the renovation costs.

Rural Historic Preservation

Requests a joint legislative council study, commencing in 2000, of methods to promote rural historic preservation.

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Creates a grant program for the costs of renovating historic agricultural buildings or structures, with a 50% match requirement, funded in the amount of \$75,000 in each year of the biennium, to be administered by the state historical society.

Makes an appropriation to the state historical society for the purpose of entering into a contract to conduct a survey to identify and document historic properties in rural areas.

For further information regarding the provisions in this bill, see the notes throughout the bill.

1 **SECTION 1.** 20.005 (3) (schedule) of the statutes: at the appropriate place, insert
2 the following amounts for the purposes indicated:

1999-00 2000-01

3 **20.245 Historical society**

4 (3) HISTORIC AND BURIAL SITES PRESERVATION

5 (f) Historic agricultural building

6 grant program	GPR	A	75,000	75,000
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7 **SECTION 2.** 20.245 (3) (f) of the statutes is created to read:

8 20.245 (3) (f) *Historic agricultural building grant program.* The amounts in
9 the schedule for the historic agricultural building grant program under s. 44.46.

10 **SECTION 3.** 44.46 of the statutes is created to read:

11 **44.46 Historic agricultural building grant program. (1)** In this section,
12 “historic agricultural building” means any building or structure that is designed for
13 agricultural purposes and that is significant in the history, architecture or culture
14 of this state.

15 **(2)** From the appropriation under s. 20.245 (3) (f), the historical society shall
16 award grants to owners of historic agricultural buildings to assist in the restoration
17 of the buildings. To receive a grant, the owner shall match the amount of the grant,
18 shall agree to use the total amount of funds to restore the historic agricultural

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1 building and shall agree to use the restored historic agricultural building in a
2 manner consistent with the public policy expressed in s. 44.30.

NOTE: Under current law, the state historical society is assigned numerous responsibilities related to the preservation of historic and archeological resources in this state.

This bill creates a historic agricultural building grant program to be administered by the state historical society. Under the program, the state historical society is required to award grants to owners of historic agricultural buildings to fund the restoration of such buildings. Each grantee is required to make a matching contribution equalling the amount of the grant and to agree to use the restored building in a manner that is consistent with the state public policy on historic preservation.

The “public policy expressed in s. 44.30”, as referenced in the new grant program, is as follows:

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

3 **SECTION 4.** 59.69 (4m) of the statutes is amended to read:

4 **59.69 (4m) HISTORIC PRESERVATION.** A county, as an exercise of its zoning and
5 police powers for the purpose of promoting the health, safety and general welfare of
6 the community and of the state, may regulate by ordinance any place, structure or
7 object with a special character, historic interest, aesthetic interest or other
8 significant value, for the purpose of preserving the place, structure or object and its
9 significant characteristics. The county may create a landmarks commission to
10 designate historic landmarks and establish historic districts. The county may
11 regulate all historic landmarks and all property within each historic district to
12 preserve the historic landmarks and property within the district and the character
13 of the district, and shall interpret the county’s regulations liberally to facilitate the
14 preservation and restoration of historic buildings and structures.

NOTE: This provision requires a county to interpret liberally its regulations that apply to historic structures in order to facilitate the preservation and restoration of historic buildings and structures.

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1 **SECTION 5.** 60.64 of the statutes is amended to read:

2 **60.64 Historic preservation.** The town board, in the exercise of its zoning
3 and police powers for the purpose of promoting the health, safety and general welfare
4 of the community and of the state, may regulate any place, structure or object with
5 a special character, historic interest, aesthetic interest or other significant value for
6 the purpose of preserving the place, structure or object and its significant
7 characteristics. The town board may create a landmarks commission to designate
8 historic landmarks and establish historic districts. The board may regulate all
9 historic landmarks and all property within each historic district to preserve the
10 historic landmarks and property within the district and the character of the district,
11 and shall interpret the board's regulations liberally to facilitate the preservation and
12 restoration of historic buildings and structures.

NOTE: This provision requires a town board to interpret liberally its regulations that apply to historic structures in order to facilitate the preservation and restoration of historic buildings and structures.

13 **SECTION 6.** 62.23 (7) (em) of the statutes is amended to read:

14 **62.23 (7) (em) Historic preservation.** A city, as an exercise of its zoning and
15 police powers for the purpose of promoting the health, safety and general welfare of
16 the community and of the state, may regulate by ordinance, or if a city contains any
17 property that is listed on the national register of historic places in Wisconsin or the
18 state register of historic places shall, not later than 1995, enact an ordinance to
19 regulate, any place, structure or object with a special character, historic,
20 archaeological or aesthetic interest, or other significant value, for the purpose of
21 preserving the place, structure or object and its significant characteristics. A city
22 may create a landmarks commission to designate historic or archaeological
23 landmarks and establish historic districts. The city may regulate, or if the city

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1 contains any property that is listed on the national register of historic places in
2 Wisconsin or the state register of historic places shall regulate, all historic or
3 archaeological landmarks and all property within each historic district to preserve
4 the historic or archaeological landmarks and property within the district and the
5 character of the district, and shall interpret the city's regulations liberally to
6 facilitate the preservation and restoration of historic buildings and structures.

NOTE: This provision requires a city to interpret liberally its regulations that apply to historic structures in order to facilitate the preservation and restoration of historic buildings and structures.

7 **SECTION 7. 66.038** of the statutes is created to read:

8 **66.038 Razing historic buildings and buildings that are more than 50**
9 **years old. (1) DEFINITIONS.** In this section:

10 (a) "Authority" means a housing authority under ss. 66.40 to 66.404, a
11 redevelopment authority under s. 66.431 or a housing and community development
12 authority under s. 66.4325.

13 (b) "Historic building" has the meaning given in s. 66.05 (9) (a) 1m.

14 (c) "Local governmental unit" means a city, village, town or county, and includes
15 an authority acting on behalf of or at the direction of a city, village or town.

16 (d) "Resident", in the case of a local governmental unit that is an authority,
17 means a resident of the city, village or town on whose behalf or at whose direction the
18 authority is acting.

19 **(2) NOTICE TO STATE HISTORICAL SOCIETY.** If a local governmental unit issues an
20 order or permit or other similar directive or authorization to raze a building, or if a
21 local governmental unit intends to raze a building that is owned by the local
22 governmental unit, and the building is either a historic building or more than 50

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1 years old, the local governmental unit shall notify the state historical society of the
2 order, permit, directive or authorization or of its intent.

3 **(3) DELAY IN RAZING.** (a) Except as provided in sub. (4) (a) 3. and (b), a local
4 governmental unit may not raze a building subject to sub. (2) during the following
5 period after the notice is given to the state historical society:

6 1. For a historic building, 60 days.

7 2. For a building more than 50 years old that is not a historic building, 30 days.

8 (b) Upon request by the state historical society, the local governmental unit
9 may extend the period of delay in razing under par. (a).

10 (c) During the period of delay in razing under par. (a) and during any extension
11 of a period of delay, the state historical society shall have access to the building to
12 create or preserve a historic record and access to the building shall be a condition of
13 the order, permit, directive or authorization issued by the local governmental unit.

14 **(4) OPPORTUNITY TO REQUEST PUBLIC HEARING; WRITTEN FINDINGS.** (a) 1. For a
15 building subject to sub. (2), the state historical society may direct the local
16 governmental unit to provide notice and the opportunity to request a public hearing.

17 2. If the state historical society directs the local governmental unit to provide
18 notice and the opportunity to request a public hearing under subd. 1., the local
19 governmental unit shall provide notice to any person who requests notice by mail and
20 by publishing a class 1 notice, under ch. 985. Within 30 days after the local
21 governmental unit publishes the notice, if 5 or more residents of the local
22 governmental unit submit a request for a hearing on the matter, the local
23 governmental unit shall either hold a public hearing or make written findings
24 setting forth the reasons for denying the request for a hearing and responding to
25 issues raised in the request for a hearing.

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1 3. If 5 or more residents of the local governmental unit submit a request for a
2 hearing under subd. 2., the period of delay in razing under sub. (3) (a) does not end
3 until the local governmental unit holds the public hearing or makes written findings,
4 as required under subd. 2.

5 (b) If the state historical society does not direct the local governmental unit to
6 provide notice and the opportunity to request a public hearing, the state historical
7 society may waive the period of delay in razing under sub. (3) (a) if the state historical
8 society determines that the delay is not necessary to accomplish the purpose of sub.
9 (3) (c).

10 **(5) REUSE OF BUILDING MATERIALS.** The owner of the building that is razed shall
11 reuse the building materials or contract with a demolition contractor who will reuse
12 the building materials, to the maximum extent feasible.

13 **(6) APPLICABILITY.** This section does not apply to part of a building that is not
14 a historic building if that part of the building is 50 years old or less.

NOTE: This provision creates a new requirement related to an order or permit issued by a local governmental unit to raze a building, or a decision by a local governmental unit to raze a building that it owns, if the building is a historic building or is more than 50 years old. "Local governmental unit" is defined to mean a city, village, town or county, and includes a housing, redevelopment or housing and community development authority acting on behalf of, or at the direction of, a city, village or town. This provision expands a provision in current s. 66.05 (9) (c), which is a statute relating to demolition orders. This provision also applies to housing authorities.

This provision requires a local governmental unit to notify the state historical society of the order or permit or of its intent. The bill requires a delay in razing the property to allow time for the state historical society to document the property and create a suitable historic record of it. Also, this delay will give time for public review of the decision to raze the building.

If the state historical society does not waive further review, the local governmental unit must provide notice to any person who requests notice by mail and by publishing a class 1 notice (a one-time newspaper notice) under ch. 985, stats. Thereafter, 5 or more residents of the local governmental unit may request a hearing and the local governmental unit is required either to hold a public hearing or to make written findings setting forth the reasons for denying the request for a hearing and responding to issues raised in the request for a hearing.

The time periods specified in this provision do not affect the provisions for judicial review. Under s. 68.13, stats., any party to a proceeding that results in a final

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determination may seek review by a court within 30 days of receipt of the final determination.

Also, the new statute requires reuse of building materials, to the maximum extent feasible, following demolition of the building.

1 **SECTION 8.** 66.05 (1m) (a) of the statutes is amended to read:

2 66.05 **(1m)** (a) The governing body or the inspector of buildings or other
3 designated officer in every municipality may order the owner of premises upon which
4 is located any building or part thereof within such municipality, which in its
5 judgment is so old, dilapidated or has become so out of repair as to be dangerous,
6 unsafe, insanitary or otherwise unfit for human habitation, occupancy or use, and
7 so that it would be unreasonable to repair the same, to raze and remove such building
8 or part thereof and restore the site to a dust-free and erosion-free condition, or if it
9 can be made safe by repairs to repair and make safe and sanitary or to raze, remove
10 and restore the site to a dust-free and erosion-free condition at the owner's option;
11 or where there has been a cessation of normal construction of any building for a
12 period of more than 2 years, to raze and remove such building or part thereof and
13 restore the site to a dust-free and erosion-free condition. The order shall specify a
14 time in which the owner shall comply therewith and specify repairs, if any. It shall
15 be served on the owner of record or the owner's agent where an agent is in charge of
16 the building in the manner provided for service of a summons in the circuit court.
17 If the owner and the owner's agent cannot be found, or if the owner is deceased and
18 an estate has not been opened, the order may be served by posting it on the main
19 entrance of the building and by publishing it as a class 1 notice, under ch. 985, before
20 the time limited in the order commences to run. The time limited in the order
21 commences to run from the date of service upon the owner or the agent in the manner
22 of a summons or, if the owner and agent cannot be found, from the date that the order
23 was posted on the building. The order shall also be served on the holder of any

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1 encumbrance of record by 1st class mail at the last-known address and by
2 publication as a class 1 notice under ch. 985.

NOTE: This amendment deletes “old” as one of the conditions that may lead to a municipal decision to order the razing of a building. The age of a building does not determine the condition of the building. Municipal decisions to order the razing of a building are appropriately based on the other conditions addressed in the statute, such as “dilapidated” and “out of repair”.

3 **SECTION 9.** 66.05 (3) of the statutes is amended to read:

4 66.05 (3) Anyone affected by any such order shall within the time provided by
5 s. 893.76 apply to the circuit court for an order restraining the inspector of buildings
6 or other designated officer from razing and removing the building or part thereof and
7 restoring the site to a dust-free and erosion-free condition or forever be barred. The
8 hearing shall be held within 20 days and shall be given preference. The court shall
9 determine whether the order of the inspector of buildings is reasonable, and if found
10 reasonable the court shall dissolve the restraining order, and if found not reasonable
11 the court shall continue the restraining order or modify it as the circumstances
12 require. Costs shall be in the discretion of the court. If the court finds that the order
13 of the inspector of buildings is unreasonable, the inspector of buildings or other
14 designated officer shall issue no other order under this section in regard to the same
15 building or part thereof until its condition is substantially changed. The remedies
16 provided in this subsection are exclusive remedies and anyone affected by such an
17 order of the inspector shall not be entitled to recover any damages for the razing and
18 removal of any such building and the restoration of the site to a dust-free and
19 erosion-free condition. For the purposes of this subsection, if the order requires the
20 razing of a historic building, as defined in sub. (9) (a) 1m., persons affected by the
21 order include representatives of a local historical society and the owner of a historic

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1 building, as defined in sub. (9) (a) 1m., that is located within 200 yards of the historic
2 building that is subject to the order.

NOTE: Section 66.05, stats., relates to local orders to repair or raze dilapidated buildings. The current statute includes provisions related to historic buildings that require a delay in implementation of the order and a different presumption regarding the reasonableness of the cost of repairs.

Any order under s. 66.05, stats., may be appealed to circuit court by an “affected person”. The issue in the appeal is the reasonableness of the order. The current statute does not define who may be an affected person. This is a matter for the court to decide, and there have not been any appellate court decisions on this issue. It is possible that a court would allow a person with a demonstrated interest in historic preservation to appeal a local order requiring demolition of a historic building, although there is no assurance of this under the current statute.

The bill does not define “affected person”, but rather provides that the term “affected person” includes representatives of a local historical society and owners of historic buildings located within 200 yards of the historic building that is subject to the order.

The definition of “historic building” that is cross-referenced in this provision is “any building or object listed on, or any building or object within and contributing to a historic district listed on, the national register of historic places in Wisconsin, the state register of historic places or a list of historic places maintained by a municipality”.

3 **SECTION 10.** 66.05 (9) (c) of the statutes is amended to read:

4 66.05 (9) (c) If an order is issued under this section to raze and remove a historic
5 building and restore the site to a dust-free and erosion-free condition, an application
6 is made for a permit to raze and remove a historic building and restore the site to a
7 dust-free and erosion-free condition or a municipality intends to raze and remove
8 a municipally owned historic building and restore the site to a dust-free and
9 erosion-free condition, the municipality in which the historic building is located
10 shall notify the state historical society of the order, application or intent. No historic
11 building may be razed and removed nor the site restored to a dust-free and
12 erosion-free condition for 30 days after the notice is given. During the 30-day period,
13 the state historical society shall have access to the historic building to create or
14 preserve a historic record or a building that is more than 50 years old, s. 66.038
15 applies.

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NOTE: The material deleted from s. 66.05 (9) (c) is recreated and expanded in s. 66.038 as created by this bill.

1 **SECTION 11.** 66.05 (10) (a) and (b) of the statutes are consolidated, renumbered
2 66.05 (10) and amended to read:

3 66.05 **(10)** First class cities may adopt by ordinance alternate or additional
4 provisions governing the placarding, closing, razing and removal of a building and
5 the restoration of the site to a dust-free and erosion-free condition. ~~(b)~~ This
6 subsection shall be liberally construed to provide 1st class cities with the largest
7 possible power and leeway of action, except that any alternate or additional provision
8 adopted shall be no less stringent than the corresponding provision in s. 66.038.

NOTE: Under the current statute, a 1st class city (the city of Milwaukee) may adopt alternate or additional provisions regarding orders to demolish buildings. This provision creates an exception to that broad authority by requiring a 1st class city to comply with the requirements in the cross-referenced statute, as affected by this bill.

9 **SECTION 12.** 71.07 (9m) (c) of the statutes is amended to read:

10 71.07 **(9m)** (c) No person may claim the credit under this subsection unless the
11 claimant includes with the claimant's return evidence that the rehabilitation was
12 approved recommended by the state historic preservation officer for approval by the
13 secretary of the interior under 36 CFR 67.6 before the physical work of construction,
14 or destruction in preparation for construction, began.

NOTE: Under the U.S. Internal Revenue Code, the owner of an income producing historic building is eligible for a federal income tax credit equal to 20% of certain specified costs of rehabilitating the historic building. The building must be listed on the national register of historic places or eligible for listing or located in certain national, state or local historic districts. The rehabilitation work must comply with standards that have been established by the U.S. Secretary of the Interior.

Wisconsin provides a supplement to the federal income tax credit equal to 5% of the eligible costs of rehabilitation. This SECTION amends s. 71.07 (9m) (c), stats., which provides the supplemental state income tax credit for historic rehabilitation.

Under the current statutes, the state income tax credit is only available if the state tax return includes evidence that the rehabilitation was approved by the secretary of the interior before the physical work of rehabilitation was commenced. As the federal program has been implemented by the secretary of the interior, the state historic preservation officer must first recommend approval of the project before the application is considered by the secretary of interior. This bill makes the state supplement available upon recommendation of the state historic preservation officer, rather than final approval

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by the secretary of the interior, which will allow owners to commence projects sooner. If, for any reason, the owner is determined not to be eligible for the federal tax credit, the owner will still be eligible for the 5% state supplement based on the approval by the state historic preservation officer.

1 **SECTION 13.** 71.21 (6) of the statutes is created to read:

2 71.21 (6) Credits computed by a partnership under s. 71.07 (9m), 71.28 (6) or
3 71.47 (6) may be allocated to partners either as provided under this chapter or
4 pursuant to an agreement among the partners establishing an alternate allocation
5 method. The partners shall notify the department of an agreement within 30 days
6 after the agreement is executed and shall provide any additional information
7 requested by the department regarding the agreement.

NOTE: This SECTION relates to the state supplement to the federal historic rehabilitation income tax credit. The supplement is equal to 5% of the eligible costs of historic preservation.

Under current law, each partner in a partnership is allocated a portion of any tax credit for which the partnership is eligible based on the partnership agreement. The partnership agreement must have economic substance.

This bill creates s. 71.21 (6) to provide that a tax credit for historic preservation claimed by a partnership may be allocated to the partners either as permitted under current law or pursuant to an agreement executed by the partners that establishes an alternate distribution method. This will allow partners who do not have a Wisconsin income tax liability (e.g., out-of-state investors) to transfer the credit to partners who do. The bill requires the partners to notify the department of revenue of the agreement within 30 days of executing such an agreement and also requires the partners to provide any additional information requested by the department of revenue.

8 **SECTION 14.** 71.28 (6) (c) of the statutes is amended to read:

9 71.28 (6) (c) No person may claim the credit under this subsection unless the
10 claimant includes with the claimant's return evidence that the rehabilitation was
11 approved recommended by the state historic preservation officer for approval by the
12 secretary of the interior under 36 CFR 67.6 before the physical work of construction,
13 or destruction in preparation for construction, began.

NOTE: This amendment corresponds with the amendment in this bill to s. 71.07 (9m) (c), stats., which includes an explanatory note.

14 **SECTION 15.** 71.47 (6) (c) of the statutes is amended to read:

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1 71.47 **(6)** (c) No person may claim the credit under this subsection unless the
2 claimant includes with the claimant's return evidence that the rehabilitation was
3 approved recommended by the state historic preservation officer for approval by the
4 secretary of the interior under 36 CFR 67.6 before the physical work of construction,
5 or destruction in preparation for construction, began.

NOTE: This amendment corresponds with the amendment in this bill to s. 71.07
(9m) (c), stats., which includes an explanatory note.

6 **SECTION 16.** 101.05 (2) of the statutes is amended to read:

7 101.05 **(2)** A bed and breakfast establishment, as defined under s. 254.61 (1),
8 is not subject to ~~rules on residential occupancy or to other~~ building codes adopted by
9 the department under this subchapter, ~~except that the uniform dwelling code~~
10 ~~adopted in rules promulgated under s. 101.63 (1) applies to the 3rd floor level of a bed~~
11 ~~and breakfast establishment that uses, other than as storage, the 3rd floor level of~~
12 ~~the bed and breakfast establishment structure.~~

NOTE: The current statutes provide that the 3rd floor of a bed and breakfast
establishment is subject to the uniform dwelling code if the 3rd floor is used for purposes
other than storage. The bill moves the provision related to the 3rd floor of a bed and
breakfast establishment so that it appears in the statutes related to the uniform dwelling
code. [See SECTION 28.] This change is solely for the purpose of better statutory
organization and is not intended to make any change in the current building code
provisions applicable to bed and breakfast establishments.

13 **SECTION 17.** 101.121 (3) (c) of the statutes is created to read:

14 101.121 **(3)** (c) The historic building code shall be liberally interpreted to
15 facilitate the preservation and restoration of qualified historic buildings.

NOTE: The department of commerce is authorized to promulgate the historic
building code under s. 101.121, stats. The statute includes a statement of legislative
purpose, as follows:

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

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The legislature incorporated additional guidance regarding the purpose of the statute into the substantive provisions of s. 101.121 (3) (a), stats., as follows:

“101.121 (3) (a) For any rule under this chapter or ch. 145 which applies to buildings, the department may provide an alternative rule which accomplishes the same general purpose and applies only to qualified historic buildings. These alternative rules shall permit, to the maximum extent possible, the use of original or duplicates of original materials, the maintenance of the original appearance of all components of a historic building and the use of original construction techniques....”

The special committee determined that some decisions regarding the implementation of the historic building code may be unnecessarily restrictive. The additional statutory language proposed in this SECTION creates an express statement of the legislature’s intent that the statute is to be interpreted liberally to facilitate the preservation and restoration of historic buildings.

The intent is not to shift the balance in the historic building code between preservation and restoration of historic buildings on one hand, and public health, safety and welfare on the other hand. The intent is to favor the preservation and restoration of historic buildings in questions involving close judgments.

1 **SECTION 18.** 101.121 (4) (a) of the statutes is renumbered 101.121 (4) (a) 1.

2 **SECTION 19.** 101.121 (4) (a) 2. of the statutes is created to read:

3 101.121 (4) (a) 2. Upon the request of the owner of a qualified historic building,
4 the department shall review any decision of a city, village, town or county that
5 requires the owner to comply with a provision of a county or municipal building code,
6 or of any other local ordinance or regulation, to determine if the provision concerns
7 a matter dealt with in the historic building code. The procedures in s. 101.02 (7)
8 apply to any review conducted by the department under this subdivision.

NOTE: Section 101.121 (4) (a), stats., authorizes the owner of a “qualified historic building” to elect to be subject to the historic building code. A qualified historic building is a building that is listed on the national or state register of historic places or a certified local register of historic property, or is within a historic district on one of those lists and has been determined to contribute to the historic significance of the district. Under the historic building code, the owner of the historic building may use alternative standards that allow preservation of the historic aspects of the building while still providing for the health, safety and welfare of occupants and visitors in the building.

One of the consequences of the election to use the historic building code is that the owner of the historic building is not required to comply with any provision of a county or municipal building code or other local ordinance or regulation that concerns a “matter dealt with” in the historic building code (the phrase used in the statute). In the rules creating the historic building code, the department of commerce has elaborated on this statutory provision by providing explicitly that local regulations pertaining to land use, zoning, fire districts or “other similar requirements” are not affected by the historic building code. [s. Comm 70.04 (2), Wis. adm. code.]

The statutes contain a general procedure, in s. 101.02 (7), stats., to resolve conflicts between local standards, decisions and ordinances and the statutes and rules enforced by the department of commerce. The statute provides that local units of government

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continue to have authority to enact and enforce regulations for the protection of public health and safety. However, rules and decisions of the department of commerce are deemed by the statute to amend or modify conflicting local regulations. Any person who is affected by a local regulation that is in conflict with a state regulation or an order of the department may petition for a hearing by the department on whether there is a conflict, and the department may nullify a local regulation that conflicts with state regulations.

The appeal process in s. 101.02 (7), stats., focuses on conflicts between state and local safety or health regulations. This provision of the bill makes it clear that the department may determine the proper scope of local regulation with respect to buildings that are subject to the historic building code, including issues related to historic preservation and restoration.

1 **SECTION 20.** 101.121 (5) of the statutes is created to read:

2 101.121 (5) ADVISORY OPINION OF STATE HISTORICAL SOCIETY. (a) The owner of a
3 qualified historic building may submit to the state historical society a request for an
4 advisory opinion with respect to any decision of the department, or of a city, village,
5 town or county that is an agent of the department, if the decision pertains to any of
6 the following:

7 1. This section or a rule promulgated under this section, except for a decision
8 of the department under sub. (4) (a) 2.

9 2. A variance to a rule promulgated under this section.

10 3. The inspection of a qualified historic building for compliance with a rule
11 promulgated under this section.

12 (b) Upon receiving a request under par. (a), the state historical society shall
13 review all information related to the decision and shall render a written opinion on
14 the following:

15 1. Whether the decision is consistent with this section and the rules
16 promulgated under this section.

17 2. Whether the alternative decision requested by the owner of the qualified
18 historic building, or any other alternative decision, is consistent with this section and
19 the rules promulgated under this section.

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1 (c) The state historical society may negotiate with the department or the city,
2 village, town or county and the owner of the qualified historic building to seek
3 agreement on an alternative decision that will allow the greatest possible degree of
4 restoration and preservation of the qualified historic building, while continuing to
5 meet the standards for the health, safety and welfare of occupants of and visitors to
6 the qualified historic building.

7 (d) The department or a city, village, town or county may modify any decision
8 described under par. (a) based on negotiations with the state historical society.

9 (e) This subsection does not modify any procedures for appeal of a decision of
10 the department or of a city, village, town or county under this section.

NOTE: Current s. 101.02 (7) provides a formal appeals process for decisions of the department of commerce and local units of government acting as agents of the department with respect to building code issues. The review process involves a review within the department, followed by judicial review. The standards for judicial review require the court to uphold the decision of the department or the local unit of government if there is “substantial evidence” to support the decision, a difficult standard for a building owner to overcome. Also, judicial review is time-consuming and expensive.

This provision of the bill creates a new, informal process for review of a decision of the department or the local unit of government. The request for review must be submitted to the state historical society. The state historical society reviews all information related to the decision and renders an opinion on whether the decision of the department or the local unit of government is consistent with the historic building code and whether there are other ways to meet the requirements and objectives of the historic building code. The bill authorizes the historical society to negotiate with the department, the local unit of government and the historic building owner. The department or local unit of government may modify its decision based on the negotiations.

This new procedure does not change any time limits or procedures for formal review of any decisions.

11 **SECTION 21.** 101.121 (7) of the statutes is created to read:

12 101.121 (7) INFORMATIONAL PAMPHLET. (a) In cooperation with the state
13 historical society, the department shall develop an informational pamphlet designed
14 to increase awareness and use of the historic building code. The pamphlet shall be
15 updated as statutes and rules relating to the historic building code are amended. The
16 pamphlet shall include the following information:

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- 1 1. A description of the historic building code.
- 2 2. A description of the types and qualities of buildings that are subject to the
- 3 historic building code.
- 4 3. An explanation of how the owner of a qualified historic building may elect
- 5 to be subject to the historic building code and a description of the consequences of that
- 6 election.
- 7 4. A description of other alternative building codes that a historic building
- 8 owner may be eligible to use.
- 9 5. A description of where further information regarding historic buildings and
- 10 the historic building code may be obtained.
- 11 (b) The department and the state historical society shall distribute the
- 12 pamphlets as they consider necessary to increase awareness of the historic building
- 13 code.

NOTE: This SECTION creates s. 101.121 (7), stats., which requires the department of commerce, in cooperation with the state historical society, to develop a pamphlet designed to inform owners of historic buildings of the scope and applicability of the historic building code and alternatives to using the historic building code. The pamphlet is also intended to increase awareness of the historic building code. The department of commerce must update the pamphlet as statutes and rules relating to the historic building code are amended. The provision requires the department of commerce and the state historical society to distribute the pamphlets as they consider necessary to increase awareness of the historic building code.

- 14 **SECTION 22.** 101.122 (4) (b) 1. of the statutes is amended to read:
- 15 101.122 (4) (b) 1. ~~Order~~ Subject to s. 66.038, order demolition of the rental unit
- 16 no sooner than 90 days after the order.

NOTE: This provision applies the requirements of s. 66.038, as created by this bill, to decisions of the department of commerce or a city, village or town to require demolition of a property that does not comply with the rental unit energy efficiency requirements of s. 101.122, stats.

- 17 **SECTION 23.** 101.132 (1m) of the statutes is created to read:

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1 101.132 **(1m)** COMPLIANCE WITH FEDERAL STANDARDS. All rules promulgated by
2 the department under this section relating to qualified historic buildings, as defined
3 in s. 101.121 (2) (c), shall comply with and not exceed the requirements of the Fair
4 Housing Act under 42 USC 3601 to 3620 and the Americans with Disabilities Act
5 under 42 USC 12181 and regulations adopted under those acts.

NOTE: This SECTION provides that all rules promulgated by the department of commerce relating to requirements that housing be accessible to physically disabled persons, as they relate to qualified historic buildings, must comply with and not exceed the requirements of the federal Fair Housing Law and the Americans with Disabilities Act and any regulations adopted under those acts. Under this requirement, the department of commerce would be required to amend its rules so that: (1) if an existing qualified historic building with mixed occupancies is remodeled or added to and the gross interior area of the building after the remodeling or addition is greater than 20,000 square feet, interior circulation between floor levels would not be required; and (2) the state fair housing law would not be applicable to existing qualified historic buildings undergoing a change of use if the building is changed to a covered multi-family housing use and the building is remodeled or added to.

6 **SECTION 24.** 101.132 (2) (b) 3m. of the statutes is created to read:

7 101.132 **(2)** (b) 3m. The requirements under this paragraph do not apply to
8 qualified historic buildings, as defined in s. 101.121 (2) (c).

NOTE: This SECTION provides that s. 101.132 (2) (b), stats., relating to making housing accessible to physically disabled persons when the housing is remodeled, does not apply to qualified historic buildings. Current s. 101.132 (2) (b), stats., provides as follows:

“101.132 (2) (b) *Remodeling*. 1. If more than 50% of the interior square footage of any housing with 3 or more dwelling units is to be remodeled, the entire housing shall conform to the standards in par. (a), regardless of when the housing was first intended for occupancy.

2. If 25% to 50% of the interior square footage of any housing with 3 or more dwelling units is to be remodeled, that part of the housing that is to be remodeled shall conform to the standards in par. (a), regardless of when the housing was first intended for occupancy.

3. If less than 25% of the interior square footage of any housing with 3 or more dwelling units is to be remodeled, the remodeling is not subject to the standards in par. (a) unless the alteration involves work on doors, entrances, exits or toilet rooms, in which case the doors, entrances, exits or toilet rooms shall conform to the standards in par. (a) regardless of when the housing was first intended for occupancy.

4. The department may grant a variance or waiver from the requirements under this paragraph relating to exterior accessibility using the standards and procedures under par. (c).”.

The intent of this change is to make Wisconsin statutes relating to qualified historic buildings consistent with the federal fair housing law. The federal Fair Housing Law applies only to buildings which are first occupied after March 31, 1991.

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1 **SECTION 25.** 101.19 (1) (intro.) of the statutes is amended to read:

2 101.19 (1) (intro.) ~~The Except as provided in sub. (1m), the department, by rule~~
3 ~~promulgated under ch. 227, shall fix and collect~~ promulgate rules establishing and
4 providing for the collection of fees which shall, as closely as possible, equal the cost
5 of providing the following services:

6 **SECTION 26.** 101.19 (1m) of the statutes is created to read:

7 101.19 (1m) The department shall waive the fees under sub. (1) (a), (am), (b),
8 (d) and (i) for any preservation or restoration of a building or structure that is more
9 than 100 years old if the state historic preservation officer certifies to the department
10 all of the following:

11 (a) That the plan for the preservation or restoration of the building or structure
12 complies with the standards promulgated under s. 44.02 (24).

13 (b) That the building or structure is listed on the national register of historic
14 places in Wisconsin or the state register of historic places, is determined by the state
15 historical society to be eligible for listing on the national register of historic places
16 in Wisconsin or the state register of historic places, or is located in a historic district
17 which is listed in the national register of historic places in Wisconsin or the state
18 register of historic places and is certified by the state historic preservation officer as
19 being of historic significance to the district.

NOTE: Under current s. 101.19, stats., the department of commerce is required to charge fees to recover the costs of services it provides related to plan review and inspection of construction projects that are subject to regulation by the department. The fees include fees for plan review, inspections, variances and copying.

This bill requires the department of commerce to waive those fees for a preservation or restoration project affecting a building or structure that is more than 100 years old. To qualify for the waiver of fees, the state historic preservation officer must certify to the department of commerce that the building or structure is listed on or eligible for listing on the national or state register of historic places and the plans for the preservation or restoration comply with the standards that are applicable to projects that qualify for the income tax credit for historic property renovations.

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1 **SECTION 27.** 101.63 (1) of the statutes is renumbered 101.63 (1) (intro.) and
2 amended to read:

3 101.63 **(1)** (intro.) Adopt rules which establish standards for the construction
4 and inspection of one- and 2-family dwellings and components thereof. Where
5 feasible, the standards used shall be those nationally recognized and shall apply to
6 the dwelling and to its electrical, heating, ventilating, air conditioning and other
7 systems, including plumbing, as defined in s. 145.01 (10). No set of rules may be
8 adopted which has not taken into account the conservation of energy in construction
9 and maintenance of dwellings and the costs of specific code provisions to home buyers
10 in relationship to the benefits derived from the provisions. Rules promulgated under
11 this subsection do not apply to a bed and breakfast establishment, as defined in s.
12 254.61 (1), except that the rules apply to all of the following:

13 **SECTION 28.** 101.63 (1) (a) and (b) of the statutes are created to read:

14 101.63 **(1)** (a) The 3rd floor level of a bed and breakfast establishment that uses
15 that level other than as storage.

16 (b) A structural addition that is specified under s. 254.61 (1) (f) 2.

17 **SECTION 29.** 101.63 (1m) of the statutes is amended to read:

18 101.63 **(1m)** Adopt a rule which requires any one- and 2-family dwelling which
19 uses electricity for space heating to be superinsulated. A rule promulgated under
20 this subsection does not apply to a bed and breakfast establishment, as defined in s.
21 254.61 (1), except as specified in sub. (1) (a) and (b).

NOTE: The provision in SECTION 28 regarding structural additions to bed and breakfast establishments is new and relates to the new provision in SECTION 32 that allows a structural addition to a bed and breakfast establishment that is more than 50 years old if the addition complies with the uniform one- and 2-family dwelling code. The other provisions of SECTIONS 16, 27 and 28 and this SECTION merely reorganize the statutes that exempt certain bed and breakfast establishments from various building codes.

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1 **SECTION 30.** 101.975 (4) of the statutes is created to read:

2 101.975 (4) A political subdivision may adopt an ordinance that permits it to
3 grant a variance to the uniform multifamily dwelling code relating to handrails and
4 guardrails of qualified historic buildings, as defined in s. 101.121 (2) (c), that are
5 converted from single-family dwellings to multifamily dwellings. The ordinance
6 shall require the owner of a qualified historic building who seeks a variance to
7 provide the political subdivision with evidence that the type, height and design of the
8 handrail or guardrail proposed for installation is historically appropriate for the
9 owner's building. Upon the provision of such evidence, the political subdivision may
10 grant a variance to the uniform multifamily dwelling code that permits the owner
11 to install a handrail or guardrail that is at least as protective of public safety as the
12 historically appropriate handrail or guardrail.

NOTE: Under current law, the uniform multifamily dwelling code [ch. Comm 66] applies to any building or portion of a building which is converted to a multifamily dwelling after April 1, 1995 unless the building is a qualified historic building and the owner elects to be subject to the historic building code. Under s. 101.971 (2), stats., a multifamily dwelling is defined as an apartment building, row house, town house, condominium or manufactured building that does not exceed 60 feet in height or 6 stories and that consists of 3 or more attached dwelling units.

This SECTION creates s. 101.975 (4) to permit a political subdivision to adopt an ordinance that allows it to grant a variance to the uniform multifamily dwelling code relating to handrails and guardrails of qualified historic buildings that are converted from single-family dwellings to multifamily dwellings. Under the uniform multifamily dwelling code, the top of a handrail must be mounted between 34 and 38 inches above the nosing of the treads on stairways or above the surface of ramps. Guardrails in dwelling units must extend to at least 36 inches above the upper surface of the floor. In nondwelling unit portions, the guardrails must extend at least 42 inches above the upper surface of the floor.

Under the bill, the ordinance must require the owner of the building who is seeking the variance to provide the political subdivision with evidence that the type, height and design of the handrail or guardrail proposed for installation is historically appropriate for the building. Upon the provision of that evidence, the bill provides that the political subdivision may grant a variance to the uniform multifamily dwelling code that permits the owner to install a handrail or guardrail that is at least as protective of public safety as the historically appropriate handrail or guardrail.

13 **SECTION 31.** 254.61 (1) (f) of the statutes is renumbered 254.61 (1) (f) (intro.)
14 and amended to read:

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1 254.61 (1) (f) (intro.) Has had completed, before May 11, 1990, any structural
2 additions to the dimensions of the original structure, including by renovation, except
3 that a this limit does not apply to any of the following:

4 1. A structural addition, including a renovation, that is made to the structure
5 may, after May 11, 1990, be made and that is within the dimensions of the original
6 structure.

7 **SECTION 32.** 254.61 (1) (f) 2. of the statutes is created to read:

8 254.61 (1) (f) 2. A structural addition, including a renovation, that complies
9 with the uniform dwelling code adopted in rules promulgated under s. 101.63 (1) and
10 (1m) and that is made to a structure that was originally constructed at least 50 years
11 before an application for a permit is made under s. 254.64 (1) (b) and for which no use
12 other than as a bed and breakfast establishment is proposed by the owner.

NOTE: The current statutes define “bed and breakfast establishment” for the purposes of determining the applicability of environmental health regulations, building code requirements and other regulatory provisions. The basic purpose of this definition is to set limits on the kinds of establishments that are deemed to be bed and breakfast establishments and thus are subject to those specific regulations. Establishments that provide food and lodging beyond the scope of the definition of a bed and breakfast establishment are subject to regulation as hotels, restaurants or other similar types of establishments, which in general means that the establishments are subject to the commercial building code and the commercial restaurant regulations.

The definition of bed and breakfast establishment has 6 elements. The first 5 elements of the definition provide that a bed and breakfast establishment is any place of lodging that:

“**(a)** Provides 8 or fewer rooms for rent to no more than a total of 20 tourists or transients.

(b) Provides no meals other than breakfast and provides the breakfast only to renters of the place.

(c) Is the owner’s personal residence.

(d) Is occupied by the owner at the time of rental.

(e) Was originally built and occupied as a single-family residence, or, prior to use as a place of lodging, was converted to use and occupied as a single-family residence.”.

The special committee focused its attention on the 6th element of the definition, which is modified by this bill. The current definition of bed and breakfast establishment in s. 254.61 (1) (f), stats., provides that a bed and breakfast establishment is a place of lodging that:

“Has had completed, before May 11, 1990, any structural additions to the dimensions of the original structure, including by renovation, except that a structural addition, including a renovation, to the structure may, after May 11, 1990, be made within the dimensions of the original structure.”.

SENATE BILL 371**SECTION 32**

The May 11, 1990 date is the date that this provision first took effect. At that time, when this restriction was created, the intent was to avoid situations in which a one- or 2-family home is constructed and shortly thereafter is substantially expanded as a bed and breakfast establishment. The restriction allows structural additions or renovations within the “dimensions” of the original structure, but does not allow additions to a structure after May 11, 1990, if that structure is to be used as a bed and breakfast establishment.

A consequence of this restriction is that older buildings, which often have attractive historic features and are desirable as bed and breakfast establishments, cannot be expanded to provide suitable facilities for the bed and breakfast establishment. This bill authorizes structural additions or renovation to the structure if the structure is more than 50 years old, if no other use than as a bed and breakfast establishment is proposed and if the structural addition complies with the uniform one- and 2-family dwelling code.

1 **SECTION 33.** 823.21 of the statutes is amended to read:

2 **823.21 Dilapidated buildings declared nuisances.** Any building which,
3 under s. 66.05 (1m), has been declared so ~~old,~~ dilapidated or out of repair as to be
4 dangerous, unsafe, unsanitary or otherwise unfit for human habitation or has been
5 determined to be unreasonable to repair under s. 66.05 (1m) is a public nuisance and
6 may be proceeded against under this chapter.

NOTE: The amendment corresponds with the amendment in this bill to s. 66.05 (1m), which includes an explanatory note.

7 **SECTION 34. Nonstatutory provisions; legislature.**

8 (1) STUDY OF RURAL HISTORIC PRESERVATION. The joint legislative council is
9 requested to study methods to promote rural historic preservation. If the council
10 undertakes such a study, the council shall report its findings, conclusions and
11 recommendations to the 2001 legislature when it convenes.

12 **SECTION 35. Appropriation changes; historical society.**

13 (1) SURVEY OF RURAL HISTORIC BUILDINGS. In the schedule under section 20.005
14 (3) of the statutes for the appropriation to the state historical society under section
15 20.245 (3) (a) of the statutes, as affected by the acts of 1999, the dollar amount is
16 increased by \$75,000 for fiscal year 1999–00 and the dollar amount is increased by
17 \$75,000 for fiscal year 2000–01 for the purpose of entering into a contract for a survey

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1 under section 44.34 (1) of the statutes to identify and document historic properties
2 in rural areas of the state.

NOTE: Under current law, the state historical society is required to conduct an ongoing statewide survey to identify and document historic properties. This bill increases the appropriation to the state historical society to provide funding to contract for a survey to identify and document historic properties in rural areas of Wisconsin.

Under current s. 44.31 (3), stats., “historic property” is defined as “any building, structure, object, district, area or site, whether on or beneath the surface of the land or water, that is significant in the history, prehistory, architecture, archeology or culture of this state, its rural and urban communities or the nation”.

3 **SECTION 36. Initial applicability.**

4 (1) SUPPLEMENT TO FEDERAL HISTORIC REHABILITATION CREDIT. The treatment of
5 sections 71.07 (9m) (c), 71.21 (6), 71.28 (6) (c) and 71.47 (6) (c) of the statutes first
6 applies to taxable years beginning on January 1, 2000.

NOTE: Creates a nonstatutory provision that provides that SECTIONS 12, 13, 14 and 15 of the bill, relating to eligibility for and distribution of the state supplement to the federal historic rehabilitation income tax credit, first apply to taxable years beginning on January 1, 2000.

7 **SECTION 37. Effective dates.** This act takes effect on the day after publication,
8 except as follows:

9 (1) SUPPLEMENT TO FEDERAL HISTORIC REHABILITATION CREDIT. The treatment of
10 section 71.21 (6) of the statutes takes effect on the first day of the 3rd month
11 beginning after publication.

NOTE: Creates a nonstatutory provision that provides that s. 71.21 (6) (c), stats., created in this bill, takes effect for partnership agreements for the allocation of the state tax credit for historic preservation executed on the first day of the 3rd month beginning after the date on which this bill takes effect.

12

(END)