

2001 DRAFTING REQUEST

Bill

Received: 10/09/2001

Received By: jkreye

Wanted: Soon

Identical to LRB:

For: Stephen Freese (608) 266-7502

By/Representing: rob

This file may be shown to any legislator: NO

Drafter: jkreye

May Contact:

Addl. Drafters:

Subject: Tax - corp. inc. and fran.
Tax - individual income

Extra Copies:

Submit via email: NO

Pre Topic:

No specific pre topic given

Topic:

Historic preservation tax credits

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofcd</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkreye 10/09/2001	gilfokm 10/10/2001		_____			S&L
/1			jfrantze 10/11/2001	_____	lrb_docadmin 10/11/2001	lrb_docadmin 10/16/2001	

FE Sent For:

L At intro

<END>

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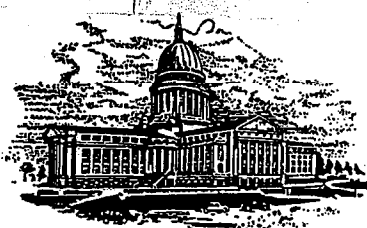
See Attached

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1?	jkreye	1-10/16 KMG	10/11	Self 10/11			

FE Sent For:

<END>



WISCONSIN STATE REPRESENTATIVE
STEPHEN J. FREESE

PETER:

PLEASE DRAFT SEPERATE
LEGISLATION THAT INCLUDES
SECTIONS 13, 15 & 16 FROM AB
277 / SB 123. ALSO INCLUDE
LANGUAGE FOUND IN SECTION
14 BUT WITH THE CHANGES
RAY CAREY RECOMMENDS. SEN.
PLACHE WILL BE INTRODUCING
A COMPANION SENATE BILL.
ANY QUESTIONS, PLEASE CALL
ME OR RAY CAREY @ 258-4778.
PLEASE WORK WITH HIM IF
NEEDED. THANK YOU! ROB

Office: P.O. 8952, State Capitol, Madison, Wisconsin 53708 • (608) 266-7502
Home: 675 Flamingo Lane, Hazel Green, Wisconsin 53811 • (608) 748-4502

FOLEY & LARDNER
MEMORANDUM

CLIENT-MATTER NUMBER
083076-0101

TO: Rob Richard
FROM: Ray Carey
DATE: October 1, 2001
RE: Historic Preservation Credit

Rob, here are the instructions for drafting:

1. From SB 123/AB 277, adopt sections 13, 15 & 16. These sections, which are all identical, permit the granting of the state's historic preservation credit if the rehabilitation project is recommended by the state historic preservation officer prior to construction. Under current law, the Secretary of the Interior must approve such a project prior to construction in order for one to be eligible for the credit.
2. Rather than adopting section 14 of these bills, I recommend the following language:

Amend Wis. Stats. §§ 71.07(9m)(f), 71.28(6)(f) and 71.47(6)(f) to read:

A partnership, limited liability company or tax-option corporation may not claim the credit under this subsection. ~~The individual partners, of a partnership, the members in of a limited liability company or the shareholders in a tax-option corporation may claim the credit under this subsection based on upon the eligible costs incurred by the partnership, limited liability company or tax-option corporation, in proportion to the ownership interest of each partner, member or shareholder. The~~ The credit computed by a partnership, limited liability company or tax-option corporation shall calculate the amount of the credit which may be claimed by each be allocated among the partners, members or shareholders as provided in a written agreement entered into no later than the last day of the taxable year of the partnership, limited liability company or tax-option corporation during which the building is placed into service. Any partner, member or shareholder and shall

FOLEY & LARDNER

provide that information to the partner, member or shareholder claiming the credit under this subsection shall attach a copy of such written agreement to the tax return on which the credit is claimed.

- 3. Create the following effective date language:

Supplement to Federal Historic Rehabilitation Credit. The treatment of the changes to sections 71.07(9m), 71.28(6), and 71.47(6) under this Act shall apply to all buildings placed in service by a partnership, limited liability company or tax-option corporation after January 1, 2001 for which a written agreement among partners, members or shareholders is entered into after January 1, 2001.

3994/1

2001 ASSEMBLY BILL 277

RM mtrk

m/10-9-01 (SOON)

April 3, 2001 - Introduced by JOINT LEGISLATIVE COUNCIL. Referred to Committee on Tourism and Recreation.

re gov

1 AN ACT *to renumber* 101.121 (4) (a); *to consolidate, renumber and amend*
2 66.0413 (4) (a) and (b); *to amend* 59.69 (4m), 60.64, 62.23 (7) (em), 66.0413 (1)
3 (b) 1., 66.0413 (1) (h), 66.0413 (1) (k), 66.0413 (3) (c), 71.07 (9m) (c), 71.28 (6) (c),
4 71.47 (6) (c), 101.121 (4) (b), 101.122 (4) (b) 1., 101.132 (2) (b) 1., 101.132 (2) (b)
5 2., 101.132 (2) (b) 3., 101.19 (1) (intro.), 254.61 (1) (f) 2. and 823.21; and *to*
6 *create* 20.245 (3) (f), 44.46, 66.0414, 71.21 (6), 101.121 (3) (c), 101.121 (4) (a) 2.,
7 101.121 (5), 101.121 (6), 101.132 (2) (b) 3m., 101.132 (2) (e) 3., 101.19 (1m) and
8 101.975 (4) of the statutes; ~~relating to: the regulation of historic buildings, the~~
9 ~~income and franchise tax credit that supplements the federal historic~~
10 ~~rehabilitation tax credit, the historic building code, awarding grants to owners~~
11 ~~of historic agricultural buildings, requiring a liberal interpretation of local~~

(8-11)

ASSEMBLY BILL 277

1 ~~regulations applicable to historic buildings and structures, and making~~
2 ~~appropriations.~~

Analysis by the Legislative Reference Bureau~~**Razing of historic buildings**~~

This bill prohibits a local governmental unit (city, village, town, or county) from razing a building that is a historic building or that is more than 50 years old unless the local governmental unit notifies the state historical society and allows the historical society time to create or preserve a historic record of the building. Upon request of the historical society, the local governmental unit must provide an opportunity for residents to request a public hearing on the decision to raze the building. The bill also requires the owner of the building to reuse the building materials or to contract with a demolition contractor who will reuse the building materials.

Current law authorizes a municipality to order the owner of any old, dilapidated, or unsafe building to raze the building. Any person affected by such an order may appeal the order to circuit court, where the issue is the reasonableness of the order.

This bill eliminates the age of the building from the criteria that may lead to an order to raze the building. The bill also provides that, if the order relates to a historic building, representatives of a local historical society and the owner of a historic building located within 200 yards of the historic building that is subject to the order may appeal the order to circuit court.

~~**Historic building code**~~

Current law authorizes the department of commerce (department) to regulate the preservation and restoration of qualified historic buildings. 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 that is located in a district that is listed on the national or state register of historic places and is of historical significance to the district. Current law permits the department, in consultation with the historic building code council, to promulgate a historic building code that provides specific standards for the preservation or restoration of qualified historic buildings, while still providing for the health, safety, and welfare of occupants of and visitors to historic buildings. In addition, in order to permit the preservation or restoration of qualified historic buildings, the department may grant a variance from any rule promulgated under the chapters of the statutes relating to the regulation of industry, buildings, and safety or the regulation of plumbing, fire protection systems, and swimming pools.

With certain exceptions, the owner of a qualified historic building may elect to be subject to the historic building code. With limited exceptions, an owner who makes this election is exempt from any provision of any other building code, including a local building code, that concerns a matter that is dealt with in the historic building code. Although current law does not contain an administrative

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procedure designed specifically to determine whether an owner is entitled to this exemption, current law does contain a procedure that an owner may follow to resolve any conflicts between a local order and any order of the department that relates to the safety of places of employment or certain buildings that are open to the public (public buildings).

This bill specifies that the historic building code must be liberally interpreted to facilitate the preservation and restoration of qualified historic buildings. The bill also creates a specific administrative procedure for determining the extent to which a provision in a local building code applies to a qualified historic building. The bill permits the owner of a qualified historic building who has elected to be governed by the historic building code to request that the department review any decision of a local governmental unit that requires the owner to comply with a provision in a local ordinance. The department must review the decision in order to determine whether the provision in the ordinance concerns a matter dealt with in the historic building code, in which case the owner would be exempt from the provision. The bill specifies that, in performing this review, the department must follow the existing procedure for resolving conflicts between local orders and orders of the department that relate to the safety of places of employment or public buildings.

This bill also expands the role of the state historical society relating to the historic building code. Under the bill, the owner of a qualified historic building may request that the state historical society review certain decisions of the department, or of a local governmental unit acting as an agent of the department, relating to the historic building code, variances under the historic building code, or the inspection of qualified historic buildings for compliance with the historic building code. The state historical society must review the particular decision and issue an advisory opinion as to whether the decision or an alternate decision is consistent with the historic building code. The bill permits the state historical society to negotiate with the department or the particular local governmental unit to achieve an alternate decision that would allow the greatest possible degree of restoration and preservation, while still providing for the health, safety, and welfare of occupants of and visitors to the qualified historic building. The bill also permits the department or the particular local governmental unit to modify a reviewed decision, based upon these negotiations. In addition, the bill requires the department, in cooperation with the state historical society, to develop an informational pamphlet to increase public awareness and use of the historic building code.

Historic buildings used as multifamily dwellings

Current law requires the department to promulgate a multifamily dwelling code that provides uniform standards for the construction of multifamily dwellings and their components. With certain exceptions, a multifamily dwelling is 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. The multifamily dwelling code currently applies to any building or portion of a building that 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. Rules promulgated by the department also

ASSEMBLY BILL 277

permit a local governmental unit to exercise jurisdiction over the construction and inspection of multifamily dwellings by adopting ordinances that are consistent with the multifamily dwelling code. Currently, the multifamily dwelling code contains specific requirements relating to the type, height, and design of handrails and guardrails that are required to be used in multifamily dwellings.

This bill permits a local governmental unit to adopt an ordinance that allows the local governmental unit to grant a variance from these handrail and guardrail requirements, as they apply to a qualified historic building that is converted from a single-family dwelling to a multifamily dwelling. Under the bill, the ordinance must require an owner of a qualified historic building who seeks a variance to show that the type, height, and design of the handrail or guardrail proposed for installation is historically appropriate. If the owner makes this showing, the local governmental unit may grant the variance, as long as the proposed installation is at least as protective of public safety as the handrail or guardrail that otherwise would have been required.

Current law requires certain multifamily dwellings to meet design and construction standards that ensure accessibility for individuals with physical disabilities. In certain circumstances, these requirements may apply to a qualified historic building that is remodeled or added to for use as a multifamily dwelling. This bill specifies that a qualified historic building that is remodeled is exempt from accessibility requirements that are otherwise triggered by the remodeling of a multifamily dwelling. The bill also provides that all rules promulgated by the department relating to the accessibility of multifamily dwellings that are qualified historic buildings must comply with, and may not exceed, the requirements of the federal Fair Housing Act and the federal Americans with Disabilities Act, and regulations promulgated under those acts.

Exemption from fees

Currently, the department must charge fees to recover the costs of certain services that it provides relating to, among other things, reviewing construction plans and inspecting public buildings, places of employment, and other building components and locations that are subject to the department's jurisdiction. This bill requires the department to waive these fees for services relating to any preservation or restoration of a building or structure that is more than 100 years old, if the state historic preservation officer certifies: 1) that the building or structure is listed or eligible to be listed on the national or state register of historic places or is a building of historical significance in a district that is listed or eligible to be listed on the national or state register of historic places; and 2) that the preservation or restoration plan complies with standards applicable to projects that qualify for an income tax credit for historic property rehabilitation.

Historic agricultural grant program

This bill directs the state historical society to award grants to owners of historic agricultural buildings to assist in the restoration of the buildings.

ASSEMBLY BILL 277***Historic preservation in local governmental units***

This bill directs local governmental units to interpret liberally their regulations that apply to historic structures in order to facilitate the preservation and restoration of historic buildings and structures.

Study of rural historic preservation

This bill requests the joint legislative council to study methods of promoting rural historic preservation.

Supplement to the federal historic rehabilitation tax credit

Under current law, a person who owns an income-producing historic building may claim a federal income tax credit that is equal to 20% of certain costs to rehabilitate the historic building. To claim the credit, the building must be listed, or be eligible for listing, on the national register of historic places or located in certain national, state, or local historic districts and the rehabilitation work must comply with standards established by the secretary of the interior.

Under current law, a person who may claim the federal income tax credit for rehabilitating an income-producing historic building may also claim a state income tax or franchise tax credit that is equal to 5% of certain costs to rehabilitate the historic building. To claim the credit, the person must include with the person's tax return evidence that the secretary of the interior approved the rehabilitation work before the rehabilitation work began.

Under this bill, a person may claim the state income and franchise tax credit for rehabilitating an income-producing historic building, if the person includes with the person's tax return evidence that the state historic preservation officer recommended the rehabilitation work for approval by the secretary of the interior before the rehabilitation work began.

Under current law, each partner in a partnership is allocated a portion of any tax credit that the partnership may claim, including the credit for rehabilitating a historic building, based on each partner's ownership interest. Under this bill, a partner may also be allocated a portion of the tax credit for rehabilitating a historic building in a manner specified in an agreement with the other partners, ~~if the partners notify the department of revenue of the agreement within 30 days after executing the agreement.~~

~~For further information, see the NOTES provided by the joint legislative council.~~

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:

~~PRELIMINARY 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

ASSEMBLY BILL 277

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 multifamily 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

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 of methods to promote rural historic preservation.

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:

ASSEMBLY BILL 277

2001-02

2002-03

20.245 Historical society

(3) HISTORIC AND BURIAL SITES PRESERVATION

(f) Historic agricultural building

grant program

GPR

A

75,000

75,000

SECTION 2. 20.245 (3) (f) of the statutes is created to read:

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

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

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

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

ASSEMBLY BILL 277

“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.”

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

2 **59.69 (4m) HISTORIC PRESERVATION.** A county, as an exercise of its zoning and
3 police powers for the purpose of promoting the health, safety and general welfare of
4 the community and of the state, may regulate by ordinance any place, structure or
5 object with a special character, historic interest, aesthetic interest or other
6 significant value, for the purpose of preserving the place, structure or object and its
7 significant characteristics. The county may create a landmarks commission to
8 designate historic landmarks and establish historic districts. The county may
9 regulate all historic landmarks and all property within each historic district to
10 preserve the historic landmarks and property within the district and the character
11 of the district, and shall interpret the county's regulations liberally to facilitate the
12 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.

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

14 **60.64 Historic preservation.** The town board, in the exercise of its zoning
15 and police powers for the purpose of promoting the health, safety and general welfare
16 of the community and of the state, may regulate any place, structure or object with
17 a special character, historic interest, aesthetic interest or other significant value for
18 the purpose of preserving the place, structure or object and its significant
19 characteristics. The town board may create a landmarks commission to designate

ASSEMBLY BILL 277

1 historic landmarks and establish historic districts. The board may regulate all
2 historic landmarks and all property within each historic district to preserve the
3 historic landmarks and property within the district and the character of the district,
4 and shall interpret the board's regulations liberally to facilitate the preservation and
5 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.

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

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

ASSEMBLY BILL 277**SECTION 6**

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.

1 **SECTION 7.** 66.0413 (1) (b) 1. of the statutes is amended to read:

2 66.0413 (1) (b) 1. If a building is old, dilapidated or out of repair and
3 consequently dangerous, unsafe, unsanitary or otherwise unfit for human
4 habitation and unreasonable to repair, order the owner of the building to raze the
5 building or, if the building can be made safe by reasonable repairs, order the owner
6 to either make the building safe and sanitary or to raze the building, at the owner's
7 option.

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".

8 **SECTION 8.** 66.0413 (1) (h) of the statutes is amended to read:

9 66.0413 (1) (h) *Restraining order.* A person affected by an order issued under
10 par. (b) may within the time provided by s. 893.76 apply to the circuit court for an
11 order restraining the building inspector or other designated officer from razing the
12 building or forever be barred. The hearing shall be held within 20 days and shall be
13 given preference. The court shall determine whether the raze order is reasonable.
14 If the order is found reasonable the court shall dissolve the restraining order. If the
15 order is found not reasonable the court shall continue the restraining order or modify
16 it as the circumstances require. Costs are in the discretion of the court. If the court
17 finds that the order is unreasonable, the building inspector or other designated
18 officer shall issue no other order under this subsection in regard to the same building
19 until its condition is substantially changed. The remedies provided in this
20 paragraph are exclusive remedies and anyone affected by an order issued under par.

ASSEMBLY BILL 277

1 (b) is not entitled to recover any damages for the razing of the building. For the
 2 purposes of this paragraph, if the order requires the razing of a historic building, as
 3 defined in sub. (3) (a) 1m., persons affected by the order include representatives of
 4 a local historical society and the owner of a historic building, as defined in sub. (3)
 5 (a) 1m., that is located within 200 yards of the historic building that is subject to the
 6 order.

NOTE: Section 66.0413, 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. 66.0413, 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”.

7 **SECTION 9.** 66.0413 (1) (k) of the statutes is amended to read:

8 66.0413 (1) (k) *Public nuisance procedure.* A building which is determined
 9 under par. (b) 1. to be old, dilapidated or out of repair and consequently dangerous,
 10 unsafe, unsanitary or otherwise unfit for human habitation and unreasonable to
 11 repair may be proceeded against as a public nuisance under ch. 823.

NOTE: See the NOTE to SECTION 7.

12 **SECTION 10.** 66.0413 (3) (c) of the statutes is amended to read:

13 66.0413 (3) (c) If an order is issued under this section to raze and remove a
 14 historic building and restore the site to a dust-free and erosion-free condition, an
 15 application is made for a permit to raze and remove a historic building and restore

ASSEMBLY BILL 277

SECTION 10

~~1 the site to a dust-free and erosion-free condition or a municipality intends to raze
2 and remove a municipally owned historic building and restore the site to a dust-free
3 and erosion-free condition, the municipality in which the historic building is located
4 shall notify the state historical society of the order, application or intent. No historic
5 building may be razed and removed nor the site restored to a dust-free and
6 erosion-free condition for 30 days after the notice is given, unless a shorter period
7 is authorized by the state historical society. If the state historical society authorizes
8 a shorter period, however, such a period shall be subject to any applicable local
9 ordinance. During the 30-day period, the state historical society shall have access
10 to the historic building to create or preserve a historic record. If the state historical
11 society completes its creation or preservation of a historic record, or decides not to
12 create or preserve a historic record, before the end of the 30-day period, the society
13 may waive its right to access the building and may authorize the person who intends
14 to raze and remove the building, and restore the site to a dust-free and erosion-free
15 condition, to proceed before the end of such period, except that such a person shall
16 be subject to any applicable local ordinance or a building that is more than 50 years
17 old, s. 66.0414 applies.~~

NOTE: The material deleted from s. 66.00413 (3) (c) is recreated and expanded in s. 66.0414 as created by this bill.

18 **SECTION 11.** 66.0413 (4) (a) and (b) of the statutes are consolidated, renumbered
19 66.0413 (4) and amended to read:

20 66.0413 (4) FIRST CLASS CITIES: OTHER PROVISIONS. First class cities may adopt,
21 by ordinance, alternate or additional provisions governing the placarding, closing,
22 razing and removal of a building and the restoration of the site to a dust-free and
23 erosion-free condition. (b) This subsection shall be liberally construed to provide 1st

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1 class cities with the largest possible power and leeway of action, except that any
2 alternate or additional provision adopted shall be no less stringent than the
3 corresponding provision in s. 66.0414.

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.

4 SECTION 12. 66.0414 of the statutes is created to read:

5 **66.0414 Razing historic buildings and buildings that are more than 50**
6 **years old. (1) DEFINITIONS. In this section:**

7 (a) "Authority" means a housing authority under subch. XII, a redevelopment
8 authority under s. 66.1333, or a housing and community development authority
9 under s. 66.1335.

10 (b) "Historic building" has the meaning given in s. 66.0413 (3) (a) 1m.

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

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

16 (2) NOTICE TO STATE HISTORICAL SOCIETY. If a local governmental unit issues an
17 order or permit or other similar directive or authorization to raze a building, or if a
18 local governmental unit intends to raze a building that is owned by the local
19 governmental unit, and the building is either a historic building or more than 50
20 years old, the local governmental unit shall notify the state historical society of the
21 order, permit, directive, or authorization or of its intent.

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

4 1. For a historic building, 60 days.

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

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

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

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

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

24 3. If 5 or more residents of the local governmental unit submit a request for a
25 hearing under subd. 2., the period of delay in razing under sub. (3) (a) does not end

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1 until the local governmental unit holds the public hearing or makes written findings,
2 as required under subd. 2.

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

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

11 (6) APPLICABILITY. This section does not apply to part of a building that is not
12 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. 66.0413 (3) (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 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.

13 SECTION 13. 71.07 (9m) (c) of the statutes is amended to read:

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1 71.07 (9m) (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: 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 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.

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6 SECTION 14. 71.21 (6) of the statutes is created to read:

7 71.21 (6) Credits computed by a partnership under s. 71.07 (9m), 71.28 (6), or
8 71.47 (6) may be allocated to partners either as provided under this chapter or
9 pursuant to an agreement among the partners establishing an alternate allocation
10 method. The partners shall notify the department of an agreement within 30 days
11 after the agreement is executed and shall provide any additional information
12 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.

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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.

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SECTION 15. 71.28 (6) (c) of the statutes is amended to read:

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

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SECTION 16. 71.47 (6) (c) of the statutes is amended to read:

71.47 (6) (c) No person may claim the credit under this subsection unless the claimant includes with the claimant's return evidence that the rehabilitation was approved recommended by the state historic preservation officer for approval by the secretary of the interior under 36 CFR 67.6 before the physical work of construction, 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.~~

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

101.121 (3) (c) The historic building code shall be liberally interpreted to 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

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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.”

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 who elects under subd. 1. to be subject to the historic building code, the department
5 shall review any decision of a city, village, town, or county that requires the owner
6 to comply with a provision of a county or municipal building code, or of any other local
7 ordinance or regulation, to determine if the provision concerns a matter dealt with
8 in the historic building code. The procedures in s. 101.02 (7) apply to any review
9 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,

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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 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 (4) (b) of the statutes is amended to read:

2 101.121 (4) (b) Paragraph (a) 1. does not apply to any owner of a nursing home,
3 as defined in s. 50.01 (3), a hospital, as defined in s. 50.33 (2) (a) and (c), or an
4 approved public or private treatment facility for alcoholics, as defined in s. 51.45 (2)
5 (b) and (c).

6 **SECTION 21.** 101.121 (5) of the statutes is created to read:

7 101.121 (5) **ADVISORY OPINION OF STATE HISTORICAL SOCIETY.** (a) The owner of a
8 qualified historic building may submit to the state historical society a request for an
9 advisory opinion with respect to any decision of the department, or of a city, village,
10 town, or county that is an agent of the department, if the decision pertains to any of
11 the following:

- 12 1. This section or a rule promulgated under this section, except for a decision
13 of the department under sub. (4) (a) 2.
- 14 2. A variance to a rule promulgated under this section.
- 15 3. The inspection of a qualified historic building for compliance with a rule
16 promulgated under this section.

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1 (b) Upon receiving a request under par. (a), the state historical society shall
2 review all information related to the decision and shall render a written opinion on
3 each of the following:

4 1. Whether the decision is consistent with this section and the rules
5 promulgated under this section.

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

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

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

17 (e) This subsection does not modify any procedures for appeal of a decision of
18 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,

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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.

1 **SECTION 22.** 101.121 (6) of the statutes is created to read:

2 **101.121 (6) INFORMATIONAL PAMPHLET.** (a) In cooperation with the state
3 historical society, the department shall develop an informational pamphlet designed
4 to increase awareness and use of the historic building code. The department, in
5 cooperation with the state historical society, shall update the pamphlet as statutes
6 and rules relating to the historic building code are amended. The pamphlet shall
7 include the following information:

- 8 1. A description of the historic building code.
- 9 2. A description of the types and qualities of buildings that are subject to the
10 historic building code.
- 11 3. An explanation of how the owner of a qualified historic building may elect
12 to be subject to the historic building code and a description of the consequences of that
13 election.
- 14 4. A description of other alternative building codes that the owner of a historic
15 building may be eligible to use.
- 16 5. A description of where a person may obtain further information regarding
17 historic buildings and the historic building code.

18 (b) The department and the state historical society shall distribute the
19 pamphlets as they consider necessary to increase awareness of the historic building
20 code.

NOTE: This SECTION creates s. 101.121 (6), 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

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SECTION 22

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.

1 **SECTION 23.** 101.122 (4) (b) 1. of the statutes is amended to read:

2 101.122 (4) (b) 1. ~~Order~~ Subject to s. 66.0414, order demolition of the rental unit
3 no sooner than 90 days after the order.

NOTE: This provision applies the requirements of s. 66.0414, 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.

4 **SECTION 24.** 101.132 (2) (b) 1. of the statutes is amended to read:

5 101.132 (2) (b) 1. ~~If~~ Except as provided in subd. 3m., if more than 50% of the
6 interior square footage of any housing with 3 or more dwelling units is to be
7 remodeled, the entire housing shall conform to the standards in par. (a), regardless
8 of when the housing was first intended for occupancy.

9 **SECTION 25.** 101.132 (2) (b) 2. of the statutes is amended to read:

10 101.132 (2) (b) 2. ~~If~~ Except as provided in subd. 3m., if 25% to 50% of the interior
11 square footage of any housing with 3 or more dwelling units is to be remodeled, that
12 part of the housing that is to be remodeled shall conform to the standards in par. (a),
13 regardless of when the housing was first intended for occupancy.

14 **SECTION 26.** 101.132 (2) (b) 3. of the statutes is amended to read:

15 101.132 (2) (b) 3. ~~If~~ Except as provided in subd. 3m., if less than 25% of the
16 interior square footage of any housing with 3 or more dwelling units is to be
17 remodeled, the remodeling is not subject to the standards in par. (a) unless the
18 alteration involves work on doors, entrances, exits or toilet rooms, in which case the
19 doors, entrances, exits or toilet rooms shall conform to the standards in par. (a)
20 regardless of when the housing was first intended for occupancy.

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1 **SECTION 27.** 101.132 (2) (b) 3m. of the statutes is created to read:
2 101.132 (2) (b) 3m. The requirements under this paragraph do not apply to
3 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.

4 **SECTION 28.** 101.132 (2) (e) 3. of the statutes is created to read:
5 101.132 (2) (e) 3. All rules promulgated by the department under this section
6 relating to qualified historic buildings, as defined in s. 101.121 (2) (c), shall comply
7 with and not exceed the requirements of the Fair Housing Act under 42 USC 3601
8 to 3619 and the Americans with Disabilities Act under 42 USC 12181 to 12189 and
9 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

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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.

1 **SECTION 29.** 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 30.** 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 services relating to any preservation or restoration of a building or
9 structure that is more than 100 years old if the state historic preservation officer
10 certifies to the department 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 that is listed on 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

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preservation or restoration comply with the standards that are applicable to projects that qualify for the income tax credit for historic property renovations.

1 **SECTION 31.** 101.975 (4) of the statutes is created to read:

2 101.975 (4) (a) A political subdivision may adopt an ordinance that permits the
3 political subdivision to grant a variance to the uniform multifamily dwelling code if
4 all of the following apply:

5 1. The ordinance permits only a variance that relates to handrails or guardrails
6 of qualified historic buildings, as defined in s. 101.121 (2) (c), that are converted from
7 single-family dwellings to multifamily dwellings.

8 2. The ordinance requires the owner of a qualified historic building who seeks
9 a variance to provide the political subdivision with evidence that the type, height,
10 and design of the handrail or guardrail proposed for installation is historically
11 appropriate for the owner's building.

12 (b) A political subdivision may grant a variance under an ordinance adopted
13 under par. (a) if the owner seeking the variance provides the evidence required under
14 par. (a) 2. and if the handrail or guardrail installation is at least as protective of
15 public safety as the handrail or guardrail that would otherwise have been required.

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

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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.

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

2 254.61 (1) (f) 2. A structural addition, including a renovation, made to a
3 structure that was originally constructed at least 50 years before an initial or
4 renewal application for a permit under s. 254.64 (1) (b) is made and for which no use
5 other than as a bed and breakfast establishment is proposed. The structural addition
6 under this subdivision shall comply with the rules promulgated under s. 101.63 (1)
7 and (1m).

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.

One requirement of the current statute is that a bed and breakfast establishment must be 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.

The May 11, 1990 date is the date that this provision first took effect. An exception is provided for structural additions made to a structure that 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. “Including a renovation” is added to make this provision consistent with the rest of the definition.

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

9 **823.21 Dilapidated buildings declared nuisances.** Any building which,
10 under s. 66.0413 (1) (b) 1., has been declared so old, dilapidated or out of repair as
11 to be dangerous, unsafe, unsanitary or otherwise unfit for human habitation or has
12 been determined to be unreasonable to repair under s. 66.0413 (1) (b) 1. is a public
13 nuisance and may be proceeded against under this chapter.

NOTE: The amendment corresponds with the amendment in this bill to s. 66.0413 (1) (b) 1., which includes an explanatory note.

ASSEMBLY BILL 277

SECTION 34. Nonstatutory provisions; legislature.

(1) STUDY OF RURAL HISTORIC PRESERVATION. The joint legislative council is requested to study methods to promote rural historic preservation. If the council undertakes such a study, the council shall report its findings, conclusions, and recommendations to the 2003 legislature when it convenes.

SECTION 35. Appropriation changes; historical society.

(1) SURVEY OF RURAL HISTORIC BUILDINGS. In the schedule under section 20.005 (3) of the statutes for the appropriation to the state historical society under section 20.245 (3) (a) of the statutes, as affected by the acts of 2001, the dollar amount is increased by \$75,000 for fiscal year 2001-02 and the dollar amount is increased by \$75,000 for fiscal year 2002-03 for the purpose of entering into a contract for a survey under section 44.34 (1) of the statutes to identify and document historic properties 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".

SECTION 36. Initial applicability.

(1) SUPPLEMENT TO FEDERAL HISTORIC REHABILITATION CREDIT. *This act*
The treatment of
~~sections 71.07 (9m) (c), 71.21 (6), 71.28 (6) (e), and 71.47 (6) (c) of the statutes first applies to taxable years beginning on January 1 of the year in which this subsection takes effect, except that if this subsection takes effect after July 1 the treatment of sections 71.07 (9m) (c), 71.21 (6), 71.28 (6) (c), and 71.47 (6) (e) of the statutes first applies to taxable years beginning on January 1 of the year following the year in which this subsection takes effect.~~

2001, and to property placed in service on January 1, 2001

ASSEMBLY BILL 277

NOTE: Creates a nonstatutory provision that provides that the provisions 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 of the year after this subsection takes effect.

1 **SECTION 37. Effective dates.** This act takes effect on the day after publication,
2 or on the day after publication of the 2001-03 biennial budget act, whichever is later,
3 except as follows:

4 (1) **SUPPLEMENT TO FEDERAL HISTORIC REHABILITATION CREDIT.** The treatment of
5 section 71.21 (6) of the statutes takes effect on the first day of the 3rd month
6 beginning after publication, or on the first day of the 3rd month beginning after
7 publication of the 2001-03 biennial budget act, whichever is later.

NOTE: Creates a nonstatutory provision that provides that s. 71.21 (6), 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 or the 2001-03 biennial budget act takes effect, whichever is later.

8

(END)

Insert 16 - 5

1 SECTION 1. 71.07 (9m) (f) of the statutes is amended to read:

2 71.07 (9m) (f) A partnership, limited liability company, or tax-option
3 corporation may not claim the credit under this subsection. The individual partners
4 of a partnership, members in of a limited liability company, or shareholders in a
5 tax-option corporation may claim the credit under this subsection based on eligible
6 costs incurred by the partnership, company, or tax-option corporation, in proportion
7 to the ownership interest of each partner, member or shareholder. The Credits
8 computed by a partnership, limited liability company, or tax-option corporation shall
9 calculate the amount of the credit which may be claimed by each partner, member
10 or shareholder and shall provide that information to the be allocated to partners,
11 members, or shareholders as provided in a written agreement among the partners,
12 members, or shareholders that is entered into no later than the last day of the taxable
13 year of the partnership, company, or tax-option corporation. Any partner, member,
14 or shareholder who claims the credit under this subsection shall attach a copy of the
15 agreement to the tax return on which the credit is claimed.

History: 1987 a. 312; 1987 a. 411 ss. 63, 79 to 82, 85, 86; 1987 a. 419, 422; 1989 a. 31, 44, 56, 100, 359; 1991 a. 39, 269, 292; 1993 a. 16, 112, 204, 471, 491; 1995 a. 27
ss. 3377m to 3393m, 9116 (5); 1995 a. 209, 227, 400, 453; 1997 a. 27, 41, 237, 299; 1999 a. 5, 9, 10, 32; 1999 a. 150 s. 672; 1999 a. 198.

Insert 17 - 6

16 SECTION 2. 71.28 (6) (f) of the statutes is amended to read:

17 71.28 (6) (f) A partnership, limited liability company, or tax-option corporation
18 may not claim the credit under this subsection. The individual partners of a
19 partnership, members in of a limited liability company, or shareholders in a
20 tax-option corporation may claim the credit under this subsection based on eligible
21 costs incurred by the partnership, company, or tax-option corporation, in proportion
22 to the ownership interest of each partner, member or shareholder. The Credits

1 computed by a partnership, limited liability company, or tax-option corporation shall
 2 calculate the amount of the credit which may be claimed by each partner, member
 3 or shareholder and shall provide that information to the be allocated to partners,
 4 members, or shareholders as provided in a written agreement among the partners,
 5 members, or shareholders that is entered into no later than the last day of the taxable
 6 year of the partnership, company, or tax-option corporation. Any partner, member,
 7 or shareholder who claims the credit under this subsection shall attach a copy of the
 8 agreement to the tax return on which the credit is claimed.

History: 1987 a. 312; 1987 a. 411 ss. 88, 130 to 139; 1987 a. 422; 1989 a. 31, 44, 56, 100, 336, 359; 1991 a. 39, 292; 1993 a. 16, 112, 232, 491; 1995 a. 2; 1995 a. 27 ss. 3399r to 3404c, 9116 (5); 1995 a. 209, 227; 1997 a. 27, 41, 237, 299; 1999 a. 5, 9.

Insert 17 - 12

9 **SECTION 3.** 71.47 (6) (f) of the statutes is amended to read:

10 71.47 (6) (f) A partnership, limited liability company, or tax-option corporation
 11 may not claim the credit under this subsection. The individual partners of a
 12 partnership, members in of a limited liability company, or shareholders in a
 13 tax-option corporation may claim the credit under this subsection based on eligible
 14 costs incurred by the partnership, company, or tax-option corporation, in proportion
 15 to the ownership interest of each partner, member or shareholder. The Credits
 16 computed by a partnership, limited liability company, or tax-option corporation shall
 17 calculate the amount of the credit which may be claimed by each partner, member
 18 or shareholder and shall provide that information to the be allocated to partners,
 19 members, or shareholders as provided in a written agreement among the partners,
 20 members, or shareholders that is entered into no later than the last day of the taxable
 21 year of the partnership, company, or tax-option corporation. Any partner, member,

- 1 or shareholder who claims the credit under this subsection shall attach a copy of the
- 2 agreement to the tax return on which the credit is claimed.

History: 1987 a. 312, 411, 422; 1989 a. 31, 44, 56, 100, 336, 359; 1991 a. 39, 292, 315; 1993 a. 16, 112; 1995 a. 27 ss. 3407m to 3412m, 9116 (5); 1995 a. 209, 227, 417; 1997 a. 27, 41, 237, 299; 1999 a. 5, 9.



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

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STEPHEN R. MILLER
CHIEF

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-6948

October 11, 2001

MEMORANDUM

To: Representative Freese

From: Joseph T. Kreye, Legislative Attorney

Re: LRB-3994/1 Historic preservation tax credits

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 266-2263 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.



State of Wisconsin

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REFERENCE SECTION: (608) 266-0341
FAX: (608) 266-5648

STEPHEN H. MILLER
CHIEF

Lrb

November 14 , 2001

MEMORANDUM

To: Representative Freese

From: Joseph T. Kreye, Legislative Attorney, (608) 266-2263

Subject: Technical Memorandum to **2001 AB 624** (LRB-3994/1)

We received the attached technical memorandum relating to your bill. This copy is for your information and your file. If you wish to discuss this memorandum or the necessity of revising your bill or preparing an amendment, please contact me.

MEMORANDUM

November 13, 2001

TO: Joseph Kreye
Legislative Reference Bureau

FROM: Brian Pahnke
Department of Revenue

SUBJECT: Technical Memorandum on AB 624: Historic Preservation Tax Credits

Under current law, a person cannot claim the supplement to the federal historic rehabilitation credit until the taxable year in which the project is approved by the secretary of the interior. The credit is claimed at the same time for federal and Wisconsin purposes. The proposed change creates uncertainty as to when the credit may be claimed. It is unclear, for example, if the credit would be claimed over a period of years as the expenses are incurred, in the year that the project is completed, or at some other point in time.

The Wisconsin treatment of S corporations and their shareholders is federalized. Sections 1366 and 1377 of the Internal Revenue Code require S corporations to allocate all items of income, loss, deduction, and credit among the shareholders based on their ownership interest. The IRS regulations provide that if there is an agreement to modify the distribution policy of the corporation by increasing distributions to shareholders who bear heavier state tax burdens, the S corporation status will be terminated. This is the case even though the result will give the shareholders equal after-tax distributions.

The provisions greatly complicate the determination of a shareholder's basis in the corporation's stock and the amount of taxable income from the corporation.

The Wisconsin treatment of partnerships and limited liability companies (LLCs) is federalized. Although partnerships and LLCs have greater flexibility than S corporations in allocating income, losses, and credits, federal law provides complex rules for determining whether these allocations are proper. When items are allocated to provide tax benefits for certain partners or members, the special allocation may be invalidated. In addition, special allocations greatly complicate the determination of a partner's or member's capital account and the amount of taxable income received from the entity. It may also create problems in determining the amount and tax treatment of distributions upon the liquidation of the entity.

This act first applies to taxable years beginning on January 1, 2001, and to property placed in service on January 1, 2001. The 2001 tax forms have already been sent to the printer. It would be preferable if the

bill were first to apply to taxable years beginning on January 1, 2002, or to taxable years beginning on January 1, 2003, if enacted after July 30 of 2002.

If you have any questions regarding this technical memorandum, please contact Pam Walgren at (608) 266-7817.