

NOTICE OF PROPOSED GUIDANCE DOCUMENT

DTIMBOA33

Pursuant to Wis. Stat. s. 227.112, the Wisconsin Department of Transportation is hereby seeking comment on DTIMBOA33, a proposed guidance document.

PUBLIC COMMENTS AND DEADLINE FOR SUBMISSION

Comments may be submitted to the Wisconsin Department of Transportation for 21 days by:

1. Department's website: <https://appengine.egov.com/apps/wi/dot/guidance-docs?guidDocId=DTIMBOA33>

2. Mailing written comments to:

Division of Transportation Investment Management
Wisconsin Department of Transportation
4822 Madison Yards Way
PO Box 7913
Madison, WI 53707-7913

WEBSITE LOCATION OF FINAL GUIDANCE DOCUMENT

The final version of this guidance document will be posted at wisconsin.dot.gov to allow for ongoing comment.

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Wisconsin Aviation Laws



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**CHAPTER TRANS 54
ADVANCE LAND ACQUISITION LOAN PROGRAM FOR AIRPORTS**

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Trans 54.07 Ownership and property management.
Trans 54.08 Recovery of loan balance, interest and administrative costs.

TRANS 54.01 Purpose and Scope.

- (1) The purpose of this chapter is to establish administrative policies and procedures necessary to implement the advance land acquisition loan fund for airports as established in s. 114.37, Stats.
- (2) The scope of this chapter shall include all provisions of s. 114.37, Stats., and applicable provisions contained in ss. 114.13 and 114.33, Stats.

History: Cr. Register, May, 1982, No. 317, eff. 6-1-82.

Trans 54.02 Definitions. Along with words and phrases as defined in ss. 114.001 and 114.002, Stats., the following definitions shall apply in the interpretation of this chapter:

- (1) "Assessment of value" means a value ascribed to the property by the department. It includes, but is not limited to, the purchase price, awards of damages, and awards or values set by courts, regulatory bodies, or arbitration, plus such other costs as may be incurred in the purchase, including the cost of litigation, relocation, relocation assistance, land surveys, appraisals, negotiation, legal services, necessary project plans, environmental studies, and other costs incidental to the acquisition.
- (2) "Bureau" means department of transportation, bureau of aeronautics.
- (3) "Fund" means the advance land acquisition loan funds referred to in s. 114.37 (3), Stats.
- (4) Trans 54.02(4)
- (5) "Sponsor" means the owner or prospective owner of a public-use airport in the Wisconsin state airport system plan, including a city, county, town, village or owner of a public-use airport and any 2 or more such governmental units having joint ownership.

History: Cr. Register, May, 1982, No. 317, eff. 6-1-82; am. (4), Register, April, 1993, No. 448, eff. 5-1-93.

Trans 54.03 Eligibility. Land to be purchased under the advance land acquisition program shall meet all of the following requirements:

- (1) The land to be acquired must be part of a planned airport improvement project or a land acquisition project.
- (2) The site or airport shall be included in the Wisconsin state airport system plan.
- (3) Trans 54.03(3)
- (4) The land to be acquired shall be included in a department approved airport layout plan.
- (5) The land to be acquired shall be capable of being utilized and developed in substantial compliance with state and federal environmental protection laws.

History: Cr. Register, May, 1982, No. 317, eff. 6-1-82.

Trans 54.04 Loan initiation. The sponsor shall submit an application for an advance land acquisition loan in the form of a resolution satisfactory to the secretary.

Note: *Application and grant contract forms are available from the department of transportation, bureau of aeronautics, P.O. Box 7914, Madison, WI 53707.*

History: Cr. Register, May, 1982, No. 317, eff. 6-1-82.

Trans 54.05 Sponsor action required. The sponsor shall, by contract, agree to:

- (1) Pay the cost of any loan initiation plans or investigations necessary for the department to justify making the loan.
- (2) Designate the secretary as the sponsor's agent and execute an agency agreement.
- (3) Execute a contract of responsibility and performance with the secretary as part of the loan agreement.
- (4) Petition for the relocation order to acquire land under s. 114.33, Stats., if condemnation is required.

History: Cr. Register, May, 1982, No. 317, eff. 6-1-82.

TRANS 54

Trans 54.06 Allocation.

- (1) In making loans from the fund, the secretary shall consider:
 - (a) The statewide priority of the proposed land acquisition.
 - (b) The adverse effect that failure to acquire the property would have on air traffic safety and future airport development.
- (2) The department may make a loan for up to 80% of the estimated land acquisition costs, including the costs of any necessary project plans and environmental studies so long as that amount does not exceed 80% of the department's assessment of the value of the property as defined in s. Trans 54.02.

History: Cr. Register, May, 1982, No. 317, eff. 6-1-82.

Trans 54.07 Ownership and property management.

- (1) Title to the land or any property interest acquired through this program shall be held by the sponsor, but the department may retain a security interest in the land until the loan is repaid.
- (2) Land or improvements, acquired as uneconomic remnants or to minimize severance damage, may be disposed of by the sponsor.
- (3) Building sites or other improvements on the land may be cleared by the sponsor before development or prior to the disposition of unneeded segments.

History: Cr. Register, May, 1982, No. 317, eff. 6-1-82.

Trans 54.08 Recovery of loan balance, interest and administrative costs. As part of the loan agreement, the secretary shall provide for the recovery of loan funds, interest, and administrative costs. The agreement shall require:

- (1) That the primary source of repayment shall be:
 - (a) Any federal, state, or sponsor's share of funds received for the land acquisition.
 - (b) Net income derived from the sale of surplus land and improvements acquired with loan funds. Such income shall be returned immediately upon receipt by the sponsor.
- (2) If funds available under sub. (1) are insufficient, then the remaining loan balance, interest, and administrative costs shall be repaid from:
 - (a) Any net income derived from leasing the land or improvements on the land acquired by the sponsor under the advance land acquisition loan program.
 - (b) Any other sources of revenue available to the sponsor.
- (3) The period for repayment of the loan balance, interest, and administrative costs shall not exceed 5 budget years. The repayment schedule shall be a matter of negotiation between the state and the sponsor.
- (4) Interest shall be charged at the rate of 4% per year on the unpaid principal balance.

History: Cr. Register, May, 1982, No. 317, eff. 6-1-82.

CHAPTER TRANS 55
CONDITIONS OF STATE AID FOR AIRPORT IMPROVEMENT

<u>Trans 55.01</u>	Purpose.
<u>Trans 55.02</u>	Definitions.
<u>Trans 55.03</u>	Applicability.
<u>Trans 55.04</u>	Duration.
<u>Trans 55.05</u>	Request for state aid.
<u>Trans 55.06</u>	Conditions of state aid.
<u>Trans 55.07</u>	Compliance assistance.

Trans 55.01 Purpose. The purpose of this chapter is to identify the conditions necessary to the granting of state aid as required in s. 114.31, Stats. This chapter describes owner responsibilities at airports developed with state funding assistance. These conditions protect the public investment and assure that airport improvements developed with state funds are managed to provide maximum public benefit.

History: Cr. Register, May, 1997, No. 497, eff. 6-1-97.

Trans 55.02 Definitions. The words and phrases defined in ch. 114, Stats., have the same meaning in this chapter unless a different definition is specifically provided. In this chapter:

- (1) "Airport improvement project" means a physical improvement to an airport.
- (2) "Airport owner" means a county, city, village or town, either singly or jointly with one or more counties, cities, villages or towns, or an owner of a public-use airport desiring to sponsor an airport improvement project to be constructed with state aid.
- (3) "Conditions" means the requirements listed in s. Trans 55.06.
- (4) "FAA" means federal aviation administration.
- (5) "Finding" means a document prepared by the secretary and approved by the governor which authorizes funds for an airport improvement project.
- (6) "Force account" means airport construction work that is accomplished through the use of material, equipment, labor, and supervision provided by the sponsor or by another public agency pursuant to an agreement with the sponsor.
- (7) "Runway protection zone" means an area off the end of the runway, the use of which is restricted in order to enhance the protection of people and property on the ground.

History: Cr. Register, May, 1997, No. 497, eff. 6-1-97.

Trans 55.03 Applicability. The conditions set forth in s. Trans 55.06 apply to airport owners who sponsor a project developed with state aid.

History: Cr. Register, May, 1997, No. 497, eff. 6-1-97.

Trans 55.04 Duration.

- (1) Conditions of state aid shall commence on the date of issuance of a finding by the governor providing state funds for an airport improvement project and shall remain in effect for 20 years.
- (2) There is no limit on the duration of conditions with respect to real property interests acquired with state funds.

History: Cr. Register, May, 1997, No. 497, eff. 6-1-97.

Trans 55.05 Request for state aid.

- (1) An airport owner may request state aid by resolution of the airport owner's governing body or board of directors as provided in s. 114.33 (2), Stats.
- (2) The secretary may enter into an agreement with an airport owner in accordance with s. 114.32, Stats., for the following:
- (3) To accept and disburse federal, state and local funds for a project and to make arrangements for the development of the project by contract, agreement, force account or otherwise.
- (4) To acquire property.
- (5) To administer the project including the execution of documents and contracts.
- (6) The secretary may require a written commitment of required airport owner funds before forwarding a finding to the governor for approval.

History: Cr. Register, May, 1997, No. 497, eff. 6-1-97.

Trans 55.06 Conditions of state aid.**(1) Good Title to Airport.**

- (a) An airport owner shall maintain good title to the airport and may not dispose of or encumber its fee title or other property interests as shown on the exhibit "A", or airport property map, for the duration of these conditions without the written approval of the secretary. Ordinary airport tenant leases for direct, supportive or complementary aviation activities are not considered an encumbrance by the secretary and not subject to review.
- (b) An airport owner may dispose of land when it is no longer needed for airport purposes, after receiving approval from the secretary. The airport owner shall dispose of the land at fair market value. The secretary may authorize that portion of the proceeds, which is proportionate to the state's share of the cost of acquisition of such land, shall be invested in an airport improvement project or be paid to the secretary for deposit in the transportation fund. Disposition of land shall be subject to the retention or reservation of an interest or right necessary to ensure that the land shall only be used for purposes which are compatible with the operation of the airport.

(2) Airport Operation and Maintenance.

- (a) An airport owner shall safely operate and maintain all airport facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States.
- (b) An airport owner may not permit an activity on airport property that would interfere with air transportation provided that nothing contained in this chapter shall be construed to require that an airport be operated during temporary periods when snow, flood or other conditions beyond the control of the owner prevent its use.
- (c) An airport owner shall promptly notify pilots of conditions affecting the safe aeronautical use of the airport.
- (d) An airport owner shall establish and maintain a program of both preventative and remedial pavement maintenance. The program shall contain, as a minimum, all of the following:
 - 1. An inventory of pavements.
 - 2. A pavement inspection schedule.
 - 3. A systematic repair schedule to maintain performance and extend pavement life.
 - 4. A budget sufficient to accomplish the repair schedule.
- (e) An airport owner shall operate the following minimum airfield lighting during periods of darkness, when such facilities exist at the airport:
 - 1. Low-intensity lighting on one runway.
 - 2. Airport beacon.
 - 3. Windsock lighting.
 - 4. Obstruction lighting.

(3) Maintain Clear and Safe Approaches.

- (a) An airport owner shall maintain clear and safe runway protection zones as described in FAA advisory circular 150/5300-13, Airport Design, as amended, except for runway lighting fixtures, markers and metrological instruments whose locations are fixed by their functional purposes or a structure approved by the FAA. The owner shall establish positive control of the runway protection zones through the acquisition of fee title or avigation easement. The owner shall prevent the erection or creation of a structure or place of public assembly in the runway protection zone.

Note: *The FAA advisory circular may be obtained from the United States Department of Transportation, Distribution Unit, TAB 443.1, Washington, D.C. 20590, and is on file with the Attorney General's office and the Legislative Reference Bureau.*

- (b) An airport owner shall adequately clear and protect the aerial approaches to the airport by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

(4) Ordinances.

- (a) A public airport owner shall adopt the following ordinances within 6 months after receipt of a sample ordinance from the secretary:
 - 1. A height limitation zoning ordinance adequately restricting the height of objects near the airport in accordance with s. 114.136, Stats.
 - 2. An ordinance to provide for the control of vehicular and pedestrian traffic on the surface of the airport.
- (b) A private airport owner shall:
 - 1. Adopt and enforce a rule to provide for the control of vehicular and pedestrian traffic on the surface of the airport.
 - 2. Make application for and pursue the passage and acceptance of a compatible ordinance using s. 114.136, Stats., as the primary guide.

- (5) **Surveys.** An airport owner shall cooperate with the secretary in surveys which may be conducted on topics that include the following:
- (a) Airport rates and charges.
 - (b) Airport operations.
 - (c) Based aircraft.
- (6) **Public Access.** An airport owner shall provide suitable aircraft parking areas so that aircraft and passengers, scheduled and general aviation, have reasonable access to the airport facilities consistent with security requirements.
- (7) **Legal Relations.** An airport owner shall indemnify and hold harmless the state and all its officers, employees, and agents from and against a suit, cause, action, claims costs, and expenses, including legal fees, and the state's attorney's fees, in connection with bodily injury to a person or damage to property caused directly or indirectly by failure, malfunction, lack of maintenance, or construction of the airport and its facilities.
- (8) **Airport Layout Plan.** An airport owner shall maintain a current layout plan showing all of the following:
- (a) The boundaries of the airport and all proposed additions, together with the boundaries of all off-site areas owned or controlled by the airport owner for airport purposes and proposed additions.
 - (b) The location and nature of all existing and proposed airport facilities and structures, such as runways, taxiways, aprons, terminal buildings, hangars and roads, including all proposed extensions and reductions of existing airport facilities.
 - (c) The airport layout plan and each amendment, revision or modification to the plan shall be subject to the approval of the secretary, which approval shall be evidenced by the signature of a duly authorized representative of the secretary on the face of the airport layout plan. The airport owner may not make or permit a change or alteration in the airport or in any of its facilities other than in conformity with the airport layout plan as approved by the secretary if the changes or alterations might adversely affect the safety, utility or efficiency of the airport.
- (9) **Preserving Airport Rights and Power.**
- (a) An airport owner may not enter into transactions which would deprive it of the rights and powers necessary to perform these conditions without the written approval of the secretary. The owner shall act to acquire, extinguish or modify outstanding rights or claims of the right or rights of others which would interfere with such performance by the airport owner.
 - (b) The obligation to perform these conditions may be assumed by another public agency found by the secretary to be eligible to assume such obligations and having the power, authority, and financial resources to carry out all such obligations. If an arrangement is made for management or operation of the airport by an agency or person other than the airport owner or an employee of the owner, the owner shall reserve sufficient rights and authority to ensure that the airport shall be operated and maintained in accordance with these conditions.
- (10) **Special Conditions.** In addition to the conditions under this section, the secretary may establish, by written agreement, special conditions in the public interest where required by specific project or airport site circumstances.
- History:** Cr. Register, May, 1997, No. 497, eff. 6-1-97.

Trans 55.07 Compliance assistance. If the department becomes aware of an instance where an airport owner is not in compliance with this chapter, the following steps shall be taken:

- (1) The department shall initiate an informal meeting with the airport owner to clarify the compliance issue and recommend corrective action, if required.
- (2) If the informal meeting fails to resolve compliance disputes, the secretary shall issue a notice to the airport owner detailing such alleged disputes and requesting corrective action.
- (3) An airport owner shall have 45 days to resolve discrepancies or reply in writing explaining a proposed course of action to resolve the discrepancy in a timely fashion.
- (4) If an airport owner's response does not resolve the issue, the secretary shall then make a compliance determination and issue an appropriate order. The department may pursue appropriate administrative or legal action including suspension from state airport aid eligibility and the recovery of state funds invested in the airport.
- (5) Airport owners in disagreement with the secretary's order may request an administrative hearing in accordance with ch. 227, Stats.

History: Cr. Register, May, 1997, No. 497, eff. 6-1-97.

**CHAPTER TRANS 56
ERECTION OF HIGH STRUCTURES**

- Trans 56.01 Purpose.
Trans 56.02 Applicability.
Trans 56.03 Definitions.
Trans 56.04 Permits.
Trans 56.05 Marking and lighting.

Note: Chapter Aer 3 as it existed on June 30, 1994, was repealed and a new chapter Trans 56 was created effective July 1, 1994.

Trans 56.01 Purpose. This chapter prescribes procedures for the permitting of the erection of high structures or other objects affecting airspace in the state of Wisconsin.

History: Cr. Register, June, 1994, No. 462, eff. 7-1-94.

Trans 56.02 Applicability. This chapter applies to any person desiring to erect any building, structure, tower or other object affecting the limitations expressed in s. 114.135 (7), Stats. It describes the minimum requirements that a person shall meet before erecting such a structure. This chapter shall not apply to any structure erected or approved for erection prior to July 1, 1994 unless subsequent addition to that structure would cause it to exceed its original height.

History: Cr. Register, June, 1994, No. 462, eff. 7-1-94.

Trans 56.03 Definitions. The words and phrases defined in ch. 114, Stats., have the same meaning in this chapter unless a different definition is specifically provided. In this chapter:

- (1) "Adverse impact" means an increased level of risk to a pilot flying in navigable airspace, degradation of safety, increased risk to the safe operation of aircraft in airport traffic patterns, approaches and departures, or other action affecting aviation that is harmful to the public interest.
- (2) "AGL" means above ground level.
- (3) "AMSL" means above mean sea level.
- (4) "Applicant" means any person proposing to erect any structure that would exceed the limitations expressed in s. 114.135 (7), Stats.
- (5) "Cardinal altitude" means an altitude which commences at 2,000 AMSL and increases in 500 increments.
- (6) "Erect" or "erection" means to raise or construct any building, structure, tower or other object, or increase the height of any existing building, structure, tower or other object.
- (7) "FAA" means federal aviation administration.
- (8) "FCC" means the federal communications commission.
- (9) "Navigable airspace" means that airspace suitable for transit by aircraft in accordance with 14 CFR part 91.
- (10) "Public airport" means any airport open to the regular use of the general public, without prior permission.
- (11) "Secretary" means the secretary of the department of transportation.
- (12) "Structure" means any building, structure, tower or other object.
- (13) "Tower farm" means a grouping of tall towers in clusters.
- (14) "VFR" means visual flight rule.
- (15) "VFR corridor" means a commonly used route identified by clearly discernible ground references including, but not limited to, railroad tracks, interstate highways, rivers or shorelines.
- (16) "Victor airway" means a very high frequency omnidirectional range federal airway.

History: Cr. Register, June, 1994, No. 462, eff. 7-1-94.

Trans 56.04 Permits.

- (1) **Permit Required.** Any person desiring to erect a structure that exceeds the limitations in s. 114.135 (7), Stats., shall obtain a permit from the secretary. Where an addition to an existing structure would cause the structure to exceed the height specified in an existing permit, an amended permit shall be obtained. It is the responsibility of the applicant to properly apply for and obtain the required permit.
- (2) **Authority Granted by Permit.**
 - (a) By issuing a permit, the secretary authorizes the erection of the proposed structure, subject to the conditions in the permit.
 - (b) A permit does not relieve the permit holder from compliance with other applicable federal, state and local laws and requirements.
 - (c) The conditions under which a permit is granted include:
 1. Written notification to the secretary when erection of the structure has begun, and again upon completion.

2. Written certification to the secretary of the final height upon completion of the structure. Transmission of the appropriate FAA supplemental notification forms or the department of industry, labor and human relations certificate of completion form to the secretary shall fulfill the requirements of subd. 1.
3. Written notification to the secretary within 30 days of a change in ownership of the structure.
4. Such other necessary and related conditions as the secretary may specify.

(3) Permit Application General Requirements.

- (a) Each person who proposes to erect a structure that requires a permit, including increasing the height of an existing structure permitted under s. 114.135 (6) and (7), Stats., shall file an application with the secretary. Applications shall be filed with the secretary at the address specified on the application.

Note: *Application forms for the permits required under s. 114.135 (6), Stats., can be obtained from the Wisconsin Department of Transportation, P. O. Box 7914, Madison, WI 53707-7914.*

- (b) An application for a permit shall include the following information:
1. Name and address of the owner of the proposed structure.
 2. Name and address of the applicant, if different from the owner.
 3. Location of the proposed structure to within 5 seconds of latitude and longitude.
 4. Location of the proposed structure depicted on a United States coast and geodetic survey 7.5 or 15 quadrangle map, or acceptable copy, and by the quarter quarter section of the United States survey.
 5. Maximum height AGL of the proposed structure, including all appurtenances and lighting.
 6. Maximum elevation AMSL of the proposed structure, including all appurtenances and lighting.
 7. Direction and distance to the closest point of the nearest end of runway of the nearest public airport.
 8. Description of the marking and lighting proposed to be installed.
 9. A copy of the completed FAA form 7460-1, notice of proposed construction or alteration, relative to the proposed structure if one is required.
- (c) The application shall be signed by an authorized officer, employee, agent or representative of the applicant.
- (d) An incomplete application may be returned to the applicant for further information without action.
- (e) The secretary may require additional information deemed necessary by the department to the permit process.
- (f) An amendment to an existing permit may be requested by application to the secretary.
- (g) The applicant shall be notified within 30 days of receipt of an application if a permit is not required.

(4) Permit Application Processing.

- (a) The application may be filed at any time.
- (b) Upon receipt of a properly completed application, the secretary shall initiate a study. That study shall include the following:
1. An analysis of the potential impacts of the proposed structure on the safe operation of aircraft and the public interest.
 2. Except as provided in par. (h), notification, within 15 working days of receipt of the application, to all airports which may be affected by the proposed structure and to other interested persons, including all known airports within 10 nautical miles of the proposed structure.
 3. Except as provided in par. (d) and subject to par. (g), such notice shall provide 90 days for public comment on the proposal.
- (c) The secretary shall, within 30 days after the close of the public comment period, issue a decision, except where an FAA aeronautical study is still being conducted. In such instance, no decision shall be issued prior to the issuance of an FAA determination and the resolution of any appeals of that determination.
- (d) Where there is no need for an FAA aeronautical study and the proposed structure is more than 5 nautical miles from the closest public airport, the public comment period shall not exceed 30 days.
- (e) The applicant or any affected party may, within 20 days of the issuance of a decision, request that the secretary convene a hearing to receive additional information or hear new arguments addressing the application.
- (f) If no hearing is requested, the decision shall become final 20 days after the date of issuance.
- (g) The secretary may, at any time during the process, convene a meeting to receive public comment and to gather additional facts relevant to the permit application. The secretary may waive the 90-day public comment period any time after a public comment meeting has been held.
- (h) The secretary may waive the notification requirement and public comment period and otherwise expedite applications for towers that do not exceed the highest tower's elevation within a tower farm.
- (i) Where there are multiple applicants for the same frequency or service from the FCC, the secretary shall take no final action on a permit application until the FCC has designated a licensee.

(5) Permit Contents. The permit shall include the following:

- (a) Name and address of the permittee.
- (b) The location of the structure by latitude and longitude to the nearest 5 seconds and by the quarter quarter section of the United States survey.

- (c) The maximum allowable height of the structure, including all appurtenances and lighting fixtures.
- (d) The required marking and lighting.
- (e) Notification that the subject structure shall be erected within one year after the date a permit is issued.

(6) Permit Violations.

- (a) A permit may be revoked or amended by the secretary for any lawful reason including, but not limited to, the following:
 - 1. Failing to properly maintain the marking and lighting designated by the FAA and FCC.
 - 2. Exceeding the permitted height of the structure.
 - 3. Abandoning the structure.
 - 4. Violating any of the conditions of the permit.
 - 5. The amending of an FAA no hazard determination regarding the proposed structure.
 - 6. Not complying with the terms of an amendment to an FAA no hazard determination relating to the proposal.
- (b) In the event the erection of the structure is not completed within one year, an extension may be requested. The extension shall be granted if the criteria for the issuance of the permit continue to be satisfied. Where there is a significant change in facts which may create an adverse impact on aviation, the secretary shall conduct a new study prior to acting on the request for extension.
- (c) Upon violation of any of the conditions of the permit, the secretary shall notify the owner of the deficiency. The owner shall correct the deficiency within a reasonable period of time, as specified in the notice. Failure to do so may subject the owner to the penalties provided in s. 114.27, Stats.
- (d) If the owner fails to correct the deficiencies described in par. (c), the secretary may notify the FAA and FCC where applicable, correct the deficiency and recover the cost from the owner, or revoke the permit by notice to the owner. The owner may appeal a revocation as provided in s. 114.315, Stats.
- (e) Upon revocation of the permit, the owner shall dismantle and remove the structure within a reasonable period of time. Should the owner fail to do so, the secretary may remove the structure and recover the cost from the owner.
- (f) A permit shall terminate 60 days after the collapse or removal of the structure or after the secretary issues a determination of abandonment of the structure unless, within such 60 days, the permittee notifies the department that it intends to either erect a replacement structure within the parameters of the existing permit or repair the existing structure.
- (g) Any person who erects a structure without obtaining a required permit may be subject to the penalties in s. 114.27, Stats.

(7) Application Evaluation.

- (a) The secretary shall consider the following in determining if a proposed structure will create an adverse impact on the safe operation of aircraft including, but not limited to, the impact on:
 - 1. A minimum altitude on a published instrument approach procedure.
 - 2. Existing instrument departure minimums.
 - 3. Airport traffic patterns at public airports.
 - 4. A cardinal altitude along a victor airway, published routing or VFR corridor.
 - 5. Airspace affected by a proposed structure over 1,000 AGL outside a tower farm or over 500 AGL under an airport radar service area outside a tower farm.
 - 6. Airspace affected by a proposed structure over 500 AGL in remote areas which may be difficult to see.
 - 7. Airspace affected by proposed structures located in areas of known regular, reoccurring use by pilots including, but not limited to, published flight corridors and arrival or departure routes for the annual experimental aircraft association convention and air show at Oshkosh.
 - 8. Visual or instrument operations at an airport or runway shown on a plan approved by the secretary.
- (b) The secretary shall approve a permit if all of the following criteria are satisfied:
 - 1. If an FAA aeronautical study is required, the secretary receives a copy of the determination of no hazard.
 - 2. The secretary concludes that the structure will not create an adverse impact on the safe operation of aircraft.
- (c) The secretary shall deny a permit if any of the criteria in par. (b) is not met.

History: Cr. Register, June, 1994, No. 462, eff. 7-1-94.

Trans 56.05 Marking and lighting.

- (1) All marking and lighting shall be in accordance with the standards prescribed in the FAA publication, AC 70/7460-1H, "Obstruction Marking and Lighting," as amended. The applicant shall comply with designated FAA and FCC marking and lighting.
- (2) In the event of any deficiency in marking or lighting, the owner shall initiate repairs and notify the FAA in accordance with the current FAA marking and lighting publication.

Note: *The federal standards prescribed above may be obtained from the Wisconsin Department of Transportation, 4802 Sheboygan Avenue, Room 701, P.O. Box 7914, Madison, WI 53707-7914. These standards are also on file with the Attorney General's office and the Legislative Reference Bureau.*

History: Cr. Register, June, 1994, No. 462, eff. 7-1-94.

**CHAPTER TRANS 57
STANDARDS FOR AIRPORT SITING**

<u>Trans 57.01</u>	Purpose.
<u>Trans 57.02</u>	Definitions.
<u>Trans 57.03</u>	Responsibility.
<u>Trans 57.04</u>	Standards.
<u>Trans 57.05</u>	Application evaluation.
<u>Trans 57.06</u>	Public hearing.
<u>Trans 57.07</u>	Issuance of certificate.
<u>Trans 57.08</u>	Appeal.
<u>Trans 57.09</u>	Non-compliance.
<u>Trans 57.10</u>	Notice of hearing.

Trans 57.01 Purpose. The purpose of this chapter is to interpret and implement s. 114.134 (3) to (5), Stats., relating to airport site approval and to provide standards for site approval.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99.

Trans 57.02 Definitions. The words and phrases defined in ch. 114, Stats., have the same meaning in this chapter unless a different definition is specifically provided. In this chapter:

- (1) "Airport not open to the public" is any airport requiring permission from the airport owner or the manager prior to its use by any person other than the owner.
- (2) "Airport open to the public" means an airport, whether publicly or privately owned, which is open for aeronautical use by the general public.
- (3) "Airport study" means an analysis performed by the department to determine an airport's compatibility with other transportation facilities.
- (4) "Applicant" means a person who applies to construct or establish a new airport or activate an airport within the state.
- (5) "Application" means FAA form 7480-1, "Notice of Landing Area Proposal" together with a bureau airport site approval application.

Note: *FAA form 7480-1, Notice of Landing Area Proposal, and the airport site approval application may be obtained by writing to the Department of Transportation, Division of Infrastructure Development, Bureau of Aeronautics, 4802 Sheboygan Avenue, Room 701, P.O. Box 7914, Madison, WI 53707-7914.*

- (6) "Approach area" means a trapezoid centered on the extended runway centerline. The trapezoid has an inner width at the runway threshold of 250 feet, a length of 5,000 feet from the threshold and an outer width of 1,250 feet.
- (7) "Approach surface" means an inclined plane which extends outward and upward from the runway threshold at a slope of 20:1, 20 feet horizontal to 1 foot vertical. The approach surface has dimensions which are bound by the vertical projection of the approach area.
- (8) "Bureau" means the bureau of aeronautics, division of infrastructure development, Wisconsin department of transportation.
- (9) "Certificate" means a certificate of airport site approval issued by the department.
- (10) "Displaced threshold" means a landing threshold located at a point on the runway other than the physical end of the runway.
- (11) "FAA" has the same meaning as provided in s. Trans 56.03 (7).
- (12) "IFR" means instrument flight rules.
- (13) "Object" means any structure, objects of natural growth, permanent or temporary construction or apparatus including, but not limited to, buildings, fences, hills, power and telephone lines, shrubs, traverse ways, trees and towers.
- (14) "Obstruction" means any object which penetrates the approach surface within the approach area or the runway primary surface.
- (15) "Runway" means a defined rectangular area, on a land airport, prepared for the landing and takeoff of aircraft along its length.
- (16) "Runway primary surface" means a surface longitudinally centered on a runway. The runway primary surface has a width of 250 feet, 125 feet each side of centerline, and a length equal to the length of the runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline.
- (17) "Seaplane" means an aircraft capable of taking off from and landing on water.
- (18) "Secretary" has the meaning designated in s. Trans 56.03 (11).
- (19) "Transportation facilities" means any airport, roadway, highway, railroad, public trails or waterway adjacent to or in the approach to the landing area.
- (20) "Traverse ways" means any routes used by the public including, but not limited to roads, highways, public trails, bike paths, railroads and waterways.

(21) "VFR" has the same meaning as provided in s. Trans 56.03 (14).

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99.

Trans 57.03 Responsibility. The secretary, or his or her designee, may issue a certificate of airport site approval for a new airport upon determination that the location is compatible with existing and planned transportation facilities in the area.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99.

Trans 57.04 Standards. The following standards shall be met in order to maintain airport site compatibility with existing and planned transportation facilities in the area:

(1) Airports.

(a) All objects within the approach area of each runway shall be considered in determining compliance. Each type of traverse way is considered to be an object with a clearance height as follows:

1. Public roads, 15 feet.
2. Private roads, 10 feet.
3. Interstate highways, 17 feet.
4. Railroads, 23 feet.
5. Waterways and other traverse ways, an amount equal to the height of the highest mobile object that would normally travel upon them.

(b) A displaced threshold shall be marked similar to attached diagram B for runways with other than paved surfaces. Runways with paved surfaces shall be marked in accordance with FAA advisory circular 150/5340-1G, "Standards for Airport Markings," September 27, 1993. In addition, if the runway is lighted, the displaced threshold shall be lighted in accordance with FAA advisory circular 150/5340-24, "Runway and Taxiway Edge Lighting System," September 3, 1975. It applies to low intensity runway lighting systems and medium intensity systems.

Note: *These FAA advisory circulars are available from the United States Department of Transportation, Distribution Unit, TAB 443.1, Washington, D. C. 20590, and are also on file with the offices of the Legislative Reference Bureau and Secretary of State.*

(c) The effective runway length to be reported for each runway landing direction is the physical length of the runway less the displaced threshold at the approach end of the runway.

(2) Airports Open to the Public.

(a) If any object penetrates the approach surface, then the runway threshold, the point of interception of the approach area and the approach surface shall be displaced down the landing runway.

(b) The displaced threshold shall be located at a point where no object penetrates the approach surface.

(3) Airports not Open to the Public.

(a) The displaced threshold shall be located at a point where no public traverse way clearance height penetrates the approach surface.

(b) If the clearance height assigned to any public traverse way penetrates the approach surface, then the runway threshold, the point of interception of the approach area and the approach surface shall be displaced down the landing runway.

(c) A displaced threshold shall be marked similarly to attached diagram B for runways with other than paved surfaces. Runway marking and lighting is subject to FAA advisory circular criteria which are identical to airports open to the public.

(d) The effective runway length to be reported for each runway landing direction is the physical length of the runway less the displaced threshold at the approach end of the runway.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99.

Trans 57.05 Application evaluation.

(1) An applicant proposing to establish a new airport shall submit an application for airport site approval.

(2) The bureau shall review the application to determine if the location of the proposed airport site is compatible with existing and planned transportation facilities in the area. An airport study shall be conducted including review of:

(a) The location of existing and planned highways and railroads.

(b) The location and type of identified obstructions.

(c) Regional planning commission plans, if applicable.

(d) County or local plans and requirements.

(e) Potential conflicts with other airports. A certificate of site approval may be denied if conflicts resulting from overlapping traffic patterns cannot be resolved by nonstandard traffic patterns or written agreement between the airport owners.

(f) FR and VFR traffic considerations. A certificate of site approval may be denied if the proposed site underlies the airspace in the primary approach area for an instrument approach, and the traffic pattern altitude conflicts with published altitudes for the approach.

TRANS 57

Note: *Published altitudes are contained in the U.S. Terminal Procedures, published by the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Ocean Service, NOAA, N/ACC3, Distribution Division, Riverdale, MD 20737, telephone (800) 638-8972.*

- (3) An FAA airspace determination shall be considered in the bureau's study, but is not binding or conclusive. An objectionable airspace determination by the FAA may be considered sufficient grounds to deny a certificate.
- (4) No fee shall be charged for the application, review or issuance of a certificate.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99.

Trans 57.06 Public hearing. The bureau may, at its discretion, hold a public hearing on the proposed airport site.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99.

Trans 57.07 Issuance of certificate. A certificate may be issued by the secretary, or his or her designee, if it is determined that the location of the proposed airport site is compatible with existing and planned transportation facilities in the area. A certificate does not waive or preempt compliance with any applicable ordinances, laws or regulations of any other governmental body or agency. The certificate is permanent.

Note: *No certificate may be issued for seaplane bases as the waters within Wisconsin are sovereign to the people of the state.*

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99.

Trans 57.08 Appeal.

- (1) **General.** The secretary shall grant a formal hearing at the request of any applicant after any refusal to issue a certificate. The matter shall be referred to the division of hearings and appeals.
- (2) **Informal Hearing.** If an applicant desires an informal meeting with the department to address specific grievances to the action, relevant facts and determination of law upon which the grievance is based, the applicant shall do so within 30 days after any refusal to issue a certificate.
- (3) **Reapplication.** The applicant may reapply when identified discrepancies that conflict with transportation facilities are resolved.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99.

Trans 57.09 Non-compliance.

- (1) Individuals who violate any provision of this chapter shall be subject to penalties in accordance with s. 114.27, Stats.
- (2) When the department becomes aware of a compliance discrepancy, the secretary may suspend the certificate of airport site approval.
- (3) The department may initiate an informal meeting with the airport owner to clarify the compliance issue and recommend corrective action, if required.
- (4) If the informal meeting fails to resolve compliance disputes, the secretary shall issue a notice to the airport owner detailing such alleged disputes and requesting corrective action.
- (5) An airport owner shall have 45 days after receipt of notice to resolve discrepancies or reply in writing explaining a proposed course of action to resolve the discrepancy in a timely fashion.
- (6) If the compliance discrepancy is not resolved within 90 days after receipt of notice, the secretary may rescind the certificate of airport site approval.

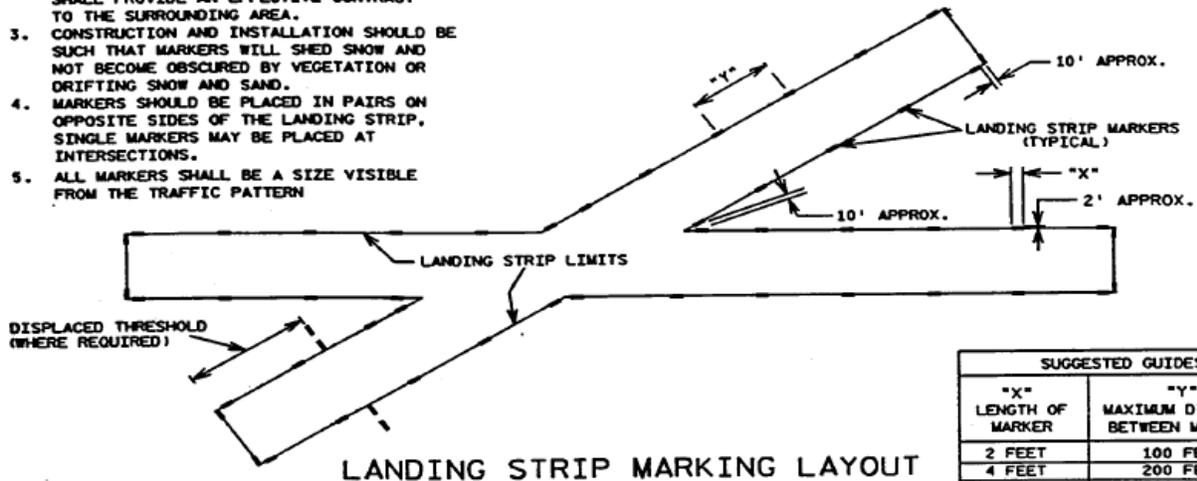
History: Cr. Register, January, 1999, No. 517, eff. 2-1-99.

Trans 57.10 Notice of hearing. Notification of all hearings regarding this chapter shall be made in accordance with s. 114.134 (4), Stats.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99.

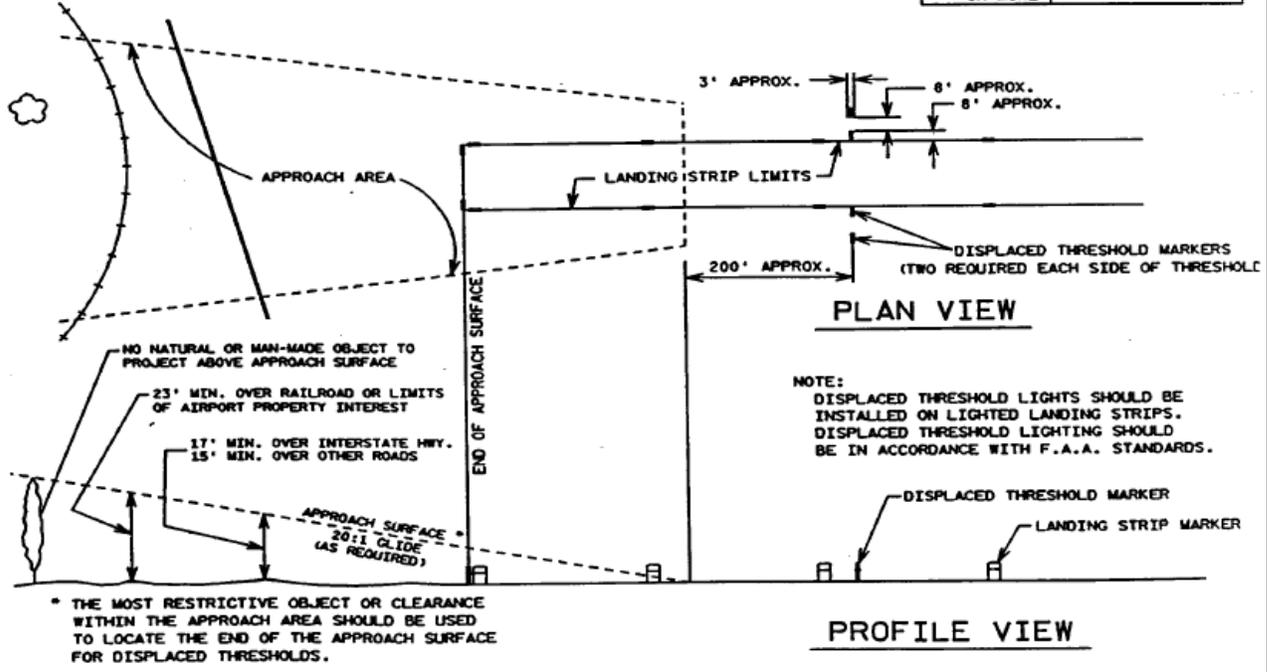
DIAGRAM B LANDING STRIP MARKING GUIDELINE

- GENERAL NOTES**
1. ALL MARKERS SHOULD BE CONSTRUCTED OF DURABLE WEATHERPROOF MATERIAL.
 2. COLOR OF MARKERS (NATURAL OR APPLIED) SHALL PROVIDE AN EFFECTIVE CONTRAST TO THE SURROUNDING AREA.
 3. CONSTRUCTION AND INSTALLATION SHOULD BE SUCH THAT MARKERS WILL SHED SNOW AND NOT BECOME OBSCURED BY VEGETATION OR DRIFTING SNOW AND SAND.
 4. MARKERS SHOULD BE PLACED IN PAIRS ON OPPOSITE SIDES OF THE LANDING STRIP. SINGLE MARKERS MAY BE PLACED AT INTERSECTIONS.
 5. ALL MARKERS SHALL BE A SIZE VISIBLE FROM THE TRAFFIC PATTERN



SUGGESTED GUIDES	
"X" LENGTH OF MARKER	"Y" MAXIMUM DISTANCE BETWEEN MARKERS
2 FEET	100 FEET
4 FEET	200 FEET
6 FEET	300 FEET
8 FEET OR MORE	400 FEET

LANDING STRIP MARKING LAYOUT



DISPLACED THRESHOLD MARKER LAYOUT

CHAPTER TRANS 233
DIVISION OF LAND ABUTTING A STATE TRUNK HIGHWAY OR CONNECTING HIGHWAY

<u>Trans 233.01</u>	Purpose.
<u>Trans 233.012</u>	Applicability.
<u>Trans 233.015</u>	Definitions.
<u>Trans 233.017</u>	Other abutments.
<u>Trans 233.02</u>	Basic principles.
<u>Trans 233.03</u>	Procedures for review.
<u>Trans 233.04</u>	Required information.
<u>Trans 233.05</u>	Direct access to state trunk highway or connecting highway.
<u>Trans 233.06</u>	Frequency of connections with a state trunk highway or connecting highway.
<u>Trans 233.07</u>	Temporary connections.
<u>Trans 233.08</u>	Setback requirements and restrictions.
<u>Trans 233.105</u>	Noise, vision corners and drainage.
<u>Trans 233.11</u>	Special exceptions.
<u>Trans 233.12</u>	Performance bond.
<u>Trans 233.13</u>	Fees.

Note: Chapter Hy 33 was renumbered chapter Trans 233, under s. 13.93 (2m) (b) 1., Stats., Register, August, 1996, No. 488. Chapter Trans 233 as it existed on January 31, 1999, was repealed and a new Chapter Trans 233 was created effective February 1, 1999.

Note: In the case of *Wisconsin Builders Association, et al. v. Wisconsin Department of Transportation* 2005 WI App 160, the Court of Appeals ruled that the rules in Ch. Trans 233 were invalid to the extent that they apply to land divisions other than subdivisions.

Note: On April 16, 2009, in Dane County Circuit Court Case No. 06-CV-4294, *Madison Area Builders Association, et al. v. Wisconsin Department of Transportation; et al.*, it was ordered and adjudged that the 1999 and 2001 amendments to Chapter Trans 233 were declared to be invalid and unenforceable, but that that order had no effect on the legal validity or enforceability of Chapter Trans 233 as it existed prior to the adoption of the 1999 amendments on February 1, 1999.

Trans 233.01 Purpose. Dividing or developing lands, or both, affects highways by generating traffic, increasing parking requirements, reducing sight distances, increasing the need for driveways and other highway access points and, in general, impairing highway safety and impeding traffic movements. The ability of state trunk highways and connecting highways to serve as an efficient part of an integrated intermodal transportation system meeting interstate, statewide, regional and local needs is jeopardized by failure to consider and accommodate long-range transportation plans and needs during land division processes. This chapter specifies the department's minimum standards for the division of land that abuts a state trunk highway or connecting highway, in order to provide for the safety of entrance upon and departure from those highways, to preserve the public interest and investment in those highways, to help maintain speed limits, and to provide for the development and implementation of an intermodal transportation system to serve the mobility needs of people and freight and foster economic growth and development, while minimizing transportation-related fuel consumption, air pollution, and adverse effects on the environment and on land owners and users. Preserving the public investment in an integrated transportation system also assures that no person, on the grounds of race, color, or national origin, is excluded from participation in, denied the benefits of, or subjected to discrimination under any transportation program or activity. The authority to impose minimum standards for subdivisions is s. 236.13 (1) (e), Stats. The authority to impose minimum standards for land divisions under ss. 236.34, 236.45 and 703.11, Stats., is s. 86.07 (2), Stats. The authority to impose minimum standards for land divisions to consider and accommodate long-range transportation plans and needs is ss. 1.11 (1), 1.12 (2), 1.13 (3), 20.395 (9) (qx), 66.1001 (2) (c), 84.01 (2), (15), and (17), 84.015, 84.03 (1), 85.02, 85.025, 85.05, 85.16 (1), 86.31 (6), 88.87 (3), and 114.31 (1), Stats.

Note: The Department is authorized and required by ss. 84.01 (15), 84.015, 84.03 (1) and 20.395 (9) (qx), to plan, select, lay out, add to, decrease, revise, construct, reconstruct, improve and maintain highways and related projects, as required by federal law, Title 23, USC and all acts of Congress amendatory or supplementary thereto, and the federal regulations issued under the federal code; and to expend funds in accordance with the requirements of acts of Congress making such funds available. Among these federal laws that the Department is authorized and required to follow are 23 USC 109 establishing highway design standards; 23 USC 134, requiring development and compliance with long-range (minimum of 20 years) metropolitan area transportation plans; and 23 USC 135, requiring development and compliance with long-range (minimum of 20 years) statewide transportation plans. Similarly, the Department is authorized and

required by the state statutes cited and other federal law to assure that it does not unintentionally exclude or deny persons equal benefits or participation in transportation programs or activities on the basis of race, color, national origin and other factors, and to give appropriate consideration to the effects of transportation facilities on the environment and communities. A "state trunk highway" is a highway that is part of the State Trunk Highway System. It includes State numbered routes, federal numbered highways, the Great River Road and the Interstate System. A listing of state trunk highways with geographic end points is available in the Department's "Official State Trunk Highway System and the Connecting Highways" booklet that is published annually as of December 31. The County Maps published by the Wisconsin Department of Transportation also show the breakdown county by county. As of January 1, 1997, there were 11,813 miles of state trunk highways and 520 center-line miles of connecting highways. Of at least 116 municipalities in which there are connecting highways, 112 are cities and 4 or more are villages.

A "connecting highway" is not a state trunk highway. It is a marked route of the State Trunk Highway System over the streets and highways in municipalities which the Department has designated as connecting highways. Municipalities are responsible for their maintenance and traffic control. The Department is generally responsible for construction and reconstruction of the through lanes of connecting highways, but costs for parking lanes and related municipal facilities and other desired local improvements are local responsibilities. The Department reimburses municipalities for the maintenance of connecting highways in accordance with a lane mile formula. See ss. 84.02 (11), 84.03 (10), 86.32 (1) and (4), and 340.01 (60), Stats. A listing of connecting highways with geographic end points is also available in the Department's "Official State Trunk Highway System and the Connecting Highways" booklet that is published annually as of December 31.

A "business route" is an alternate highway route marked to guide motorists to the central or business portion of a city, village or town. The word "BUSINESS" appears at the top of the highway numbering marker. A business route branches off from the regular numbered route, passes through the business portion of a city and rejoins the regularly numbered route beyond that area. With very rare exceptions, business routes are not state trunk highways or connecting highways. The authorizing statute is s. 84.02(6), Stats. This rule does not apply to business routes.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99; am. Register, January, 2001, No. 541, eff. 2-1-01; corrections made under s. 13.93 (2m) (b) 7., Stats., Register January 2004 No. 577.

Trans 233.012 Applicability.

- (1) In accordance with ss. 86.07 (2), 236.12, 236.34 and 236.45, Stats., this chapter applies to all land division maps reviewed by a city, village, town or county, the department of administration and the department of transportation. This chapter applies to any land division that is created by plat or map under s. 236.12 or 236.45, Stats., by certified survey map under s. 236.34, Stats., or by condominium plat under s. 703.11, Stats., or other means not provided by statute, and that abuts a state trunk highway, connecting highway or service road.
- (2) Structures and improvements lawfully placed in a setback area under ch. Trans 233 prior to February 1, 1999, or lawfully placed in a setback area before a land division, are explicitly allowed to continue to exist. Plats that have received preliminary approval prior to February 1, 1999, are not subject to the standards under this chapter as first promulgated effective February 1, 1999, if there is no substantial change between the preliminary and final plat, but are subject to ch. Trans 233 as it existed prior to February 1, 1999. Plats that have received final approval prior to February 1, 1999, are not subject to the standards under this chapter as first promulgated effective February 1, 1999, but are subject to ch. Trans 233 as it existed prior to February 1, 1999. Land divisions on which the department acted between February 1, 1999 and February 1, 2001 are subject to ch. Trans 233 as it existed February 1, 1999.
- (3) Any structure or improvement lawfully placed within a setback area under ch. Trans 233 prior to February 1, 1999, or lawfully placed within a setback area before a land division, may be kept in a state of repair, efficiency or validity in order to preserve from failure or decline, and if unintentionally or tortiously destroyed, may be replaced substantially in kind.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99; renum. Trans. 233.012 to be (1), cr. (2) and (3), Register, January, 2001, No. 541, eff. 2-1-01; correction made under s. 13.93 (2m) (b) 7., Stats., Register January 2004 No. 577.

Trans 233.015 Definitions. Words and phrases used in this chapter have the meanings given in s. 340.01, Stats., unless a different definition is specifically provided. In this chapter:

- (1) "Certified survey map" or "CSM" means a map that complies with the requirements of s. 236.34, Stats.
 - (1m) "Desirable traffic access pattern" means traffic access that is consistent with the technical and professional guidance provided in the department's facilities development manual.
- Note:** *Guidelines established in the Department's Facilities Development Manual are not considered "rules," as defined in s. 227.01 (13), Stats., and so are not subject to the requirements under s. 227.10, Stats.*
- (1r) "District office" means an office of the division of transportation districts of the department.
 - (2) "Improvement" means any permanent addition to or betterment of real property that involves the expenditure of labor or money to make the property more useful or valuable. "Improvement" includes parking lots, driveways, loading docks, in-ground swimming pools, wells, septic systems, retaining walls, signs, buildings, building appendages such as porches, and drainage facilities. "Improvement" does not include sidewalks, terraces, patios, landscaping and open fences.
 - (2m) "In-ground swimming pool" includes a swimming pool that is designed or used as part of a business or open to use by the general public or members of a group or association. "In-ground swimming pool" does not include any above-ground swimming pools without decks.
 - (3) "Land divider" means the owner of land that is the subject of a land division or the land owner's agent for purposes of creating a land division.
 - (4) "Land division" means a division under s. 236.12, 236.34, 236.45 or 703.11, Stats., or other means not provided by statute, of a lot, parcel or tract of land by the owner or the owner's agent for the purposes of sale or of building development.
 - (5) "Land division map" means an official map of a land division, including all certificates required as a condition of recording the map.
 - (5m) "Major intersection" means the area within one-half mile of the intersection or interchange of any state trunk highway or connecting highway with a designated expressway, or freeway, under s. 84.295, Stats., or a designated interstate highway under s. 84.29, Stats.
 - (6) "Public utility" means any corporation, company, individual or association that furnishes products or services to the public, and that is regulated under ch. 195 or 196, Stats., including railroads, telecommunications or telegraph companies, and any company furnishing or producing heat, light, power, cable television service or water, or a rural electrical cooperative, as described in s. 32.02 (10), Stats.
 - (6m) "Reviewing municipality" means a city or village to which the department has delegated authority to review and object to land divisions under s. Trans 233.03 (7).
 - (6r) "Secretary" means the secretary of the department of transportation.
 - (7) "Structure" includes a temporary or non-permanent addition to or betterment of real property that is portable in nature, but that adversely affects the safety of entrance upon or departure from state trunk or connecting highways or the preservation of public interest and investment in those highways, as determined by the department. "Structure" does not include portable swing sets, movable lawn sheds without pads or footings, and above ground swimming pools without decks.
 - (7m) "Technical land division" means a land division involving a structure or improvement that has been situated on the real property for at least 5 years, does not result in any change to the use of existing structures and improvements and does not negatively affect traffic. "Technical land division" includes the conversion of an apartment building that has been in existence for at least 5 years to condominium ownership, the conversion of leased commercial spaces in a shopping mall that has been in existence for at least 5 years to owned spaces, and the exchange of deeds by adjacent owners to resolve mutual encroachments.
 - (8) "Unplatted" means not legally described by a plat, land division map, certified survey map or condominium plat.
 - (8m) "User" means a person entitled to use a majority of the property to the exclusion of others.
 - (9) "Utility facility" means any pipe, pipeline, duct, wire line, conduit, pole, tower, equipment or other structure used for transmission or distribution of electrical power or light or for the transmission, distribution or delivery of heat, water, gas, sewer, telegraph or telecommunication service, cable television service or broadcast service, as defined in s. 196.01 (1m), Stats.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99; cr. (1m), (1r), (2m), (5m), (6m), (6r), (7m) and (8m), Register, January, 2001, No. 541, eff. 2-1-01.

Trans 233.017 Other abutments. For purposes of this chapter, land shall be considered to abut a state trunk highway or connecting highway if the land is any of the following:

- (1) Land that contains any portion of a highway that is laid out or dedicated as part of a land division if the highway intersects with a state trunk highway or connecting highway.
- (2) Separated from a state trunk highway or connecting highway by only unplatted lands that abut a state trunk highway or connecting highway if the unplatted lands are owned by, leased to or under option, whether formal or informal, or under contract or lease to the owner.

- (3) Separated from a state trunk highway or connecting highway by only a service road.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99.

Trans 233.02 Basic principles. To control the effects of land divisions on state trunk highways and connecting highways and to carry out the purposes of ch. 236, Stats., the department promulgates the following basic requirements:

- (1) Local traffic from a land division or development abutting a state trunk highway or connecting highway shall be served by an internal highway system of adequate capacity, intersecting with state trunk highways or connecting highways at the least practicable number of points and in a manner that is safe, convenient and economical.
- (2) A land division shall be so laid out that its individual lots or parcels do not require direct vehicular access to a state trunk highway or connecting highway.
- (3) The department, in order to integrate and coordinate traffic on a highway or on a private road or driveway with traffic on any affected state trunk highway or connecting highway, shall do both of the following:
 - (a) Consider, particularly in the absence of a local comprehensive general or master plan, or local land use plan, that plat or map's relationship to the access requirements of adjacent and contiguous land divisions and unplatted lands.
 - (b) Apply this chapter to all lands that are owned by, or are under option, whether formal or informal, or under contract or lease to the land divider and that are adjacent to or contiguous to the land division. Contiguous lands include those lands that abut the opposite side of the highway right-of-way.
- (4) Setbacks from a state trunk highway or connecting highway shall be provided as specified in s. Trans 233.08.
- (5) A land division map shall include provision for the handling of surface drainage in such a manner as specified in s. Trans 233.105 (3).
- (6) A land division map shall include provisions for the mitigation of noise if the noise level exceeds noise standards in s. Trans 405.04, Table I.
- (7) A land division shall provide vision corners at intersections and driveways per department standards.

Note: Guide dimensions for vision corners are formally adopted in the Department's Facilities Development Manual, Chapter 11, pursuant to s. 227.01 (13) (e), Stats. Rules governing construction of driveways and other connections with highways are found in ch. Trans 231. Detailed specifications may be obtained at the department's district offices.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99; am. (intro.), Register, January, 2001, No. 541, eff. 2-1-01.

Trans 233.03 Procedures for review. The following procedures apply to review by the department, district office or reviewing municipality of proposed certified survey maps, condominium plats and other land divisions:

- (1) **Conceptual Review.**
 - (a) Before the lots are surveyed and staked out, the land divider shall submit a sketch to the department's district office for review. The sketch shall indicate roughly the layout of lots and the approximate location of streets, and include other information required in this chapter.
 - (b) Unless the land divider submits a preliminary plat under s. 236.12 (2) (a), Stats., the land divider shall have the district office review the sketch described in par. (a).
 - (c) There is no penalty for failing to obtain conceptual review; the conceptual review procedure is encouraged to avoid waste that results from subsequent required changes.
- (2) **Preliminary and Final Plat Review.** The department shall conduct preliminary and final subdivision plat review under s. 236.12, Stats., when the land divider or approving authority submits, through the department of administration's plat review office, a formal request for departmental review of the plat for certification of non-objection as it relates to the requirements of this chapter. The request shall be accompanied with the land division map and the departmental review fee. No submittal may be considered complete unless it is accompanied by the fee.
- (3) **Preliminary and Final Review for Land Divisions Occurring under s. 236.45 and s. 703.11, stats.** The department shall review preliminary and final land division maps under ss. 236.45 and 703.11, Stats., when the approving authority, or the land divider, when there is no approving authority, submits a formal request for departmental review for certification of non-objection as it relates to the requirements of this chapter. The request shall be accompanied with the land division map and the departmental review fee. No submittal may be considered complete unless it is accompanied by the fee. Additional information required is the name and address of the register of deeds, any approving agency, the land division map preparer and the land divider. This information is to be submitted to the district office.

Note: The appropriate department address is Access Management Coordinator, Bureau of Highway Development, 4802 Sheboygan Avenue, Room 651, P. O. Box 7916, Madison, WI 53707-7916.

- (4) **Preliminary and Final Review for Land Divisions Occurring under s. 236.34 and by Other Means not Prescribed by Statutes.** The department shall conduct preliminary and final review of land division maps under s. 236.34, Stats., or under any other means not prescribed by statutes, when the land divider submits a formal request for departmental review for certification of non-objection to the land division as it relates to the requirements of this

chapter. The request shall be accompanied with the land division map and the departmental review fee. No submittal may be considered complete unless it is accompanied by the fee. Additional information required is the name and address of the register of deeds, any approving agency, the land division map preparer and the land divider. This information shall be submitted to the district office or to the department.

Note: *The appropriate department address is Access Management Coordinator, Bureau of Highway Development, 4802 Sheboygan Avenue, Room 651, P. O. Box 7916, Madison, WI 53707-7916.*

(5) Time Limit for Review.

- (a) Except as provided in pars. (b) to (d), not more than 20 calendar days after receiving a completed request to review a land division map, the department, district office or reviewing municipality shall do one of the following:
1. Determine that the land division is a technical land division. Upon determining that a land division is a technical land division, the department, district office or reviewing municipality shall certify that it has no objection to the land division map and shall refund all fees paid for review of that land division map.
 2. Provide written notice to the land divider either objecting to or certifying that it has no objection to the land division.

Note: *The 20-day time limit for action on a review without any special exception or variance is also established by statute for subdivision plat reviews in sec. 236.12(3) and (6), Stats.*

- (b) The department and district offices are not required to complete conceptual reviews under sub. (1) within a specified time, but shall endeavor to complete a conceptual review under sub. (1) within 30 calendar days after receiving the completed request.
- (c) If a special exception is requested under s. Trans 233.11, the department, district office or reviewing municipality shall complete its review of the land division map within the time limit provided in s. Trans 233.11 (6).
- (d) A request is considered complete under this subsection unless, within 5 working days after receiving the request, the department, district office or reviewing municipality provides written notice to the land divider stating that the request is incomplete and specifying the information needed to complete the request. On the date that additional information is requested under this subdivision, the time period for review ceases to run, but resumes running upon receipt of the requested information.
- (e) If the department, district office or reviewing municipality fails to act within the time limit provided in this section or s. Trans 233.11 (6), the department, district office or reviewing municipality shall be considered to have no objection to the land division map or special exception.
- (6) District Authority to Review Land Division Maps.** Beginning on February 1, 2001, each district office may review land division maps under this chapter. The department shall develop implementing procedures to assure consistency and uniformity of such reviews among district offices and shall provide uniform guidance in figure 3 of procedure 7-50-5 of the department's facilities development manual dated December 1, 2000.

Note: *Guidelines established under this subsection are not considered "rules", as defined in s. 227.01 (13), Stats., and so are not subject to the requirements under s. 227.10, Stats. However, this rule references uniform guidance by date so that future revisions to that uniform guidance will become effective only if ch. Trans 233 is amended.*

- (7) Municipal Authority to Review Land Division Maps.** The department may, upon request, delegate to a city or village authority to review and object to any proposed land division that abuts a state trunk highway or connecting highway lying within the city or village. The department shall develop a uniform written delegation agreement in cooperation with cities and villages. The delegation agreement may authorize a city or village to grant special exceptions under s. Trans 233.11. Any decision of a reviewing municipality relating to a land division map or special exception is subject to the appeal procedure applicable to such decisions made by the department or a district office, except that the department may unilaterally review any such decision of a reviewing municipality to ensure conformity with the delegation agreement and this chapter and may reverse or modify the municipality's decision as appropriate. No reviewing municipality may change its setback policy after executing a delegation agreement under this section, except by written amendment to the delegation agreement approved by the department.

(8) Appeals.

- (a) *Department review.* Except as provided in this paragraph and par. (b), a land divider, governmental officer or entity, or member of the general public may appeal a final decision of a district office or reviewing municipality regarding a land division map, special exception, or consequence of a failure to act to the secretary or the secretary's designee. Appeals may be made not more than 20 calendar days after that final decision or failure to act. The secretary or the secretary's designee may reverse, modify or affirm the decision. Not more than 60 calendar days after receiving the appeal, the secretary or secretary's designee shall notify the appealing party and the land divider in writing of the decision on appeal. If the secretary or secretary's designee does not provide written notice of his or her decision within the 60-day limit, the department is considered to have no objection to the final decision of the district office or reviewing municipality. The department may not unilaterally initiate a review of a decision of a district office certifying non-objection to a

land division map, with or without a special exception. The department may unilaterally review any decision of a reviewing municipality relating to a land division map to ensure conformity with the delegation agreement and this chapter, and may reverse or modify the municipality's decision as appropriate. No person may appeal a conceptual review under sub. (1).

(b) *Judicial review.*

1. 'Chapter 236 land divisions.' Judicial review of any final decision of the department, district office or reviewing municipality relating to a land division that is subject to ch. 236, Stats., shall follow appeal procedures specified in that chapter.

Note: *Land divisions subject to plat approval under s. 236.10, Stats., shall follow the procedures specified in s. 236.13(5), Stats.*

2. 'All other land divisions.' Judicial review of any final decision of the department, district office or reviewing municipality relating to a land division that is not subject to ch. 236, Stats., shall follow the procedures specified in ch. 227, Stats., for judicial review of agency decisions.

Note: *Final administrative decisions which adversely affect the substantial interests of any person, whether by action or inaction, whether affirmative or negative in form, are subject to judicial review as provided in ch. 227, Stats.*

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99; am. (intro.), (2), (3) and (4), r. and recr. (5), cr. (6) to (8), Register, January, 2001, No. 541, eff. 2-1-01; Reprinted to correct printing error in (3) Register January 2004 No. 577.

Trans 233.04 Required information. The land divider shall show on the face of the preliminary or final land division map or on a separate sketch, at a scale of not more than 1,000 feet to the inch, the approximate distances and relationships between the following, and shall show the information in subs. (1) to (8) about the following:

- (1) The geographical relationship between the proposed land division and of any unplatted lands that abut any state trunk highway or connecting highway and that abut the proposed land division, and the ownership rights in and the land divider's interest, if any, in these unplatted lands.
- (2) The locations of all existing and proposed highways within the land division and of all private roads or driveways within the land division that intersect with a state trunk highway or connecting highway.
- (3) The location, and identification of each highway and private road or driveway, leading to or from the land division.
- (4) The principal use, as agricultural, commercial, industrial or residential, of each private road or driveway that leads to or from the land division.
- (5) The locations of all easements for accessing real property within the land division.
- (6) The location of the highway nearest each side of the land division.
- (7) The location of any highway or private road or driveway that connects with a state trunk highway or connecting highway that abuts the land division, if the connection is any of the following:
 - (a) Within 300 feet of the land division, if any portion of the land division lies within a city or village.
 - (b) Within 1,000 feet of the land division, if no part of the land division lies within a city or village.
- (8) All information required to be shown on a land division map shall be shown in its proper location

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99.

Trans 233.05 Direct access to state trunk highway or connecting highway.

- (1) No land divider may divide land in such a manner that a private road or driveway connects with a state trunk highway or connecting highway or any service road lying partially within the right-of-way of a state trunk highway or connecting highway, unless the land divider has received a special exception for that purpose approved by the department, district office or reviewing municipality under s. Trans 233.11. The following restriction shall be placed on the face of the land division map, or as part of the owner's certificate required under s. 236.21 (2) (a), Stats., and shall be executed in the manner specified for a conveyance:

"All lots and blocks are hereby restricted so that no owner, possessor, user, licensee or other person may have any right of direct vehicular ingress from or egress to any highway lying within the right-of-way of (U.S.H.)(S.T.H.) _____ or _____ Street; it is expressly intended that this restriction constitute a restriction for the benefit of the public as provided in s. 236.293, Stats., and shall be enforceable by the department or its assigns. Any access shall be allowed only by special exception. Any access allowed by special exception shall be confirmed and granted only through the driveway permitting process and all permits are revocable."

Note: *The denial of a special exception for access or connection purposes is not the functional equivalent of the denial of a permit under s. 86.07 (2), Stats. Appeal of disapproval of a plat (and thus disapproval of a special exception) is available only by certiorari under s. 236.13 (5), Stats. There is no right to a contested case hearing under ss. 227.42 or 227.51 (1), Stats., for the denial of a special exception.*

- (2) The department may require a desirable traffic access pattern between a state trunk highway or connecting highway and unplatted lands that abut the proposed land division and that are owned by or under option, whether formal or

informal, contract or lease to the owner. The department may require a recordable covenant running with the land with respect to those unplatted lands.

- (3) No person may connect a highway or a private road or driveway with a state trunk highway, connecting highway, or with a service road lying partially within the right-of-way of a state trunk highway or connecting highway, without first obtaining a permit under s. 86.07, Stats. The department may not issue a permit authorizing the connection of a highway with a state trunk highway or connecting highway to any person other than a municipality or county. The department may not issue any permit under s. 86.07, Stats., prior to favorable department review of the preliminary or final land division map or, for a subdivision plat, prior to the department's certification of no objection.

Note: *The authority maintaining the highway is the one that issues, denies or places conditions on any permit issued under s. 86.07 (2), Stats. Cities and villages are responsible for the maintenance of connecting highways under s. 86.32 (1), Stats. Cities and villages must condition any permit issued with respect to a connecting highway upon compliance with all requirements imposed pursuant to this chapter.*

- (4) Whenever the department finds that existing and planned highways provide the land division with reasonable and adequate access to a highway, the department shall prohibit the connection to a state trunk highway or connecting highway of any highway and private road or driveway from within the land division.

Note: *Rules governing construction of driveways and other connections with a state trunk highway are found in ch. Trans 231. Detailed specifications may be obtained at the Department's district offices.*

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99; am. (1), Register, January, 2001, No. 541, eff. 2-1-01.

Trans 233.06 Frequency of connections with a state trunk highway or connecting highway.

- (1) The land division shall be laid out with the least practicable number of highways and private roads or driveways connecting with abutting state trunk highways or connecting highways.
- (2) The department shall determine a minimum allowable distance between connections with the state trunk highway or connecting highway, between any 2 highways within the land division and between a highway within the land division and any existing or planned highway. To the extent practicable, the department shall require a distance of at least 1,000 feet between connections with a state trunk highway or connecting highway.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99.

Trans 233.07 Temporary connections.

- (1) The department may issue temporary connection permits, which authorize the connection of a highway or a private road or driveway with a state trunk highway or connecting highway. The department may issue temporary connection permits in the case of:
 - (a) A land division which at the time of review cannot provide direct traffic access complying with the provisions of s. Trans 233.06 (2).
 - (b) A land division layout which might necessitate a point or pattern of traffic access for a future adjacent land division, not in accordance with s. Trans 233.06 (2).
- (2) The department may require that such temporary connections be altered or closed by the permit holder at a later date in order to achieve a desirable traffic access pattern. The permit may require the permit holder to alter or close the temporary connection by a specified date or upon the completion of a specified activity. The permit holder is responsible for the expense of closing or altering the temporary connection.
- (2m) A temporary connection shall be prominently labeled "Temporary Connection" on the land division map, and the following restriction shall be lettered on the land division map:
"The temporary connection(s) shown on this plat shall be used under a temporary connection permit which may be canceled at such time as a feasible alternate means of access to a highway is provided."
- (3) When such a temporary connection is granted, the owner shall dedicate a service road or a satisfactory alternative, to provide for a present or future pattern of access that complies with s. Trans 233.06 (2).

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99.

Trans 233.08 Setback requirements and restrictions.

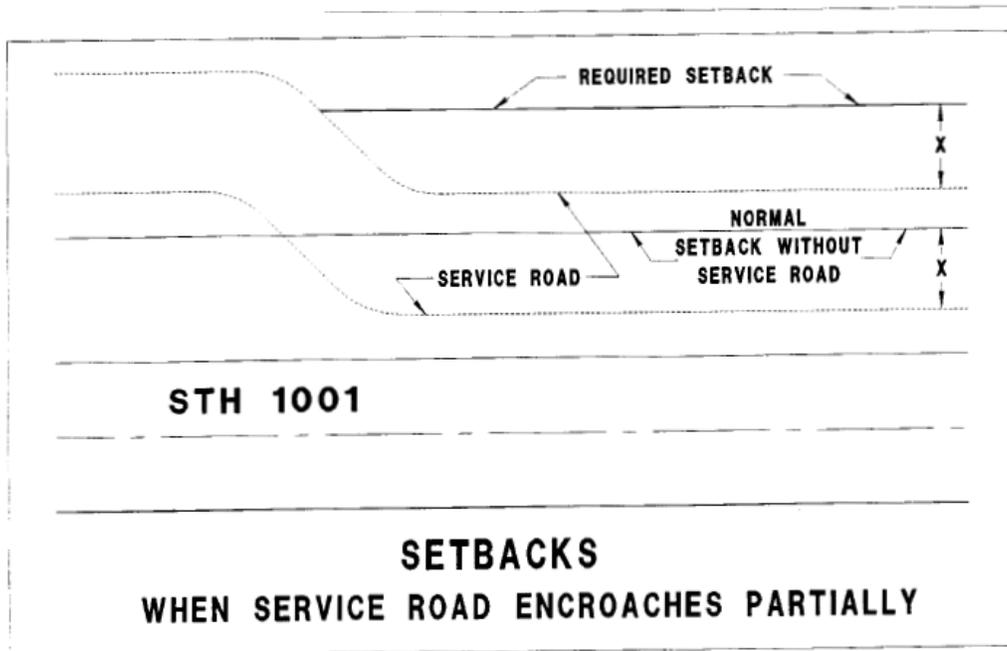
- (1) Except as provided in this section or in s. Trans 233.11 or, with respect to connecting highways, as provided in s. 86.16 (1), Stats., no person may erect, install or maintain any structure or improvement within a setback area determined under sub. (2) or (3).
- (2)
 - (a) Except as provided in par. (b), the setback area is the area within 110 feet of the centerline of a state trunk highway or connecting highway or within 50 feet of the nearer right-of-way line of a state trunk highway or connecting highway, whichever is furthest from the centerline.
 - (b) If an applicable ordinance allows structures or improvements to be located closer to the right-of-way of a state trunk highway or connecting highway than is provided under par. (a), the setback area is the area between the right-of-way and the more restrictive of the following:
 1. The distance allowed under the ordinance.

2. 42 feet from the nearer right-of-way line.
 3. 100 feet from the centerline.
- (c) At least once every 2 years, the department shall produce general reference maps that generally identify major intersections and the highways specified in subds. 1. to 5. The department may reduce or extend, by not more than 3 miles along the highway, the area subject to a setback established under par. (a) or (b) to establish logical continuity of a setback area or to terminate the setback area at a readily identifiable physical feature or legal boundary, including a highway or property boundary. Persons may seek special exceptions to the setback requirement applicable to these major intersections and highways, as provided in s. Trans 233.11 (3). The setback area established under par. (a) or (b) applies only to major intersections and to highways identified as:
1. State trunk highways and connecting highways that are part of the national highway system and approved by the federal government in accordance with 23 USC 103(b) and 23 CFR 470.107(b).
 2. State trunk highways and connecting highways that are functionally classified as principal arterials in accordance with procedure 4-1-15 of the department's facilities development manual dated July 2, 1979.
 3. State trunk highways and connecting highways within incorporated areas, within an unincorporated area within 3 miles of the corporate limits of a first, second or third class city, or within an unincorporated area within 1½ miles of a fourth class city or a village.
 4. State trunk highways and connecting highways with average daily traffic of 5,000 or more.
 5. State trunk highways and connecting highways with current and forecasted congestion projected to be worse than level of service "C," as determined under s. Trans 210.05 (1), within the following 20 years.

Note: *The National Highway System (NHS) includes the Interstate System, Wisconsin's Corridors 2020 routes, and other important routes. Highways on the NHS base system were designated by the Secretary of USDOT and approved by Congress in the National Highway System Designation Act of 1995. NHS Intermodal Connector routes were added in 1998 with the enactment of the Transportation Equity Act for the 21st Century. Modifications to the NHS must be approved by the Secretary of USDOT. Guidance criteria and procedures for the functional classification of highways are provided in (1) the Federal Highway Administration (FHWA) publication "Highway Functional Classification--Concepts, Criteria and Procedures" revised in March 1989, and (2) former ch. Trans 76. The federal publication is available on request from the FHWA, Office of Environment and Planning, HEP-10, 400 Seventh Street, SW., Washington, DC 20590. Former ch. Trans 76 is available from the Wisconsin Department of Transportation, Division of Transportation Investment Management, Bureau of Planning. The results of the functional classification are mapped and submitted to the Federal Highway Administration (FHWA) for approval and when approved serve as the official record for Federal-aid highways and one basis for designation of the National Highway System. In general, the highway functional classifications are rural or urban: Principal Arterials, Minor Arterials, Major Collectors, Minor Collectors, and Local Roads. The definition of "level of service" used for this paragraph is the same as in ss. Trans 210.03(4) and 210.05(1) for purposes of the MAJOR HIGHWAY PROJECT NUMERICAL EVALUATION PROCESS. In general, the "level of service" refers to the ability of the facility to satisfy both existing and future travel demand. Six levels of service are defined for each type of highway facility ranging from A to F, with level of service A representing the best operating conditions and level of service F the worst. Department engineers will use the procedures outlined in the general design consideration guidelines in Chapter 11, Section 5 of the Wisconsin Department of Transportation's Facilities Development Manual to determine the level of highway service. Under the rule as effective February 1, 1999, s. Trans 233.08(1) provides 4 ways to erect something in a setback area (1) for utilities, follow the procedures set forth in the rule, (2) obtain a variance (now "special exception"), (3) for utilities, get local approval for utilities on or adjacent to connecting highways, or for utilities within the right of way of state trunk highways, get department approval (a mere "technical" exception), and (4) erect something that doesn't fall within the definition of "structure" or within the definition of "improvement." The provision below now adds a fifth "exception," (5) be 15 feet or more outside the right of way line of a defined and mapped set of highways.*

- (d) In addition to producing general reference maps at least once every 2 years that identify highways and intersections under par. (c), at least every 2 years the department shall also produce more detailed reference maps suitable for use in the geographic area of each district office.
- (3) If any portion of a service road right-of-way lies within the setback area determined under sub. (2), the setback area shall be increased by the lesser of the following:
- (a) The width of the service road right-of-way, if the entire service road right-of-way lies within the setback area. Any increase under this paragraph shall be measured from the boundary of the setback area determined under sub. (2).
 - (b) The distance by which the service road right-of-way lies within the setback area, if the entire service road right-of-way does not lie within the setback area. Any increase under this paragraph shall be measured from the nearer right-of-way line of the service road.

Note: For example, if a service road ROW extends 15 feet (measured perpendicularly to the setback) into the setback determined under sub. (2), and runs for a distance of 100 feet, the setback determined under sub. (2) shall be pushed 15 feet further from the centerline, running for a distance of 100 feet. See Graphic.



(3m)

- (a) Notwithstanding sub. (1), a public utility may erect, install or maintain a utility facility within a setback area.
- (b) If the department acquires land that is within a setback area for a state trunk highway, as provided by this chapter, and on which a utility facility is located, the department is not required to pay compensation or other damages relating to the utility facility, unless the utility facility is any of the following:
 1. Erected or installed before the land division map is recorded.
 2. Erected or installed on a recorded utility easement that was acquired prior to February 1, 1999.
 3. Erected or installed after the land division map is recorded but with prior notice in writing, with a plan showing the nature and distance of the work from the nearest right-of-way line of the highway, to the department's appropriate district office within a normal time of 30 days, but no less than 5 days, before any routine, minor utility erection or installation work commences, nor less than 60 days, before any major utility erection or installation work commences, if any utility work is within the setback.

Note: For purposes of this section, "major utility erection or installation work" includes, but is not limited to, work involving transmission towers, communication towers, water towers, pumping stations, lift stations, regulator pits, remote switching cabinets, pipelines, electrical substations, wells, gas substations, antennae, satellite dishes, treatment facilities, electrical transmission lines and facilities of similar magnitude. "Routine minor utility erection or installation work" refers to single residential distribution facilities and similar inexpensive work of less magnitude. The concept behind the flexible, "normal time of 30 days" standard for utility submission of notice and plans to the department is to encourage and require at least 60 days notice from utilities for larger, complex or expensive installations, but not for routine, minor utility work that has traditionally involved only a few days notice for coordination and issuance of utility permits by the department for which a minimum of 5 days notice is mandatory. However, the normal time for submission and review is 30 days. This notice and plan requirement does not apply to maintenance work on existing utilities.

4. Erected or installed before the land division map is recorded but modified after that date in a manner that increases the cost to remove or relocate the utility facility. In such a case, the department shall pay compensation or other damages related to the utility facility as it existed on the date the land division map was recorded, except that if the modification was made with prior notice in writing, with a plan showing the nature and distance of the work from the nearest right-of-way line of the highway, to the department's appropriate district office within a normal time of 30 days, but no less than 5 days, before any routine, minor utility erection or installation work commences, nor less than 60 days, before any major utility erection or installation work commences, if any utility work is within the setback, then the department shall pay compensation or other damages related to the utility facility as modified.

- (c) If a local unit of government or the department acquires land that is within a setback area for a connecting highway as provided by this chapter and on which a utility facility is located, the department is not required to pay compensation or other damages relating to the utility facility, unless the utility facility is compensable under the applicable local setbacks and the utility facility is in any of the categories described in par. (b) 1. to 4.

Note: A "connecting highway" is not a state trunk highway. It is a marked route of the state trunk highway system over the streets and highways in municipalities which the Department has designated as connecting highways. Municipalities have jurisdiction over connecting highways and are responsible for their maintenance and traffic control. The Department is generally responsible for construction and reconstruction of the through lanes of connecting highways, but costs for parking lanes and related municipal facilities and other desired local improvements are local responsibilities. See ss. 84.02 (11), 84.03 (10), 86.32 (1) and (4), and 340.01 (60), Stats. A listing of connecting highways and geographic end points are available in the department's "Official State Trunk Highway System and the Connecting Highways" booklet that is published annually as of December 31.

- (d) The department shall review the notice and plan to determine whether a planned highway project within a 6-year improvement program under s. 84.01 (17), Stats., or a planned major highway project enumerated under s. 84.013 (3), Stats., will conflict with the planned utility facility work. If the department determines a conflict exists, it will notify the utility in writing within a normal time of 30 days, but no more than 5 days, after receiving the written notice and plan for any routine, minor utility erection or installation work, nor more than 60 days, after receiving the written notice and plan for any major utility erection or installation work, and request the utility to consider alternative locations that will not conflict with the planned highway work. The department and utility may also enter into a cooperative agreement to jointly acquire, develop and maintain rights of way to be used jointly by WISDOT and the public utility in the future as authorized by s. 84.093, Stats. If the department and utility are not able to make arrangements to avoid or mitigate the conflict, the utility may proceed with the utility work, but notwithstanding pars. (b) and (c), the department may not pay compensation or other damages relating to the utility facility if it conflicts with the planned highway project. In order to avoid payment of compensation or other damages to the utility, the department is required to record a copy of its written notice to the utility of the conflict, that adequately describes the property and utility work involved, with the register of deeds in the county in which the utility work or any part of it is located.

Note: The Department will make the general and detailed maps readily available to the public on the internet and through other effective means of distribution.

- (3n) Any person may erect, install or maintain any structure or improvement at 15 feet and beyond from the nearer right-of-way line of any state trunk highway or connecting highway not identified in s. Trans 233.08 (2) (c). Any person may request a special exception to the setback requirement established under this subsection, as provided in s. Trans 233.11 (3). This subsection does not apply to major intersections or within the desirable stopping sight distance, as determined under procedure 11-10-5 of the department's facilities development manual dated June 10, 1998, of the intersection of any state trunk highway or connecting highway with another state trunk highway or connecting highway. This subsection does not supersede more restrictive requirements imposed by valid applicable local ordinances.

Note: Technical figures 2, 3, 3m, 4, 4m, 5, 6 and 6m within Procedure 11-10-5 have various dates other than June 10, 1998 or are undated.

- (4) The land division map shall show the boundary of a setback area on the face of the land division map and shall clearly label the boundary as a highway setback line and shall clearly show existing structures and improvements lying within the setback area.
- (5) The owner shall place the following restriction upon the same sheet of the land division map that shows the highway setback line:

"No improvements or structures are allowed between the right-of-way line and the highway setback line. Improvements and structures include, but are not limited to, signs, parking areas, driveways, wells, septic systems, drainage facilities, buildings and retaining walls. It is expressly intended that this restriction is for the benefit of the public as provided in section 236.293, Wisconsin Statutes, and shall be enforceable by the Wisconsin Department of Transportation or its assigns. Contact the Wisconsin Department of Transportation for more information. The phone number may be obtained by contacting the County Highway Department."

If on a CSM there is limited space for the above restriction on the same sheet that shows the setback line, then the following abbreviated restriction may be used with the standard restriction placed on a subsequent page: "Caution - Highway Setback Restrictions Prohibit Improvements. See sheet _____."

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99; cr. (2) (c), (d) and (3n), Register, January, 2001, No. 541, eff. 2-1-01.

Trans 233.105 Noise, vision corners and drainage.

- (1) **NOISE.** When noise barriers are warranted under the criteria specified in ch. Trans 405, the department is not responsible for any noise barriers for noise abatement from existing state trunk highways or connecting highways. Noise resulting from geographic expansion of the through-lane capacity of a highway is not the responsibility of the owner, user or land divider. In addition, the following notation shall be placed on the land division map: "The lots of this land division may experience noise at levels exceeding the levels in s. Trans 405.04, Table I. These levels are based on federal standards. The department of transportation is not responsible for abating noise from existing state trunk highways or connecting highways, in the absence of any increase by the department to the highway's through-lane capacity."

Note: *Some land divisions will result in facilities located in proximity to highways where the existing noise levels will exceed recommended federal standards. Noise barriers are designed to provide noise protection only to the ground floor of abutting buildings and not other parts of the building. Noise levels may increase over time. Therefore, it is important to have the caution placed on the land division map to warn owners that the department is not responsible for further noise abatement for traffic and traffic increases on the existing highway, in the absence of any increase by the department to the highway's through-lane capacity.*

- (2) **VISION CORNERS.** The department may require the owner to dedicate land or grant an easement for vision corners at the intersection of a highway with a state trunk highway or connecting highway to provide for the unobstructed view of the intersection by approaching vehicles. The owner shall have the choice of providing the vision corner by permanent easement or by dedication. If the department requires such a dedication or grant, the owner shall include the following notation on the land division map:

"No structure or improvement of any kind is permitted within the vision corner. No vegetation within the vision corner may exceed 30 inches in height."

Note: *Guide dimensions for vision corners are formally adopted in the Department's Facilities Development Manual, Chapter 11, pursuant to s. 227.01 (13) (e), Stats.*

- (3) **DRAINAGE.** The owner of land that directly or indirectly discharges stormwater upon a state trunk highway or connecting highway shall submit to the department a drainage analysis and drainage plan that assures to a reasonable degree, appropriate to the circumstances, that the anticipated discharge of stormwater upon a state trunk highway or connecting highway following the development of the land is less than or equal to the discharge preceding the development and that the anticipated discharge will not endanger or harm the traveling public, downstream properties or transportation facilities. Various methods of hydrologic and hydraulic analysis consistent with sound engineering judgment and experience and suitably tailored to the extent of the possible drainage problem are acceptable. Land dividers are not required by this subsection to accept legal responsibility for unforeseen acts of nature or forces beyond their control. Nothing in this subsection relieves owners or users of land from their obligations under s. 88.87 (3) (b), Stats.

Note: *In sec. 88.87 (1), Stats., the Legislature has recognized that development of private land adjacent to highways frequently changes the direction and volume of flow of surface waters. The Legislature found that it is necessary to control and regulate the construction and drainage of all highways in order to protect property owners from damage to lands caused by unreasonable diversion or retention of surface waters caused by a highway and to impose correlative duties upon owners and users of land for the purpose of protecting highways from flooding or water damage. Wisconsin law, sec. 88.87 (3), Stats., imposes duties on every owner or user of land to provide and maintain a sufficient drainage system to protect downstream and upstream highways. Wisconsin law, sec. 88.87 (3) (b), Stats., provides that whoever fails or neglects to comply with this duty is liable for all damages to the highway caused by such failure or neglect. The authority in charge of maintenance of the highway may bring an action to recover such damages, but must commence the action within 90 days after the alleged damage occurred. Section 893.59, Stats. Additional guidance regarding drainage may be found in Chapter 13 and Procedure 13-1-1 of the Department's Facilities Development Manual.*

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99; am. (1), (2) (intro.) and (3), Register, January, 2001, No. 541, eff. 2-1-01.

Trans 233.11 Special exceptions.

- (1) **Department Consent.** No municipality or county may issue a variance or special exception from this chapter without the prior written consent of the department.

(3)

- (a) *Special exceptions for setbacks allowed.* The department, district office or, if authorized by a delegation agreement under sub. (7), reviewing municipality may authorize special exceptions from this chapter only in appropriate cases when warranted by specific analysis of the setback needs, as determined by the department, district office or reviewing municipality. A special exception may not be contrary to the public interest and shall be in harmony with the general purposes and intent of ch. 236, Stats., and of this chapter. The department, district office or reviewing municipality may grant a special exception that adjusts the setback area or authorizes the erection or installation of any structure or improvement within a setback area only as

provided in this subsection. The department, district office or reviewing municipality may require such conditions and safeguards as will, in its judgment, secure substantially the purposes of this chapter.

Note: *The phrase "practical difficulty or unnecessary hardship" has been eliminated from the rule that was effective February 1, 1999, to avoid the adverse legal consequences that could result from the existing use of the word "variance." The Wisconsin Supreme Court has interpreted "variance" and this phrase to make it extremely difficult to grant "variances" and in so doing has eased the way for third party legal challenges to many "variances" reasonably granted. See State v. Kenosha County Bd. of Adjust., 218 Wis. 2d 396, 577 N.W.2d 813 (1998). The Supreme Court defined "unnecessary hardship" in this context as an owner having "no reasonable use of the property without a variance." Id. at 413. The "special exception" provision in this rule is not intended to be so restrictive and has not been administered in so restrictive a fashion. In the first year following revisions of ch. Trans 233, effective February 1, 1999, the Department granted the vast majority of "variances" requested, using a site and neighborhood-sensitive context based on specific analysis.*

- (b) *Specific analysis for special exceptions for setbacks.* Upon request for a special exception from a setback requirement of this chapter, the department, district office or reviewing municipality shall specifically analyze the setback needs. The analysis may consider all of the following:
1. The structure or improvement proposed and its location.
 2. The vicinity of the proposed land division and its existing development pattern.
 3. Land use and transportation plans and the effect on orderly overall development plans of local units of government.
 4. Whether the current and forecasted congestion of the abutting highway is projected to be worse than level of service "C," as determined under s. Trans 210.05 (1), within the following 20 years.
 5. The objectives of the community, developer and owner.
 6. The effect of the proposed structure or improvement on other property or improvements in the area.
 7. The impact of potential highway or other transportation improvements on the continued existence of the proposed structure or improvement.
 8. The impact of removal of all or part of the structure or improvement on the continuing viability or conforming use of the business, activity, or use associated with the proposed structure or improvement.
 9. Transportation safety.
 10. Preservation of the public interest and investment in the highway.
 11. Other criteria to promote public purposes consistent with local ordinances or plans for provision for light and air, providing fire protection, solving drainage problems, protecting the appearance and character of a neighborhood, conserving property values, and, in particular cases, to promote aesthetic and psychological values as well as ecological and environmental interests.
- (c) *Adjust setback.* If the department, district office or reviewing municipality grants a special exception by adjusting the setback area, the department shall pay just compensation for any subsequent department-required removal of any structure or improvement that the department has allowed outside of the approved, reduced setback area on land that the department acquires for a transportation improvement. The department may not decrease the 15 foot setback distance established under s. Trans 233.08 (3n), except in conformity with a comprehensive local setback ordinance, generally applicable to the vicinity of the land division, that expressly establishes a closer setback line.
- (d) *Allow in setback – removal does not affect viability.* The department, district office or reviewing municipality may authorize the erection of a structure or improvement within a setback area only if the department, district office or reviewing municipality determines that any required removal of the structure or improvement, in whole or in part, will not affect the continuing viability or conforming use of the business, activity, or use associated with the proposed structure or improvement, and will not adversely affect the community in which it is located. Any owner or user who erects a structure or improvement under a special exception granted under this paragraph assumes the risk of future department-required removal of the structure or improvement and waives any right to compensation, relocation assistance or damages associated with the department's acquisition of that land for a transportation improvement, including any damage to property outside the setback caused by removal of the structure or improvement in the setback that was allowed by special exception. The department, district office or reviewing municipality may not grant a special exception within an existing setback area, unless the owner executes an agreement or other appropriate document required by the department, binding on successors and assigns of the property, providing that, should the department need to acquire lands within the setback area, the department is not required to pay compensation, relocation costs or damages relating to any structure or improvement authorized by the special exception. The department, district office or reviewing municipality may require such conditions and safeguards as will, in its judgment, secure substantially the purposes of this chapter. The department, district office or reviewing municipality shall require the executed agreement or other appropriate document to be recorded with the register of deeds under sub. (7) as part of the special exception.

- (e) *Blanket or area special exceptions for setbacks.* Based on its experience granting special exceptions on similar land divisions, similar structures or improvements, or the same area and development pattern, the department may grant blanket or area special exceptions from setback requirements of this chapter that are generally applicable. The department shall record blanket or area special exceptions with the register of deeds in the areas affected or shall provide public notice of the blanket or area special exceptions by other means that the department determines to be appropriate to inform the public.
- (f) *Horizon of setback analysis.* For purposes of its specific analysis, the department, district office or reviewing municipality shall consider the period 20 years after the date of analysis.

Note: Federal law requires a minimum 20-year forecast period for transportation planning for all areas of the State. 23 USC 134 (g) (2)(A) and 135 (e) (1).

- (4) **Special Exceptions for Provisions of this Chapter other than Setbacks.** Except as provided in sub. (3), the department may not authorize special exceptions from this chapter, except in appropriate cases in which the literal application of this chapter would result in practical difficulty or unnecessary hardship, or would defeat an orderly overall development plan of a local unit of government. A special exception may not be contrary to the public interest and shall be in harmony with the general purposes and intent of ch. 236, Stats., and of this chapter. The department may require such conditions and safeguards as will, in its judgment, secure substantially the purposes of this chapter.

Note: This subsection uses the phrase "practical difficulty or unnecessary hardship to indicate a higher standard for special exceptions from provisions of this chapter other than setbacks. However, the phrase "special exception" has been used rather than the word "variance." The Supreme Court defined "unnecessary hardship" in a variance context as an owner having "no reasonable use of the property without a variance." See *State v. Kenosha County Bd. of Adjust.*, 218 Wis. 2d 396, 413, 577 N.W.2d 813 (1998). The department intends the "special exception" provision in this rule to be administered in a somewhat less restrictive fashion than "no reasonable use of the property" without a "variance."

- (5) **Municipal Special Exceptions.** A delegation agreement under s. Trans 233.03 (8) may authorize a reviewing municipality to grant special exceptions. No municipality may grant special exceptions to any requirement of this chapter, except in conformity with a delegation agreement under this subsection. Any decision of a reviewing municipality relating to a special exception is subject to the appeal procedure applicable to such decisions made by the department or a district office, except that the department may unilaterally review any such decision of a reviewing municipality only for the purposes of ensuring conformity with the delegation agreement and this chapter.
- (6) **Time Limit for Review.** Not more than 60 calendar days after receiving a completed request for a special exception under s. Trans 233.11, the department, district office or reviewing municipality shall provide to the land divider written notice of its decision granting or denying a special exception. The 60-day time limit may be extended only by written consent of the land divider.

Note: The Department intends that decisions concerning special exceptions be made in the shortest practicable period of time. The Department intends the 60-day time limit applicable to special exceptions to allow sufficient time for a land divider and the Department, district office or municipality to explore alternative locations or plans to avoid and minimize conflicts and to facilitate mutually acceptable resolutions to conflicts.

- (7) **Recording Required.** A special exception granted under this section is effective only when the special exception is recorded in the office of the register of deeds. Any structure or improvement erected under authority of a special exception granted under this section is presumed to have been first erected on the date the special exception is recorded.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99; renum. (2) to be (3) (a) and am., cr. (3) (b) to (f) and (4) to (7), Register, January, 2001, No. 541, eff. 2-1-01.

Trans 233.12 Performance bond. The department may, in appropriate cases, require that a performance bond be posted, or that other financial assurance be provided, to ensure the construction of any improvements in connection with the land division which may affect a state trunk highway.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99.

Trans 233.13 Fees. The department shall charge a fee of \$110 for reviewing a land division map that is submitted under s. 236.10, 236.12, 236.34, 236.45 or 703.11, Stats., or other means not provided by statute, on or after the first day of the first month beginning after February 1, 1999. The fee is payable prior to the department's review of the land division map. The department may change the fee each year effective July 1 at the annual rate of inflation, as determined by movement in the consumer price index for all urban consumers (CPI-U), published the preceding January in the CPI detailed report by the U.S. department of labor's bureau of labor statistics, rounded down to the nearest multiple of \$5.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99.

**CHAPTER TRANS 400
WISCONSIN ENVIRONMENTAL POLICY ACT
PROCEDURES FOR DEPARTMENT ACTIONS**

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Trans 400.01 Authority.

- (1) This chapter is promulgated under the authority of ss. 1.11, 85.16 (1) and 227.11 (2), Stats.
- (2) As specified in s. 227.01 (13) (d), (e) and (y), Stats., the definition of "rule" and the requirement to promulgate statements of general policy and interpretation of statutes as administrative rules do not apply to action or inaction of the department which relates to the use of highways and is made known by signs or signals, relates to the construction or maintenance of highways or bridges, except as provided in ss. 84.11 (1r) and 85.025, Stats., or prescribes measures to minimize the adverse environmental impact of bridge and highway construction and maintenance.
- (3) As specified in ss. 20.395 (9) (qx), 84.01 (15), 84.015 and 84.03 (1), Stats., the department is directed to construct and maintain highways and related projects within the meaning of title 23, United States Code, and all acts amendatory and supplementary thereto, and the federal regulations issued under that code, as well as to receive and expend all funds in accordance with the requirements of acts of congress making such funds available.

History: Cr. Register, April, 1992, No. 436, eff. 5-1-92.

Trans 400.02 Purpose. The purpose of this chapter is to implement the Wisconsin environmental policy act, s. 1.11, Stats., by establishing the policy by which the department will consider environmental effects of its major actions on the quality of the human environment, by identifying actions under the jurisdiction of the department that have the potential to affect the quality of the human environment, by determining the appropriate environmental analysis and documentation necessary for each action, by ensuring an opportunity for public participation in the process, and by establishing procedures by which the department will consider the effects of its actions on the quality of the human environment.

History: Cr. Register, April, 1992, No. 436, eff. 5-1-92.

Trans 400.03 Applicability.

- (1) The provisions of this chapter shall apply to all department actions which may affect the quality of the human environment.
- (2) Where another state or federal agency has concurrent responsibility with the department for a proposed EA action, a joint environmental assessment, or EA, may be prepared with the other agency if the EA meets the requirements of this chapter. The department shall make an independent judgment on the need for an environmental impact statement, or EIS, in accordance with this chapter.
- (3) Where a proposed action involves another state or federal agency approval or decision, and it has been determined that an EIS shall be prepared in accordance with NEPA or WEPA, the WEPA requirement for an EIS under this chapter may be waived if:
 - (a) A joint EIS is prepared; or
 - (b) After review of the other state or federal EIS by the department, it appears that the requirements as to content of the EIS prescribed in s. 1.11, Stats., and this chapter have been met, and the EIS was developed and prepared through appropriate participation by the department with the other agencies in a coordinated effort to satisfy the requirement of NEPA and WEPA.
- (4) If the joint EIS under sub. (3) appears to comply with the requirements of WEPA and this chapter, public hearings shall be held in accordance with this chapter unless they are held in Wisconsin by the lead agency with effective participation by the department.

- (5) The department may accept certification of compliance by a county, city, village or town with any environmental laws applicable to improvements under the jurisdiction of the local government for which reimbursement is sought from the department through the local roads improvement program in s. 86.31, Stats.

History: Cr. Register, April, 1992, No. 436, eff. 5-1-92; am. (2), Register, February, 1999, No. 518, eff. 3-1-99.

Trans 400.04 Definitions. In this chapter:

- (1) "Access roads" means the various, incidental, public roads that provide service and access to state parks, national and state forests, and state institutions.
- (2) "Alternatives" means other reasonable actions or activities which may achieve the same or altered purpose of the proposed action including the alternative of taking no action.
- (3) "Categorical exclusion" means an action which meets the definition of the term in the guidelines published by the United States council on environmental quality as a federal rule in 40 CFR 1508.4, July 1, 1990, and the rule published jointly by the federal highway administration and urban mass transit administration of the United States department of transportation in 23 CFR 771.117, April 1, 1991, or the procedures published by the federal aviation administration of the United States department of transportation as order 5050.4A, chapter 3, paragraph 23, October 8, 1985, or other actions of the department for which neither an EA, EIS nor other environmental documentation is required by this rule.
- (4) "Cooperating agency" means any local, state or federal agency, other than the lead or transportation agency, which has jurisdiction by law over the proposed action or which has special expertise with respect to any relevant environmental effect generated by the proposed action.
- (5) "Department" means the Wisconsin department of transportation.
- (6) "DEIS" or "draft environmental impact statement" means the preliminary version of an EIS.
- (7) "EA" or "environmental assessment" means a concise, comprehensive document containing an analysis of a proposed action to determine the significance of the action's environmental effects and whether or not the action constitutes a major action.
- (8) "Environmental effect" or "environmental impact" means a beneficial or adverse influence resulting from an action of the department. The term includes ecological, aesthetic, historic, cultural, economic, social or health effects.
- (9) "EIS" or "environmental impact statement" means a written report containing an analysis of a proposed major action and its alternatives to identify and address their effects on the quality of the human environment.
- (10) "ER" or "environmental report" means a brief document used internally by the department to demonstrate a proposed action fits the criteria or conditions for approval as a categorical exclusion in 23 CFR 771.117 (d), April 1, 1991, or has met the review criteria of paragraph 23.a. of chapter 3 of federal aviation administration order 5050.4A of October 8, 1985, or has been properly coordinated with other agencies having jurisdiction by law over specific activities.
- (11) "FEIS" or "final environmental impact statement" means the final version of an EIS.
- (12) "FONSI" or "finding of no significant impact" means an approved, completed EA containing a finding that the proposed action is not a major action.
- (13) "Human environment" means the natural or physical environment and the relationship of people with that environment.
- (14) "Joint lead agency" means the department together with any local, state or federal agency having equal responsibility for the preparation, content and processing of an environmental document for a proposed action.
- (15) "Ldn" means the directly measurable sound level quantity using the day-night average sound level methodology developed for the United States environmental protection agency for estimating noise impacts at both civil and military airports.
- (16) "Lead agency" means the local, state or federal agency preparing or having taken primary responsibility for preparing the environmental document for a proposed action.
- (17) "LEIS" or "legislative environmental impact statement" means a written report containing an analysis to identify and address the effects on the quality of the human environment of a department-initiated report or recommendation on a proposal for legislation.
- (18) "Major action" means an action that will have significant effects on the quality of the human environment. It does not include actions whose significance is based only on economic or social effects.
- (19) "Major and significant new proposal" means a new proposal developed by the department which, if legislatively authorized and funded, may significantly affect the quality of the human environment and represents a significant departure from, or expansion of, the department's existing responsibilities by substantially expanding or substantially reducing total resources allocated to any existing programs.
- (20) "Mitigation" means avoiding, minimizing, rectifying, reducing, eliminating or compensating for adverse environmental effects of a proposed action.
- (21) "NEPA" means the national environmental policy act, 42 USC 4321, et seq.
- (22) "Notice of availability," "notice of intent," "notice of opportunity for public hearing" or "notice of public hearing" means a class 1 notice as defined in ch. 985, Stats.

- (23) "ROD" or "record of decision" means a public record which identifies:
- (a) The department's selected course of action.
 - (b) The selected action's environmental effects.
 - (c) Alternatives to the action that were considered.
 - (d) Mitigation measures selected.
 - (e) Reason for rejection of suggested reasonable mitigation measures.
- (24) "Reevaluation" means the review of a DEIS or FEIS to assess whether there have been significant changes in the proposed action, the affected human environment, the anticipated environmental impacts, or the proposed mitigation measures.
- (25) "Scoping" means an early, open process with the public and public agencies for identifying the anticipated range of issues for a proposed action.
- (26) "Significant effects" means considerable and important impacts of department actions on the quality of the human environment.
- (27) "SEE" or "system-plan environmental evaluation" means a conceptual environmental evaluation, that shall be considered the "detailed statement" required by statute commonly known as "environmental impact statement," developed as an integral element of a system plan that contemplates that if the plan recommendations are implemented, there will be subsequent project or site-specific environmental reviews. A SEE also serves as the LEIS regarding reports or recommendations on legislation required to implement the plan.
- (28) "System plan" means a plan which identifies transportation facility or service needs for a statewide system. The needs are identified conceptually without addressing specific design and locational details.
- (29) "Tiering" means the coverage of general matters in a broad EIS with subsequent narrower statements or environmental analyses which incorporate by reference the general discussion of the EIS.
- (30) "WEPA" means the Wisconsin environmental policy act, s. 1.11, Stats.
- History:** Cr. Register, April, 1992, No. 436, eff. 5-1-92; am. (7) and (12), Register, February, 1999, No. 518, eff. 3-1-99.

Trans 400.05 Federal regulations adopted. Federal regulations, 23 CFR 771.115, 771.117, 771.119(a) and 771.123(a), April 1, 1998, adopted jointly by the federal highway administration and urban mass transit administration of the United States department of transportation, and its federal aviation administration order 5050.4A, chapter 3, paragraphs 20, 21, 22, and 23, October 8, 1985, pursuant to 40 CFR 1508.4, July 1, 1998, as approved by the United States council on environmental quality, and 40 CFR 1506.8 and 1508.17 are adopted by the department and are attached hereto in appendix 1.

Note: The "urban mass transit administration" has been renamed the "federal transit administration," but the federal rule text has not yet been changed.

History: Cr. Register, April, 1992, No. 436, eff. 5-1-92; am. Register, February, 1999, No. 518, eff. 3-1-99.

Trans 400.06 Policy.

- (1) The department shall strive to protect and enhance the quality of the human environment in carrying out its basic transportation mission and shall consider pertinent environmental factors consequential to any proposed action. The policy expressed in this section and the procedures defined in this chapter shall be implemented as an integrated process beginning during the initial planning stage for department action.
- (2) The department acknowledges WEPA as a legal obligation shared by all divisions of the department to evaluate and be aware of environmental consequences of proposed actions.
- (3) Alternative courses of action shall be evaluated and decisions on proposed actions shall be made in the best overall public interest consistent with state and federal statutes and regulations. Decisions on proposed actions shall be based upon a balanced consideration of the findings of the environmental document, public comments, and the need for safe and efficient transportation consistent with local, state and national environmental goals.
- (4) Public involvement, interagency coordination and consultation, and a systematic interdisciplinary approach to analysis of the issues shall be essential parts of the environmental process for proposed actions.
- (5) Measures necessary to avoid, minimize and to mitigate adverse environmental impacts of proposed actions shall be part of the development and evaluation of alternatives.
- (6) The department shall implement procedures to make the WEPA process more useful to decision makers and the public by reducing paperwork and reducing delay utilizing the means for achieving these goals as specified in the rules of the United States council on environmental quality at 40 CFR 1500.4 and 1500.5, July 1, 1990, that are attached hereto in appendix 1. Environmental documents shall be concise, clear, and to the point and emphasize real environmental issues and alternatives.
- (7) In carrying out its responsibility under s. 1.11, Stats., the department shall substantially follow the guidelines issued as rules by the United States council on environmental quality and federal transportation agencies.

History: Cr. Register, April, 1992, No. 436, eff. 5-1-92.

Trans 400.07 Action designation and environmental documentation.

- (1) The designations, EIS and CE shall be used to categorize department actions. Actions designated EIS actions shall be considered major actions, and actions designated CE shall be considered categorical exclusions. An EA and an ER describe procedures to be followed to categorize department actions. The EA process yields a determination whether an action requires an EIS or a finding of no significant impact. The ER process confirms whether an action falls within a categorical exclusion or requires further evaluation and documentation.
- (2) Except for actions designated CE actions which do not require any environmental documentation, actions and procedures designated EIS, EA or ER shall require the following environmental documentation:
- (a) *EIS or LEIS*. An EIS action is a major action. An LEIS may be prepared for a major and significant new proposal.
 - 1. An environmental impact statement, or EIS, shall be prepared for major actions.
 - 2. A legislative environmental impact, or LEIS, may be prepared when a major and significant new proposal consists of a report or recommendation of the department on a proposal for legislation initiated by the department that is not within the scope of any categorical exclusion.
 - (b) *EA, SEE or screening sheet*. An EA is a procedure followed for an action for which the significance of the environmental impact is not clearly established. An EA, SEE or screening sheet may be used as follows:
 - 1. An EA shall be prepared for those project actions for which the significance of the environmental impact is not clearly established. If it is concluded from the analysis in the EA that the action is a major action, an EIS shall be prepared. If it is concluded from the analysis in the EA that the action is not a major action, the EA shall be revised to constitute a FONSI, and the FONSI shall serve as the environmental document. The FONSI shall be prepared only after availability of the EA for public and cooperating agency review and comment and the incorporation of any appropriate revisions resulting from the public involvement process. Where a permit will be required or other agency coordination is specifically required by law, the FONSI may serve as the vehicle for such permit or coordinating agency approval.
 - 2. A SEE may be prepared in the case of proposals contained in system plans, if it is concluded they are major and significant new proposals. If it is concluded from an analysis of the system plan that it does not contain any major and significant new proposals, a clear statement of that determination may be incorporated within the system plan or as a separately identifiable and retained record of the department's determination.
 - 3. In the case of reports or recommendations of the department on proposals for legislation initiated by the department, if it is concluded from the screening sheet they contain major and significant new proposals, an LEIS may be prepared. If it is concluded from the screening sheet that they do not contain any major and significant new proposals or are within the scope of any categorical exclusion, a clear statement of that determination may be included on the screening sheet.
 - (c) *ER*. An ER is a procedure followed for an action that is likely to fit the criteria for a conditional categorical exclusion in 23 CFR 771.117(d), April 1, 1998 or federal aviation administration order 5050.4A, chapter 3, paragraph 23.a., October 8, 1985, or otherwise requires coordination with or concurrence of another agency. An environmental report, or ER, shall be prepared to demonstrate whether the proposed action does fit the criteria or conditions for approval as a categorical exclusion and has been properly coordinated with other agencies having jurisdiction by law over specific activities. The ER shall serve as the department's record of coordination with other agencies having jurisdiction over specific activities, including the following activities:
 - 1. Construction-related activities including, but not limited to, stream crossings, fills in wetlands and temporary structures in or over streams or wetlands.
 - 2. Defined land use acquisition including, but not limited to, the acquisition of agricultural lands, historic or archeological sites, and state, county or national forest lands.

History: Cr. Register, April, 1992, No. 436, eff. 5-1-92; am. (1), (2) (intro.), (a), (b) and (c) (intro.), Register, February, 1999, No. 518, eff. 3-1-99.

Trans 400.08 Categorization of department actions.

- (1) Based on federal regulations and past experience with analysis of similar actions the following are categorized as EIS, EA, ER or CE:
- (a) *EIS — Environmental Impact Statement*. The federal highway administration regulations at 23 CFR 771.115(a) April 1, 1998, federal aviation administration order 5050.4A, chapter 3, paragraph 21, October 8, 1985, identify types of federally funded actions which require the preparation of an environmental impact statement.

Note: *The National Environmental Policy Act (NEPA) requires the federal government to prepare environmental documentation for major federal actions. The Wisconsin Department of Transportation prepares the federal environmental documentation for review and approval by the federal government of actions for which federal funds are to be used by the Department. The requirements for federally funded actions are followed by the*

Department when federal funds are involved. These federally funded actions are also actions of the Department to which the Wisconsin Environmental Policy Act (WEPA) applies. Finally, when the Department pursues an action for which only State funds are involved, NEPA does not apply, but WEPA still applies. The intent of this chapter is to direct the Department to follow NEPA and its implementing regulations for both NEPA and WEPA purposes when federal funds are involved in the proposed action. The intent is to apply WEPA and its implementing rules in this chapter when only State funds are involved in the proposed actions, but to make the WEPA implementing rules track the federal law and federal regulations as closely as possible.

The following are examples of department major actions that require the preparation of an environmental impact statement:

1. 'Highways and transit.'
 - a. Construction of a new controlled access freeway.
 - b. Construction of a new highway project of 4 or more lanes on a new location.
 - c. New construction or extension of fixed rail transit facilities including rapid rail, light rail, commuter rail, and automated guideway transit.
 - d. New construction or extension of a separate roadway for buses or high occupancy vehicles not located within an existing highway facility.
2. 'Airports.'
 - a. First time airport layout plan approval or airport location approval for a commercial service airport located in a standard metropolitan statistical area.
 - b. Federal financial participation in, or airport layout plan approval of, a new runway capable of handling air carrier aircraft at a commercial service airport in a standard metropolitan statistical area.
3. 'Railroads.'
 - a. Construction of a new major railroad.
 - b. Construction of new major facilities to handle freight, maintenance or passengers.

Note: *The federal railroad administration regulation at 49 CFR 266.19, October 1, 1997, generally identifies actions that do not require an environmental impact statement.*

(b) EA — Environmental Assessment. EA procedures apply to actions for which the significance of the environmental impacts is not clearly established and require the preparation of an environmental assessment to make that determination. The federal highway administration regulations at 23 CFR 771.115(c) April 1, 1998, and the federal aviation order 5050.4A, chapter 3, paragraph 22, October 8, 1985 identify the types of federal actions that require the preparation of an environmental assessment. Examples of the department's actions that are required to follow the EA procedure are as follows:

1. 'Highways and transit.' Highways and transit actions that are not EIS or CE actions are required to follow EA procedures. This category requires the preparation of an environmental assessment to determine the appropriate environmental document required, unless it appears an ER would be more appropriate.
2. 'Airports.' An airport layout plan approval of the following types of actions shall be subject to the analysis of an environmental assessment and subsequent decision as to whether to prepare an environmental impact statement or a finding of no significant impact:
 - a. Airport location.
 - b. New runway.
 - c. Major runway extension.
 - d. Runway strengthening which would result in a 1.5 Ldn or greater increase in noise over any noise sensitive area located within the 65 Ldn contour.
 - e. Construction or relocation of entrance or service road connections to public roads which adversely affect the capacity of such public roads.
 - f. Land acquisition associated with any of the items in subds. 2. a. to e. and land acquisition which results in relocation of residential units when there is evidence of insufficient comparable replacement dwellings or major disruption of business activities.
 - g. Establishment or relocation of an instrument landing system, or an approach lighting system.
 - h. An airport development action that affects property of state or local historical, architectural, archeological, or cultural significance; requires land acquisition of over 5 acres from a farm operation; affects wetlands, coastal zones, or floodplains; or affects endangered or threatened species.
3. 'Administrative facilities.' Construction of a new or replacement administrative building, including an office building, state patrol academy, driver licensing and testing station, state patrol communications building, or other similar facility, at a new location.
4. 'Financial assistance.' This provision applies to issuance as well as acceptance of the following grants by the department:

- a. Financial grant for railroad construction action that may require an EIS.
 - b. Financial grant for construction of new port facilities.
 - c. Financial grant for construction of a new disposal facility for harbor dredge material.
 - d. Financial grant for dredging of material for the purpose of expanding an existing harbor.
 - e. Financial grant for disposal of contaminated harbor dredge material into a new disposal facility.
5. 'Policy, contract, standard and specification changes.'
- a. Change in policy for nonhighway use of highway right-of-way or non-railroad use of railroad right-of-way by utility companies, or for access to public roads or private residential or commercial driveways or farm crossings.
 - b. Change in policy for transport of hazardous cargo, such as explosives, hazardous wastes, toxins, radioactive material, or any other similar cargo.
 - c. Change in policy for the maintenance program relating to the use of deicing materials, or to the use of pesticides, herbicides or insecticides within the right-of-way, or to the use of cutback asphalt or creosoted ties, or other similar materials.
 - d. Change in policy for acquisition of scenic easements.
6. 'System planning.' Publication or adoption of a system plan. Preparation of a SEE or EA for a system plan is discretionary.
- (c) *ER — Environmental Report.* ER procedures apply to actions identified in 23 CFR 771.117(d), April 1, 1998, and federal aviation administration order 5050.4A, chapter 3, paragraph 23a., October 8, 1985. ER actions require documentation with an environmental report. The environmental report shall demonstrate that the action meets the criteria for a categorical exclusion by demonstrating that specific conditions or criteria for the action have been addressed and that significant environmental effects will not result. Examples of ER actions to which ER procedures apply are as follows:
- 1. 'Highways and transit.'
 - a. Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes, including lanes for parking, weaving, turning or climbing.
 - b. Highway safety or traffic operations improvement projects including the installation of ramp metering control devices and lighting.
 - c. Bridge rehabilitation, reconstruction or replacement or the construction of grade separation to replace existing at-grade railroad crossings.
 - d. Transportation corridor fringe parking facilities.
 - e. Construction of new truck weigh stations or rest areas.
 - f. Approvals for disposal of excess right-of-way or for joint or limited use of right-of-way, where the proposed use does not have significant adverse impacts.
 - g. Approvals for changes in access control.
 - h. Construction of new bus storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and which is located on or near a street with adequate capacity to handle anticipated bus and support vehicle traffic.
 - i. Rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where only minor amounts of additional land are required and there is not a substantial increase in the number of users.
 - j. Construction of bus transfer facilities, including an open area consisting of passenger shelters, boarding areas, kiosks and related street improvements, when located in a commercial area or other high activity center in which there is adequate street capacity for projected bus traffic.
 - k. Construction of rail storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and where there is no significant noise impact on the surrounding community.
 - l. Hardship acquisition of land where the acquisition may not limit or impede the evaluation of future alternatives for planned construction projects, due to the investment in land through hardship acquisition, including evaluation of future shifts in alignment of highways.
 - 2. 'Airports.'
 - a. Runway, taxiway, apron, or loading ramp construction or repair work including extension, strengthening, reconstruction, resurfacing, marking, grooving, fillets and jet blast facilities, and construction of new heliports on existing airports, except where such action will create environmental impacts off airport property.
 - b. Installation or upgrading of airfield lighting systems, including runway end identification lights, visual approach aids, beacons and electrical distribution systems.
 - c. Installation of miscellaneous items including segmented circles, wind or landing direction indicators or measuring devices, or fencing.

- d. Construction or expansion of passenger handling facilities.
 - e. Construction, relocation or repair of entrance and service roadways.
 - f. Grading or removal of obstructions on airport property and erosion control actions with no off-airport impacts.
 - g. Landscaping generally and landscaping or construction of physical barriers to diminish impact of airport blast and noises.
 - h. Projects to carry out noise compatibility programs.
 - i. Land acquisition and relocation associated with subs. 2. a. to i.
 - j. Removal of a displaced threshold.
3. 'Administrative facilities.' Extensive remodeling, expansion or modification of an administrative building, including an office building, state patrol academy, driver licensing and testing station, state patrol communications building, or other similar facility, which either substantially increases the capacity of the facility or substantially changes its use.
 4. 'Financial assistance.' This provision applies to issuance as well as acceptance of the following grants by the department.
 - a. Financial grant for repair or modification of existing port facilities in locations below the ordinary high-water mark that are not within an area designated by a bulkhead line, a lake bed grant, or a submerged lands lease.
 - b. Financial grant for repair of an approved disposal facility for contaminated dredge material.
 - c. Financial grant under the transportation economic assistance program for the construction of a local transportation facility.
 5. 'Policy, contract, standard and specification changes.'
 - a. Change in policy on artificial lighting for highways and airports.
 - b. Change in policy for planting and landscaping on transportation corridors.
 - c. Processing a contract change for significant changes in design.
 - d. Major change in design standards or construction specifications.
- (d) *CE — Categorical Exclusions.* CE actions are categorically excluded from the requirement to prepare environmental documentation pursuant to the rule published by the United States department of transportation in 23 CFR 771.117, April 1, 1998, or its federal aviation administration order 5050.4A, chapter 3, paragraph 23, October 8, 1985. CE actions do not require environmental documentation because, based on past experience with similar actions, they do not involve significant environmental impacts. They are actions which do not induce significant impacts to planned growth or land use for the area, do not require the relocation of significant numbers of people, do not have a significant impact on any natural, cultural, recreational, historic or other resource, do not involve significant air, noise, or water quality impacts, do not have significant impacts on travel patterns, and do not otherwise, either individually or cumulatively, have any significant environmental impacts. Examples of CE actions include the following:
1. 'Highways and transit.'
 - a. Activities which do not involve or lead directly to construction, including planning and technical studies, grants for training and research programs, research activities, approval of a unified work program and any findings required in the planning process, approval of statewide programs, approval of project concepts, engineering to define the elements of a proposed action or alternatives so that social, economic, and environmental effects can be assessed.
 - b. Approval of utility installations along or across a transportation facility.
 - c. Construction of bicycle and pedestrian lanes, paths, and facilities.
 - d. Activities included in the state's "highway safety plan" under 23 U.S.C 402.
 - e. Transfer of lands when the subsequent action to be taken on the lands transferred is not a department action.
 - f. The installation of noise barriers or alterations to existing publicly owned buildings to provide for noise reduction.
 - g. Landscaping.
 - h. Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no land acquisition or traffic disruption will occur.
 - i. Emergency repairs.
 - j. Acquisition of scenic easements.
 - k. Improvements to existing rest areas and truck weigh stations.
 2. 'Airports.'
 - a. Acquisition of an existing privately owned airport, as long as acquisition only involves change of ownership.

- b. Acquisition of security equipment required by rule or regulation for the safety or security of personnel and property on the airport, or safety equipment required by rule or regulation for certification of an airport or snow removal equipment.
- c. Issuance of airport planning grants.
- d. Airport improvement program actions which are tentative and conditional and clearly taken as a preliminary action to establish a sponsor's eligibility under the program.
- e. Retirement of the principal of bond or other indebtedness for terminal development.
- f. Issuance of airport policy and planning documents including the national plan of integrated airport systems, or NPIM, airport improvement program, or AIP, priority system, advisory circulars on planning, design, and development programs which are not intended for direct implementation or which are issued by FAA as administrative and technical guidance to the public.
- g. Issuance of certificates and related actions under the airport certification program.
 - h. Issuance of grants for preparation of noise exposure maps and noise compatibility programs pursuant to 49 USC 47501 et seq. and 14 CFR part 150.
 - i. Airspace determinations.
- 3. 'Administrative facilities.' Minor construction or expansion of an airport facility, such as a runway, taxiway, apron, service or entrance road, or passenger handling or parking facility.
- 4. 'Financial assistance.' This provision applies to issuance as well as acceptance of grants by the department.
 - a. Financial grant for repair modification of existing facilities in locations below ordinary high water mark that are within an area designated by a bulkhead line, a lake bed grant, or a submerged lands lease.
 - b. Financial grant for maintenance dredging of navigable waterway.
 - c. Financial grant for disposal of contaminated dredge material at existing approved disposal facilities.

(2) In addition, the following actions and activities of the department are categorized as CE actions:

- (a) Activities exempt by statute or approved as categorical exclusions by the United States council on environmental quality pursuant to 40 CFR 1508.4, July 1, 1998.
- (b) Enforcement activities.
- (c) Emergency activities to protect public health, safety and the human environment.
- (d) Ancillary activities which are part of a routine series of related department actions.
- (e) Actions which individually or cumulatively do not significantly affect the quality of the human environment and do not involve unresolved conflicts in the use of available resources.
- (f) The budget request of the department as a whole submitted to the department of administration and legislature pursuant to ss. 16.42 and 19.45 (12), Stats.
- (g) Proposals for enabling or conforming legislation that are required to be enacted to comply with federal law or federal standards as the department is authorized by ss. 20.395 (9) (qx), 84.01 (15), 84.015 and 84.03 (1), Stats., as a matter of federal preemption, but only to the extent so required and no further.
- (h) Reports or recommendation on proposals for legislation for which the department has performed or caused to be performed a SEE as an integral part of system plans.
- (i) Budget requests associated with implementation of a system plan for which a SEE has been completed.
- (j) Reports or recommendations on revenue proposals.
- (k) Expenditure or appropriation requests involving only an existing department program, except requests that constitute major and significant new proposals.
- (l) Reports or recommendations on proposals for legislation that have not been initiated by or sponsored by the department.
- (m) Budgetary proposals submitted in response to a request by the governor, the legislature, legislative committees, or individual legislators.
- (n) Reports or recommendations on proposals for legislation that relate to the level of transportation aids payments to local units of government, including mass transit aids.

History: Cr. Register, April, 1992, No. 436, eff. 5-1-92; r. and recr. (1), am. (2) (intro.) and (a), Register, February, 1999, No. 518, eff. 3-1-99.

Trans 400.09 Scoping.

- (1) As part of system plan development process, the department may perform SEE scoping. This scoping is to identify the issues to be addressed, alternatives to be analyzed, and the affected public or agencies involved in the system plan development. No scoping is required for reports or recommendations on proposals for legislation, LEIS's, or ER or CE actions.

- (2) For actions requiring an EIS or EA procedures, the department shall determine by means of scoping, insofar as possible at the time that a proposed action is approved for planning, development or implementation, the probable action designation, environmental review and agency coordination that will be required. If a decision to prepare an EIS is made, the department shall inform the public and affected agencies by publishing a notice of intent in the Wisconsin administrative register and a local newspaper of general circulation. The notice of intent shall include:
- (a) A statement that an EIS will be prepared.
 - (b) A brief description of the proposed action.
 - (c) A preliminary list of possible alternatives.
 - (d) A brief discussion of the proposed scoping process.
 - (e) Names and addresses of the contact persons at the federal and state review agencies.
- (3) The scoping process shall include, to the extent feasible, affected local, state and federal agencies, any affected American Indian tribes, and other interested persons. The scoping process may consist of meetings, hearings, workshops, surveys, questionnaires, interagency committees, or other appropriate methods or activities, and may be integrated with other public participation requirements.
- (4) The department shall use the scoping process to accomplish the following:
- (a) Determine the scope of issues to be analyzed in depth in the environmental document.
 - (b) Identify and eliminate from detailed study and further consideration alternatives which are unreasonable and issues which are not significant or which have been covered and documented by prior environmental review related to the proposed action.
 - (c) Establish a schedule for document preparation and for opportunities for public involvement.
 - (d) Determine, when the department is involved in the development of proposals with other state agencies, which agencies may be joint lead agencies or whether one agency should be designated the lead agency.
 - (e) Ensure the required involvement of any cooperating agencies.
 - (f) Determine whether tiering shall be used to improve or simplify the environmental processing of complex actions.

History: Cr. Register, April, 1992, No. 436, eff. 5-1-92; am. (1) and (2) (intro.), Register, February, 1999, No. 518, eff. 3-1-99.

Trans 400.10 Preparation and content of environmental documents.

- (1) **Preparation.** The environmental documents shall be prepared by one of the following:
- (a) The department.
 - (b) Local units of government under the direction of the department and with final review and approval responsibility by the department.
 - (c) A consultant under the direction of the department and with final review and approval responsibility by the department.
- (2) **See Content.** While the general issues to be addressed by a SEE are similar to those in the individual project evaluations, it is recognized that, in most cases the analysis of transportation alternatives, including multi-modal analyses where appropriate, will be qualitative, reflecting the broad level of generality of system plans. Therefore, by necessity, a SEE shall be more conceptual, qualitative, and general than is common with the individual project environmental reviews. A SEE, prepared as an integral part of a system plan, may address the following matters:
- (a) The range of environmental effects, including the effects on sensitive land and water resources, of system plans.
 - (b) In non-attainment areas, the range of air quality impacts which might be expected from system plan recommendations.
 - (c) The range of system plan effects on energy consumption.
 - (d) The relation of system plans to adopted regional development goals and plans, including potential effects of transportation on land use and land use on transportation demand.
 - (e) The range of anticipated effects of system plans on traffic congestion.
 - (f) The range of anticipated effects of system plans on economic development.
 - (g) The qualitative comparison of the costs of system plans and expected benefits.
 - (h) The range of effects of system plans on communities.
- (3) **DEIS and FEIS Content.**
- (a) The DEIS and FEIS shall be consistent with applicable laws, orders and policies, and shall include all of the following:
 1. A summary which describes the proposed action and discusses the major environmental issues and controversies associated with the proposal.
 2. A statement of purpose and need for the proposed action.
 3. A discussion of the proposed action. The discussion shall:
 - a. Evaluate alternatives.
 - b. Specify the reasons for eliminating any of the alternatives from further consideration.

- c. Address each reasonable alternative being considered in detail, so that their relative merits and liabilities can be compared.
 - 4. A brief description of the human environment of the area or areas that may be affected by each of the alternatives under consideration. The amount of detail of such description shall be commensurate with the significance of the potential environmental impacts, but shall at a minimum identify and describe:
 - a. The existing quality of the human environment, including the economy, land use, demographics and projections of the population, traffic, natural and physical characteristics and their use, energy consumption, historic and archeological sites, and recreational facilities.
 - b. The required agency coordination, public involvement and permits or authorizations.
 - c. The relationship of the proposed action to adopted or proposed land use plans, policies, controls, and goals and objectives of affected communities, including potential effects of transportation on land use and land use on transportation demand.
 - 5. A discussion of the environmental consequences. The discussion shall include the following:
 - a. The environmental impacts of the alternatives.
 - b. The adverse environmental effects, if any, which cannot be avoided should the proposed action be implemented.
 - c. The relationship between local short-term uses of the human environment and the maintenance and enhancement of long-term productivity.
 - d. The significant irreversible or irretrievable commitments of resources, if any, which would be involved should the proposed action be implemented.
 - e. The beneficial aspects of the proposed action, both short and long term.
 - f. The economic advantages and disadvantages of the proposed action.
 - 6. A discussion of the measures being considered to minimize the harm or enhance the beneficial environmental effects of the proposed action. The discussion may include alternative designs or construction methods, alternative management actions, or other alternatives such as replacement, restoration or compensation.
 - 7. The names and qualifications of the persons primarily responsible for preparing the document or significant supporting background papers, including basic components of the DEIS and FEIS.
 - (b) In addition to the contents required under par. (a), the DEIS shall also include the identification of the preferred alternative, if any.
 - (c) In addition to the contents required under par. (a), the FEIS shall also incorporate the comments received during the DEIS and subsequent hearing processes. A response shall be made to each environmental issue identified in the comments and not addressed in the DEIS. The response shall include a discussion of the environmental issue, including the identification of the efforts to resolve the issue and the commitments to specific measures to mitigate adverse impacts and enhance beneficial effects.
- (4) EA and FONSI Content.**
- (a) The EA and FONSI may be completed on screening sheets developed by the department, and shall include all of the following:
 - 1. Stimulation of secondary environmental effects.
 - 2. Creation of a new environmental effect.
 - 3. Impacts on geographically scarce resources.
 - 4. Precedent-setting nature of the proposed action.
 - 5. The degree of controversy associated with the proposed action.
 - 6. Conflicts with official agency plans or local, state, or national policies, including conflicts resulting from potential effects of transportation on land use and land use on transportation demand.
 - 7. Cumulative environmental impacts of repeated actions of the type proposed.
 - 8. Foreclosure of future options.
 - 9. Direct or indirect impacts on ethnic or cultural groups.
 - (b) In addition to the contents required under par. (a), the FONSI shall also include the following:
 - 1. A specific finding that the proposed action is not a major action.
 - 2. Documentation showing permit or coordinating agency approval when the FONSI serves as the vehicle for such approval.
- (5) ER Content.** The ER shall reflect compliance with the applicable laws and regulations of other agencies, and shall include all of the following:
- (a) A description of the proposed action.
 - (b) The purpose and need of the proposed action.
 - (c) A brief description of the preferred alternative and the other alternatives under consideration.
 - (d) The reasons for eliminating any of the alternatives from further consideration.
 - (e) A summary of the status and results of agency coordination and public involvement.

- (f) A brief summarization of environmental, social and economic issues relevant to the proposed action including the use of prescribed construction-related methods or special contract provisions or land acquisitions that would be used to ensure that no significant adverse environmental effects or controversies developed.

History: Cr. Register, April, 1992, No. 436, eff. 5-1-92; am. (2) (intro.), Register, February, 1999, No. 518, eff. 3-1-99.

Trans 400.11 Distribution and review of environmental documents.

(1) SEE.

- (a) *Public availability of SEE.* When required, a SEE shall be prepared as an integral element of system plans. The system plan and SEE shall be made available for public inspection at the department's central office, appropriate department region offices, and depository libraries.
- (b) *Notice of availability of a SEE.* A notice of availability of a system plan and its SEE shall be published in the official state newspaper and other newspapers, as deemed appropriate. The notice may be combined with a notice of opportunity for a public hearing on the system plan. The notice shall:
1. Briefly describe the plan.
 2. List the locations where the plan and its SEE may be reviewed.
 3. Invite the public to furnish comments on the plan and the SEE.
 4. Indicate where comments are to be sent and their due date.
- (c) *Public hearing.* A public hearing on a system plan and its SEE shall be held by the department, except there is no requirement for a two-step, draft and final SEE because the planning process contemplates that if the plan recommendations are implemented, there will be subsequent project or site-specific environmental reviews.

(2) LEIS. In the case of a departmental report or recommendation on a department-initiated proposal for legislation that contains major and significant new proposals that are not within the scope of any categorical exclusion, the department shall prepare a LEIS substantially following the guidelines of the United States council on environmental quality in 40 CFR 1506.8, July 1, 1998. This includes transmission of the LEIS to the legislature concurrent with or within 30 days after the legislative proposal is submitted to the legislature, provided that the LEIS must be available in time for legislative hearings and deliberations, and 5 days in advance. There is no scoping requirement and the statement shall be prepared in the same manner as a DEIS, but shall be considered the detailed statement required by s. 1.11 (2) (c), Stats. Any comments on the LEIS shall be given to the department which shall forward them along with its own responses to the legislative committees with jurisdiction.

(3) DEIS.

- (a) *Printing and distribution of DEIS.* Printing of the DEIS shall be the responsibility of the preparer. Sufficient quantities of the DEIS shall be printed to meet distribution requirements. The DEIS shall be distributed to the following:
1. The office of the governor.
 2. Local, state and federal governmental agencies having special expertise, interest or jurisdiction.
 3. Regional and county planning agencies within the area of the proposed action.
 4. Public officials, interest groups and members of the public having the potential to be directly affected by the proposed action and requesting a copy of the DEIS. A charge may be assessed to cover reproduction and handling costs.
 5. Offices of the department located in the vicinity of the proposed action and at the department's central office.
 6. Public libraries:
 - a. For proposals having local importance, the nearest public library. In addition, a request shall be made to an appropriate public official to make the document available in a public place.
 - b. For proposals having regional importance, public libraries with a geographic distribution which provides public access without undue travel.
 - c. For proposals having statewide interest, public libraries providing reasonable access for members of the public who would be potentially affected by such proposals.
- (b) *Notice of availability of DEIS.* A notice of availability of the DEIS shall be published in the appropriate official local newspaper or in a newspaper with general circulation within the area affected by the proposed action. If the proposed action is of statewide interest, such notice shall also be published in the official state newspaper. Such notice shall include:
1. A brief description of the proposed action.
 2. A brief description of the administrative procedures to be followed.
 3. The date by which comments on the DEIS must be submitted to the department.
 4. The locations where copies of the DEIS are available for review.

(4) FEIS. The FEIS shall be printed and distributed, and a notice of availability of the FEIS shall be published in the same manner as provided for a DEIS under sub. (3), except that the decision to proceed with the proposed action and

to sign the ROD shall not be made sooner than 30 days after the date of publication of the notice of availability of the FEIS or 90 days after the date of publication of the notice of availability of the DEIS.

- (5) EA.
- (a) *Public availability of EA.* The EA shall be made available for public inspection at the department's central office, the appropriate department region office, and the office of the local unit of government having requested the proposed action. A charge may be assessed to cover reproduction and handling costs for requested copies of the EA or portions thereof.
 - (b) *Notice of availability of EA.* A notice of availability of the EA shall be published in the appropriate official local newspaper or in a newspaper of general circulation within the area affected by the proposed action. If the proposed action is of statewide interest, the notice shall also be published in the official state newspaper. The notice may be combined with the notice of opportunity for public hearing provided for under par. (c). The notice shall:
 1. Briefly describe the proposed action.
 2. Announce the completion and availability of the EA.
 3. List the locations where the EA may be inspected.
 4. Invite the public to furnish written comments on the proposed action.
 5. Indicate where comments are to be sent and that such comments must be submitted within 30 days of the publication date of the notice.
 - (c) *Notice of opportunity for public hearing on EA.* A notice of opportunity for public hearing shall be published when the EA is completed and made available for inspection as provided for under par. (a). Publication of the notice shall be in the appropriate official local newspaper or in a newspaper of general circulation within the area affected by the proposed action. Publication shall also be in the official state newspaper if the proposed action is of statewide interest. The notice shall invite submission of requests for a public hearing on the EA within 30 days after the date of publication of the notice. The notice shall include a description of the procedure for requesting a public hearing.
- (6) FONSI. The FONSI shall be made available by the department to participating local units of government and to the public upon request. A notice of availability shall not be required for a FONSI. A charge may be assessed to cover reproduction and handling costs for requested copies of the FONSI or portions thereof.
- (7) ER. The ER shall upon request be made available for inspection at the department's central office, the appropriate department region office, and the office of the local unit of government having requested the proposed action. A notice of availability shall not be required for an ER. A charge may be assessed to cover reproduction and handling costs for requested copies of the ER.

History: Cr. Register, April, 1992, No. 436, eff. 5-1-92; corrections in (1) (a), (5) (a), (7) made under s. 13.92 (4) (b) 6., Stats., Register February 2013 No. 686.

Trans 400.12 Public hearings.

- (1) **Public Hearing on SEE.** The department shall hold a public hearing on a system plan and its SEE no sooner than 15 days after its notice of public hearing. The public hearing shall be held after announcement of the public hearing and the identity of the system plan and its SEE shall be referenced in the public hearing announcement.
- (2) **No Public Hearing on LEIS.** As provided in s. 1.11 (2) (d), Stats., no public hearing is required on environmental impact statements on reports or recommendations on proposals for legislation.
- (3) **Public Hearing on DEIS.**
 - (a) Whenever a proposed action requires an EIS, the department shall hold a public hearing on the DEIS no sooner than 15 days after its notice of availability is published. The hearing shall be held prior to the determination of the recommended course of action for the proposal.
 - (b) A notice of public hearing shall be published, at least 15 days prior to the hearing, in the appropriate official local newspaper or in a newspaper of general circulation within the area affected by the proposed action. If the proposed action is of statewide interest, such notice shall also be published in the official state newspaper and any other newspapers as appropriate to obtain comprehensive coverage. Copies of the notice shall be mailed to appropriate local, state and federal agencies and to others having an interest in the proceedings of the proposed action. The notice of public hearing shall include:
 1. Identification of the DEIS.
 2. Date, time and place of the hearing.
 3. A brief description of the proposed action.
 4. A brief description of the scope and purpose of the hearing.
 5. The address to which questions may be sent prior to the hearing and locations where additional information may be obtained.
 6. Provision for submitting written statements in place of, or in addition to, testimony presented at the public hearing.
 7. The locations where the DEIS may be obtained or reviewed.

- (c) The public hearing may be combined with other hearings and notices of hearings required for departmental actions, provided the requirements under pars. (a) and (b) are met.
- (4) **Public Hearing on EA.** A public hearing on an EA may be held by the department if a request for such a hearing is received by the department within the time specified in the notice of opportunity for a public hearing provided for under s. Trans 400.11 (5) (c). Whenever the department approves a timely request for a public hearing under this subsection, the department shall proceed in the same manner as provided for a public hearing on a DEIS under sub. (3), except that the public hearing shall be held no sooner than 15 days after publication of the public hearing notice and the identity of the EA shall be referenced in the public hearing notice.

History: Cr. Register, April, 1992, No. 436, eff. 5-1-92.

Trans 400.13 Decision on proposed action.

(1) FEIS; Record of Decision.

- (a) The department shall complete and sign a record of decision no sooner than 30 days after the date of publication of the notice of availability of the FEIS provided for under s. Trans 400.11 (4).
- (b) The record of decision shall contain the following information:
1. A statement of the decision.
 2. Identification of all alternatives considered by the department in reaching its decision, specifying which one is considered environmentally preferable.
 3. A statement indicating that all practicable means to avoid or mitigate environmental harm have been adopted, and if not so adopted, a statement specifying the reasons for not adopting all such means.

(2) EA; Finding of No Significant Impact.

- (a) The decision to revise an EA to constitute a FONSI shall not be made until after the end of the 30-day period specified in the notice of availability of the EA provided for under s. Trans 400.11 (5) (b).
- (b) If potentially significant impacts have not been identified, the department shall revise the EA as appropriate and shall attach a summary of the public hearing, if a hearing was held, and a summary of any comments received and responses thereto. These items, along with a statement of no significant impact, shall constitute the FONSI and the record of decision.
- (c) If, at any point in the EA process, the department determines that the proposed action may have a significant impact on the quality of the human environment, an EIS shall be prepared.

History: Cr. Register, April, 1992, No. 436, eff. 5-1-92.

Trans 400.14 DEIS and FEIS reevaluation and supplement.

(1) DEIS.

- (a) A reevaluation of a DEIS shall be prepared if 3 years have elapsed before the date of publication of the notice of availability of the FEIS provided for under s. Trans 400.11 (4). A reevaluation of a DEIS shall also be prepared any time prior to the date of publication of the notice of availability of the FEIS if, in the judgment of the department, there have been significant changes in the proposed action, the affected human environment, the anticipated environmental impacts or the proposed mitigation measures. If in either case the reevaluation indicates or confirms any such significant changes, a supplemental DEIS shall be prepared. The supplemental DEIS shall be prepared and processed in the same manner as a DEIS under this chapter. Preparation of the supplemental DEIS shall not require withdrawal of previous approvals for those aspects of the proposed action not directly affected by the changed condition or new information.
- (b) An EA may be used to assess the need to prepare a supplemental DEIS if it is uncertain that significant changes in the proposed action, the affected human environment, the anticipated environmental impacts or proposed mitigation measures will result in significant environmental impacts which could not be identified from preparing a reevaluation of the DEIS. The EA shall be prepared and processed in accordance with the requirements of this chapter. Preparation of the EA shall not require withdrawal of previous approvals for those aspects of the proposed action not directly affected by the changed condition or new information.

(2) FEIS.

- (a) A reevaluation of a FEIS shall be prepared any time there have been, in the judgment of the department, significant changes in the proposed action, the affected human environment, the anticipated environmental impacts or the proposed mitigation measures. If the reevaluation confirms any such significant changes, a supplemental FEIS shall be prepared. The supplemental FEIS shall be prepared and processed in the same manner as a FEIS under this chapter. Preparation of the supplemental FEIS shall not require withdrawal of previous approvals for those aspects of the proposed action not directly affected by the changed condition or new information.
- (b) An EA may be used to assess the need to prepare a supplemental FEIS if it is uncertain that significant changes in the proposed action, the affected human environment, the anticipated environmental impacts or proposed mitigation measures will result in significant environmental impacts which could not be identified from preparing a reevaluation of the FEIS. The EA shall be prepared and processed in accordance with the

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requirements of this chapter. Preparation of the EA shall not require withdrawal of previous approvals for those aspects of the proposed action not directly affected by the changed condition or new information.

History: Cr. Register, April, 1992, No. 436, eff. 5-1-92.

**CHAPTER ADM 92
RELOCATION ASSISTANCE**

SUBCHAPTER I – GENERAL

<u>Adm 92.001</u>	Purpose.
<u>Adm 92.002</u>	Applicability.
<u>Adm 92.01</u>	Definitions.
<u>Adm 92.04</u>	Decent, safe, and sanitary housing.
<u>Adm 92.06</u>	Written notice and information.
<u>Adm 92.08</u>	Payment of relocation claim.
<u>Adm 92.10</u>	Waiver or modification.
<u>Adm 92.12</u>	Waiver of relocation benefits.
<u>Adm 92.14</u>	Education, certification and monitoring.
<u>Adm 92.16</u>	Eviction policy.
<u>Adm 92.18</u>	Relocation appeal.
<u>Adm 92.20</u>	Relocation file.

Adm 92.001 Purpose. The purpose of this chapter is to implement ss. 32.185 to 32.27, Stats., by establishing minimum standards for providing relocation payments and services to a person who moves from a dwelling, business or farm operation because of acquisition for a public project, and to assure that such persons do not suffer disproportionate costs as a result of projects designed to benefit the public as a whole. Payments required by this chapter do not affect any right to seek compensation specified in ss. 32.01 through 32.18 and 32.28, Stats. The department of administration shall assure that displaced persons are treated uniformly, fairly and equitably.

History: Cr. Register, March, 1986, No. 363, eff. 4-1-86; am. Register, November, 1989, No. 407, eff. 12-1-89; correction made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1996, No. 484; **correction made under s. 13.92 (4) (b) 6., 7., Stats., Register December 2011 No. 672.**

Adm 92.002 Applicability. This chapter applies to the following:

(1) A public project conducted by any agency under s. Adm 92.01 (13) which may or shall displace any person from real property regardless of the source of funds, federal regulations, or the date the project was formally adopted, approved, funded or started;

(2) A displacement under sub. (1) resulting from initiation of negotiations which begins after April 2, 1989.

History: Cr. Register, March, 1986, No. 363, eff. 4-1-86; am. (1) (b), Register, (November, 1989, No. 407, eff. 12-1-89; correction made under s. 13.93 (2m) (b) 1. and 7., Stats., Register, April, 1996, No. 484; **correction in (intro.), (1) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672.**

Adm 92.01 Definitions. In this chapter:

(1) "Acquisition" means:

(a) A property purchased by an agency by any legal means including a negotiated sale and exercise of eminent domain; or

(b) A tenant-occupied unit where possession or use is denied to the occupant under a rehabilitation, code enforcement or other program or project being carried out with public financial assistance.

(2) "Agency" means a displacing agency, under sub. (13).

(3) "Average annual net earnings" means one half of the net earnings of a business or farm operation, before federal and state income taxes, during the 2 taxable years preceding the taxable year of the displacement, or another period an agency determines more equitable. It includes compensation paid by a business or farm operation to an owner, spouse or dependents. Owner, as used under this subsection includes a sole proprietorship, a principal partner of a partnership, and a principal stockholder of a corporation. Stock held by a spouse and dependent children shall be treated as one principal stockholder.

(4) "Average monthly income" means, for determining financial means, the annual gross income of an individual or the adults in a family, including salaries, wages, public assistance payments, tips, commissions, unemployment payments, rents, royalties, dividends, interest, profits, pensions, annuities, and other income, divided by 12.

(5) "Business" means a legal activity, other than a farm operation, regardless of the income produced, conducted:

(a) For the purchase, sale, lease or rent of personal and real property, and to manufacture, process or market a product, commodity, or other personal property;

(b) For the sale of a service to the public;

- (c) By a nonprofit organization; or
 - (d) Solely for the purpose of moving and related expense, to assist in the purchase, sale, resale, manufacture, processing or marketing of a product, commodity, personal property or service by the erection and maintenance of an outdoor advertising display, whether or not it is located on the premises on which any of the activities listed in this paragraph are conducted.
- (6) "Carve-out" means a method for computing a replacement housing, business or farm operation payment that is applied to separate the value of a portion of a property acquired, or a comparable selected.
- (7) "Comparable replacement business" means a replacement business currently available to a displaced person and, when compared with the acquired business:
- (a) Meets applicable federal, state or local codes;
 - (b) Is adequate for the needs of a business and suited for the same type of business;
 - (c) Is similar in major characteristics and functionally equivalent with respect to:
 1. Condition, state of repair, land area and building square footage required;
 2. Access to transportation necessary for the business operation, customers, utilities and public services.
 - (d) Is in an area free of adverse environmental conditions which may cause significant impairment of the business.
 - (e) Is within reasonable proximity of the acquired business if necessary to retain existing or new clientele.
- (8) "Comparable replacement dwelling" means a dwelling which is currently available to the displaced person and, when compared with the dwelling being acquired:
- (a) Is adequate for the person and is decent, safe and sanitary under s. Adm 92.04.
 - (b) Is functionally equivalent and substantially the same as the acquired dwelling, with respect to:
 1. Area of habitable living space, number and size of rooms and closets, and the size and utility of any garage or outbuilding within the immediate surrounding yard;
 2. Type of construction, age and state of repair;
 3. In an area not less desirable than the acquired dwelling with respect to public utilities, public and commercial facilities and neighborhood conditions, including schools and municipal services, and is accessible to the person's place of employment;
 - (c) Is available to the person regardless of sex, race, color, handicap, religion, national origin, sex or marital status of the person maintaining a household, legal sources of income, age, ancestry, sexual orientation or other applicable federal, state or local fair housing laws.
- Note:** The comparable must be available to the person being displaced. For example, a dwelling may not be selected as a comparable for a family with children, when the owner does not rent to families with children.
- (d) Is available within the financial means of the displaced person.
- (9) "Comparable replacement farm operation" means a replacement farm operation currently available to a displaced person and, when compared to the acquired farm operation:
- (a) Meets applicable federal, state or local codes;
 - (b) Is adequate for the needs of the farmer and suited for the same type of farm operation;
 - (c) Is similar in major characteristics and functionally equivalent with respect to:
 1. Type of farm operation, condition, and state of repair of farm buildings;
 2. Soil quality, yield per acre, land area, transportation access necessary for the farm operation, utilities and public services;
 - (d) Is in an area free of adverse environmental conditions which may cause significant impairment of the farm operation;
 - (e) Is within reasonable proximity of the acquired farm operation to the extent necessary for the farm operation.
- (10) "Conventional financing" means, for determining a down payment assistance payment, a loan or promissory note secured by a mortgage made by a financial institution and not insured or guaranteed by an agency of the state or federal government, or any other private insurer.
- (11) "Department" means the Wisconsin department of administration.
- (12) "Direct loss of property" means a compensable moving expense, in addition to an expense incurred in a move of other property, payable to a displaced business or farm operation, for direct loss of tangible personal property used in a moved or discontinued operation and which is sold or abandoned rather than moved, after attempting to sell.
- (13) "Displacing agency" means a condemnor, state agency, political subdivision of the state, developer or any other person carrying out a public project that causes a person to be a displaced person. An agency vested with eminent domain power under ch. 32, Stats., acquiring real property in whole or in part for a public project, is a displacing agency, regardless of whether or not any or all of the statutory or procedural steps necessary to exercise such power have been taken, or whether the property is acquired by negotiated purchase or by eminent domain. In a project

being carried out by a person or entity without eminent domain power, the condemnor, state agency or political subdivision of the state that is the principal public funding source for the project, shall ensure compliance with the provisions of this chapter.

(14)

- (a) "Displaced person" means any person who moves from real property or moves personal property from real property:
1. As a direct result of a written notice of intent to deny possession or use of rented property or to purchase real property, the initiation of negotiations for, or the purchase of, such real property by a displacing agency, in whole or in part, for a public project. A person is also considered to have moved because of the purchase when the person occupies a property at the time of initiation of negotiations, but moves before acquisition, if the property is subsequently acquired;
 2. As a result of denial of possession or use by the owner in anticipation of acquisition by an agency, if the removal is unrelated to a material breach of a rental agreement by the tenant. A substantial and unwarranted rent increase before acquisition by an agency shall be considered denial or use by the owner; or
 3. As a result of property rehabilitation, conversion, demolition, or other related displacing activity, provided the person is:
 - a. A tenant occupant who will be permanently displaced and has not been offered a reasonable opportunity to occupy a suitable, decent, safe and sanitary dwelling in the same or a nearby building with actual reasonable moving cost of the move being paid by the displacing agency; or
 - b. A tenant occupant in a federally assisted project who is unable to continue occupancy in the displacement dwelling under terms and conditions that are reasonable as specified by the federal funding agency.
- (b) "Displaced person" does not include, among others:
1. A person who moves before initiation of negotiations, unless the agency determines the person was displaced by the project;
 2. A person who initially occupies the affected property after the date of its acquisition by the agency;
 3. A person who has occupied the property for the express purpose of obtaining relocation benefits under this chapter;
 4. A tenant-occupant of a dwelling who has been promptly notified that he or she will not be displaced by the project, provided that, if a temporary move is necessary, the temporary replacement dwelling is decent, safe and sanitary and the tenant is compensated for actual out-of-pocket expenses incurred in connection with a temporary move, including moving costs to and from the temporary dwelling, any increased rent or utility costs, and other reasonable expenses incurred;
 5. A person who, after receiving a notice of relocation eligibility, is subsequently notified in writing that the person will not be displaced for the project. Such notice shall not be issued unless the person has not moved, the agency provides compensation for any expenses incurred up to the time the no displacement notice is issued and the agency withdraws any attempt to acquire the property or carry out the project affecting the property;
 6. An owner-occupant who voluntarily sells a property after being informed in writing that the agency will not acquire the property by condemnation if a mutually satisfactory agreement of sale is not obtainable. In such cases, however, any tenants who occupy the property are displaced persons under this chapter;

Note: The agency may be required to obtain a waiver of relocation assistance under s. [Adm 92.12](#).

7. An owner-occupant who voluntarily sells a property to a displacing agency not vested with eminent domain power;
8. A person who voluntarily retains the right of use and occupancy of the real property for life following its acquisition by the agency;
9. A person who is determined to be in unlawful occupancy of the property or has been evicted for cause under applicable law before initiation of negotiations for the property. Unlawful occupancy is defined under s. [Adm 92.01 \(42\)](#).
10. A person who is a non-occupant owner of commercial or residential property that is rented to others, except that such owner may qualify for actual and reasonable moving expenses under s. [Adm 92.52](#).
11. For projects that do not receive federal funds and properties that do not involve an outdoor advertising sign or an outdoor advertising company tenant, a tenant who is allowed to occupy leased premises to the end of the term of the lease, or for 180 days, or for a period of time equal to one-half of the term of the lease, or for a period of time determined by the condemnor, whichever of these four alternatives is longer.

- (15) " Dwelling " means a single family house, a single family unit in a duplex, multi-family or multi-purpose property, a condominium or cooperative housing unit, a sleeping room, a mobile home, or other residential unit.
- (16) " Economic rent " means the rent for a property similar to and in the same area as an acquired property.
- (17) " Eminent domain " means a right of government and others under s. 32.02, Stats., permitting a taking of private property for a public purpose with payment of just compensation.
- (18) " Existing patronage " means the business from specific clientele or as evidenced by an annual net income during the 2 taxable years preceding the taxable year of an acquisition or during a more equitable period determined by an agency. The patronage for a nonprofit organization includes persons, clientele and community served or affected by the organization.
- (19) " Farm operation " means an activity conducted mainly for the production of one or more agricultural products or commodities, or timber, for sale or home use, and customarily producing these in sufficient quantity to contribute materially to a person's support.
- (20) " Financial means " means the standard for determining if a dwelling is affordable. A replacement or comparable dwelling is within a person's financial means when, as an owner, the monthly housing costs, including payments for mortgage, insurance, utilities and property taxes, or, as a tenant, monthly rent including comparable utility costs, minus any replacement housing payment available to a person under this chapter, does not exceed 30% of average monthly income. In lieu of the 30% of income standard in this subsection, a comparable dwelling may also be considered to be within a person's financial means if:
- (a) *Owner-occupant*. The acquisition price of the comparable replacement dwelling does not exceed the sum of the payment for the acquired dwelling and the comparable replacement housing payment available under this chapter.
 - (b) *Tenant-occupant*. The monthly rent of the comparable replacement does not exceed the monthly rent at the displacement dwelling, after taking into account any rental assistance payment available under this chapter.
- (21) " Initiation of negotiations " means:
- (a) In acquisition projects, the date a displacing agency, or its representative, initially contacts an owner of real property, or the owner's representative and makes a written monetary offer to purchase the property; or
 - (b) In rehabilitation, code enforcement or related non-acquisition projects, the date a displacing agency makes its initial funding or other commitment to the project which may cause the displacement of an occupant, or the date a person receives actual or constructive notice that the person will be displaced, whichever is earlier, unless a different action or date is specified in applicable federal program regulations.
- Note:** Initiation of negotiations does not generally include a situation where the agency obtains only a first right of refusal to acquire that does not also include a monetary offer or establishment of a purchase price and where the agency is not otherwise committed to the acquisition of the property.
- (c) " Initiation of negotiations " does not include:
 1. Entering into a lease, including a lease with an option to purchase.
 2. Responding to an offer to sell property and negotiating for the purchase of the property, when the offer does not involve the involuntary displacement of any occupant of the property and the agency is not implementing a project to acquire the property.
 3. Obtaining a right of first refusal to acquire that does not also include a monetary offer or establishment of a purchase price and does not otherwise commit the agency to the acquisition of the property.
- (22) " Mortgage " means a lien given to secure an advance for the unpaid purchase price of real property, together with a credit instrument secured thereby.
- (23) " Moving expense-actual " means an actual and reasonable expense necessary to move a person and personal property including charges by public utilities for starting service, storage of property up to 12 months, and necessary temporary lodging and transportation.
- (24) " Moving expense-fixed payment " means an alternate payment for moving. A payment for an occupant of a dwelling is based on a room schedule plus a dislocation allowance. A fixed payment for a business or farm operation is based on average annual net earnings and may not be less than \$1,000 nor more than \$20,000.
- (25) " Nonprofit organization " means a corporation, partnership, individual or other public or private entity, engaged in a legal business, professional or instructional activity on a nonprofit basis and having fixtures, equipment, stock in trade or other tangible property on the premises and established as a nonprofit organization under federal or state law.
- (26) " Owner " means a person who has an interest in a dwelling or real property to be acquired by a displacing agency in the form of the following:
- (a) A fee title or life estate;
 - (b) An interest in cooperative housing including a right to occupy a dwelling;

- (c) A contract purchaser of any of the estates or interests under this subsection;
 - (d) A mobile home on a permanent foundation, or a mobile home which is not decent, safe and sanitary, and cannot be moved without substantial damage or unreasonable cost or there are no replacement sites to where it can be moved;
 - (e) An interest other than under this subsection which is considered ownership by an agency or the department;
 - (f) Has succeeded to any of the interests under this subsection by devise, bequest, inheritance or operation of law, except the tenure of ownership, not occupancy, of a succeeding owner shall include the tenure of a preceding owner.
- (27) "Owner-occupant, residential", means a person, who is the owner of a property being acquired and occupies a dwelling on the property as a primary residence.
- (28) "Owner-occupant, business", means a person who is an owner of a property being acquired, and is also the owner and operator of a business or farm operation which was conducted on the property for at least one year before initiation of negotiations to purchase the property or the date of vacation when given a notice of intent to acquire, whichever is earlier.
- (29) "Person" means an individual, family, partnership, corporation, association, business or farm operation, or non profit organization under this chapter. Two or more persons who are tenants of the same dwelling shall be treated as one person.
- (30) "Personal property" means tangible property located on real property but not acquired by an agency.
- (31) "Prepaid expense" means an item paid in advance by a seller of real property and prorated between a seller and buyer at the time of closing on a property including property tax, insurance, assessment, fuel and utilities, and others.
- (32) "Primary residence" means a dwelling occupied as a customary and usual place of residence but not a vacation dwelling. It is occupied by a person for a substantial period of time before initiation of negotiations. It is evidenced by place of voter registration, address on a tax return, mailing address, rent receipt, proximity to work, school, utility and phone bill or other evidence acceptable to an agency.
- (32m) "Public financial assistance" means direct funding received from a public entity. An authority which uses its own funds for a project is not receiving "public financial assistance."
- (33)
- (a) "Public project" means, in addition to a project being carried out directly by a public entity, an activity or program directly receiving public financial assistance including a grant, loan or contribution. Unless otherwise covered under federal relocation regulations, such assistance must be at least \$25,000 in a project having total costs of less than \$50,000 or at least 50% in a project having total costs of \$50,000 or more, and involve one or more of the following activities:
 1. Real property acquisition;
 2. Housing or commercial rehabilitation or conversion;
 3. Demolition within a designated redevelopment or blight removal area established by formal local government action on or after April 2, 1989; or
 4. Another related public construction or improvement project receiving federal financial assistance covered under federal relocation regulation.
 - (b) "Public project" does not include, among others:
 1. Any public guarantee or insurance;
 2. Any interest reduction payment or loan to an individual in connection with the purchase and occupancy of a property by the individual.
 3. Acquisition of property under tax foreclosure proceedings, provided a tenant-occupant is not displaced for a public project related to the acquisition;
 4. Direct acquisition by a federal agency carrying out a federal program or project;
 5. Demolition activity accomplished on a random basis if there is no planned public project for the property affected; or
 6. A private project which is able to proceed as a result of governmental zoning changes, variances or related actions.
- (34) "Real property" means land and improvements on and to the land, estates in land, and fixtures or other personal property directly connected with the land.
- (35) "Relocation payment" means a payment under this chapter, including actual moving expense, a fixed payment in lieu of actual moving expense, purchase, rental and interest differential payment, down payment assistance, and cost incidental to a purchase of replacement property. An agency may pay more than the minimum amounts under this chapter, provided the payments are uniform.

- (36) "Relocation plan" means a document prepared by an agency and submitted to and approved by the department before any property acquisition activity begins. A plan describes the relocation assistance and payments to be provided, and indicates whether displaced persons can be satisfactorily relocated.
- (37) "Searching expense payment" means a payment to a displaced business or farm operation, to compensate for actual and reasonable expense in locating a replacement business or farm operation.
- (38) "Selected comparable" means a comparable dwelling, business or farm operation selected by an agency from one or more comparable properties as the most comparable for computing a replacement differential payment.
- (39) "Tenant" means a person who occupies real property and has not been, or could not otherwise be dispossessed, except pursuant to the procedures under chs. 704 and 799, Stats.
- (40) "Tenant-occupant, residential", means a person who is the tenant of a displacement dwelling and occupies the dwelling as a primary residence.
- (41) "Tenant-occupant, business", means, for the purposes of subch. VI, a person who is a tenant-owner and operator of a business or farm operation which was conducted on the property for at least one year before initiation of negotiations or the date of vacation when given a notice of displacement from the agency, whichever is earlier.
- (42) "Unlawful occupancy" means occupancy by a person who has been ordered to move by a court of competent jurisdiction prior to initiation of negotiations for the acquisition of the property. At the discretion of the agency, persons who occupy property without permission of the owner may be considered to be in unlawful occupancy. Technical violations of law and unlitigated violations of the terms of a lease, such as having an unauthorized pet or withholding rent because of improper building maintenance, do not constitute unlawful occupancy.
- (43) "Utility charge" means an average monthly cost for space and water heating, lighting, water and sewer, and trash removal, but not telephone service.
- History:** Cr. Register, March, 1986, No. 363, eff. 4-1-86; am. (1), (13), (20), (intro.), (21) and (24), r. and recr. (4), renum. (33) to (41) to be (34) to (41) and (43) and am. (40) and (41), cr. (33) and (42), Register, November, 1989, No. 407, eff. 12-1-89; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1996, No. 484; cr. (14) (b) 11., (21) (c), (32m), am. (33) (a) (intro.), Register, March, 1997, No. 495, eff. 4-1-97; **correction in (8) (a), (11), (13), (14) (b) 9., 10. made under s. 13.92 (4) (b) 6., 7., Stats., Register December 2011 No. 672.**

Adm 92.04 Decent, safe, and sanitary housing.

- (1) **PURPOSE.** The following minimum housing standards are to assure that housing quality is adequate for the protection of public health, safety and welfare. They shall be applicable for all dwellings selected for comparable replacement housing payment determinations, referrals to displaced persons and to which persons move.
- (2) **MINIMUM REQUIREMENT.** A decent, safe and sanitary dwelling conforms with applicable provisions for existing structures established under state or local building, plumbing, electrical, housing and occupancy codes and similar ordinances or regulations, and meets the following minimum requirements:
- (a) *Water.* A dwelling shall have a continuing and adequate supply of water suitable for drinking.
- (b) *Kitchen.* A dwelling shall have a room or portion of a room where food is normally prepared and cooked and is equipped with:
1. A kitchen sink in good working condition, properly connected to an approved water system with sufficient hot and cold water, and to an approved sewer system.
 2. Cabinets or shelves for the storage of eating, drinking and cooking equipment and utensils, and food that does not ordinarily require refrigeration for safekeeping. The cabinets or shelves shall be of sound construction with surfaces that are easily cleaned and have no toxic or noxious effect on food.
 3. Sufficient space and utility service connections for installation of a stove and refrigerator.
- (c) *Heating system.* A dwelling shall have a safe, good working and properly installed heating system capable of heating all habitable rooms to approximately 70° F. Unvented fuel-fired flame space heaters and furnaces shall be prohibited. Portable electric heaters approved under appropriate local and state codes are acceptable.
- (d) *Bathroom facility.* A dwelling shall contain the following:
1. A private, nonhabitable room with a properly working flush toilet connected to a water system with sufficient water, and to an approved sewer system.
 2. A room with a lavatory sink. A sink may be in the same room as a toilet. If a sink is located in a room other than the one with a toilet, the toilet shall be near a door leading directly into the room with a sink. A sink shall be in good working condition, properly connected to an approved water system with sufficient hot and cold water, and to an approved sewer system.
 3. A private room with a bathtub or shower. A bathtub or shower may be in the same room as a flush toilet, a room with a lavatory sink, or in another room and shall be connected to an approved water system with sufficient hot and cold water, and to an approved sewer system.

- (e) *Electric service.* A dwelling unit and public and common areas shall be supplied with electric service, wiring, outlets and fixtures which are properly installed, and maintained in good and safe working condition. The service capacity and the number of outlets and fixtures shall be as follows:
1. A habitable room shall have a minimum of 2 floor or wall outlets.
 2. A water closet room, bathroom, laundry room, furnace room, dining room, kitchen, and public hall shall have at least one ceiling or wall electric light fixture.
 3. Light switches in a room or passage shall be conveniently located to light the area ahead.
 4. Public halls and stairways in a multiple dwelling shall be adequately lighted at all times.
- (f) *Structurally sound.*
1. A foundation, roof, exterior wall door, skylight and windows shall be weathertight, waterproof, dampproof, and together with floors, interior walls and ceilings, be structurally sound and in good repair without visible evidence of structural failure or deterioration.
 2. A dwelling, multiple dwelling, rooming house, other building or accessory structure and premises shall be maintained to prevent and eliminate rodents.
 3. A foundation, roof, floors, exterior and interior walls, ceilings, inside and outside stairs, porches and all appurtenances shall be safe and capable of supporting a normal load. Inside and outside stairs shall have uniform risers and treads. Stairways shall have structurally sound handrails.
 4. Plumbing fixtures and water pipes shall be properly installed and maintained in a good, sanitary working condition.
 5. Toilet room, bathroom and kitchen floor surfaces shall be impervious to water to permit maintenance of a clean and sanitary condition.
 6. Gas burning equipment and pipes, water and waste pipes, toilets, sinks, lavatories, bathtubs, shower and catch basins, vents, chimneys, flues, smoke pipes and other facilities, equipment or utilities in a dwelling, shall be maintained in a safe, satisfactory working condition.
- (g) *Light and ventilation.*
1. Habitable room. A habitable room shall have at least one openable window or skylight facing outside. The minimum window or skylight area shall be at least 8% of the floor area of a room.
 2. Bathroom. A bathroom or toilet room shall comply with the requirement for a habitable room. A window or skylight may be omitted when the room is equipped with artificial lighting and adequate ventilation.
- (h) *Number of exits - means of escape.* In a dwelling of more than 2 rooms, bedroom and living room areas shall have at least 2 means of escape with at least one door or stairway providing a means of unobstructed travel to the outside at street or ground level. Bedroom and living room areas may not be accessible by only a ladder or folding stairs, or through a trap door.
- (hm) *Alternate means of escape.* A second means of escape shall be either:
1. A door or stairway providing a means of unobstructed travel to the outside at street or ground level, or
 2. An outside window operable from the inside without the use of tools and providing a clear opening of not less than 20 inches in width, 24 inches in height, and 5.7 square feet in area. The window bottom may not be more than 44 inches above the floor.
 - a. Exception no. 1. A second means of escape shall not be required when the room has a door leading directly outside to grade.
 - b. Exception no. 2. A second means of escape shall not be required when a building is protected throughout by an approved automatic sprinkler system.
 - c. Exception no. 3. A second means of escape from a second or higher story dwelling may be directly through a common corridor provided the corridor has at least 2 means of escape.
- (ht) *Prohibited path.* A required path of travel to the outside from a room may not be through another room or apartment not under the immediate control of the occupant of the first room, nor through a bathroom or other space subject to locking.
- (i) *Habitable floor space.* A dwelling unit shall have at least 150 square feet of habitable floor space for the first occupant and at least 100 square feet, 70 square feet for a mobile home, for each additional occupant. In addition:
1. The floor space shall be divided into rooms and bedrooms to be adequate for a displaced person. No more than 2 persons may occupy a bedroom of less than 100 square feet. Children of opposite sex over age 7 may not be required to share a bedroom;
 2. The ceiling height of any habitable room shall be at least 7 feet, except that in a habitable room with a sloping ceiling at least one half of the floor area shall have a ceiling height of at least 7 feet. The floor area of the room may not include that part of a room where the ceiling height is less than 5 feet;
 3. Space located below grade may not be used as a habitable room unless:

- a. The floor and the walls below grade are waterproof and dampproof;
 - b. The minimum window area shall be equal to that under par. (g) 1. and shall be within properly drained window wells when located below grade;
 - c. The total openable window area shall be at least equal to that as specified under par. (hm) 2., except when there is adequate ventilation and humidity control.
- (j) *Barrier-free.* A dwelling and access to the dwelling shall be free of barriers for a physically handicapped person or family member.
 - (k) *Premises.* A dwelling site shall be graded, well drained and maintained in a clean, sanitary and safe condition, and located in an area not subject to adverse environmental conditions as determined by the agency.
- (3) **SLEEPING ROOM.** The requirements for a sleeping room shall be as specified under sub. (2) (a), (c), (e), (f), (g), (h), (hm), (ht), (j), (k), and have the following:
- (a) At least 100 square feet of habitable floor space for the first occupant and 50 square feet of habitable floor space for each additional occupant;
 - (b) Access to a private lavatory, bath and toilet facility.
- (4) **INSPECTION.** An agency shall promptly inspect a replacement dwelling to ascertain whether it meets the requirements of this section.
- (5) **HABITABLE ROOM.** A habitable room is a room used for sleeping, living, or dining, but excludes closets, kitchens, pantries, bath or toilet rooms, service rooms, hallways, stairways, laundries, storage spaces, cellars, utility rooms, and similar spaces.
- History:** Cr. Register, March, 1986, No. 363, eff. 4-1-86; corrections made under s. 13.93 (2m) (b) 1. and 7., Stats., Register, April, 1996, No. 484.

Adm 92.06 Written notice and information. An agency shall as a minimum, provide displaced persons and property owners with notices and relocation information as specified in this section.

- (1) **INFORMATION AT PUBLIC HEARING.** An agency shall provide the following general information if a public hearing is held for a project which may involve land acquisition and displacement of a person;
- (a) A general description of the relocation services and payments;
 - (b) A statement that an agency shall prepare a relocation plan for approval by the department before acquisition and that persons to be affected shall be contacted to obtain information to prepare the plan;
 - (c) Identification of project boundaries and an estimate of the number of residential and nonresidential properties to be acquired;
 - (d) A statement that a person who moves prematurely may jeopardize relocation entitlements and that sufficient time to relocate will be provided;
 - (e) The name, address and telephone number of an agency representative available for further information on acquisition and relocation assistance matters.
- (2) **WRITTEN INFORMATION AT INITIAL CONTACT.** An agency, except an agency without eminent domain power undertaking a project where such power does not exist, shall provide written notice at the time of initial contact to obtain information necessary for preparation of a relocation plan:
- (a) An owner of rental property shall receive a statement which describes the nature of the proposed project, informs an owner that tenants are being contacted to obtain information to prepare the plan, cautions the owner against eviction of tenants before acquisition, explains that tenants are being advised not to move prematurely, and that in the event tenants move before acquisition, an owner may qualify for a rent loss payment.
 - (b) A tenant or an owner-occupant of a property shall receive a statement which describes the nature of a proposed project, warns against a premature move which may jeopardize relocation entitlements, indicates the date acquisition is expected to begin, summarizes the relocation assistance and benefits available, and gives the name, address and phone number of an agency representative to contact.
- (3) **INFORMATION BEFORE INITIATION OF NEGOTIATIONS.** An agency, except an agency without eminent domain power undertaking a project where such power does not exist, shall, before initiation of negotiations, furnish the following pamphlets unless already furnished with the written notice at the time of initial contact as specified under sub. (2).
- (a) An owner of property shall receive a pamphlet, s. 32.05 or 32.06, Stats., depending on the type of project, entitled "Your Rights as a Landowner under Wisconsin Eminent Domain Law."
 - (b) A tenant or an owner-occupant of a residential property shall receive a pamphlet entitled "Wisconsin Relocation Rights", for residential occupants.

- (c) A tenant or an owner-occupant of a business or farm property shall receive a pamphlet entitled "Wisconsin Relocation Rights", for business or farm occupants.

Note: The pamphlets referred to in this section may be obtained from the department.

- (4) **INFORMATION FROM AGENCIES WITHOUT EMINENT DOMAIN POWER.** An agency without the power of eminent domain undertaking a project where such power does not exist, shall provide the following notices and information:
- (a) A written notice cautioning the owner against removal of tenants shall be provided to the owner before initiation of negotiations.
- (b) A relocation informational pamphlet under sub. (3) (b) or (c) shall be provided to a tenant occupant who will be displaced as soon as feasible and no later than 7 days after an offer to purchase has been accepted and all contingencies removed, except for a relocation plan approval contingency.
- (5) **WRITTEN OFFER TO PURCHASE.** An offer to purchase a property shall be in writing and shall establish the date of initiation of negotiations. However, the date of a verbal monetary offer to purchase authorized by the acquiring agency shall be considered as initiation of negotiations to establish eligibility for a relocation benefit.
- (6) **WRITTEN NOTICE OF REPLACEMENT PAYMENT ENTITLEMENT AND OCCUPANCY TERM.**
- (a) An agency shall provide a written notice to occupants indicating the differential replacement payment computation as specified under ss. Adm 92.68 to 92.88 for residential occupants and under ss. Adm 92.90 to 92.98 for business and farm occupants. The notice shall be provided within 90 days of an expected date of vacation or at the request of a displaced person, whichever is sooner.
- (b) An agency may not require an occupant of property acquired by an agency to move without at least a 90 day written notice of an intended vacation date.
- (7) **INFORMATION ON RELOCATION CLAIM FILING.** An agency shall furnish a displaced person with a claim form and explain the filing procedure before displacement. An agency shall assist in claim preparation and describe any supporting documentation a person must provide.
- (8) **WRITTEN NOTICE OF CLAIM DENIAL.** An agency shall promptly notify a claimant in writing of a determination, the basis for a determination and how a person may modify the claim or file an appeal, when an agency denies a claim or does not approve the full amount.
- (9) **MANNER OF NOTICE.** An agency shall give a person written notice as specified in this section by personal service, receipt documented, or by certified or registered first-class mail, return receipt requested. A notice shall be written in plain language and have a name and a telephone number of a person to contact. An agency shall provide appropriate translation and counseling for a person to be displaced who is unable to read or understand a notice. An agency shall make a diligent effort to contact a person to provide notices specified in this section.

History: Cr. Register, March, 1986, No. 363, eff. 4-1-86; am. (2) (intro.) and (3) (intro.), renum. (4) to (8) to be (5) to (9), cr. (4), Register, November, 1989, No. 407, eff. 12-1-89; corrections in (6) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1996, No. 484; **correction in (6) (a) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672.**

Adm 92.08 Payment of relocation claim. An agency shall pay a displaced person a relocation payment as specified under this chapter.

- (1) **TIME OF FILING.** A displaced person may file a claim for payment following a move, but not later than 2 years after the following dates, unless extended by the agency for good cause:
- (a) For tenants, the date of displacement;
- (b) For owners, the date of final payment for the purchase of the real property or the date of displacement, whichever is later.
- (2) **PROMPT PAYMENT OF A CLAIM.** An agency shall pay a claim in a timely manner, and promptly notify a displaced person when additional information is needed to support a claim. A replacement housing, business or farm payment shall be paid in one lump sum.
- (3) **DIRECT PAYMENT.** An agency may not withhold part of a payment to a displaced person to satisfy an obligation to an agency or creditor, except that an agency may deduct any rent the displaced person owes the agency if the deduction does not prevent the person from obtaining a comparable replacement dwelling. An agency may not require a person to relinquish a right to future claims as a condition of payment. A payment shall be made to a displaced person, unless a person designates otherwise in writing, or a court orders a set off under s. 32.20, Stats.
- (4) **PARTIAL PAYMENT.** An agency shall pay a displaced person promptly for that part of the total claim not in dispute when only a part of a total claim is filed, or when a part of a claim is in dispute or is not sufficiently documented.
- (5) **ADVANCE PAYMENT.** An agency may pay a displaced person in advance of a move, subject to safeguards to ensure the payment is no greater than the amount a person is eligible to receive.

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- (6) **NO DUPLICATION OF PAYMENT.** A person eligible for a relocation payment under this chapter and the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, 84 Stat. 1894, may not receive a payment under both for items which have the same purpose and are equally compensable.
- (7) **DISCOUNTING PROHIBITED.** An agency may not discount a relocation payment for present worth, except for an increased interest payment.

History: Cr. Register, March, 1986, No. 363, eff. 4-1-86; am. (1) and (3), Register, November, 1989, No. 407, eff. 12-1-89.

Adm 92.10 Waiver or modification. The department may waive or modify any requirement that is not required under ss. 32.185 to 32.27, Stats., for good reason, and on an individual case basis, upon written request of an agency or a displaced person. A waiver shall be in writing to be valid.

History: Cr. Register, March, 1986, No. 363, eff. 4-1-86.

Adm 92.12 Waiver of relocation benefits. An owner-occupant of a property to be acquired, as an agreed upon condition of acquisition of the property, may waive relocation benefits as specified under s. 32.19, Stats., provided a waiver is executed knowledgeably, without duress, and under the following requirements:

- (1) The property to be acquired by an agency is:
 - (a) An isolated parcel, not included as part of a public project or located within a proposed or previously designated area where it is reasonable to conclude that other acquisitions by the agency will occur in the foreseeable future;
 - (b) Being sold voluntarily to an agency:
 1. In response to a public solicitation provided the agency states that it will not acquire property unless a mutually satisfactory agreement can be reached;
 2. Through a voluntary listing of a property for sale by an owner;
 3. Under another voluntary circumstance.
- (2) The property owner shall be given pamphlets prepared by the department entitled "Wisconsin Relocation Rights," and "The Rights of Landowners under Wisconsin Eminent Domain Law" before execution of a waiver agreement.
- (3) An agency shall inform the property owner in writing regarding the specific dollar benefits and services being waived before execution of a waiver agreement.
- (4) The waiver is executed on a form provided by the department.
- (5) The executed waiver is submitted to the department for approval before initiation of negotiations. The agency shall receive written approval of a waiver from the department before entering into an option to purchase or making an offer to purchase, unless an option or offer to purchase is conditioned on receipt of department approval. A waiver submitted to the department for approval shall be considered approved unless the department otherwise notifies the agency within 10 working days of receipt of the waiver.
- (6) An agency may not solicit or execute a waiver from a person who is a tenant of a property to be acquired. An owner of a property to be acquired may not waive a relocation benefit for another person.
- (7) A waiver of a relocation benefit as specified under this chapter does not affect the rights of an owner under other provisions of ch. 32, Stats.

Note: A displaced tenant may choose not to claim relocation payment during the two year time limit, provided the choice is not a condition of the acquisition or relocation from the property involved.

History: Cr. Register, March, 1986, No. 363, eff. 4-1-86.

Adm 92.14 Education, certification and monitoring.

- (1) **EDUCATION.** The department shall promote and place emphasis upon opportunities for interested persons to receive training in the relocation assistance requirements of ch. 32, Stats., and this chapter.
- (2) **CERTIFICATION.** The department may certify the relocation assistance program of a unit of state or local government upon a determination that the certified program meets the standards followed by the department in administering the relocation assistance requirements of ch. 32, Stats., and this chapter. A unit of government with a certified relocation assistance program shall not be required to submit relocation plans to the department for prior approval under s. Adm 92.26. A unit of government with a certified relocation assistance program shall retain all of its program records for the periods of time specified by the department. The department may examine any records of a certified relocation assistance program. The department shall monitor and audit all certified programs and may revoke the certification of a program upon a determination that the program does not continue to meet the standards for certification.
- (3) **ENFORCEMENT.** Complaints shall be received and investigated as provided in s. Adm 92.18

History: Cr. Register, March, 1986, No. 363, eff. 4-1-86; correction made under s. 13.93 (2m) (b) 1., Stats., Register, April, 1996, No. 484; r. and recr. Register, March, 1997, No. 495, eff. 4-1-97; **correction in (2), (3) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672.**

Adm 92.16 Eviction policy. An agency may evict a person as a last resort but the eviction does not affect the eligibility of a person for relocation benefits. An agency shall assist to prevent eviction of a tenant by an owner before acquisition by an agency. An agency's relocation record shall document the circumstance surrounding eviction from an agency-acquired property. Eviction may be undertaken for the following:

- (1) Failure to pay rent, except as specified under s. 704.07, Stats.;
- (2) Use of a premises for an illegal purpose;
- (3) A material breach of a rental agreement;
- (4) Refusal to accept an offer of a comparable replacement property;
- (5) An eviction is required by law.

History: Cr. Register, March, 1986, No. 363, eff. 4-1-86.

Adm 92.18 Relocation appeal. A displaced person, or one claiming to be displaced, may file a complaint for review by the department under this subsection.

- (1) **GENERAL.** An agency shall inform a displaced person before displacement of the person's right of appeal under local and state procedures. A displaced person shall be assured of the following:
 - (a) A right to be represented in an appeal by a personal representative;
 - (b) A right to inspect and photocopy a file, record, regulation or operating procedure of an agency or the department pertinent to an appeal;
 - (c) A right to have a written complaint, in any form, reviewed and acted on;
 - (d) A right to prompt consideration of a complaint and a written reply from an agency or the department explaining a determination;
 - (e) A displaced person who appeals may not be removed from an acquired property until an agency issues a written determination on an appeal unless the agency provides written notice to the department that an occupant may be required to move before such determination may be issued.
 - (f) Filing a complaint under local or state appeal procedure is not a condition precedent to the filing of a claim and commencement of a legal action under s. 32.20, Stats.
- (2) **APPEAL TO DISPLACING AGENCY.** An agency shall establish an internal appeal procedure to resolve a relocation complaint. The procedure shall assure the following minimum requirements:
 - (a) An agency shall promptly notify a displaced person not satisfied with a relocation payment or service on how to appeal;
 - (b) An appeal procedure shall provide for resolution of a complaint at an intermediate level within an agency, or an appeal to the agency head or designee, as a final step in resolving a complaint;
 - (c) An agency shall give a displaced person an opportunity to be heard and shall assist in filing a complaint;
 - (d) An agency's determination on a complaint shall be conveyed to a displaced person in writing within 30 days after receipt;
 - (e) An agency shall inform a person who has filed a complaint, regarding a right to appeal to the department under sub. (3), when a complaint cannot be resolved internally.
- (3) **APPEAL TO DEPARTMENT.** A displaced person may file an appeal to the department. The department shall:
 - (a) Receive and consider all relocation complaints filed under this chapter;
 - (b) Provide a written notice to the displacing agency within five working days of receipt of a complaint, including a copy of the complaint;
 - (c) Request that an agency or a displaced person provide materials or documentation pertinent to a complaint and shall specify a time to provide the materials;
 - (d) Promptly notify the parties of a dispute when the department determines that a complaint is unreasonable, including the reasons;
 - (e) Schedule an informal meeting with the parties when necessary to resolve a dispute. The meeting shall be scheduled as soon as practicable and be held in the county where displacement occurred or another mutually agreed location;
 - (f) Provide a written determination when necessary to resolve a dispute;
 - (g) Notify the parties within 90 days after an informal meeting when an acceptable solution cannot be negotiated.

History: Cr. Register, March, 1986, No. 363, eff. 4-1-86.

Adm 92.20 Relocation file. An agency shall maintain a current individual property acquisition and individual relocation case file. The file shall be retained for inspection by the department for a minimum of 3 years following completion of a project or a final relocation payment, whichever is later.

- (1) **PROPERTY ACQUISITION FILE.** An individual property acquisition file shall contain:
 - (a) The name and address of a property owner and the address or other legal description of an acquired property;
 - (b) Evidence that the property owner was given a pamphlet entitled, "Your Rights as a Landowner under Wisconsin Eminent Domain Law," and the date given;
 - (c) A copy of written notices under this chapter or otherwise given to a displaced person;
 - (d) A copy of appraisal reports or documents on which a determination of just compensation is based;
 - (e) A copy of the written offer to purchase and the date of initiation of negotiations to acquire a property;
 - (f) A copy of a purchase agreement, deed, declaration of taking, waiver or related document involving conveyance of the property;
 - (h) Evidence that a property owner was paid for the purchase price and expenses incurred incidental to transfer of the property as specified under s. 32.195, Stats.
- (2) **INDIVIDUAL RELOCATION CASE FILE.** An agency shall develop and maintain an individual case file for a displaced person beginning with information obtained in the initial interview. An individual relocation case file shall include the following:
 - (a) Name, on-site address and phone number, date of displacement, replacement address and phone number, and if a tenant or an owner, before and after relocation;
 - (b) The age and sex of dependent household members, the average monthly income of adult household members and the monthly housing cost of an acquired and replacement dwelling;
 - (c) A description of the business or farm operation being conducted, whether a displaced person relocated or discontinued, and the average monthly cost of the acquired and replacement facilities;
 - (d) A description of a dwelling, habitable space, number of rooms and bedrooms, and the type of construction;
 - (e) A description of relocation needs and preferences;
 - (f) Evidence that a displaced person received a pamphlet entitled, "Wisconsin Relocation Rights," and the date received;
 - (g) A copy of a written notice as specified under this chapter or otherwise given to a displaced person;
 - (h) Relocation service and assistance provided and the date;
 - (i) Referral to a replacement dwelling, business or farm operation, including the date, address, and sale or rental price;
 - (j) A copy of an occupancy agreement for the period after acquisition;
 - (k) A copy of a replacement property inspection document with the inspection date, description of a property and its condition;
 - (l) Type and amount of each relocation payment made;
 - (m) A copy of a relocation claim and supporting documentation and related documents for determining eligibility for or an amount of a payment, evidence of payment, and correspondence relating to a claim;
 - (n) A copy of an appeal and an explanation of the action taken to resolve the appeal, and the final determination;
 - (o) A copy of individual relocation case reports or other correspondence with the department;
 - (p) The agency representative who provided relocation assistance.
- (3) **RECORDS AVAILABLE FOR INSPECTION.** Property acquisition and relocation records shall be available for inspection by the department, and any person as specified under the Wisconsin Open Records Law, ss. 19.31 to 19.39, Stats.
History: Cr. Register, March, 1986, No. 363, eff. 4-1-86.

SUBCHAPTER II — RELOCATION PLAN

- Adm 92.24 Purpose.
Adm 92.26 Time of plan submission.
Adm 92.28 Contents of relocation plan.
Adm 92.29 Small projects relocation plan.
Adm 92.30 Data for plan development.

Adm 92.24 Purpose. The purpose of a relocation plan is to assure that an agency will provide adequate relocation payments and services and to determine whether displaced persons can be satisfactorily relocated. The department may not approve a relocation plan unless an agency submits evidence and assurances that relocation payments and services provide the following:

- (1) Displaced persons shall have an opportunity to occupy comparable, decent, safe and sanitary replacement housing;
- (2) Displaced business, farm operation or nonprofit organizations shall have an opportunity to occupy a comparable replacement and shall be assisted in reestablishing with a minimum of delay and loss of earnings;
- (3) Prompt and complete relocation payments will be made;
- (4) Project and program activities are designed to minimize displacement hardship;
- (5) Persons covered under Wisconsin's Open Housing Law shall be assisted to ensure equal opportunity to obtain housing from within a community's total housing supply.
- (6) Persons shall receive equal treatment in the relocation process;
- (7) Persons shall be given a reasonable time to move, and may not be required to move unless a comparable replacement is provided for or available;
- (8) Persons shall receive assistance consistent with needs, including referrals for social service, job and housing counseling, and transportation to available replacement dwellings.

History: Cr. Register, March, 1986, No. 363, eff. 4-1-86.

Adm 92.26 Time of plan submission.

- (1) **AGENCY WITH EMINENT DOMAIN POWER.** An agency vested with eminent domain power, or undertaking a project where such power exists, shall file a relocation plan and receive approval in writing from the department before proceeding with initiation of negotiations on any project which may involve displacement of a person.
- (2) **AGENCY WITHOUT EMINENT DOMAIN POWER.** An agency undertaking a project where the power of eminent domain does not exist, shall submit and receive approval of a relocation plan from the department, before a property is acquired for the project, provided:
 - (a) Any option taken or offer to purchase made by the agency is conditioned upon receipt of relocation plan approval from the department before a property is acquired, and
 - (b) Tenants who occupy a property and who may be required to move, are contacted by the agency within 7 days after all contingencies have been removed from an option or an accepted offer to purchase. Such contact shall be for the purpose of informing a tenant of any relocation payments and services available and to obtain information for the purpose of preparing a relocation plan.

Note: The purpose of this alternative method of submitting a relocation plan is to ensure that agencies without the power of eminent domain, who are unable to adequately plan for relocation before the project has sufficiently developed to the implementation stage, comply with relocation planning requirements as soon as feasible and before an agency is legally or financially committed to the acquisition of a property where displacement may occur.

History: Cr. Register, March, 1986, No. 363, eff. 4-1-86; am. (intro.), cr. (2), Register, November, 1989, No. 407, eff. 12-1-89.

Adm 92.28 Contents of relocation plan. A relocation plan shall include the following elements in sufficient detail to assess whether relocation can be satisfactorily accomplished:

- (1) **PROJECT DESCRIPTION.** The name, purpose, location, overall project activity, administrative organization and staffing for relocation assistance, type and occupancy status of displacement property and a timetable for project implementation;
- (2) **RELOCATION PROGRAM STANDARDS.** A statement regarding whether or not local ordinances or regulations establish standards meeting those specified under this chapter for decent, safe and sanitary housing, or whether another regulation requires the agency to provide relocation benefits in excess of those specified under this chapter.
- (3) **COMPETING DISPLACEMENT.** A description and analysis of any other private and public displacement activities in the area which may compete for replacement resources;

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- (4) **RELOCATION FEASIBILITY ANALYSIS.** An identification and description of displaced persons, a description of the property occupied, an identification and assessment of available replacement resources, a correlation of replacement resources with a person's needs, financial means, and an estimate of relocation payments;
- (5) **ALTERNATIVE RELOCATION PLAN.** An alternative relocation plan when existing replacement resources are insufficient to meet a person's needs;
- (6) **RELOCATION ASSISTANCE SERVICE.** The relocation services to be provided;
- (7) **RELOCATION PAYMENT.** The procedure for processing a claim to assure prompt and complete payment;
- (8) **PROPERTY MANAGEMENT.** The policy for continued occupancy and eviction;
- (9) **RELOCATION GRIEVANCE.** The procedure for resolving a relocation appeal;
- (10) **ASSURANCE.** A statement by the agency head or designee that persons to be displaced shall be relocated as specified in the approval plan and this chapter;
- (11) **PROJECT MAP.** A map identifying each property to be acquired and the project boundary;
- (12) **PHOTOGRAPH.** A photograph of each improved property to be acquired.
History: Cr. Register, March, 1986, No. 363, eff. 4-1-86; am. (intro.) and (1), Register, November, 1989, No. 407, eff. 12-1-89.

Adm 92.29 Small projects relocation plan. A small projects relocation plan for projects having less than 3 displacements may be submitted in lieu of a complete relocation plan, and shall consist of items specified in s. Adm 92.28 (1), (4) and (10). A small projects relocation plan shall be submitted in a format approved by the department.
History: Cr. Register, November, 1989, No. 407, eff. 12-1-89; correction made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1996, No. 484; correction made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672.

Adm 92.30 Data for plan development. An agency shall obtain the following data for plan development:

- (1) Information from an interview regarding a person's needs, characteristics, present occupancy and relocation preferences shall form the basis for a plan. Other reliable information may be substituted when a person is unable to provide the information or cannot be contacted after repeated attempts;
- (2) Replacement housing, business or farm operations listed in the plan shall be drawn from properties available at the time of plan development. An agency may use reliable data on past sales and rental activity in estimating resources to be available when there are not enough available properties at the time of plan development.
History: Cr. Register, March, 1986, No. 363, eff. 4-1-86.

SUBCHAPTER III - RELOCATION ASSISTANCE SERVICES

- Adm 92.38 General.
Adm 92.40 Services to be provided.
Adm 92.42 Fair rental charge.
Adm 92.44 Local relocation office.
Adm 92.46 Termination of relocation assistance.

Adm 92.38 General. An agency shall provide relocation assistance to a person as specified under this chapter and commensurate with individual need, whenever the acquisition of property for a project will result in the displacement of a person.

History: Cr. Register, March, 1986, No. 363, eff. 4-1-86.

Adm 92.40 Services to be provided. An agency shall provide displaced persons with the following services:

- (1) Advice on eligibility requirements and the availability of relocation payments and services;
- (2) Advice on rehousing and relocation options based on a personal interview to obtain a person's housing needs and relocation preferences;
- (3) Current and continuing information and referral to replacement sales and rental housing, including any government assisted homeownership, rehabilitation or rental housing programs for which a person may qualify;
- (4) Current data on security deposit cost, closing cost, typical down payment required, interest rate and financing terms, maps indicating location of schools, churches, parks, playgrounds, shopping facilities and public transportation routes when applicable;
- (5) Information on the agency's relocation program and grievance procedure, local ordinances on housing, building codes, fair housing, housing consumer literature, shelter costs, homeownership and family budgeting;

- (6) Advice to homebuyers on obtaining mortgage financing or a land contract and submission of offers to purchase, credit report, appraisal and survey. Advice to renters on tenant or lease arrangements, tenant/landlord responsibilities, security deposit practices and rent costs;
- (7) Assess replacement property to determine its condition and adequacy, before referral;
- (8) Advise displaced persons that they will not have to move unless offered a comparable replacement within a reasonable period before displacement;
- (9) Assistance in moving and transferring utility services;
- (10) Referrals for employment, training, health, welfare, legal aid, and related programs, when necessary;
- (11) Relocation services which result in equal treatment for persons regardless of sex, race, color, handicap, religion, national origin, sex or marital status of a person maintaining a household, lawful source of income, sexual orientation, age, ancestry or a person's status as an owner or tenant;
- (12) Ensure that during the time between acquisition and displacement a property occupied by a displaced person is free of any immediate life threatening conditions, unless an existing code requires a higher maintenance standard. An agency may temporarily relocate an occupant as an alternative to correcting such life threatening conditions.
- (13) Assistance in preparing and filing a relocation claim;
- (14) Consult with a business or farm operator to determine relocation needs and preferences, land and building square footage required, traffic patterns, market demand and retention of existing clientele, replacement cost limitations, employee needs, operating modifications and other factors for successful reestablishment;
- (15) Current and continuing information and referrals to suitable commercial replacement sales and rental sites and facilities;
- (16) Current data on the cost of comparable property and leased space, growth potential in various areas, industrial sites, zoning ordinances, applicable code restrictions and permit requirements, and other data to assist a person in making an informed decision regarding relocation or discontinuance of a business or farm operation;
- (17) Referrals to financial institutions, government agencies, and others offering assistance to business or farm operations;
- (18) Referrals and advice to assure that low income and minority persons have equal opportunity in selecting a replacement dwelling from the total housing market, thereby facilitating desegregation and economic and racially inclusive patterns of occupancy. Low income and minority persons shall be informed of housing opportunities outside of low income and minority neighborhoods. An agency shall provide, or secure through contract with fair housing or civil rights groups, affirmative assistance that includes, as a minimum:
 - (a) Services necessary to familiarize low income and minority persons with nonimpacted neighborhoods including transportation, escort to brokers or rental offices, and counseling and assistance in obtaining available services which may be required;
 - (b) Services necessary to guard against housing discrimination by a seller, broker, landlord, rental agent, or financial institution on the basis of sex, race, color, handicap, religion, national origin, sex or marital status of a person maintaining a household, lawful source of income, sexual orientation, age or ancestry;
 - (c) A copy of Wisconsin's Open Housing Law and any applicable local ordinances on fair housing;
 - (d) Assistance in filing an application or complaint for administrative or judicial relief when housing discrimination is alleged.

History: Cr. Register, March, 1986, No. 363, eff. 4-1-86.

Adm 92.42 Fair rental charge. Rent charged to an occupant for use of a property between the date of acquisition and the date of displacement may not exceed the economic rent, the rent paid by a tenant to the former owner or the occupant's financial means if a dwelling, whichever is less. A displaced person shall have rent free use of the property for 30 days beginning with the next first or fifteenth day of the month after title vests in an agency, whichever is sooner.

History: Cr. Register, March, 1986, No. 363, eff. 4-1-86.

Adm 92.44 Local relocation office. There shall be a relocation office convenient to public transportation or within walking distance of a project when the needs of displaced persons justify it. The office shall be open during hours convenient to displaced persons, including evening hours when necessary.

History: Cr. Register, March, 1986, No. 363, eff. 4-1-86.

Adm 92.46 Termination of relocation assistance. Relocation assistance and services to a displaced person shall continue for 2 years after displacement or until relocation has been completed. An agency shall provide relocation assistance until:

- (1) A displaced person moves to a suitable replacement property, or discontinues a business or farm operation, and receives relocation payments;

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- (2) A diligent effort was made to locate a displaced person whose whereabouts are unknown;
- (3) A displaced person moves to not decent, safe and sanitary housing or to a business or farm operation not in compliance with applicable codes, and refuses efforts by an agency to correct deficiencies or accept other referrals;
- (4) A displaced person refuses to accept suitable replacement referrals. In the event of continuous refusal to admit an agency representative for relocation assistance, who visits the occupant at convenient times, and has whenever possible, given notice of intention to visit the occupant, an agency shall make a diligent effort to communicate with a person before terminating assistance.

History: Cr. Register, March, 1986, No. 363, eff. 4-1-86.

SUBCHAPTER IV — RELOCATION MOVING PAYMENTS

- Adm 92.50 General.
Adm 92.52 Standard for actual and reasonable moving expense.
Adm 92.54 Moving payment — residential.
Adm 92.56 Moving payment-business.
Adm 92.58 Optional move payment — business.
Adm 92.60 Moving payment — farm operation.
Adm 92.62 Moving payment — nonprofit organization.
Adm 92.64 Moving payment — outdoor advertising sign.
Adm 92.66 Multiple occupants of a property.
Adm 92.67 Reestablishment expenses—non residential moves.

Adm 92.50 General. An agency shall pay a person for the following moving and related expense:

- (1) Moving a person and personal property from a displacement property;
- (2) Moving a fixture when a person retains ownership provided the fixture is necessary for reestablishment of a business or farm operation and cannot otherwise be replaced within the maximum replacement payment under s. Adm 92.90.
- (3) Moving costs, when an acquisition of real property used for a business or farm operation causes a person to vacate a dwelling or other real property not acquired, or in moving personal property from other real property not acquired;
- (4) Moving costs for a residence and a business or farm when a person operates a business or farm and also resides on the property.
- (5) One move, except the cost of a temporary move and a final move shall be paid when a hardship exists or when approved by an agency.

History: Cr. Register, March, 1986, No. 363, eff. 4-1-86; am. (1), Register, November, 1989, No. 407, eff. 12-1-89; correction in (2) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1996, No. 484; **correction in (2) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672**.

Adm 92.52 Standard for actual and reasonable moving expense.

- (1) **ELIGIBLE MOVING EXPENSE.** A person who claims a moving payment based on actual and reasonable cost shall be eligible for the following expenses:
 - (a) Transporting a person and personal property from an acquired site to a replacement site. Transportation expense beyond 50 miles is ineligible, unless an agency determines that a hardship exists or relocation could not be satisfactorily accomplished within this distance. Exception shall be allowed by an agency to the nearest adequate and available site;
 - (b) Packing, crating, unpacking and uncrating personal property;
 - (c) Disconnecting, dismantling, removing, reassembling and reinstalling relocated and substitute machinery, equipment, appliances and other items not acquired, including reconnection of utilities to the items, and modification necessary to adapt the property to a replacement structure which is not a substantial real property improvement;
 - (d) Storage of personal property, except on property owned by a displaced person, for a period not to exceed 12 months unless a longer period is determined necessary by the agency;
 - (e) Advertisement and obtaining bids for moving;
 - (f) An insurance premium for the replacement value of property lost or damaged while in storage or transit;
 - (g) The replacement value of property lost, stolen or damaged in moving, not caused by the fault or negligence of a displaced person, agent, or employee, if insurance coverage was not reasonably available;
 - (h) A nontransferable license, permit or certification obtained by a displaced person when necessary to reestablish. The cost may not exceed either the cost for one year, or the cost of the remaining useful life of the document, as determined by the issuing authority, whichever is less;

- (i) A professional service or consultant fee for planning, moving or installing relocated and substituted property at a replacement location;
 - (j) Time to prepare an inventory of items to be moved when the agency is unable to perform an inventory;
 - (k) Relettering a sign and replacement of obsolete stationery;
 - (l) Direct loss of tangible personal property for a nonresidential displaced person under s. Adm 92.56 (2);
 - (m) Searching for a replacement location for a business or farm operation under s. Adm 92.56 (3);
 - (n) The amount actually paid for services in preparing and documenting a claim for a relocation payment or a business loan application not to exceed \$100 for a residential occupant or \$500 for a business or farm operation;
 - (o) Related move expenses determined necessary by the agency.
- (2) **INELIGIBLE MOVING EXPENSE.** A person who claims a moving payment based on actual and reasonable cost may not receive payment for the following expenses:
- (a) Moving a structure or property improvement acquired as part of the real property;
 - (b) Additional expense of residing or operating a business or farm operation in a new location except as provided under s. Adm 92.67;
 - (c) Interest on a loan for moving expense;
 - (d) Loss of goodwill, clientele, profit, or a trained employee;
 - (e) Personal injury;
 - (f) The cost of searching for a replacement dwelling.
- History:** Cr. Register, March, 1986, No. 363, eff. 4-1-86; am. (1) (g) and (2) (b), Register, November, 1989, No. 407, eff. 12-1-89; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1996, No. 484; **correction in (1) (L), (m), (2) (b) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672.**

Adm 92.54 Moving payment — residential. An agency shall pay a person displaced from a dwelling for the cost of moving the person and personal property as specified under s. Adm 92.52. A person who moves from a primary or seasonal dwelling may claim a payment based on the fixed payment schedule under sub. (2).

- (1) **ACTUAL AND REASONABLE MOVING EXPENSE.**
- (a) *Commercial move.* An agency shall pay a person the actual and reasonable cost for a commercial move when properly supported by receipts. An agency may pay the mover directly when all parties agree.
 - (b) *Contract with mover.* An agency shall provide a list of commercial movers to a displaced person and may contract with and pay a mover selected by the displaced person.
 - (c) *Self-move.* An agency shall pay a person displaced from a dwelling for a self-move when costs are properly supported by receipted bills. The payment may not exceed the estimated cost of a commercial move.
 - (d) *Cost of moving a person.* The cost of moving a person to a new location may not exceed 20 cents per mile, or a normal rate when commercial transportation is used. Food and lodging are eligible expenses when necessary for the move.
 - (e) *Cost of moving a mobile home.* An agency shall pay an owner of a mobile home for the actual and reasonable cost to move the mobile home and other personal property, including detaching and reattaching fixtures, utilities and appliances. An occupant of a mobile home may elect to claim under the fixed payment schedule in sub. (2).
- (2) **FIXED PAYMENT SCHEDULE.** An agency shall, in lieu of payment under sub. (1), pay a person a moving expense and dislocation allowance payment based on the following schedule of furnished or unfurnished rooms in a dwelling or seasonal residence, except that one or more additional rooms shall be added for property stored in a basement, attic, garage or outbuilding. The actual moving cost may not be considered in computing a fixed payment, nor is it required that a person document actual cost when claiming a fixed payment. - [See PDF for table](#) 
- (3)
- (a) Two or more families, or a family and an unrelated individual, who move to separate dwellings, shall each be reimbursed either on an actual cost basis or on the fixed payment schedule. A fixed payment for each shall be based on the number of rooms occupied by each, plus rooms shared.
 - (b) Two or more individuals shall be treated as one person for moving cost purposes. There shall be one prorated actual move cost payment based on the actual cost of each person. Two or more individuals who claim under the fixed payment schedule, shall receive one payment based on the total number of rooms occupied. Payment shall be prorated equally among the individuals unless they specify differently.
- History:** Cr. Register, March, 1986, No. 363, eff. 4-1-86; am. (intro.), (1) (e), (3) (a) and (b), renum. (2) (intro.) to be (2) and am., r. (2) (a) to (d) and (3) (c), cr. Table 222.54, Register, November, 1989, No. 407, eff. 12-1-89;

correction in (intro.) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1996, No. 484; **correction in (intro.) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672.**

Adm 92.56 Moving payment-business. An agency shall pay a displaced business person for actual moving and related expense under sub. (1), actual direct loss of tangible personal property under sub. (2), and actual expense in searching for a replacement business as specified under sub. (3). A displaced business may be eligible for a fixed payment in lieu of actual moving expenses under sub. (4).

(1) ACTUAL AND REASONABLE MOVING EXPENSE.

(a) *Commercial move.* An agency shall pay a person for the expense of a commercial move as specified under s. Adm 92.52. The expense shall be supported by receipts and an inventory of the items moved.

(b) *Self-move.*

1. A person shall have the option of taking responsibility for all or a part of the move and being paid an amount equal to the lower of 2 acceptable bids or estimates obtained by the agency or prepared by qualified staff. An agency shall also pay a person for expenses specified under s. Adm 92.52 when not included in a bid or estimate.
2. An agency shall pay a person for actual and reasonable expenses, supported by evidence of expense, when a bid or estimate cannot be obtained or when a large fluctuation in inventory prevents bidding. The following expenses may be included in a self-move in addition to items specified under s. Adm 92.52:
 - a. A hired truck and equipment;
 - b. Gas and oil when a vehicle or equipment owned is used in the move and the cost of insurance and depreciation directly allocable to the move;
 - c. Wages for persons who assist in the move based on hours worked, not to exceed the hourly rate paid by commercial movers in the area;
 - d. Wages for supervisory personnel who are regular employees for time spent in overseeing the move.
3. An agency may pay a person without obtaining bids or estimates and without supporting evidence of expenses when it is estimated that the cost of the move will not exceed \$1,000.
4. A person who self-moves shall certify that the items listed were moved. The inventory of items listed as moved may not deviate to any appreciable extent from the original inventory without a corresponding increase or decrease in the agreed payment. An increase in the payment shall be based on a moved inventory normal to business operations.

(c) *Low value-high bulk property.* The agency shall pay the difference between the estimated sales value and the replacement cost of junk, sand, gravel, metal, or other low value and high bulk property used in the operation, when the estimated cost of moving is disproportionately higher than the value.

(2) DIRECT LOSS OF TANGIBLE PERSONAL PROPERTY. An agency shall pay a person for direct loss of tangible property which a person may move but does not, provided the person makes a good faith effort to sell the property. Selling expense and sale proceeds shall be supported by receipts or records. Payment shall be determined as follows:

(a) The payment, when an operation is to be reestablished and an item of personal property used in the operation is not moved but replaced with a comparable item at the new location, shall be the lesser of:

1. The replacement cost, minus the net proceeds of the sale. Trade-in value may be substituted for net proceeds when applicable;
2. The estimated cost of moving the item to a replacement site;

(b) The payment, when an operation is to be discontinued or an item is not replaced in a reestablished operation, shall be the lesser of:

1. The difference between the market value of the tangible property for continued use at its location before displacement, less the net proceeds of the sale;
2. The estimated cost of moving the item to a replacement site;

(c) A payment for loss of an item abandoned because it wasn't sold may not be more than its market value for continued use before displacement, or the estimated cost of moving the item, whichever is less, plus the cost of the attempted sale, irrespective of the cost to an agency for removing the item.

(d) An agency shall pay a person for direct loss of tangible property when it is abandoned and no effort was made to sell the property, provided the agency determines a sale was not practicable.

(e) The cost to an agency for removal of tangible property may not be considered an offsetting charge against other relocation payments.

(3) ACTUAL AND REASONABLE EXPENSE IN SEARCHING FOR A REPLACEMENT BUSINESS. An agency shall pay a person for actual and reasonable expense in searching for a replacement business. The expense shall include transportation,

food and lodging away from home and the value of time spent in searching, including any fee paid to a real estate agent or broker, providing a commission was not paid to the agent or broker by the seller.

- (a) *Receipted bills.* All expense claimed except the value of time spent in searching shall be supported by receipts.
 - (b) *Time spent in searching.* Payment for time spent in searching may not exceed \$30 per hour, unless approved by the agency. A certified statement of time spent, the hourly rate, and the replacement locations considered, shall support a claim.
 - (c) *Payment amount.* A search payment may not exceed \$1,000, unless it is determined by an agency that a greater amount is necessary.
- (4) **PAYMENT IN LIEU OF ACTUAL AND REASONABLE MOVING EXPENSE.** An agency shall pay a person who discontinues or relocates a business, at a person's option, a fixed payment in lieu of actual moving and related expense, and reestablishment expenses under s. Adm 92.67. The fixed payment shall be equal to the average annual net earnings of the business, but not less than \$1,000, nor more than \$20,000, if the following requirements are met:
- (a) *Loss of patronage.* A person is unable to relocate without a substantial loss of existing patronage as specified under s. Adm 92.01 (18). A business shall be assumed to meet the loss of patronage test, unless the agency demonstrates that the business will not suffer a substantial loss of existing patronage, and shall consider the following:
 1. The type of business and nature of the clientele may require a location near the displacement property and a suitable replacement site may not be available;
 2. The replacement sites may create a significant financial burden on the business not otherwise compensable;
 3. A person may incur substantial uncompensated expense, in down-time, the need to borrow additional capital, the allocation of other resources for a new operation, substantial change in method of operation or related expense;
 4. A person is unable to relocate to the rental properties available and remain competitive;
 5. The age or physical condition of a person or the need to be near a residence may make reestablishment of the business impractical.
 - (b) *Number of businesses.* The business is not part of a commercial enterprise having more than 3 other establishments not being displaced and engaged in the same or similar business under the same ownership.
 - (c) *Rental business.* The business is not operated at the displacement dwelling or site solely for the purpose of renting to others.
 - (d) *Payment determination.* The payment shall be based on the average annual net earnings of the business as specified under s. Adm 92.01 (3).
 - (e) *In business less than 2 years.* A business in operation for less than 2 years, shall qualify for a payment. The payment shall be based on a 12 consecutive month period, or by dividing the net earnings by the number of months in operation when operated less than 12 consecutive months.
 - (f) *Owner verification of income.* A business owner shall verify net earnings if claiming a payment in excess of \$1,000. Income tax records shall be acceptable evidence of earnings.
- History:** Cr. Register, March, 1986, No. 363, eff. 4-1-86; am. (1) b. 1., (4) (intro.) and (a) 1. and (b), renum. (4) (c) to (e) to be (4) (d) to (f) and am. (4) (f), cr. (4) (c), Register, November, 1989, No. 407, eff. 12-1-89; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1996, No. 484; **correction in (1) (a), (b) 1., 2. (intro.), (4) (intro.), (a) (intro.), (d) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672.**

Adm 92.58 Optional move payment — business.

- (1) **GENERAL.** An agency shall pay a person who moved and was paid a moving expense as specified under s. Adm 92.56 (1), (2) or (3), a payment-in-lieu under s. Adm 92.56 (4) provided the business suffers a substantial loss of patronage and discontinues the business within 2 years of the date of payment for moving expense.
 - (2) **COMPUTATION OF PAYMENT.** The optional move payment shall be the difference, if any, between the payment-in-lieu as specified under s. Adm 92.56 (4) and the moving payment received.
- History:** Cr. Register, March, 1986, No. 363, eff. 4-1-86; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1996, No. 484; **correction in (1), (2) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672.**

Adm 92.60 Moving payment — farm operation.

- (1) **GENERAL.** An agency shall pay a person displaced from a farm operation for actual moving and related expense, direct loss of tangible personal property, and actual expense in searching for a replacement farm operation, as specified under s. Adm 92.56 (1), (2) and (3).

(2) **PAYMENT IN LIEU OF ACTUAL AND REASONABLE MOVING EXPENSE.** An agency shall pay a person who discontinues or relocates a farm operation, at the person's option, a fixed payment in lieu of actual moving and related expense and reestablishment expenses under s. Adm 92.67. The fixed payment shall be equal to the average annual net earnings of the farm operation, but not less than \$1,000, nor more than \$20,000, if the following requirements are met:

- (a) *Entire farm affected.* The entire farm operation is discontinued or relocated; or
- (b) *Partial acquisition.* A farm operation shall be eligible in a partial taking, when:
 1. The property remaining after the acquisition is no longer an economic unit for the same type of farm operation;
 2. The acquisition caused displacement of a person from a farm operation on the remaining land; or
 3. The acquisition caused substantial change in the nature of the farm operation.
- (c) *Payment determination.* The payment shall be based on the average annual earnings of a farm operation as specified under s. Adm 92.01 (3).
- (d) *In operation less than 2 years.* A farm in operation for less than 2 years shall qualify for a payment. The payment shall be based on a 12 consecutive month period, or by dividing the net earnings by the number of months in operation when operated less than 12 consecutive months.
- (e) *Owner verification of income.* The farm operator shall verify net earnings if claiming a payment in excess of \$1,000. Income tax records shall be acceptable evidence of earnings.

History: Cr. Register, March, 1986, No. 363, eff. 4-1-86; am. (2) (intro.), (b) 2. and (e), Register, November, 1989, No. 407, eff. 12-1-89; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1996, No. 484; **correction in (1), (2) (intro.), (c) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672.**

Adm 92.62 Moving payment — nonprofit organization.

- (1) **GENERAL.** An agency shall pay a displaced nonprofit organization for actual moving and related expense, direct loss of tangible personal property, and actual expense in searching for a replacement facility, as specified under s. Adm 92.56 (1), (2) and (3).
- (2) **PAYMENT IN LIEU OF ACTUAL MOVING EXPENSE.** An agency shall pay a discontinued or relocated nonprofit organization at the organization's option, a fixed payment in lieu of actual moving and related expense and reestablishment expenses under s. Adm 92.67. The fixed payment shall be equal to the average annual difference between gross revenues and administrative expenses for the 2 year period before displacement, but not less than \$1,000, nor more than \$20,000, if the organization is unable to relocate without a substantial loss of existing membership or clientele. A nonprofit organization is assumed to meet this test unless the agency demonstrates otherwise.

History: Cr. Register, March, 1986, No. 363, eff. 4-1-86; am. (2), Register, November, 1989, No. 407, eff. 12-1-89; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1996, No. 484; **correction in (1), (2) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672.**

Adm 92.64 Moving payment — outdoor advertising sign.

- (1) **GENERAL.** An agency shall pay a person displaced from an outdoor advertising sign for actual moving and related expense, direct loss of tangible personal property, and the actual expense in searching for a replacement site as specified under s. Adm 92.56 (1), (2) and (3).
- (2) **SIGN MUST BE CONFORMING.** An agency may not pay a claim for moving expense when a sign is relocated to a site in violation of law.
- (3) **SIGN A PART OF OTHER DISPLACED BUSINESS.** The requirements in this section do not apply to an advertising sign owned by and located on a business or farm operation being displaced. The sign, including a sign eligible under s. Adm 92.50 (3), are considered items of the business or farm operation and shall be included as part of the moving expense payment.
- (4) **DIRECT LOSS OF PERSONAL PROPERTY.** An agency shall pay a person for direct loss of tangible property when a person does not relocate a sign. The payment shall be the depreciated reproduction cost of the sign as determined by the agency or the estimated cost of moving the sign, whichever is less.
- (5) **PAYMENT IN LIEU OF ACTUAL AND REASONABLE MOVING COSTS.** At the person's option, an agency shall pay a person who discontinues or relocates an outdoor advertising sign, a fixed payment in lieu of actual moving and related expenses and reestablishment expenses under s. Adm 92.67. The fixed payment shall be equal to the average annual net earnings of the sign, but not less than \$1,000 nor more than \$20,000, if the person meets the loss of patronage requirement under s. Adm 92.56 (4) (a).

History: Cr. Register, March, 1986, No. 363, eff. 4-1-86; cr. (5), Register, November, 1989, No. 407, eff. 12-1-89; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1996, No. 484; **correction in (1), (3), (5) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672.**

Adm 92.66 Multiple occupants of a property. An agency shall, in determining whether more than one business or farm is eligible for relocation payments, consider all pertinent factors including the extent to which:

- (1) The same facilities and equipment are shared;
- (2) Substantially identical or interrelated business or farm functions are carried out and financial affairs are commingled;
- (3) The entities are held out to the public, and to those customarily dealing with them, as one operation;
- (4) The same person, or closely related persons own, control or manage the affairs of the entities.

History: Cr. Register, March, 1986, No. 363, eff. 4-1-86.

Adm 92.67 Reestablishment expenses—non residential moves.

- (1) **GENERAL.** In addition to the payments available under s. Adm 92.56 (1), (2), and (3), a business, farm or nonprofit organization may be eligible to receive a payment, not to exceed \$10,000, for expenses actually incurred in relocating and reestablishing at a replacement site.
- (2) **ELIGIBLE EXPENSES.** Reestablishment expenses may include, but are not limited to the following reasonable and necessary costs, as determined by the displacing agency:
 - (a) Repairs or improvements to the replacement real property as required by applicable federal, state or local codes or ordinances.
 - (b) Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business.
 - (c) Construction and installation costs for exterior signing to advertise the business.
 - (d) Provision of utilities from the right-of-way to improvements on the replacement site.
 - (e) Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, panelling, or carpeting.
 - (f) Licenses, fees and permits when not paid as part of moving expenses.
 - (g) Feasibility surveys, soil testing and marketing studies.
 - (h) Advertisement of the replacement location.
 - (i) Professional services in connection with the purchase or lease of a replacement site.
 - (j) Increased costs of operation during the first 2 years at the replacement site for lease or rental charges, personal or real property taxes, insurance premiums, or utility charges.
 - (k) Impact fees or one-time assessments for anticipated heavy utility usage.
 - (l) Other items that the agency considers essential for reestablishment of the business.
- (3) **INELIGIBLE EXPENSES.** Reestablishment expenditures that are not considered to be reasonable and necessary relocation costs include the following nonexclusive list:
 - (a) Purchase of capital assets, such as office furniture, filing cabinets, machinery or trade fixtures.
 - (b) Purchase of manufacturing materials, production supplies, product inventory or other items used in the normal course of business operations.
 - (c) Interior or exterior renovations at the replacement site which are for aesthetic purposes, except as provided in sub. (2) (e).
 - (d) Interest on money borrowed to make the move or purchase the replacement property.
 - (e) Payment to a part-time business in the home which does not contribute materially to the household income.
- (4) **LIMITATIONS.** A person shall be eligible for reasonable and necessary reestablishment expenses, as determined by the agency, if such expenses are not otherwise paid as part of a replacement business or farm payment under s. Adm 92.90. A person who is eligible to receive a replacement business or farm payment of at least \$10,000 under s. Adm 92.90 is not eligible for reestablishment expenses under this section, except for items in sub. (2) (c), (d), (f), (h), (k) and (L).

History: Cr. Register, November, 1989, No. 407, eff. 12-1-89; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1996, No. 484; am. (2) (c), (h) and (j), r. (3) (f), Register, March, 1997, No. 495, eff. 4-1-97; **correction in (1), (4) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672**.

SUBCHAPTER V — REPLACEMENT HOUSING PAYMENT

<u>Adm 92.68</u>	General.
<u>Adm 92.70</u>	180-day owner who purchases.
<u>Adm 92.72</u>	180-day owner who rents.
<u>Adm 92.74</u>	90-day owner or tenant who purchases.
<u>Adm 92.76</u>	90-day owner who rents.
<u>Adm 92.78</u>	90-day tenant who rents.
<u>Adm 92.80</u>	90-day tenant who purchases.
<u>Adm 92.82</u>	Mobile home — general.
<u>Adm 92.84</u>	180-day mobile home owner.
<u>Adm 92.86</u>	90-day mobile home owner.
<u>Adm 92.88</u>	90-day mobile home tenant.

Adm 92.68 General. This section describes the general requirements for a replacement housing payment to a person displaced from a dwelling. A person is not required to relocate to the same owner or tenant occupancy status, but has other options as specified under this subchapter. An agency shall make one replacement payment for each dwelling unit, except in the case of joint occupancy of a single family dwelling as specified under sub. (7) (d).

(1) ELIGIBILITY REQUIREMENTS.

- (a) *Persons who meet length of occupancy requirements.* An owner or tenant occupant displaced from a dwelling shall be eligible for a replacement housing payment under this subchapter, if the person occupied the dwelling 180 days before initiation of negotiations if an owner, or 90 days if a tenant, except that a 90-day owner may qualify for a tenant replacement payment.
- (b) *Persons who do not meet length of occupancy requirements.* A person who occupies real property before its acquisition, but does not meet the length of occupancy requirements in par. (a), may receive a payment equal to the difference between 30% of the person's average monthly income and the monthly housing costs of a replacement dwelling, for a period of 48 months, if a replacement rental is not otherwise available within 30% of the person's average monthly income.

(2) DELAYED OCCUPANCY FOR CONSTRUCTION AND REHABILITATION. A person who contracts for the construction or rehabilitation of a replacement dwelling, but cannot occupy it within the time period as specified under s. Adm 92.70 (1) (b), shall be considered to have purchased and occupied the dwelling as of the date of the contract. A replacement payment may be deferred until occupancy, provided the agency makes payment into an interest-bearing escrow account for release to a person upon occupancy. An agency may pay the person before occupancy provided the agency is assured that occupancy will occur.

(3) PRIOR OWNERSHIP OF REPLACEMENT DWELLING OR LAND. An agency shall make a replacement payment to a person based on a dwelling or site owned by the person before acquisition, if the person occupies the replacement within the time limit as specified under s. Adm 92.70 (1) (b), and the dwelling is decent, safe and sanitary. The fair market value of the land and the dwelling at the time of displacement shall be used as the actual cost in determining the payment.

(4) HOUSING INSPECTION.

- (a) *Person moves to decent, safe and sanitary.* An agency shall make a replacement payment to a person after finding a replacement to be decent, safe and sanitary as specified under s. Adm 92.04.
- (b) *Person moves to non-decent, unsafe or unsanitary.*
 1. An agency shall assist in correcting deficiencies and, when necessary, refer a displaced person to other decent, safe and sanitary housing, before terminating assistance or denying a replacement housing payment.
 2. An agency shall notify a displaced person in writing within 10 days of an inspection regarding deficiencies to be corrected to receive payment, and shall make the payment when deficiencies are corrected, or a person moves to another decent, safe and sanitary dwelling.

(5) STATEMENT OF ELIGIBILITY TO A LENDER. An agency, upon request of a person to be relocated, shall inform an interested person or mortgage lender that the person shall be eligible for a replacement payment upon the purchase or rent and occupancy of a decent, safe and sanitary dwelling within the applicable time limit.

(6) ADVANCE PAYMENT IN A CONDEMNATION CASE. An agency shall promptly pay a replacement housing payment. An advance payment shall be made when an agency determines the acquisition payment will be delayed because of condemnation proceedings. An agency's maximum offer shall be used as the acquisition price for calculating the payment. The payment shall be contingent on a person signing an affidavit of intent that:

- (a) The agency shall re-compute a replacement payment using the acquisition amount set by the court;
- (b) The person shall refund to an agency the excess amount from the judgment when the amount awarded as the acquisition amount plus the advance payment exceeds the amount actually paid for a replacement or an

agency's determined cost of a comparable replacement. A person is not required to refund more than the advance payment. A payment shall be made after condemnation proceedings are completed when a person does not sign an affidavit.

(7) CARVE-OUT AND MODIFICATION OF REPLACEMENT PAYMENT COMPUTATION.

(a) Complete acquisition.

1. Typical size lot. The maximum replacement payment shall be the selling price of a comparable dwelling on a lot typical for the area, less the price of the acquired dwelling and the site, when a dwelling is located on a lot typical for the area.
2. Larger than typical size lot. The maximum replacement payment shall be the price of a comparable dwelling on a lot typical for the area, less the price of the acquired dwelling plus the price of that portion of the acquired land which represents a lot typical for the area, when the acquired dwelling is located on a lot size larger than typical for the area.

(b) Partial acquisition.

1. Typical size lot. The maximum replacement payment shall be the selling price of a comparable dwelling on a lot typical for the area, less the value of the entire property, when an acquired dwelling is located on a lot typical for the area. An agency may purchase the remainder of the lot when requested by an owner.
2. Larger than typical size lot. The maximum replacement payment shall be the selling price of a comparable dwelling on a lot typical for the area, less the value of that portion which represents the homesite lot typical for the area, when the dwelling is located on a lot larger than typical for the area. An agency may purchase the remainder of the lot when requested by an owner.
3. Remainder property. If a buildable residential lot or an uneconomic remnant remains after a partial taking and the owner of the remaining property refuses to sell the remainder to the agency, the market value of the remainder may be added to the acquisition cost for the purposes of computing the payment.

Note: Under ss. 32.05 (3m) and 32.06 (3m), Stats., an agency is required to offer to purchase a remainder if it is an uneconomic remnant.

(c) Dwelling on land with higher and better use. The maximum replacement payment shall be the selling price of a comparable dwelling on a lot typical in the area, less the price of the acquired dwelling, and the price of that portion which represents a lot typical for residential use in the area, when the market value is based on a higher and better use than residential.

(d) Multiple occupancy of a dwelling.

1. An agency shall make one replacement payment when there are 2 or more families occupying a dwelling, except when there is no comparable dwelling available. A replacement payment shall be paid to each family when a comparable is not available. The payments shall be based on housing comparable to that occupied by each family plus space shared by other persons. The acquisition price or rent used for payment computations shall be the amount each person receives from the total property acquisition payment, or when tenants, the amount each pays toward the total rent.
2. Two or more individuals who occupy a dwelling unit, shall be considered as one person for a replacement payment. An agency shall pay individuals a pro rata share of one payment, based on a comparable dwelling, regardless of whether the individuals relocate together or separately, except that payment shall be made to persons moving to decent, safe and sanitary housing.

(e) Joint residential and business use.

1. An agency shall make a replacement housing payment to a person displaced from a dwelling separately from a payment required for a business or farm on the same property.
2. An agency shall compute a replacement housing payment for a person who occupied one unit of a multi-family or a mixed-use property provided:
 - a. The comparable property shall be the same as a property acquired. For example, a comparable shall be a triplex when the acquired property is a triplex. Dwellings of the next lower density shall be used when there is no comparable. A single-family dwelling shall be used as the comparable for a person's dwelling when there are no comparable multi-family or mixed-use dwellings;
 - b. The carve-out value of the dwelling shall be used for a replacement housing determination, not the market value of an entire property. A replacement housing payment is the difference, if any, between the value of the acquired dwelling unit and the value of a comparable dwelling unit in the most comparable property.

(8) NONPROFIT ORGANIZATION. A nonprofit organization or a religious society which meets the eligibility requirements applicable for a residential tenant or owner shall be eligible for a replacement housing payment under

this subchapter. A nonprofit organization or religious society eligible for and claiming a replacement business payment under this subchapter may not receive a payment under subch. VI.

- (9) **PAYMENT AMOUNT.** A differential payment, an increased interest payment and an incidental expense payment may not exceed \$25,000 for a 180-day owner-occupant, and a rent differential or downpayment may not exceed \$8,000 for a 90-day occupant, except for the following:
- (a) An agency may exceed the amounts in sub. (9) if necessary to obtain a comparable replacement dwelling;
 - (b) An agency may provide assistance in addition to that required in sub. (9) if a comparable dwelling is unavailable within a person's financial means. The additional assistance may include one or more of the following methods:
 1. A replacement payment in excess of the amounts in sub. (9);
 2. An offer of government assisted housing which is available and adequate for the needs of the displaced person;
 3. Rehabilitation of or addition to an existing dwelling;
 4. Provision of a direct loan requiring regular amortization or a deferred repayment;
 5. Relocation and rehabilitation of a dwelling;
 6. Purchase of land or a replacement dwelling by the displacing agency with subsequent sale or lease back to, or exchange with, a displaced person;
 7. Construction of a new dwelling.
 8. Change in occupancy status of the displaced person from tenant to homeowner when it is more cost effective to do so.
 - (c) An agency may limit payment to the amount necessary to relocate to a comparable replacement within one year from the date the person is paid for the displacement dwelling, or one year from the date the person is initially offered a comparable replacement dwelling and advised of replacement payment entitlements, whichever is later.

History: Cr. Register, March, 1986, No. 363, eff. 4-1-86; renum. (1) to be (1) (a) and am., cr. (1) (b), (9) (b) 8. and (c), am. (3), Register, November, 1989, No. 407, eff. 12-1-89; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1996, No. 484; am. (9) (b) (intro.), Register, March, 1997, No. 495, eff. 4-1-97; **correction in (2), (3), (4) (a) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672.**

Adm 92.70 180-day owner who purchases. An agency shall pay an owner-occupant of a dwelling who purchases a replacement, a payment for the differential cost to purchase a comparable dwelling, for the loss of favorable financing on an existing mortgage or land contract in financing a replacement dwelling, and for expense incidental to the purchase. A payment shall be determined as follows:

- (1) **ELIGIBILITY REQUIREMENTS.** A displaced person shall be eligible for a payment when the person:
- (a) Owns and occupies the property for not less than 180 days immediately before the date of initiation of negotiations for the acquisition of the property, or the date of vacation when given a notice of intent to acquire, whichever is earlier;
 - (b) Purchases and occupies a decent, safe and sanitary replacement dwelling within one year from the date the owner received final payment for the acquired property or the date the owner vacates the acquired property, or an extended date established by the agency for good cause, whichever is later. For the purpose of this section a replacement dwelling is purchased when a person:
 1. Acquires an existing dwelling;
 2. Relocates or rehabilitates a dwelling owned or acquired;
 3. Purchases a life estate in a retirement facility;
- Note:** The cost shall be the entrance fee plus the present worth of a monetary commitment in a retirement facility to the facility, but may not include a periodic service charge;
4. Contracts to build or builds a new decent, safe and sanitary dwelling on a site owned or acquired.
- Note:** Construction cost, including the value of labor furnished by a displaced person, shall be limited to that cost necessary to purchase a comparable dwelling.
- (2) **DIFFERENTIAL AMOUNT PAYABLE.** A differential amount payable is an amount, if any, when added to the acquisition payment for an acquired dwelling, equals an amount a person pays for a replacement, or an amount determined by an agency as necessary to purchase a comparable replacement, whichever is less. A replacement payment shall include the cost to modify a property to meet comparable standards or code requirements.
- (3) **SELECTION AND COST OF COMPARABLE AND ACTUAL REPLACEMENTS.** An agency shall determine the cost of a comparable replacement by analyzing 3 or more comparable replacement dwellings, and selecting the one that is the most comparable. Fewer may be analyzed if 3 are not available.

- (a) An agency may adjust the asking price of the selected comparable if considered justified on the basis of local market conditions. The agency's relocation plan shall specify if adjustments will be made for the project, the basis for this determination and the method of adjustment to be used.
 - (b) The cost of physical changes or improvements necessary to meet comparable standards in the selected comparable or the actual replacement shall be included in the maximum replacement payment.
 - (c) An agency shall select comparable dwellings from the neighborhood of a displaced person provided the area is not designated for governmental acquisition and displacement, or subject to adverse environmental conditions.
 - (d) An agency shall select comparable dwellings from adjacent or nearby neighborhoods in ascending order of cost when there are no comparable dwellings in the neighborhood of a displaced person.
 - (e) An agency, to promote racially integrated housing, may select comparable dwellings from an adjacent or nearby neighborhood having less concentrated racial composition, when desired by a displaced minority person.
 - (f) The selected comparable shall be equal to or better than the acquired property and a payment shall be based on new construction when there is no comparable dwelling available.
- (4) **REVISION TO SELECTED COMPARABLE AMOUNT.** An agency, upon request of a displaced person, shall offer a comparable dwelling within the maximum differential amount determined. Another comparable study shall be made to determine a new replacement payment when there is no comparable dwelling available except the new replacement payment may not be less than the original payment.
- (5) **INCREASED INTEREST PAYMENT.**
- (a) *General.* An agency shall pay a displaced person for the increased interest expense and other debt service costs incurred in financing the purchase of a comparable replacement dwelling, if:
 1. The acquired dwelling was encumbered by a bona fide mortgage or land contract;
 2. The mortgage or land contract was executed in good faith not less than 180 days before initiation of negotiations to purchase the property;
 3. All bona fide mortgages or land contracts that were valid liens on the displacement dwelling for at least 180 days before initiation of negotiations on the acquired dwelling shall be used to compute the increased interest payment.
 - (b) *Payment computation.* The increased interest payment shall be computed as follows:
 1. The interest payment shall be an amount which will reduce the mortgage balance on the replacement dwelling to an amount which could be amortized with the same monthly payment for principal and interest as that for the mortgage or mortgages on the displacement dwelling, except that the payment for a person obtaining a mortgage that is less than the mortgage balance computed in the buydown determination, shall be prorated and reduced accordingly. In the case of a home equity loan, the unpaid balance shall be that balance which existed 180 days before the initiation of negotiations or the balance on the date of acquisition, whichever is less.
 2. The amount paid by a person as points, loan origination or assumption fees, but not seller's points, shall be based on the amount refinanced, not exceeding the amount which would have been paid had the original mortgage been refinanced, and shall be added to the amount as specified under subd. 1. The origination or assumption fee shall be limited to the fee normal for real estate transactions in the area.
 - (c) *Interest rate on replacement dwelling mortgage.* The interest rate on the mortgage for a replacement dwelling used in the computation may not exceed the rate typically charged by mortgage lenders in the area.
 - (d) *Mortgage term.* The payment shall be based on the remaining term of the mortgage or mortgages on the displacement dwelling regardless of the term on the new mortgage.
 - (e) *Adjustment to interest payment amount.*
 1. Larger than typical size lot. The interest payment shall be reduced to the percentage ratio that the value of the typical residential portion is to the value of the entire property before acquisition, when a dwelling is located on a lot larger than typical for the area.
 2. Multi-use property. The interest payment on multi-use property shall be reduced to the percentage ratio that the residential value of the multi-use property is to the value of the entire property before acquisition.
 3. Dwelling on land with higher and better use. An agency shall compute an interest payment as specified under par. (b) when a dwelling is located on land where the fair market value is established on a higher and better than residential use, and when the mortgage is based on residential value. The interest payment shall be reduced to the percentage ratio that the estimated residential value of the land is to the value of the entire property before acquisition, when the mortgage is based on the higher use.

- (f) *Prompt payment.* An agency shall advise a displaced person of the approximate amount of a refinancing payment as soon as the facts relative to a person's current mortgages are known. If requested by the displaced person, the refinancing payment shall be made available at or near the time of closing on the replacement to permit reduction of the new mortgage amount.
- (6) **INCIDENTAL EXPENSE PAYMENT.** An agency shall pay a person for actual and reasonable expense incurred incidental to the purchase of a replacement dwelling. The payment shall include the following:
- (a) Legal, closing and related cost including title search, preparing conveyance contracts, notary fees, surveys, preparing drawings or plats and recording fees;
 - (b) Lender, appraisal or application fees, and loan origination or assumption fees that do not represent prepaid interest;
 - (c) Certification of structural soundness;
 - (d) Credit reports;
 - (e) Owner or mortgagee title insurance policy or abstract of title;
 - (f) Escrow agent fee;
 - (g) Other expense approved by an agency.
- Note:** The payment may not include a prepaid expense (e.g. taxes, water, fuel) or fee, cost, charge or expense which is part of a debt service or finance charge under 15 USC 1631-1641 and Regulation Z issued pursuant thereto by the board of governors of the federal reserve system.
- (7) **OWNER-OCCUPANT RETAINS DWELLING.** An owner-occupant may purchase the property back from an agency and move it to another location following receipt of payment for the acquired property, and when not inconsistent with project development. The replacement payment shall be determined as follows:
- (a) *Amount payable.* The payment shall be the amount, if any, between the acquisition price and the cost to relocate the dwelling. The cost to relocate shall include the purchase-back price, the cost to acquire and develop a new site, or when moved to retained land, the market value of the residential lot, installing utility service, constructing a foundation, moving the dwelling, restoring it to comparable standards and other moving costs.
 - (b) *Limitation.* The differential payment under this subsection may not exceed the amount necessary to purchase a comparable replacement dwelling as specified under sub. (3), plus any increased interest or incidental expense payment due under subs. (5) and (6).
- (8) **REPLACEMENT PAYMENT CONVERSION.** An agency shall pay a person as specified under this section. A replacement payment for a prior move to a rental unit shall be deducted from the amount payable under this section. The combined payment may not exceed \$25,000, unless a person is eligible for a payment in excess of \$25,000 under s. Adm 92.68 (9).
- History:** Cr. Register, March, 1986, No. 363, eff. 4-1-86; am. (1) (b) (intro.), (5) (a) and (b) and (6) (b), r. and recr. (5) (d), cr. (5) (f), Register, November, 1989, No. 407, eff. 12-1-89; correction in (8) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1996, No. 484; **correction in (8) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672.**

Adm 92.72 180-day owner who rents.

- (1) **GENERAL.** An agency shall pay a person who rents a replacement dwelling, and is eligible for a replacement payment as specified under s. Adm 92.68 (1), a rental assistance payment not to exceed \$8,000 for 4 years.
 - (2) **COMPUTATION OF PAYMENT.** The payment shall be computed as specified under s. Adm 92.78, except the economic rent of the acquired dwelling shall be used to compute the payment.
- History:** Cr. Register, March, 1986, No. 363, eff. 4-1-86; am. (2), Register, November, 1989, No. 407, eff. 12-1-89; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1996, No. 484; **correction in (1), (2) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672.**

Adm 92.74 90-day owner or tenant who purchases.

- (1) **GENERAL.** An agency shall pay a person who has occupied a dwelling for not less than 90 days before initiation of negotiations, an amount up to \$8,000 for a downpayment on the purchase of a replacement dwelling and reimbursement for expenses incidental to purchase.
- (2) **COMPUTATION OF DOWN PAYMENT AND INCIDENTAL COST.**
 - (a) An agency shall pay a person a downpayment assistance payment equal to a rental assistance payment computed as specified under s. Adm 92.78.
 - (b) An amount required to be paid by a person for incidental cost as specified under s. Adm 92.70 (6), shall be added to the amount as specified under par. (a).

- (c) An agency shall pay a person who purchases and occupies a decent, safe and sanitary dwelling within one year after the date the person moves from the dwelling or the date the person receives payment for the acquired property, whichever is later. The agency may extend this period for good cause.

(3) LIMITATION.

- (a) An agency may require that the full amount of the downpayment assistance payment be applied to the purchase price of the replacement dwelling or related incidental expenses, except that an agency may pay the downpayment assistance directly to a displaced person upon reasonable assurance that the displaced person will apply the payment toward replacement housing costs.
- (b) A downpayment assistance payment to a 90-day owner may not exceed the amount the owner would have received if eligible under the 180-day occupancy provisions.
- (c) An owner eligible for a payment as a 180-day owner under s. Adm 92.70 is ineligible for a downpayment assistance payment under this section.

- (4) OWNER RETAINS DWELLING.** An agency shall pay a person who retains and moves an acquired dwelling, a replacement payment as specified under s. Adm 92.70 (7), except the amount may not exceed \$8,000.

- (5) REPLACEMENT PAYMENT CONVERSION.** An agency shall pay a person as specified under this section. A replacement payment for a prior move to a rental unit shall be deducted from the amount payable under this section. The combined payment may not exceed \$8,000, unless a person is eligible for a payment in excess of \$8,000 under s. Adm 92.68 (9).

History: Cr. Register, March, 1986, No. 363, eff. 4-1-86; am. (1), (2) (a) and (3), r. (2) (b), renum. (2) (c) and (d) to be (2) (b) and (c) and am., Register, November, 1989, No. 407, eff. 12-1-89; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1996, No. 484; **correction in (2) (a), (b), (3) (c), (4), (5) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672.**

Adm 92.76 90-day owner who rents.

- (1) **GENERAL.** An agency shall pay a person who has occupied a dwelling for not less than 90 days before initiation of negotiations, a rental assistance payment not to exceed \$8,000 for 4 years.
- (2) **COMPUTATION OF PAYMENT.** The payment shall be computed as specified under s. Adm 92.78, except the economic rent of the acquired dwelling shall be used to compute the payment.

History: Cr. Register, March, 1986, No. 363, eff. 4-1-86; corrections in (2) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1996, No. 484; **correction in (2) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672.**

Adm 92.78 90-day tenant who rents. An agency shall pay a person who has occupied a displacement dwelling for not less than 90 days before initiation of negotiations, for the increased cost to rent a comparable dwelling as specified under this section. A rental assistance payment shall not exceed \$8,000 unless a person is eligible for a greater payment under s. Adm 92.68 (9).

- (1) **ELIGIBILITY REQUIREMENT.** A person shall be eligible for a payment when the person:
- (a) Occupies a dwelling for not less than 90 days immediately before the date of initiation of negotiations for a property which is subsequently acquired or affected by displacement and;
- (b) Rents and occupies a decent, safe and sanitary replacement dwelling within one year of the date of vacation. The agency may extend this period for good cause.
- (2) **RENT DIFFERENTIAL PAYMENT.** An agency shall pay a person who rents a replacement dwelling, a payment equal to the difference for 48 months, if any, between the monthly rent for the displacement unit and the lesser of the monthly rent for a comparable dwelling or the actual replacement rent.
- (3) **PREFERRED REPLACEMENT HOUSING TENURE.** The agency shall assist a person relocate to original tenancy status or, at a person's option, purchase a replacement using the downpayment assistance provisions under s. Adm 92.80.
- (4) **PAYMENT COMPUTATION.** To compute a payment, an agency shall determine the base monthly rent, the rent of a comparable dwelling and the rent paid for the replacement as follows:
- (a) *Base monthly rent.* The base monthly rent shall be:
1. The average monthly rent and utilities paid by the tenant-occupant, including a rent supplement provided by another person except when the supplement will be discontinued after relocation, for a 3 month period before initiation of negotiations, or a more representative period; or
 2. The economic rent when the actual rent is insignificant in relation to market rents for similar dwellings in the area.
 3. The agency may establish the base monthly rent by using a person's financial means as specified under s. Adm 92.01 (20) in lieu of the rent specified in subd. 1. or 2. If the person refuses to provide appropriate evidence of income or is a dependent, the base monthly rent shall be established as

specified in subd. 1. or 2. A full time student or resident of an institution may be assumed to be a dependent, unless the person demonstrates otherwise.

- (b) *Determine rent of a comparable dwelling.* The agency shall determine the rent of a comparable dwelling using the selection procedures specified under s. Adm 92.70 (3) and (4).
- (5) **COMPARABILITY OF RENT FACTORS.** Rental cost factors such as utilities, furnishings, parking and others, shall be the same for the acquired dwelling and the comparable or replacement dwelling. However, rental factors in the comparable property which must be paid by the displaced person shall be included in the payment regardless of whether or not they existed in the acquired dwelling.
- (6) **CHANGE OF OCCUPANCY.** A person who, after moving to a decent, safe and sanitary dwelling, moves to a higher rent dwelling within one year, may be eligible for an amount in excess of the original claim but not to exceed the amount necessary to rent a comparable replacement dwelling.
- History:** Cr. Register, March, 1986, No. 363, eff. 4-1-86; am. (intro.) (1) (a) and (b), (2) and (4) (intro.), cr. (4) (a) 3., Register, November, 1989, No. 407, eff. 12-1-89; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1996, No. 484; **correction in (intro.), (3), (4) (a) 3., (b) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672.**

Adm 92.80 90-day tenant who purchases.

- (1) **GENERAL.** An agency shall pay a tenant occupant of a dwelling who purchases a replacement and who is eligible under s. Adm 92.78 (1) (a), a payment not to exceed \$8,000 for a downpayment on the purchase of a comparable replacement dwelling plus incidental expenses under s. Adm 92.70 (6).
- (2) **COMPUTATION OF PAYMENT.** The payment shall be computed as specified under s. Adm 92.74.
- History:** Cr. Register, March, 1986, No. 363, eff. 4-1-86; am. (1), Register, November, 1989, No. 407, eff. 12-1-89; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1996, No. 484; **correction in (1), (2) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672.**

Adm 92.82 Mobile home — general. A person who is a tenant or an owner of a mobile home shall meet the same eligibility requirements and is entitled to the same replacement payment provisions applicable for a person displaced from a conventional dwelling, except as specified under this section. The ownership or tenancy of the mobile home, not the land on which it is located shall determine a person's status as an owner or tenant occupant. The length of ownership and occupancy of the mobile home in a mobile home park, or on the site, determines a person's status as an 180-day owner or a 90-day owner or tenant.

- (1) **PERMANENT FOUNDATION.** An agency shall treat a person who owns and occupies a mobile home on a permanent foundation the same as a person displaced from a conventional dwelling, except the selected comparable shall be a mobile home and site.
- (2) **NON-PERMANENT FOUNDATION.**
- (a) An agency shall treat a person who owns and occupies a mobile home not on a permanent foundation on land a person owns or rents, the same as a person displaced from a conventional dwelling, provided one of the following conditions exist:
1. The mobile home is not decent, safe and sanitary as specified under s. Adm 92.04;
 2. The mobile home, because of its condition, cannot be moved without substantial damage or cost;
 3. There is no adequate or available site to move the mobile home.
- (b) The acquisition price for the purpose of computing a replacement housing payment shall be the trade-in or salvage value of the mobile home, when the mobile home is not acquired by the agency.
- (3) **COMBINED PURCHASE AND SITE RENTAL PAYMENT.** An agency shall pay a person who owns and occupies a mobile home and rents the site, a payment for the increased cost to rent a comparable mobile home site or the necessary downpayment on the purchase of a comparable mobile home site, in addition to the amount necessary to purchase a comparable mobile home as specified under this chapter.
- (4) **MOBILE HOME PARK FEE.** An agency shall include a fee in the replacement or rental assistance payment, when a person is required to pay a fee to enter a mobile home park provided the fee is legally permitted and is not returnable to a person.
- (5) **PARTIAL ACQUISITION OF MOBILE HOME PARK.** A person occupying a mobile home who is required to move from the mobile home park as a result of partial acquisition and displacement of the park operator, shall be a displaced person under this section.
- (6) **COMPARABLE BASED ON CONVENTIONAL HOUSING.** A replacement payment shall be based on a conventionally built comparable dwelling when there is no comparable mobile home available.
- History:** Cr. Register, March, 1986, No. 363, eff. 4-1-86; correction in (2) (a) 1., made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1996, No. 484; **correction in (2) (a) 1. made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672.**

Adm 92.84 180-day mobile home owner.

- (1) **GENERAL.** An agency shall pay a person who has owned and occupied a mobile home for not less than 180 days for the following:
- (a) A differential amount to purchase a replacement as specified under this section and s. Adm 92.70 (1), (2), (3), and (4);
 - (b) An increased interest payment on an existing mortgage or land contract as specified under s. Adm 92.70 (5);
 - (c) An incidental expense payment as specified under s. Adm 92.70 (6);
 - (d) A rental assistance payment as specified under this section and s. Adm 92.72;
- (2) **ACQUISITION OF MOBILE HOME AND SITE.**
- (a) An agency shall pay a person an amount, if any, when added to the payment for the acquired mobile home and site, equals an amount a person pays for a replacement, or an amount determined by an agency as necessary to purchase a comparable mobile home and site, whichever is less.
 - (b) An agency shall pay a person who rents a replacement mobile home and site, a rental assistance payment as specified under s. Adm 92.72. The monthly rent for a replacement computation shall be the economic rent for the acquired mobile home and site.
- (3) **ACQUISITION OF SITE ONLY.**
- (a) An agency shall pay a person, when only the site is acquired and the mobile home is moved, an amount, if any, when added to the payment for the site, equals the amount a person pays for a replacement site or an amount determined by an agency as necessary to purchase a comparable site, whichever is less.
 - (b) An agency shall pay a person who rents a replacement site, a rental assistance payment as specified under s. Adm 92.72. The economic rent for the site being acquired shall be used to compute the payment.
- (4) **ACQUISITION OF MOBILE HOME ONLY — OWNER RENTS SITE.**
- (a) An agency shall pay a person who owns and occupies a mobile home but rents the site, a replacement housing payment when only the mobile home is acquired. Payment shall be the amount, if any, when added to the payment for the mobile home, equals the lesser of the following:
 - 1. The amount a person pays for a replacement dwelling and site;
 - 2. The amount determined by an agency as necessary to purchase a comparable dwelling plus the difference, if any, between the rent for the acquired site and the replacement rent, or an amount necessary to rent a comparable mobile home site, whichever is less, for 48 months.
 - (b) An agency shall pay a displaced person who purchases a replacement site, a downpayment assistance payment as specified under s. Adm 92.74.
 - (c) An agency shall pay a person who rents a replacement mobile home and site, a payment as specified under s. Adm 92.78, except the base rent shall be the economic rent of the mobile home and the actual rent of the site.
- (5) **ACQUISITION OF RENTED SITE ONLY — MOBILE HOME NOT ACQUIRED.**
- (a) An agency shall pay a person who owns and occupies a mobile home to be moved from a rented site, a payment not to exceed \$8,000, for the difference, for 48 months, if any, between rent for the acquired site and the monthly rent for a comparable site, or the rent for a replacement site, whichever is less; or
 - (b) An agency shall make a downpayment assistance payment as specified under s. Adm 92.74, to a person who purchases a replacement site.
- History:** Cr. Register, March, 1986, No. 363, eff. 4-1-86; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1996, No. 484; **correction in (1) (a), (b), (c), (d), (2) (b), (3) (b), (4) (b), (c), (5) (b) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672.**

Adm 92.86 90-day mobile home owner.

- (1) **GENERAL.** An agency shall pay a person who has owned and occupied a mobile home for at least 90 days but less than 180 days, for the following:
- (a) A rental assistance payment as specified under this section and s. Adm 92.78;
 - (b) A downpayment assistance payment as specified under s. Adm 92.74;
- (2) **ACQUISITION OF MOBILE HOME AND SITE.**
- (a) An agency shall pay a person who purchases a replacement dwelling, a payment as specified under s. Adm 92.74. The amount shall be limited to that necessary to purchase a comparable mobile home and site.
 - (b) An agency shall pay a person who rents a replacement mobile home and site, a payment as specified under s. Adm 92.78. The economic rent for the mobile home and site shall be used for the computation.
- (3) **ACQUISITION OF SITE ONLY.**

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- (a) An agency shall pay a person who purchases a replacement site a downpayment assistance payment as specified under s. Adm 92.74 except the payment shall be limited to an amount necessary to purchase a comparable replacement site.
- (b) An agency shall pay a person who rents a replacement site, a payment as specified under s. Adm 92.78 except the payment shall be limited to an amount necessary to rent a comparable replacement site.

(4) ACQUISITION OF MOBILE HOME ONLY — OWNER RENTS SITE.

- (a) An agency shall pay a person who owns and occupies the mobile home but rents the site, a downpayment assistance payment under s. Adm 92.74 except the payment shall be limited to the amount necessary to purchase a comparable mobile home, plus the difference, if any, between the monthly rent for the acquired site and the actual replacement rent, or the amount needed to rent a comparable site, whichever is less, for 48 months.
- (b) An agency shall pay a person who rents a replacement mobile home, a payment as specified under s. Adm 92.78, except the base rent shall be the economic rent of the acquired mobile home.

History: Cr. Register, March, 1986, No. 363, eff. 4-1-86; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1996, No. 484; **correction in (1) (a), (b), (2) (a), (b), (3) (a), (b), (4) (a), (b) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672.**

Adm 92.88 90-day mobile home tenant. An agency shall pay a person who is a tenant of a mobile home for not less than 90 days, a replacement payment as follows:

- (1) A rental assistance under s. Adm 92.78; or
- (2) A downpayment assistance under s. Adm 92.80.

History: Cr. Register, March, 1968, No. 363, eff. 4-1-86; corrections made under s. 13.93 (2m) (b) 1. and 7., Stats., Register, April, 1996, No. 484; **correction in (1), (2) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672.**

SUBCHAPTER VI — REPLACEMENT BUSINESS AND FARM PAYMENT

<u>Adm 92.90</u>	General.
<u>Adm 92.92</u>	Owner-occupant who purchases.
<u>Adm 92.94</u>	Owner-occupant who rents.
<u>Adm 92.96</u>	Tenant-occupant who rents.
<u>Adm 92.98</u>	Tenant-occupant who purchases.
<u>Adm 92.99</u>	Forms.

Adm 92.90 General. This section describes the general requirements for a replacement payment to a displaced person who is a tenant-occupant or an owner-occupant of a business, farm operation, or nonprofit organization. A person is not required to relocate to the same owner or tenant occupancy status, but has other options as specified under this subchapter. An agency shall make one payment for each displacement, not to exceed \$30,000 for a tenant-occupant or \$50,000 for an owner-occupant.

- (1) **ELIGIBILITY REQUIREMENTS.** An agency shall make a replacement payment to a displaced business or farm operation provided:
 - (a) The property is subsequently acquired, a tenant is affected by displacement, or a notice to vacate is issued;
 - (b) The person owns and occupies a business or farm conducted on the real property acquired or affected by displacement, for not less than one year before initiation of negotiations.
 - (c) The person purchases or rents a replacement business or farm operation within 2 years of the date the person vacates or receives final payment for the acquired property, whichever is later.
 - (d) For the purpose of this section, a replacement business or farm property is purchased when a person:
 - 1. Acquires an existing property as a replacement for the business or farm operation;
 - 2. Relocates or rehabilitates a property owned or acquired.

Note: The cost to achieve comparable standards and to correct code deficiencies shall be included in the actual cost of purchasing a replacement property when it is not comparable or in code compliance.

3. Contracts to, or constructs a building or structure for a new business or farm operation on a site owned or acquired.

Note: The cost of construction shall be limited to that necessary to construct a comparable replacement. The cost shall include the value of the land at the time it was acquired. The cost of constructing a replacement structure shall include the value of labor furnished by a self-help builder.

- (e) The entire business or farm operation shall be displaced to qualify for a replacement payment. However, a business or farm operation shall be considered eligible for a replacement payment when:

1. The property remaining after the acquisition is not an economic unit or would result in a significant reduction in net earnings for the same type of business or farm operation, as determined by an agency;
 2. The acquisition substantially changed or interfered with the principal operation or the nature of the business or farm operation so as to constitute a displacement.
- (2) **DELAYED OCCUPANCY FOR CONSTRUCTION AND REHABILITATION.** A person who contracts for the construction or rehabilitation of a replacement building, is considered to have purchased the replacement as of the date of the contract. The replacement payment may be deferred until a final acquisition price is known and relocation is completed provided the agency makes payment into an interest-bearing escrow account for release upon reestablishment of the business or farm operation. An agency may pay a person before reestablishment when there is assurance of reestablishment.
- (3) **PRIOR OWNERSHIP OF A REPLACEMENT BUILDING OR LAND.** An agency shall pay a person who is an owner of a replacement building or land upon which a replacement building is constructed and within the time limit under sub. (1), a replacement payment as specified under this subchapter. The fair market value of the land and the building at the time of displacement shall be used as the actual cost in determining the payment.
- (4) **INSPECTION FOR COMPLIANCE WITH FEDERAL, STATE OR LOCAL CODE.** An agency shall inspect a replacement business or farm operation to determine if it meets federal, state or local codes before making a replacement payment. An agency shall take the following steps before terminating assistance or denying eligibility for a replacement payment because a person moved to a facility which is not in compliance;
- (a) Assist a person to correct a deficiency and when necessary, refer a person to another facility in compliance with applicable codes;
 - (b) Notify a person in writing within 10 days of the inspection regarding a deficiency to be corrected to receive payment, and that when the deficiency is corrected by the date as specified under sub. (1), or when a person moves to another facility which is in compliance, the person shall receive payment.
- (5) **STATEMENT OF ELIGIBILITY TO LENDER.** An agency, upon request of a person to be relocated, shall inform an interested person or mortgage lender that the person shall be eligible for a replacement payment upon the purchase or rent and reestablishment of a replacement property within the applicable time limit.
- (6) **ADVANCE PAYMENT IN CONDEMNATION CASE.** An agency shall promptly pay a replacement business or farm payment. An advance payment shall be made when an agency determines the acquisition payment will be delayed because of condemnation proceedings. An agency's offer shall be used as the acquisition price for calculating the payment. The payment shall be contingent on a person signing an affidavit of intent that:
- (a) The agency shall re-compute the replacement payment using the acquisition amount, set by the court;
 - (b) The person shall refund the excess amount from the judgment when the amount awarded as acquisition amount plus the advance payment exceeds the amount paid for a replacement or the agency's determined cost of a comparable replacement. A person is not required to refund more than the advance payment. The payment shall be made after the condemnation proceedings are completed when a person does not sign an affidavit.
- (7) **CARVE-OUT AND MODIFICATION OF REPLACEMENT PAYMENT COMPUTATION.**
- (a) *Complete acquisition.*
 1. 'Typical size lot.' The maximum replacement payment shall be the selling price of a comparable replacement on land typical in size for the business less the price of the acquired building and the site when the acquired business is located on land typical in size for the type of business conducted.
 2. 'Larger than typical size lot.' The maximum replacement payment shall be the selling price of a comparable replacement on land typical in size for the business, less the price of the acquired building, plus the price of that portion of the acquired land typical in size for the business being conducted, when the acquired business is located on land larger in size than typical for the type of business conducted.
 - (b) *Partial acquisition.*
 1. 'Typical size lot.' The maximum replacement payment shall be the selling price of a comparable replacement on land typical in size for the business, less the value of that portion of the acquired property which represents the typical size for the business, when the acquired business is located on land larger than typical for the business conducted.
 2. 'Larger than typical size lot.' The maximum replacement payment shall be the selling price of a comparable replacement on land typical in size for the business, less the value of that portion of the acquired property which represents the typical size for the business, when the acquired business is located on land larger in size than typical for the business conducted.
 3. 'Remainder property.' If a buildable residential lot or an uneconomic remnant remains after a partial taking and the owner of the remaining property refuses to sell the remainder to the agency, the

market value of the remainder may be added to the acquisition cost for the purposes of computing the payment.

Note: Under ss. 32.05 (3m) and 32.06 (3m), Stats., an agency is required to offer to purchase a remainder if it is an uneconomic remnant.

- (c) *A business or farm operation on land with higher and better use.* The maximum payment shall be the selling price of a comparable replacement business or farm operation on land typical in size for the existing business or farm use in the area, less the price for the acquired property and the price of that portion of the acquired land which represents land typical for the existing use, when the market value is based on a higher and better use than the existing use.
- (d) *Mixed residential and nonresidential use property.* An agency shall determine a replacement payment by using only that portion of the acquired or displacement property occupied by the displaced business or farm.
- (e) *Multiple occupancy of the same parcel.*
 1. Each separately organized business or farm operation which occupies a parcel shall be eligible for a replacement payment. The acquisition price or rent used for a replacement payment computation shall be the amount each business or farm occupant receives from the total payment for the property acquired, or the rent each tenant-occupant pays toward the total rent.
 2. There shall be only one business or farm operation replacement payment for a business or farm operation under one ownership but engaged in more than one operation.

Note: An agency shall consider the factors under s. Adm 92.66 in determining whether more than one business or farm is eligible for payment under this subchapter.

- (f) *Decentralization of business or farm.* The purchase price or the cost of a replacement, when a business or farm operation displaced from one site relocates to more than one site. The replacement payment shall be limited to a selected comparable at one site unless an agency determines the needs of a business or farm operation require location at more than one site.
 - (g) *Joint business and investment use.* A person who owns and occupies a business and also rents out a residence or business facility on the same property, shall receive a replacement payment based only on that portion of the space and that portion of the acquisition price utilized by the business.
- (8) **NONPROFIT ORGANIZATION.** A nonprofit organization is eligible for a replacement business payment as specified under this chapter, provided the organization has not claimed a replacement housing payment under subch. V.
- (9) **OUTSIDE PROFESSIONAL ASSISTANCE.** The agency may use professional assistance to reestablish a displaced business or farm operation. Professional assistance for searching and other incidental expense incurred by a displaced person shall be compensable if the costs are necessary for reestablishment of the business or farm operation.

History: Cr. Register, March, 1986, No. 363, eff. 4-1-86; am. (1) (a) and (b), (3) and (7) (d), Register, November, 1989, No. 407, eff. 12-1-89.

Adm 92.92 Owner-occupant who purchases. An agency shall pay an owner-occupant of a business or farm operation a payment, not to exceed \$50,000, for the difference necessary to purchase a replacement business or farm operation; for the loss of favorable financing on an existing mortgage or land contract in financing a replacement property, and expenses incidental to the purchase of a replacement business or farm operation. The payment shall be computed as specified under this section.

- (1) **DIFFERENTIAL AMOUNT PAYABLE.** A differential amount payable is an amount, if any, when added to the acquisition payment for the acquired business or farm operation, equals an amount a person pays for a replacement property, or an amount determined by an agency as necessary to purchase a comparable replacement, whichever is less. A replacement payment shall include the difference between the price paid for a fixture or other real property improvement acquired and the cost to purchase and install the improvement in a replacement facility. A replacement payment shall also include the cost to modify a property to meet comparable standards and code requirements.
- (2) **SELECTION AND COST OF COMPARABLE AND ACTUAL REPLACEMENTS.** The agency shall determine the cost of a comparable replacement business or farm operation by analyzing 3 or more comparable replacement business or farm operations and selecting the one that is the most comparable. Fewer may be analyzed if 3 are not available.
 - (a) An agency may adjust the asking price of the selected comparable if considered justified on the basis of local market conditions. The agency's relocation plan shall specify if adjustments will be made for the project, the basis for this determination and the method of adjustment to be used.
 - (b) The cost of physical changes or improvements necessary to meet comparable standards in the selected comparable or the actual replacement shall be included in the maximum replacement payment.
 - (c) An agency shall select a comparable business or farm operation from the area of a displaced person provided the area is not designated for governmental acquisition and displacement, or subject to adverse environmental conditions.

- (d) The selected comparable shall be equal to or better than the acquired property and a payment shall be based on new construction when there is no comparable business or farm operation available.
- (3) **REVISION TO SELECTED COMPARABLE AMOUNT.** An agency, upon request of a displaced person, shall offer a comparable replacement business or farm operation within the maximum differential payment determined. Another comparable study shall be made to determine a new replacement payment when there is no comparable available, except the new replacement payment may not be less than the original payment.
- (4) **INCREASED INTEREST PAYMENT.**
- (a) *General.* An agency shall pay a displaced person for the increased interest expense and other debt service costs incurred in financing the purchase of a replacement business or farm operation, provided:
1. The acquired business or farm operation property was encumbered by a bona fide mortgage or land contract;
 2. The mortgage or land contract was executed in good faith not less than one year before initiation of negotiations to purchase the property;
 3. All bona fide mortgages or land contracts that were valid liens on the displacement property for at least one year before initiation of negotiations on the acquired property shall be used to compute the increased interest payment.
- (b) *Payment computation.* The increased interest payment shall be computed as follows:
1. The interest payment difference shall be an amount which will reduce the mortgage balance on the replacement property to an amount which could be amortized with the same monthly payment for principal and interest as that for the mortgage or mortgages on the displacement property, except that the payment for a person obtaining a mortgage that is less than the mortgage balance computed in the buydown determination, shall be prorated and reduced accordingly.
 2. The amount paid by a person as points, loan origination or assumption fees, but not seller's points, shall be based on the amount refinanced, not exceeding the amount which would have been paid had the original mortgage balance been refinanced, and shall be added to an amount as specified under subd. 1. The origination or assumption fee shall be limited to the fee normal for real estate transactions in the area.
- (c) *Interest rate on replacement mortgage.* The interest rate on the mortgage for a replacement business or farm operation used in the computation may not exceed the rate typically charged by mortgage lenders in the area.
- (d) *Mortgage term.* The payment shall be based on the remaining term of the mortgage(s) on the displacement dwelling regardless of the term on the new mortgage.
- (e) *Adjustment to interest payment amount.*
1. Larger than typical size lot. The interest payment shall be reduced to the percentage ratio that the value of the typical and necessary part is to the value of the entire property before acquisition, when a property is located on a lot larger than typical and necessary for the type of business or farm operation being operated.
 2. Multi-use property. The interest payment on multi-use property shall be reduced to the percentage ratio that the business or farm operation value of the multi-use property is to the value of the entire property before acquisition.
 3. Business or farm on land with higher and better use. An agency shall compute an interest payment under par. (b), when a business or farm operation is located on land where the fair market value is established on a higher and better use, and when the mortgage is based on business or farm operation value. The interest payment shall be reduced to the percentage ratio that the estimated business or farm operation value of the parcel is to the value of the entire property before acquisition, when the mortgage is based on the higher use.
- (f) *Prompt payment.* An agency shall advise a displaced person of the approximate amount of a refinancing payment as soon as the facts relative to a person's mortgages are known. If requested by the displaced person, the refinancing payment shall be made available at or near the time of closing on the replacement to permit reduction of the new mortgage amount.
- (5) **INCIDENTAL EXPENSE PAYMENT.** An agency shall pay a person for actual and reasonable expense incurred incidental to the purchase of a replacement business or farm operation. The payment shall include the following:
- (a) Legal, closing and related cost including title research, preparing conveyance contracts, notary fees, surveys, preparing drawings or plats and recording fees;
 - (b) Lender, appraisal or application fees, and loan origination or assumption fees that do not represent prepaid interest;
 - (c) Certification of structural soundness;
 - (d) Credit reports;

- (e) Owner or mortgagee title insurance policy or abstract of title;
- (f) Escrow agent fee;
- (g) Other expense approved by an agency.

Note: The payment may not include a prepaid expense such as taxes, water, or fuel costs, or a fee, cost, charge or expense which is part of a debt service or finance charge.

- (6) **OWNER RETENTION.** An owner-occupant may purchase the property back from an agency and move it to another location following receipt of the payment for the acquired property, and when not inconsistent with project development. The replacement payment shall be determined as follows:
 - (a) *Amount payable.* The payment shall be the amount, if any, between the acquisition price and the cost to relocate. The cost to relocate shall include the purchase-back price, the cost to acquire and develop a new site, or when moved to retained land, the market value of the site, installing utility service, constructing a foundation, moving the property, restoring it to comparable standards and other moving costs.
 - (b) *Limitation.* The differential payment computed under this section may not exceed the amount necessary to purchase a comparable replacement under sub. (2) plus any increased interest or incidental expense payment due under subs. (4) and (5).
- (7) **REPLACEMENT PAYMENT CONVERSION.** An agency shall pay a person as specified under this section. A replacement payment for a prior move to a rental property shall be deducted from the amount payable under this section. The combined payment may not exceed \$50,000.

History: Cr. Register, March, 1986, No. 363, eff. 4-1-86; am. (4) (a) (intro.) and 3., (b) and (5) (b), r. and recr. (4) (d), cr. (4) (f), Register, November, 1989, No. 407, eff. 12-1-89.

Adm 92.94 Owner-occupant who rents.

- (1) **GENERAL.** An agency shall pay an owner-occupant who rents a replacement business or farm operation, a rental assistance payment not to exceed \$30,000 for 4 years, or the amount the person is eligible for as an owner under s. Adm 92.92, whichever is less.
- (2) **COMPUTATION OF PAYMENT.** The payment shall be computed as specified under s. Adm 92.96, except that the economic rent of the acquired property shall be used to compute the payment.

History: Cr. Register, March, 1986, No. 363, eff. 4-1-86; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1996, No. 484; **correction in (1), (2) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672.**

Adm 92.96 Tenant-occupant who rents. An agency shall pay a tenant-occupant of a business or farm operation, a rental assistance payment, not to exceed \$30,000, for the increased cost to rent or lease a replacement business or farm operation. The payment shall be computed as specified under this section.

- (1) **RENT DIFFERENTIAL PAYMENT.** An agency shall pay a person who rents a replacement business or farm operation, a payment equal to the difference for 48 months, if any, between the monthly rent for the displacement unit and the lesser of the monthly rent for a comparable business or farm operation, or the actual replacement.
- (2) **PREFERRED REPLACEMENT TENURE.** An agency shall assist a person to relocate to original tenancy status or, at a person's option, purchase a replacement using the downpayment assistance provisions under s. Adm 92.98.
- (3) **PAYMENT COMPUTATION.** To compute a payment, an agency shall determine the base monthly rent, the rent of a comparable replacement, and the rent paid for the replacement property as follows:
 - (a) *Base monthly rent.* The base monthly rent shall be either:
 - 1. The average monthly rent and utilities paid by the tenant-occupant for the 12-month period before initiation of negotiations, or a more representative period; or
 - 2. The economic rent when the actual rent is insignificant in relation to market rents for similar property in the area.
 - (b) *Determine rent of a comparable replacement.* The agency shall determine the rent of a comparable replacement business or farm operation using the selection procedures under s. Adm 92.92 (2) and (3) except:
 - 1. An agency shall increase the rent by the additional amount the owner would charge if required to make modifications necessary to bring a property up to comparable standards, or
 - 2. An agency shall pay a person who rents a replacement business or farm operation requiring modifications to meet comparable standards, the actual cost of these modifications if incurred by the person. The amount shall be included in the rent differential payment.
- (4) **COMPARABILITY OF RENT FACTORS.** Rent factors such as utilities, furnishings, parking and others, shall be the same for the displacement property and the comparable or replacement property. However, rent factors in the comparable property which must be paid by the displaced person shall be included in the payment regardless of whether they existed in the displacement property.

- (5) **CHANGE OF OCCUPANCY.** A person, after moving to a replacement business or farm operation, moves to a higher rent property within a 2 year period, may be eligible for an amount in excess of the original claim but not to exceed the amount necessary to rent a comparable replacement.

History: Cr. Register, March, 1986, No. 363, eff. 4-1-86; am. (1), (3) and (4), Register, November, 1989, No. 407, eff. 12-1-89; correction in (2) and (3) (b) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1996, No. 484; **correction in (2), (3) (b) (intro.) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672.**

Adm 92.98 Tenant-occupant who purchases.

- (1) **GENERAL.** An agency shall pay a person otherwise eligible under s. Adm 92.96, an amount up to \$30,000 for a downpayment on the purchase of a replacement, and reimbursement for actual expenses incidental to the purchase. The payment may not exceed the amount necessary to rent a comparable replacement as specified under s. Adm 92.96.
- (2) **COMPUTATION OF DOWNPAYMENT AND INCIDENTAL COST.**
- (a) The agency shall pay a person the amount the person is entitled to receive for a rental replacement payment as specified under s. Adm 92.96.
 - (b) An agency shall pay the amount calculated under s. Adm 92.96 to a tenant-occupant who purchases a replacement business or farm operation within 2 years after the person moves from the displacement property.
 - (c) The incidental cost as specified under s. Adm 92.92 (5) shall be added to the amount as specified under par. (a).
 - (d) An agency may require that the full amount of the downpayment assistance payment be applied to the purchase price of the replacement property and related incidental expenses. An agency may pay the amount directly to a displaced person upon reasonable assurance that the displaced person will apply the payment toward business or farm reestablishment costs.
 - (e) An owner eligible for a payment under s. Adm 92.92 is ineligible for a downpayment assistance payment under this section.

History: Cr. Register, March, 1986, No. 363, eff. 4-1-86; am., cr. (2) (e), Register, November, 1989, No. 407, eff. 12-1-89; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1996, No. 484; **correction in (1), (2) (a), (b), (c), (e) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672.**

Adm 92.99 Forms. Material and forms noted under this chapter are available from the Department of Administration, Division of Energy Services, P.O. Box 7868, Madison, WI 53707-7868 or at the Department's Web site <http://energyindependence.wi.gov/section.asp?linkid=1783&locid=160>.

History: Cr. Register, March, 1986, No. 363, eff. 4-1-86; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1996, No. 484; **correction in (intro.), (1) to (9) made under s. 13.92 (4) (b) 6., 7., Stats., Register December 2011 No. 672.**

Wisconsin State Statutes

CHAPTER 27
PUBLIC PARKS AND PLACES OF RECREATION

27.05 Powers of commission or general manager.

27.05 Powers of Commission or General Manager. The county park commission, or the general manager in counties with a county executive or county administrator, shall have charge and supervision of all county parks and all lands acquired by the county for park or reservation purposes. The county park commission or general manager, subject to the general supervision of the county board and regulations prescribed by the county board, except as provided under s. 27.03 (2), may do any of the following:

- (4) Acquire in the name of the county by purchase, land contract, lease, condemnation or otherwise, with the approval and consent of the county board, such tract or tracts of land as it deems necessary for the purpose of providing a suitable and convenient place and station upon which airplanes and aircraft generally may land, be cared for, and make flight from; and improve and provide such place with the necessary hangars, and equipment for same; and said county park commission or county park manager further may let, lease or have such lands or station, and make such charge therefor, as they deem proper and advisable; provided, however, that any such lands so acquired, leased or used for such purpose shall not be leased or let, exclusively, to any person, but proper provision in any such use, lease or letting, shall be made for use, by others who may desire to use same; and for the purpose herein specified said county park commission or county park manager may appropriate and use from and out of the county park funds, and the county board of supervisors may appropriate and use from and out of the funds of the county, such sum or sums as may be severally or jointly sufficient to pay for such lands and improvements; and all rents, charges and income received from said lands and the use thereof shall belong to and be paid into the county park fund herein established.

History: 1985 a. 29 ss. 650, 3200 (56); 1993 a. 246; 1995 a. 201; 1999 a. 83.

CHAPTER 29
FISH AND GAME

29.307 Hunting with aid of aircraft prohibited.

29.971 General penalty provisions.

29.307 Hunting with Aid of Aircraft Prohibited.

- (1) No person may hunt any animal with the aid of an aircraft, including the use of an aircraft to spot, group or drive, or otherwise attempt to affect the behavior of, animals for hunters on the ground.
- (3) Any rules promulgated under s. 29.307 (2), 2009 stats., do not apply after June 30, 2004.

History: 1971 c. 151; 1997 a. 248 s. 432; Stats. 1997 s. 29.307; 2001 a. 108; 2011 a. 257.

29.971 General penalty provisions. Any person who, for himself or herself, or by his or her agent or employee, or who, as agent or employee for another, violates this chapter shall be punished as follows:

- (11) For hunting deer without the required approval, during the closed season, with the aid of artificial light or with the aid of an aircraft, for the snaring of or setting snares for deer, or for the possession or control of a deer carcass in violation of s. 29.055 or 29.347, by a fine of not less than \$1,000 nor more than \$2,000 or by imprisonment for not more than 6 months or both. In addition, the court shall order the revocation of all approvals issued to the person under this chapter and shall prohibit the issuance of any new approval under this chapter to the person for 3 years.

History: 1975 c. 365 ss. 45, 50; 1979 c. 34, 150, 175, 190, 355; 1981 c. 20, 236, 243, 391; 1983 a. 27; 1983 a. 80 s. 9; 1983 a. 114 s. 9; 1983 a. 192, 209, 419, 520, 538; 1985 a. 29, 36, 270, 271, 272, 289, 332; 1987 a. 379; 1989 a. 190, 336; 1991 a. 39, 269; 1993 a. 137; 1995 a. 59, 79; 1997 a. 1, 27; 1997 a. 248 ss. 714 to 722; Stats. 1997 s. 29.971; 1997 a. 283 ss. 20 to 23; 1999 a. 9, 32; 2001 a. 56, 108, 109; 2003 a. 139, 249; 2005 a. 288; 2009 a. 276; 2011 a. 28, 257; 2015 a. 55, 89, 346.

CHAPTER 30
NAVIGABLE WATERS, HARBORS AND NAVIGATION

- 30.10 Declarations of navigability.
30.38 Powers and duties of boards of harbor commissioners.
30.78 Local regulation of seaplanes.

30.10 Declarations of navigability.

- (1) **LAKES.** All lakes wholly or partly within this state which are navigable in fact are declared to be navigable and public waters, and all persons have the same rights therein and thereto as they have in and to any other navigable or public waters.
- (2) **STREAMS.** Except as provided under sub. (4) (c) and (d), all streams, sloughs, bayous and marsh outlets, which are navigable in fact for any purpose whatsoever, are declared navigable to the extent that no dam, bridge or other obstruction shall be made in or over the same without the permission of the state.
- (3) **ENLARGEMENTS OR IMPROVEMENTS IN NAVIGABLE WATERS.** All inner harbors, turning basins, waterways, slips and canals created by any municipality to be used by the public for purposes of navigation, and all outer harbors connecting interior navigation with lake navigation, are declared navigable waters and are subject to the same control and regulation that navigable streams are subjected to as regards improvement, use and bridging.
- (4) **INTERPRETATION.**
 - (a) This section does not impair the powers granted by law to municipalities to construct highway bridges, arches, or culverts over streams.
 - (b) The boundaries of lands adjoining waters and the rights of the state and of individuals with respect to all such lands and waters shall be determined in conformity to the common law so far as applicable, but in the case of a lake or stream erroneously meandered in the original U.S. government survey, the owner of title to lands adjoining the meandered lake or stream, as shown on such original survey, is conclusively presumed to own to the actual shorelines unless it is first established in a suit in equity, brought by the U.S. government for that purpose, that the government was in fact defrauded by such survey. If the proper claims of adjacent owners of riparian lots of lands between meander and actual shorelines conflict, each shall have his or her proportion of such shorelands.
 - (c) Notwithstanding any other provision of law, farm drainage ditches are not navigable within the meaning of this section unless it is shown that the ditches were navigable streams before ditching. For purposes of this paragraph, "farm drainage ditch" means any artificial channel which drains water from lands which are used for agricultural purposes.
 - (d) A drainage district drain located in the Duck Creek Drainage District and operated by the board for that district is not navigable unless it is shown, by means of a U.S. geological survey map or other similarly reliable scientific evidence, that the drain was a navigable stream before it became a drainage district drain.

History: 1977 c. 190, 272, 418; 1981 c. 339; 1991 a. 316; 1999 a. 9; 2003 a. 118; 2011 a. 167.

When there are 2 owners of land adjacent to a disputed parcel erroneously meandered under sub. (4), the judge is to divide the parcel proportionately on an equitable, but not necessarily equal, basis. Kind v. Vilas County, 56 Wis. 2d 269, 201 N.W.2d 881 (1972).

The department of natural resources properly considered the existence of beaver dams and ponds and the periods of high water caused by spring runoffs in determining the navigability of a creek. The dams and ponds were normal and natural to the stream, and the periods of high water were of a regularly recurring, annual nature. DeGayner & Co. v. Department of Natural Resources, 70 Wis. 2d 936, 236 N.W.2d 217 (1975).

An owner of land on a meandered lake takes only to the actual shoreline. An owner does not have a "proper claim" to an isolated parcel separated from the remainder of the lot by the lake, making sub. (4) (b) inapplicable as parcels separated by a lake are not "adjacent." State Commissioners of Board of Public Lands v. Thiel, 82 Wis. 2d 276, 262 N.W.2d 522 (1978).

A department of natural resources declaration of navigability subjecting private property to sub. (1) was a taking. Zinn v. State, 112 Wis. 2d 417, 334 N.W.2d 67 (1983).

The department of natural resources has the authority, as well as the obligation, to determine whether the waters of the state are navigable in fact and subject to regulation under ch. 30, another agency's prior ancillary finding to the contrary notwithstanding. Turkow v. Department of Natural Resources, 216 Wis. 2d 273, 576 N.W.2d 288 (Ct. App. 1998), 97-1149.

This chapter applies to navigable ditches that were originally navigable streams. If a navigable ditch was originally nonnavigable or had no previous stream history, the department of natural resources' jurisdiction depends upon the facts of the situation. 63 Atty. Gen. 493.

Erroneously meandered lakeshore — the status of the law as it affects title and distribution. 61 MLR 515. The Muench case: A better test of navigability. Edwards, 1957 WLR 486.

CHAPTER 30

Riparian Landowners Versus the Public: The Importance of Roads and Highways for Public Access to Wisconsin's Navigable Waters. Williams. 2010 WLR 186.

30.38 Powers and duties of boards of harbor commissioners.

(8) HARBOR OPERATION.

(b) When so authorized by the municipal governing body, a board of harbor commissioners also may:

1. Operate airport facilities owned or leased by the municipality and located on or contiguous to the harbor lands.
2. Operate municipal harbor craft, such as fireboats, tugs, dredges, barges, lighters and inspection boats.
3. Acquire, charter and operate vessels for use in domestic and foreign commerce.

History: 1981 c. 238; 1985 a. 29; 1987 a. 27; 1991 a. 39; 1995 a. 130, 225; 1999 a. 150 s. 672; 2001 a. 16.

A fee assessed for revenue purposes, which bears no relation to the costs of maintaining harbor facilities, is a tax that is not authorized under sub. (9). *Racine Marina Associates v. City of Racine*, 175 Wis. 2d 614, 499 N.W.2d 715 (Ct. App. 1993).

30.78 Local regulation of seaplanes.

(1) **CITY, VILLAGE AND TOWN ORDINANCES.** Any city, village or town adjoining or surrounding any waters may, after public hearing, by ordinance:

- (a) Prescribe reasonable safety regulations relating to the operation on the surface of such waters of any aircraft capable of landing on water.
- (b) Prescribe the areas which may be used as a landing and take-off strip for the aircraft or prohibit the use of the waters altogether.
- (c) Provide proper and reasonable penalties for the violation of any such ordinance.

(1g) LAKE DISTRICT ORDINANCES.

- (a) A public inland lake protection and rehabilitation district, after public hearing, may enact and enforce local ordinances applicable to a lake entirely within its boundaries if each town, village and city having jurisdiction on the lake adopts a resolution authorizing the lake district to do so.
- (b) Ordinances authorized under par. (a) are limited to the type of ordinances authorized under sub. (1) (a) to (c).
- (c) If any town, village or city having jurisdiction on the lake rescinds the resolution authorizing the public inland lake protection and rehabilitation district to enact and enforce ordinances under this paragraph, the lake district ordinances are void.

(1r) **NOTICE TO DEPARTMENT OF TRANSPORTATION.** The department of transportation shall receive timely notice of the public hearing required under subs. (1) and (1g) and shall have an opportunity to present testimony on the proposed ordinance. An ordinance under sub. (1) (b) or (1g) that regulates or restricts an area of surface waters for landing or take-off purposes shall be filed with the department of transportation.

(2) **MARKING OF REGULATED OR RESTRICTED AREAS.** Any ordinance that regulates or restricts an area of surface waters under sub. (1) or (1g) shall direct that the area be marked by standard marking devices.

(3) CONFLICTING ORDINANCES.

- (a) If a public inland lake protection and rehabilitation district enacts an ordinance under sub. (1g), the lake district ordinance supersedes all conflicting provisions of a town, village or city ordinance enacted under sub. (1) that are applicable to that lake.
- (b) Any conflict in jurisdiction arising from the enactment of ordinances by 2 or more municipalities shall be resolved under s. 66.0105.

History: 1975 c. 269; 1989 a. 159; 1993 a. 167; 1999 a. 150 s. 672.

**CHAPTER 32
EMINENT DOMAIN**

**SUBCHAPTER I
GENERAL EMINENT DOMAIN**

- 32.01 Definitions.
- 32.02 Who may condemn; purposes.
- 32.03 When condemnation not to be exercised.
- 32.035 Agricultural impact statement.
- 32.04 Procedure in condemnation.
- 32.05 Condemnation for sewers and transportation facilities.
- 32.06 Condemnation procedure in other than transportation matters.
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**SUBCHAPTER II
ALTERNATE EMINENT DOMAIN
PROCEDURES IN 1ST CLASS CITIES**

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- 32.51 Exercise of eminent domain.
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- 32.70 Statute of limitations.
- 32.71 Liberal construction.
- 32.72 Approval by the electorate.

**SUBCHAPTER I
GENERAL EMINENT DOMAIN**

32.01 Definitions. In this subchapter unless the context clearly requires otherwise:

(1g) "Business entity" has the meaning given in s. 13.62 (5).

(1r) "Person" includes the state, a county, town, village, city, school district or other municipal corporation, a board, commission, including a commission created by contract under s. 66.0301, corporation, or housing authority created under ss. 66.1201 to 66.1211 or redevelopment authority created under s. 66.1333 or the Wisconsin Aerospace Authority created under s. 114.61.

(2) "Property" includes estates in lands, fixtures and personal property directly connected with lands.

History: 1973 c. 305; 1979 c. 175 s. 53; 1983 a. 27; 1983 a. 236 s. 12; 1999 a. 150 s. 672; 2005 a. 335; 2015 a. 55.

32.02 Who may condemn; purposes. The following departments, municipalities, boards, commissions, public officers, and business entities may acquire by condemnation any real estate and personal property appurtenant thereto or interest therein which they have power to acquire and hold or transfer to the state, for the purposes specified, in case such property cannot be acquired by gift or purchase at an agreed price:

- (1) Any county, town, village, city, including villages and cities incorporated under general or special acts, school district, the department of health services, the department of corrections, the board of regents of the University of Wisconsin System, the building commission, a commission created by contract under s. 66.0301, with the approval of the municipality in which condemnation is proposed, a commission created by contract under s. 66.0303 that is acting under s. 66.0304, if the condemnation occurs within the boundaries of a member of the commission, or any public board or commission, for any lawful purpose, but in the case of city and village boards or commissions approval of that action is required to be granted by the governing body. A mosquito control commission, created under s. 59.70 (12), and a local professional football stadium district board, created under subch. IV of ch. 229, may not acquire property by condemnation.
- (2) The governor and adjutant general for land adjacent to the Wisconsin state military reservation at Camp Douglas for the use of the Wisconsin national guard.
- (3) Any railroad corporation, any grantee of a permit to construct a dam to develop hydroelectric energy for sale to the public, any Wisconsin plank or turnpike road corporation, any drainage corporation, any interstate bridge corporation, or any corporation formed under chapter 288, laws of 1899, for any public purpose authorized by its articles of incorporation.
- (4) Any Wisconsin telegraph or telecommunications corporation for the construction and location of its lines.
- (5)
 - (a) "Foreign transmission provider" means a foreign corporation that satisfies each of the following:
 1. The foreign corporation is an independent system operator, as defined in s. 196.485 (1) (d), or an independent transmission owner, as defined in s. 196.485 (1) (dm), that is approved by the applicable federal agency, as defined in s. 196.485 (1) (c).
 2. The foreign corporation controls transmission facilities, as defined in s. 196.485 (1) (h), in this and another state.
 - (b) Any Wisconsin corporation engaged in the business of transmitting or furnishing heat, power or electric light for the public or any foreign transmission provider for the construction and location of its lines or for ponds or reservoirs or any dam, dam site, flowage rights or undeveloped water power.
- (6) Any Wisconsin corporation furnishing gas, electric light or power to the public, for additions or extensions to its plant and for the purpose of conducting tests or studies to determine the suitability of a site for the placement of a facility.
- (7) Any Wisconsin corporation formed for the improvement of any stream and driving logs therein, for the purpose of the improvement of such stream, or for ponds or reservoir purposes.
- (8) Any Wisconsin corporation organized to furnish water or light to any city, village or town or the inhabitants thereof, for the construction and maintenance of its plant.
- (9) Any Wisconsin corporation transmitting gas, oil or related products in pipelines for sale to the public directly or for sale to one or more other corporations furnishing such gas, oil or related products to the public.
- (10) Any rural electric cooperative association organized under ch. 185 which operates a rural electrification project to:
 - (a) Generate, distribute or furnish at cost electric energy at retail to 500 or more members of said association in accordance with standard rules for extension of its service and facilities as provided in the bylaws of said association and whose bylaws also provide for the acceptance into membership of all applicants therefor who may reside within the territory in which such association undertakes to furnish its service, without discrimination as to such applicants; or
 - (b) Generate, transmit and furnish electric energy at wholesale to 3 or more rural electric cooperative associations furnishing electric energy under the conditions set forth in par. (a), for the construction and location of its lines, substation or generating plants, ponds or reservoirs, any dam, dam site, flowage rights or undeveloped

water power, or for additions or extension of its plant and for the purpose of conducting tests or studies to determine the suitability of a site for the placement of a facility.

- (11) Any housing authority created under ss. 66.1201 to 66.1211; redevelopment authority created under s. 66.1333; community development authority created under s. 66.1335; local cultural arts district created under subch. V of ch. 229, subject to s. 229.844 (4) (c); or local exposition district created under subch. II of ch. 229.
- (11m) The Wisconsin Aerospace Authority created under subch. II of ch. 114.
- (12) Any person operating a plant which creates waste material which, if released without treatment would cause stream pollution, for the location of treatment facilities. This subsection does not apply to a person with a permit under ch. 293 or subch. III of ch. 295.
- (13) Any business entity authorized to do business in Wisconsin that shall transmit oil or related products including all hydrocarbons which are in a liquid form at the temperature and pressure under which they are transported in pipelines in Wisconsin, and shall maintain terminal or product delivery facilities in Wisconsin, and shall be engaged in interstate or international commerce, subject to the approval of the public service commission upon a finding by it that the proposed real estate interests sought to be acquired are in the public interest.
- (15) The department of transportation for the acquisition of abandoned rail and utility property under s. 85.09.
- (16) The department of natural resources with the approval of the appropriate standing committees of each house of the legislature as determined by the presiding officer thereof and as authorized by law, for acquisition of lands.

History: 1971 c. 100 s. 23; 1973 c. 243, 305; 1975 c. 68, 311; 1977 c. 29, 203, 438, 440; 1979 c. 34 s. 2102 (52) (b); 1979 c. 122; 1979 c. 175 s. 53; 1981 c. 86, 346, 374; 1983 a. 27; 1985 a. 29 s. 3200 (51); 1985 a. 30 s. 42; 1985 a. 187; 1985 a. 297 s. 76; 1987 a. 27; 1989 a. 31; 1993 a. 246, 263; 1993 a. 491 s. 284; 1995 a. 27 s. 9126 (19); 1995 a. 201; 1997 a. 204; 1999 a. 65; 1999 a. 150 s. 672; 1999 a. 167; 2001 a. 30 s. 108; 2005 a. 335; 2007 a. 20, s. 9121 (6) (a); 2009 a. 28, 205; 2011 a. 32; 2013 a. 1; 2015 a. 55.

Cross-reference: See s. 13.48 (16) for limitation on condemnation authority of the building commission.

The inalienability of the power of eminent domain is a well-settled rule. A party with the right to condemn cannot lose that power through contract. The right to condemnation cannot be waived or abrogated by estoppel. Personal rights may be waivable, but public rights are not. Andrews v. Wisconsin Public Service Corporation, 2009 WI App 6, 315 Wis. 2d 772, 762 N.W.2d 837, 07-2541.

32.03 When condemnation not to be exercised.

- (1) The general power of condemnation conferred in this subchapter does not extend to property owned by the state, a municipality, public board or commission, nor to the condemnation by a railroad, public utility or electric cooperative of the property of either a railroad, public utility or electric cooperative unless such power is specifically conferred by law, provided that property not to exceed 100 feet in width owned by or otherwise under the control or jurisdiction of a public board or commission of any city, village or town may be condemned by a railroad corporation for right-of-way or other purposes, whenever a city, village or town by ordinance consents thereto. This subchapter does not apply to the acquisition by municipalities of the property of public utilities used and useful in their business, nor to any city of the 1st class, except that every such city may conduct any condemnation proceedings either under this subchapter or, at its option, under other laws applicable to such city.
- (2) Any railroad corporation or pipeline corporation may acquire by condemnation lands or interest therein which are held and owned by another railroad corporation or pipeline corporation. In the case of a railroad corporation, no such land shall be taken so as to interfere with the main track of the railroad first established except for crossing, and in the case of a pipeline corporation no such land shall be taken except for crossing or in such manner as to interfere with or endanger railroad operations.
- (3) Any public utility corporation, or cooperative association mentioned in s. 32.02 (10), upon securing from the public service commission, pursuant to written application and upon due notice to all interested parties, an order determining that lands or interests therein sought to be acquired by the applicant are owned by a public utility corporation or such rural electric cooperative and are not then being used by the owner for service to the public by the public utility or to its members by such cooperative association and will not be required in the future for such purposes to an extent and within a period which will be interfered with by the appropriation of the lands or interests sought to be condemned, may acquire by condemnation such lands or interests therein. No lands, or interests therein, belonging to a public utility corporation or to any such cooperative association which is being held by such owner as a site for an electric generating plant, and no other property so owned, or any interest therein, which is used or suitable for the development of water power, shall be subject to condemnation under this subsection; except that an undeveloped water power site, belonging to any such public utility corporation or to any such cooperative association and which is within the flowage area of any other undeveloped water power site, may be condemned pursuant to this subsection, but only if, upon application to it, the public service commission, after hearing held upon notice to such owner and all parties interested, shall by order determine the necessity of taking such lands or interest therein. Such order shall be subject to review as prescribed by ch. 227. Any condemnation of lands pursuant to this subsection shall be conducted in accordance with the procedure and requirements prescribed by ss. 32.04 to 32.14.

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(5)

- (a) If an electric utility is required to obtain a certificate of public convenience and necessity from the public service commission under s. 196.491 (3), no right to acquire real estate or personal property appurtenant thereto or interest therein for such project by condemnation shall accrue or exist under s. 32.02 or 32.075 (2) until such a certificate of public convenience and necessity has been issued.
- (b) This subsection does not apply to the condemnation of a limited interest in real property or appurtenant personal property, except structures with foundations, necessary to conduct tests or studies to determine the suitability of a site for the placement of a utility facility, provided that:
 - 1. Such a limited interest does not run for more than 3 years; and
 - 2. Activities associated with such tests or studies will be conducted at reasonable hours with minimal disturbance, and the property will be reasonably restored to its former state, upon completion of such tests or studies.
- (c) This subsection does not prohibit an electric utility from negotiating with the owner, or one of the owners, of a property, or the representative of an owner, before the issuance of a certificate of public convenience and necessity, if the electric utility advises the owner or representative that the electric utility does not have the authority to acquire the property by condemnation until the issuance of a certificate of public convenience and necessity.

(6)

- (a) In this subsection, "blighted property" means any property that, by reason of abandonment, dilapidation, deterioration, age or obsolescence, inadequate provisions for ventilation, light, air, or sanitation, high density of population and overcrowding, faulty lot layout in relation to size, adequacy, accessibility, or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, or the existence of conditions that endanger life or property by fire or other causes, or any combination of such factors, is detrimental to the public health, safety, or welfare. Property that consists of only one dwelling unit is not blighted property unless, in addition, at least one of the following applies:
 - 1. The property is not occupied by the owner of the property, his or her spouse, or an individual related to the owner by blood, marriage, or adoption within the 4th degree of kinship under s. 990.001 (16).
 - 2. The crime rate in, on, or adjacent to the property is at least 3 times the crime rate in the remainder of the municipality in which the property is located.
- (b) Property that is not blighted property may not be acquired by condemnation by an entity authorized to condemn property under s. 32.02 (1) or (11) if the condemnor intends to convey or lease the acquired property to a private entity.
- (c) Before commencing the condemnation of property that a condemnor authorized to condemn property under s. 32.02 (1) or (11) intends to convey or lease to a private entity, the condemnor shall make written findings and provide a copy of the findings to the owner of the property. The findings shall include all of the following:
 - 1. The scope of the redevelopment project encompassing the owner's property.
 - 2. A legal description of the redevelopment area that includes the owner's property.
 - 3. The purpose of the condemnation.
 - 4. A finding that the owner's property is blighted and the reasons for that finding.

History: 1973 c. 305; 1975 c. 68; 1979 c. 175 s. 53; 1983 a. 27; 1983 a. 236 s. 12; 1983 a. 338 s. 3; 1985 a. 30 s. 42; 1985 a. 187; 1993 a. 246, 490; 1997 a. 204; 2003 a. 89; 2005 a. 233.

County lands are not subject to condemnation by a town absent express statutory authority authorizing such condemnation. 62 Atty. Gen. 64.

Wisconsin's Response to Condemnation for Economic Development. Braun. Wis. Law. Sept. 2007.

32.035 Agricultural impact statement.

(1) **DEFINITIONS.** In this section:

- (a) "Department" means department of agriculture, trade and consumer protection.
- (b) "Farm operation" means any activity conducted solely or primarily for the production of one or more agricultural commodities resulting from an agricultural use, as defined in s. 91.01 (2), for sale and home use, and customarily producing the commodities in sufficient quantity to be capable of contributing materially to the operator's support.

- (2) **EXCEPTION.** This section shall not apply if an environmental impact statement under s. 1.11 is prepared for the proposed project and if the department submits the information required under this section as part of such statement or if the condemnation is for an easement for the purpose of constructing or operating an electric transmission line, except a high voltage transmission line as defined in s. 196.491 (1) (f).
- (3) **PROCEDURE.** The condemnor shall notify the department of any project involving the actual or potential exercise of the powers of eminent domain affecting a farm operation. If the condemnor is the department of natural resources, the notice required by this subsection shall be given at the time that permission of the senate and assembly

committees on natural resources is sought under s. 23.09 (2) (d) or 27.01 (2) (a). To prepare an agricultural impact statement under this section, the department may require the condemnor to compile and submit information about an affected farm operation. The department shall charge the condemnor a fee approximating the actual costs of preparing the statement. The department may not publish the statement if the fee is not paid.

(4) IMPACT STATEMENT.

- (a) *When an impact statement is required; permitted.* The department shall prepare an agricultural impact statement for each project, except a project under ch. 82 or a project located entirely within the boundaries of a city or village, if the project involves the actual or potential exercise of the powers of eminent domain and if any interest in more than 5 acres of any farm operation may be taken. The department may prepare an agricultural impact statement on a project located entirely within the boundaries of a city, village, or town or involving any interest in 5 or fewer acres of any farm operation if the condemnation would have a significant effect on any farm operation as a whole.
- (b) *Contents.* The agricultural impact statement shall include:
 1. A list of the acreage and description of all land lost to agricultural production and all other land with reduced productive capacity, whether or not the land is taken.
 2. The department's analyses, conclusions and recommendations concerning the agricultural impact of the project.
- (c) *Preparation time; publication.* The department shall prepare the impact statement within 60 days of receiving the information requested from the condemnor under sub. (3). The department shall publish the statement upon receipt of the fee required under sub. (3).
- (d) *Waiting period.* The condemnor may not negotiate with an owner or make a jurisdictional offer under this subchapter until 30 days after the impact statement is published.

(5) PUBLICATION. Upon completing the impact statement, the department shall distribute the impact statement to the following:

- (a) The governor's office.
- (b) The senate and assembly committees on agriculture and transportation.
- (c) All local and regional units of government which have jurisdiction over the area affected by the project. The department shall request that each unit post the statement at the place normally used for public notice.
- (d) Local and regional news media in the area affected.
- (e) Public libraries in the area affected.
- (f) Any individual, group, club or committee which has demonstrated an interest and has requested receipt of such information.
- (g) The condemnor.

History: 1977 c. 440; 1979 c. 34; 1983 a. 236 s. 12; 1985 a. 140; 1987 a. 175; 2003 a. 214; 2009 a. 28.

Note: 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.

32.04 Procedure in condemnation. All acquisition of property in this state by condemnation, except as hereinafter provided, commenced after April 6, 1960 shall be accomplished in the following manner:

32.05 Condemnation for sewers and transportation facilities. In this section, "mass transit facility" includes, without limitation because of enumeration, exclusive or preferential bus lanes if those lanes are limited to abandoned railroad rights-of-way or existing expressways constructed before May 17, 1978, highway control devices, bus passenger loading areas and terminal facilities, including shelters, and fringe and corridor parking facilities to serve bus and other public mass transportation passengers, together with the acquisition, construction, reconstruction and maintenance of lands and facilities for the development, improvement and use of public mass transportation systems for the transportation of passengers. This section does not apply to proceedings in 1st class cities under subch. II. In any city, condemnation for housing under ss. 66.1201 to 66.1211, for urban renewal under s. 66.1333, or for cultural arts facilities under subch. V of ch. 229, may proceed under this section or under s. 32.06 at the option of the condemning authority. In any village, condemnation for housing under ss. 66.1201 to 66.1211 or for urban renewal under s. 66.1333 may proceed under this section or under s. 32.06 at the option of the condemning authority. Condemnation by a local exposition district under subch. II of ch. 229 for any exposition center or exposition center facility may proceed under this section or under s. 32.06 at the option of the local exposition district. All other condemnation of property for public alleys, streets, highways, airports, spaceports, mass transit facilities, or other transportation facilities, gas or leachate extraction systems to remedy environmental pollution from a solid waste disposal facility, storm sewers and sanitary sewers, watercourses or water transmission and distribution facilities shall proceed as follows:

(1) RELOCATION ORDER.

- (a) Except as provided under par. (b), a county board of supervisors or a county highway committee when so authorized by the county board of supervisors, a city council, a village board, a town board, a sewerage commission governing a metropolitan sewerage district created by ss. 200.05 or 200.21 to 200.65, the

secretary of transportation, a commission created by contract under s. 66.0301, a joint local water authority created by contract under s. 66.0823, a housing authority under ss. 66.1201 to 66.1211, a local exposition district created under subch. II of ch. 229, a local cultural arts district created under subch. V of ch. 229, a redevelopment authority under s. 66.1333 or a community development authority under s. 66.1335 shall make an order providing for the laying out, relocation and improvement of the public highway, street, alley, storm and sanitary sewers, watercourses, water transmission and distribution facilities, mass transit facilities, airport, or other transportation facilities, gas or leachate extraction systems to remedy environmental pollution from a solid waste disposal facility, housing project, redevelopment project, cultural arts facilities, exposition center or exposition center facilities which shall be known as the relocation order. This order shall include a map or plat showing the old and new locations and the lands and interests required. A copy of the order shall, within 20 days after its issue, be filed with the county clerk of the county wherein the lands are located or, in lieu of filing a copy of the order, a plat may be filed or recorded in accordance with s. 84.095.

- (b) No relocation order is necessary under par. (a) if the compensation, as estimated by the appraisal under sub. (2) (a), will be less than \$1,000 in the aggregate.

(2) APPRAISAL.

- (a) The condemnor shall cause at least one, or more in the condemnor's discretion, appraisal to be made of all property proposed to be acquired. In making any such appraisal the appraiser shall confer with the owner or one of the owners, or the personal representative of the owner or one of the owners, if reasonably possible.
- (b) The condemnor shall provide the owner with a full narrative appraisal upon which the jurisdictional offer is based and a copy of any other appraisal made under par. (a) and at the same time shall inform the owner of his or her right to obtain an appraisal under this paragraph. The owner may obtain an appraisal by a qualified appraiser of all property proposed to be acquired, and may submit the reasonable costs of the appraisal to the condemnor for payment. The owner shall submit a full narrative appraisal to the condemnor within 60 days after the owner receives the condemnor's appraisal. If the owner does not accept a negotiated offer under sub. (2a) or the jurisdictional offer under sub. (3), the owner may use an appraisal prepared under this paragraph in any subsequent appeal.

- (2a) NEGOTIATION.** Before making the jurisdictional offer provided in sub. (3), the condemnor shall attempt to negotiate personally with the owner or one of the owners or his or her representative of the property sought to be taken for the purchase of the same. In such negotiation the condemnor shall consider the owner's appraisal under sub. (2) (b) and may contract to pay the items of compensation enumerated in ss. 32.09 and 32.19 as may be applicable to the property in one or more installments on such conditions as the condemnor and property owners may agree. Before attempting to negotiate under this subsection, the condemnor shall provide the owner or his or her representative with copies of applicable pamphlets prepared under s. 32.26 (6). When negotiating under this subsection, the condemnor shall provide the owner or his or her representative with the names of at least 10 neighboring landowners to whom offers are being made, or a list of all offerees if less than 10 owners are affected, together with a map showing all property affected by the project. Upon request by an owner or his or her representative, the condemnor shall provide the name of the owner of any other property which may be taken for the project. The owner or his or her representative shall also have the right, upon request, to examine any maps in the possession of the condemnor showing property affected by the project. The owner or his or her representative may obtain copies of such maps by tendering the reasonable and necessary costs of preparing copies. The condemnor shall record any conveyance by or on behalf of the owner of the property to the condemnor executed as a result of negotiations under this subsection with the register of deeds of the county in which the property is located. The conveyance shall state the identity of all persons having an interest of record in the property immediately prior to its conveyance, the legal description of the property, the nature of the interest acquired and the compensation for such acquisition. The condemnor shall serve upon or mail by certified mail to all persons named therein a copy of the conveyance and a notice of the right to appeal the amount of compensation under this subsection. Any person named in the conveyance may, within 6 months after the date of its recording, appeal from the amount of compensation therein stated in the manner set forth in subs. (9) to (12) and chs. 808 and 809 for appeals from an award under sub. (7). For purposes of any such appeal, the amount of compensation stated in the conveyance shall be treated as the award and the date the conveyance is recorded shall be treated as the date of taking and the date of evaluation.

- (3) JURISDICTIONAL OFFER TO PURCHASE.** Condemnor shall send to the owner, or one of the owners of record, and to the mortgagee, or one of the mortgagees of each mortgage of record, a notice:

- (a) Stating briefly the nature of the project, with reference to the relocation order if required, and that the condemnor in good faith intends to use the property sought to be condemned for such public purpose.
- (b) Describing the property and the interest therein sought to be taken.
- (c) Stating the proposed date of occupancy regardless of the date of taking.
- (d) Stating the amount of compensation offered, itemized as to the items of damage as set forth in s. 32.09 and that compensation for additional items of damage as set forth in s. 32.19 may be claimed under s. 32.20 and will be paid if shown to exist.

- (e) Stating that the appraisal or one of the appraisals of the property on which condemnor's offer is based is available for inspection at a specified place by persons having an interest in the lands sought to be acquired.
 - (g) Stating that the owner has 20 days from date of completion of service upon the owner of the offer, as specified in sub. (6), in which to accept or reject the offer.
 - (h) Stating that if the owner has not accepted such offer as provided in sub. (6) the owner has 40 days from the date of completion of service upon the owner of the offer to commence a court action to contest the right of condemnation as provided in sub. (5); provided that the acceptance and retention of any compensation resulting from an award made prior to the commencement of such an action shall be an absolute bar to such action.
 - (i) Stating that the owner, subject to subs. (9)(a) and (11), will have 2 years from the date of taking the property by award in which to appeal for greater compensation without prejudice to the right to use the compensation given by the award. If the condemning authority is a housing authority organized under ss. 66.1201 to 66.1211 a redevelopment authority organized under s. 66.1333 or a community development authority organized under s. 66.1335, the notice shall also state that in the case of an appeal under sub. (9)(a) the parties having an interest in the property who are taking the appeal may initiate such appeal by filing with the condemning authority a letter requesting that the issue of the amount of such compensation be determined by the condemnation commission.
- (3m) UNECONOMIC REMNANT.**
- (a) In this subsection, "uneconomic remnant" means the property remaining after a partial taking of property, if the property remaining is of such size, shape, or condition as to be of little value or of substantially impaired economic viability.
 - (b) If the acquisition of only part of a property would leave its owner with an uneconomic remnant, the condemnor shall offer to acquire the remnant concurrently and may acquire it by purchase or by condemnation if the owner consents.
- (4) HOW NOTICE OF JURISDICTIONAL OFFER IS GIVEN.** The giving of such notice is a jurisdictional requisite to a taking by condemnation. Such notice may be given by personal service in the manner of service of a circuit court summons, or it may be transmitted by certified mail. If service is by mail, service of the papers shall be deemed completed on the date of mailing and the use of mail service shall not increase the time allowed to act in answer to or in consequence of such service. If such owner or mortgagee is unknown or cannot be found there shall be published in the county wherein the property is located a class 1 notice, under ch. 985. If such owner is a minor, or an individual adjudicated incompetent, the condemnor shall serve such notice upon the legal guardian of the minor or individual, and if there is no such guardian the condemnor shall proceed under s. 32.15 to have a special guardian appointed to represent the minor or individual in the proceeding. The reasonable fees of any special guardian as approved by the court shall be paid by the condemnor. The notice shall be called the "jurisdictional offer". The condemnor shall file a lis pendens on or within 14 days of the date of service or mailing of the jurisdictional offer or within 14 days of the date of publication if publication is necessary. The lis pendens shall include a copy of the jurisdictional offer. From the time of such filing every purchaser or encumbrancer whose conveyance or encumbrance is not recorded or filed shall be deemed a subsequent purchaser or encumbrancer and shall be bound by the terms of the jurisdictional offer and it shall not be necessary to serve other jurisdictional offers on such subsequent purchaser or encumbrancer. In the award the condemnor may name and make payment to parties who were owners or mortgagees at the time of the filing of the lis pendens unless subsequent purchasers or encumbrancers give written notice to the condemnor of their subsequently acquired interests in which event such parties shall be named in the award as their interests may appear.
- (5) COURT ACTION TO CONTEST RIGHT OF CONDEMNATION.** If an owner desires to contest the right of the condemnor to condemn the property described in the jurisdictional offer, for any reason other than that the amount of compensation offered is inadequate, the owner may within 40 days from the date of personal service of the jurisdictional offer or within 40 days from the date of postmark of the certified mail letter transmitting such offer, or within 40 days after date of publication of the jurisdictional offer as to persons for whom such publication was necessary and was made, commence an action in the circuit court of the county wherein the property is located, naming the condemnor as defendant. Such action shall be the only manner in which any issue other than the amount of just compensation, or other than proceedings to perfect title under ss. 32.11 and 32.12, may be raised pertaining to the condemnation of the property described in the jurisdictional offer. The trial of the issues raised by the pleadings in such action shall be given precedence over all other actions in said court then not on trial. If the action is not commenced within the time limited the owner or other person having any interest in the property shall be barred from raising any such objection in any other manner. Nothing in this section shall be construed to limit in any respect the right to determine the necessity of taking as conferred by s. 32.07 nor to prevent the condemnor from proceeding with condemnation during the pendency of the action to contest the right to condemn.
- (6) ACCEPTANCE OF JURISDICTIONAL OFFER.** The owner has 20 days from the date of personal service of the jurisdictional offer or 20 days from the date of postmark of the certified mail letter transmitting such offer, or if publication of the jurisdictional offer was necessary and was made, 20 days after the date of such publication, in which to accept the jurisdictional offer unless such time is extended by mutual written consent of the condemnor and

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condemnee. If such offer is accepted, the transfer of title shall be accomplished within 60 days after acceptance including payment of the consideration stipulated in such offer. If the jurisdictional offer is rejected in writing by all of the owners of record the condemnor may proceed to make an award forthwith. At any time prior to acceptance of the jurisdictional offer by the condemnee the same may be withdrawn by the condemnor.

- (7) **AWARD OF COMPENSATION.** If the owner has not accepted the jurisdictional offer within the periods limited in sub. (6) or fails to consummate an acceptance as provided therein, the condemnor may make an award of damages in the manner and sequence of acts as follows:
- (a) The award shall be in writing. Except as provided in sub. (1) (b), the award shall state that it is made pursuant to relocation order of (name of commission, authority, board or council having jurisdiction to make the improvement) No. dated filed in the office of the County Clerk, County of, or pursuant to transportation project plat no. dated filed or recorded in the office of register of deeds, County. If a relocation order is not required under sub. (1) (b), the award shall name the condemnor. It shall name all persons having an interest of record in the property taken and may name the other persons. It shall describe such property by legal description, or by the parcel number shown on a plat filed or recorded under s. 84.095, and state the interest therein sought to be condemned and the date when actual occupancy of the property condemned will be taken by condemnor. The award shall also state the compensation for the taking which shall be an amount at least equal to the amount of the jurisdictional offer. The award shall state that the condemnor has complied with all jurisdictional requirements. An amended award for the purpose of correcting errors wherein the award as recorded differs from the jurisdictional offer may be made, served and recorded as provided by this section.
 - (b) Copy of such award shall be served on or mailed by certified mail to all persons named therein. If any such person cannot be found or the person's address is unknown, the award shall be published in the county wherein the property is situated as a class 3 notice, under ch. 985, and completed publication as shown by affidavit shall constitute proper service. Such award shall be known as the "basic award".
 - (c) When service of the award has been completed, and after payment of the award as provided in par. (d), the award shall be recorded in the office of the register of deeds of the county wherein the property is located. Thereupon title in fee simple to the property described in the award, or the lesser right in property acquired by the award shall vest in the condemnor as of the time of recording. The date of such recording is the "date of evaluation" and also the "date of taking".
 - (d) On or before said date of taking, a check, naming the parties in interest as payees, for the amount of the award less outstanding delinquent tax liens, proportionately allocated as in division in redemption under ss. 74.51 and 75.01 when necessary and less prorated taxes of the same year, if any, likewise proportionately allocated when necessary against the property taken, shall at the option of the condemnor be mailed by certified mail to the owner or one of the owners of record or be deposited with the clerk of the circuit court of the county for the benefit of the persons named in the award. The clerk shall give notice thereof by certified mail to such parties. The persons entitled thereto may receive their proper share of the award by petition to and order of the circuit court of the county. The petition shall be filed with the clerk of the court without fee.
- (8) **OCCUPANCY; WRIT OF ASSISTANCE; WASTE.**
- (a) In this subsection, "condemnor" has the meaning given in s. 32.185.
 - (b) No person occupying real property may be required to move from a dwelling or move his or her business or farm without at least 90 days' written notice of the intended vacation date from the condemnor. The displaced person shall have rent-free occupancy of the acquired property for a period of 30 days, commencing with the next 1st or 15th day of the month after title vests in the condemnor, whichever is sooner. Any person occupying the property after the date that title vests in the condemnor is liable to the condemnor for all waste committed or allowed by the occupant on the lands condemned during the occupancy. The condemnor has the right to possession when the persons who occupied the acquired property vacate, or hold over beyond the vacation date established by the condemnor, whichever is sooner, except as provided under par. (c). If the condemnor is denied the right of possession, the condemnor may, upon 48 hours' notice to the occupant, apply to the circuit court where the property is located for a writ of assistance to be put in possession. The circuit court shall grant the writ of assistance if all jurisdictional requirements have been complied with, if the award has been paid or tendered as required and if the condemnor has made a comparable replacement property available to the occupants, except as provided under par. (c).
 - (c) The condemnor may not require the persons who occupied the premises on the date that title vested in the condemnor to vacate until a comparable replacement property is made available. This paragraph does not apply to any person who waives his or her right to receive relocation benefits or services under s. 32.197 or who is not a displaced person, as defined under s. 32.19 (2) (e), unless the acquired property is part of a program or project receiving federal financial assistance.

(9) APPEAL FROM AWARD BY OWNER OR OTHER PARTY IN INTEREST.

- (a) Any party having an interest in the property condemned may, within 2 years after the date of taking, appeal from the award, except as limited by this subsection by applying to the judge of the circuit court for the county wherein the property is located for assignment to a commission of county condemnation commissioners as provided in s. 32.08, except that if the condemning authority is a housing authority organized under ss. 66.1201 to 66.1211, a redevelopment authority organized under s. 66.1333 or a community development authority organized under s. 66.1335, the appeals may be initiated by filing with the condemning authority a letter requesting that the issue of the amount of the compensation be determined by the condemnation commission. The condemning authority shall, upon receipt of the letter, apply to the judge of the circuit court for the county wherein the property is located for assignment to a commission of county condemnation commissioners as provided in s. 32.08. This application shall contain a description of the property condemned and the names and last-known addresses of all parties in interest but shall not disclose the amount of the jurisdictional offer nor the amount of the basic award. Violation of this prohibition shall nullify the application. Notice of the application shall be given to the clerk of the court and to all other persons other than the applicant who were parties to the award. The notice may be given by certified mail or personal service. Upon proof of the service the judge shall forthwith make assignment. Where one party in interest has appealed from the award, no other party in interest who has been served with a notice of the appeal may take a separate appeal, but may join in the appeal by serving notice upon the condemnor and the appellant of the party's election to do so. The notice shall be given by certified mail or personal service within 10 days after receipt of notice of the appeal and shall be filed with the clerk of the court. Upon failure to give and file the notice all other parties of interest shall be deemed not to have appealed. The result of the appeal shall not affect parties who have not joined in the appeal as provided in this paragraph. In cases involving more than one party in interest with a right to appeal, the first of the parties filing an appeal under this subsection or under sub. (11) shall determine whether the appeal shall be under this subsection or under sub. (11). No party in interest may file an appeal under this subsection if another party in interest in the same lands has filed a prior appeal complying with the requirements of sub. (11). Thereafter the procedure shall be as prescribed in s. 32.08. In cases involving multiple ownership or interests in lands taken the following rules shall also apply:
1. Where all parties having an interest in the property taken do not join in an appeal, such fact shall not change the requirement that a finding of fair market value of the entire property taken and damages, if any, to the entire property taken, shall be made in determining compensation. Determination of the separate interests of parties having an interest in property taken shall, in cases of dispute, be resolved by a separate partition action as set forth herein.
 2. In cases where the amount of the award appealed from is increased on appeal, such amount shall be paid by the condemnor making tender of the amount to one of the appellant owners or appellant parties of interest in the same manner governing the tender of a basic award. In the event that a determination on appeal reduces the amount of the appealed award, those parties who joined in the appeal shall be liable, jointly and severally, to the condemning authority.
 3. When the owners or parties having an interest in land taken cannot agree on the division of an award, any of such owners or parties of interest may petition the circuit court for the county wherein the property is located for partition of the award moneys as provided in s. 820.01. When the tender of an award is refused, the condemning authority may pay the award to the clerk of the circuit court for the county wherein the property is located and no interest shall accrue against the condemning authority for moneys so paid.
- (b) If the commission's award exceeds the basic award the owner shall recover the excess plus interest thereon until payment from the date of taking less a period which is 14 days after the date of filing the commission's award. If the commission's award is less than the basic award, the condemnor shall recover the difference with interest until payment from the date of taking.
- (c) All sums due under this subsection shall be paid within 70 days after date of filing of the commission's award unless within such time an appeal is taken to the circuit court. In the event such appeal is later dismissed before trial such payment shall be made within 60 days after the dismissal date.
- (d) In the event the award of the county condemnation commissioners is lower than the basic award and tender of the basic award has been accepted by an owner, the condemnor shall have a lien against such owner for the amount of the difference. The lien shall give the name and address of the owner or owners, refer to the basic award and the award on appeal and state the difference in amounts. The lien may be recorded in the office of the register of deeds and when so recorded shall attach to all property of the owner presently owned or subsequently acquired in any county where such lien is recorded. Such lien shall remain in force with interest until satisfied or until it is set aside by a judgment of the circuit court in an action pursuant to sub. (10).

(10) APPEAL FROM COMMISSION'S AWARD TO CIRCUIT COURT.

- (a) Within 60 days after the date of filing of the commission's award, any party to the proceeding before the commission may appeal to the circuit court of the county wherein the property is located. Notice of such appeal shall be given to the clerk of the circuit court and to all persons other than the appellant who were parties to the proceeding before the commissioners. Notice of appeal may be given by certified mail or by personal service. The clerk shall thereupon enter the appeal as an action pending in said court with the condemnee as plaintiff and the condemnor as defendant. It shall thereupon proceed as an action in said court subject to all the provisions of law relating to actions brought therein and shall have precedence over all actions not then on trial. The sole issues to be tried shall be questions of title, if any, under ss. 32.11 and 32.12 and the amount of just compensation to be paid by condemnor. It shall be tried by jury unless waived by both plaintiff and defendant. Neither the amount of the jurisdictional offer, the basic award, nor the award made by the commission shall be disclosed to the jury during such trial.
- (b) The court shall enter judgment for the amount found to be due after giving effect to any amount paid by reason of a prior award. The judgment shall include legal interest on the amount so found due from the date of taking if judgment is for the condemnor, and from 14 days after the date of taking if judgment is for the condemnee.
- (c) All moneys due under this subsection shall be paid within 60 days after entry of judgment unless within such period an appeal is taken by any party to the court of appeals.

(11) WAIVER OF HEARING BEFORE COMMISSION; APPEAL TO CIRCUIT COURT AND JURY. The owner of any interest in the property condemned named in the basic award may elect to waive the appeal procedure specified in sub. (9) and instead, within 2 years after the date of taking, appeal to the circuit court of the county wherein the property is located. The notice of appeal shall be served as provided in sub. (9) (a). Filing of the notice of appeal shall constitute such waiver. The clerk shall thereupon enter the appeal as an action pending in said court with the condemnee as plaintiff and the condemnor as defendant. It shall proceed as an action in said court subject to all the provisions of law relating to actions originally brought therein and shall have precedence over all other actions not then on trial. The sole issues to be tried shall be questions of title, if any, under ss. 32.11 and 32.12 and the amount of just compensation to be paid by condemnor. It shall be tried by jury unless waived by both plaintiff and defendant. The amount of the jurisdictional offer or basic award shall not be disclosed to the jury during such trial. Where one party in interest has appealed from the award, no other party in interest who has been served with notice of such appeal may take a separate appeal but may join in the appeal by serving notice upon the condemnor and the appellant of that party's election to do so. Such notice shall be given by certified mail or personal service within 10 days after receipt of notice of the appeal and shall be filed with the clerk of court. Upon failure to give such notice such parties shall be deemed not to have appealed. The appeal shall not affect parties who have not joined in the appeal as herein provided. In cases involving more than one party in interest with a right to appeal, the first of such parties filing an appeal under sub. (9) or under this subsection shall determine whether such appeal shall be under sub. (9) or directly to the circuit court as here provided. No party in interest may file an appeal under this subsection if another party in interest in the same lands has filed a prior appeal complying with the requirements of sub. (9). In cases involving multiple ownership or interests in lands taken the provisions of sub. (9) (a) 1., 2. and 3. shall govern.

- (a) If the jury verdict as approved by the court does not exceed the basic award, the condemnor shall have judgment against the appellant for the difference between the jury verdict and the amount of the basic award, plus interest on the amount of such difference from the date of taking.
- (b) If the jury verdict as approved by the court exceeds the basic award, the appellant shall have judgment for the amount of such excess plus legal interest thereon to date of payment in full from that date which is 14 days after the date of taking.
- (c) All moneys payable under this subsection shall be paid within 60 days after entry of judgment unless within such period an appeal is taken to the court of appeals.

(12) EFFECT OF DETERMINATION OF COMPENSATION BY THE COURT WHERE JURY WAIVED. If the action is tried by the court upon waiver of a jury the determination of the amount of damages by the court shall be considered in lieu of the words "jury verdict as approved by the court" where such language occurs in this section.

History: 1971 c. 244, 287, 307; 1973 c. 244; Sup. Ct. Order, 67 Wis. 2d 585, 773 (1975); 1975 c. 218, 311, 410, 421; 1977 c. 29, 203, 338; 1977 c. 418 ss. 259, 924 (8m); 1977 c. 438, 440, 447, 449; 1979 c. 310; 1981 c. 282 s. 47; 1981 c. 390 s. 252; 1983 a. 27; 1983 a. 219 ss. 3, 46; 1983 a. 236 s. 13; 1983 a. 249; 1985 a. 29 s. 3200 (51); 1985 a. 135; 1987 a. 378; 1989 a. 31, 89; 1991 a. 32, 39, 316; 1993 a. 246, 263, 301, 453, 491; 1995 a. 417; 1997 a. 184, 282; 1999 a. 32, 65; 1999 a. 150 s. 672; 1999 a. 186; 2003 a. 214; 2005 a. 335, 387; 2009 a. 28, 173; 2011 a. 32; 2013 a. 168 s. 21; 2015 a. 196.

Note: 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.

If a notice of appeal from a condemnation award is not served on the condemnor, the appeal is not perfected. In making an assignment to condemnation commissioners, a judge is acting in an administrative capacity. State ex rel. Milwaukee County Expressway Commission v. Spenner, 51 Wis. 2d 138, 186 N.W.2d 298 (1971).

When the plaintiffs sold 2 parcels of land but reserved a strip between them for street purposes and the state then condemned the strip for a street, the taking was total and no special benefits to the land already sold could be considered. *Renk v. State*, 52 Wis. 2d 539, 191 N.W.2d 4 (1971).

When the record owner of property is deceased, the jurisdictional offer may properly be served on the heirs. Any objection may be raised only by action under sub. (5). A motion to quash the proceeding is not sufficient. *Area Board of Vocational, Technical & Adult Education District #2 v. Saltz*, 57 Wis. 2d 524, 204 N.W.2d 909 (1973).

Sub. (11) (c) does not govern the time within which an appeal may be taken, but rather sets forth the time within which a party seeking to withhold payment pending the outcome of the appeal must file its appeal. *Weiland v. DOT*, 62 Wis. 2d 456, 215 N.W.2d 455 (1974).

The sub. (10) (a) requirement of service of a notice of appeal by personal service or by certified mail is not met by service through regular mail. *Big Valley Farms, Inc. v. Public Service Corp.* 66 Wis. 2d 620, 225 N.W.2d 488 (1975).

Scale drawings of a proposed sewer line as it traversed the condemnee's property was sufficient to comply with sub. (1). *Ingalls v. Village of Walworth*, 66 Wis. 2d 773, 226 N.W.2d 201 (1975).

A condemnor appealing under sub. (10) has no right to abandon the appeal over the condemnee's objection if the time for the condemnee to appeal has expired. *Huth v. Public Service Corp.* 82 Wis. 2d 102, 260 N.W.2d 676 (1978).

The valuation of a financially troubled mass transit public utility in a condemnation take-over by a governmental unit is discussed. Sub. (11) (b) requires the payment of continuous simple interest at the legal rate of 5 percent from 14 days after the date of the taking until the date of payment. *Milwaukee & Suburban Transport Corp. v. Milwaukee County*, 82 Wis. 2d 420, 263 N.W.2d 503 (1978).

If an action under sub. (5) is untimely, a court must, on its own motion, dismiss for lack of subject-matter jurisdiction. *Achtor v. Pewaukee Lake Sanitary District* 88 Wis. 2d 658, 277 N.W.2d 778 (1979).

A court had no jurisdiction over a party to an appeal when service under sub. (10) (a) was by first class mail. *519 Corp. v. DOT*, 92 Wis. 2d 276, 284 N.W.2d 643 (1979).

Sales of components comparable to components of a unitary economic entity were admissible to prove the value of the entity. Income evidence was properly excluded. *Leathem Smith Lodge, Inc. v. State*, 94 Wis. 2d 406, 288 N.W.2d 808 (1980).

In the absence of special circumstances, giving notice of "appeal" under sub. (10) (a) to a party's attorney was not sufficient notice to the party. Time computations under sub. (10) (a) and s. 32.06 (10) are controlled by s. 801.15 (1), not s. 990.001 (4). In the Matter of *Wisconsin Electric Power Co.* 110 Wis. 2d 649, 329 N.W.2d 186 (1983).

The market value of a unique property that cannot be sold for near its value to its owner may be determined by the cost approach; replacement cost minus depreciation. *Milwaukee Rescue Mission v. Milwaukee Redevelopment Authority*, 161 Wis. 2d 472, 468 N.W.2d 663 (1991).

In a review under sub. (11), the jury was not limited to the ultimate opinion of expert appraisers in setting value through the cost approach but was entitled to consider a contractor's testimony of replacement cost. *Milwaukee Rescue Mission v. Milwaukee Redevelopment Authority*, 161 Wis. 2d 472, 468 N.W.2d 663 (1991).

Service of an appeal under sub. (9) must be made within the time prescribed under s. 801.02 (1). *City of LaCrosse v. Shiftar Bros.* 162 Wis. 2d 556, 469 N.W.2d 915 (Ct. App. 1991).

One of the conditions precedent for the issuance to the condemnor of a writ of assistance under sub. (8) is that the displaced person must have comparable replacement property made available to the extent required by ss. 32.19 to 32.27. No substantive right is created by sub. (8). *City of Racine v. Bassinger*, 163 Wis. 2d 1029, 473 N.W.2d 526 (Ct. App. 1991).

The removal, in eminent domain proceedings, of billboards not in conformity with s. 84.30 is subject to the just compensation provisions of s. 84.30 (6). *Vivid, Inc. v. Fiedler*, 182 Wis. 2d 71, 512 N.W.2d 771 (1994).

A purchase agreement under sub. (2a) is subject to the provisions of ch. 32; failure to refer to the provisions of ch. 32 is not a waiver. Sub. (11) (a) applies to all awards including negotiated awards. *Dorschner v. DOT*, 183 Wis. 2d 236, 515 N.W.2d 311 (Ct. App. 1994).

Comparable sales occurring after the taking may be considered by a court, but may be found inadmissible as too remote. Postjudgment interest under sub. (10) (b) is determined under s. 815.05 (8) while interest under sub. (11) (b) is at the statutory rate. *Calaway v. Brown County*, 202 Wis. 2d 736, 553 N.W.2d 809 (Ct. App. 1996), 95-2337.

After the DOT commences condemnation proceedings under this section, sovereign immunity is fully waived. The question of whether the cost of the condemnee's appraisal was reasonable and, therefore, subject to payment by the DOT under sub. (2) (b) is not for the DOT to unilaterally determine; it is a question of fact for the court. *Miesen v. DOT*, 226 Wis. 2d 298, 594 N.W.2d 821 (Ct. App. 1999), 98-3093.

Service on the state through the attorney general, rather than the department of transportation, was sufficient service under sub. (9). *DOT v. Peterson*, 226 Wis. 2d 623, 594 N.W.2d 765 (1999), 97-2718.

When through inadvertent error the award of damages was attached to the notice of application under sub. (9), the award was not a part of the application, and it was error to declare the application a nullity and to withdraw the

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assignment of the application from the county condemnation committee. *Schoenhofen v. DOT*, 231 Wis. 2d 508, 605 N.W.2d 249 (Ct. App. 1999), 99-0629.

Filing of an award is complete, and the 60-day appeal period under sub. (10) (a) begins to run, when the commission has filed its award with the circuit court clerk and the clerk has mailed and recorded the award under s. 32.08 (6) (b). *Dairyland Fuels, Inc. v. State*, 2000 WI App 129, 237 Wis. 2d 467, 614 N.W.2d 829, 99-1296.

Consistent with *Peterson*, service on the state through the attorney general, rather than the department of transportation, was sufficient service under sub. (10). *Dairyland Fuels, Inc. v. State*, 2000 WI App 129, 237 Wis. 2d 467, 614 N.W.2d 829, 99-1296.

Taking jurisprudence does not divide a single parcel into discrete segments and attempt to determine whether rights in a given part have been entirely abrogated but instead focuses on the extent of the interference with rights in the parcel as a whole. *R.W. Docks & Slips v. State*, 2001 WI 73, 244 Wis. 2d 497, 628 N.W.2d 781, 99-2904.

Section 893.80 (1), 2001 Stats., [now s. 893.80 (1d)] does not require that the making of a relocation order be the first step in the condemnation process. *Danielson v. City of Sun Prairie*, 2000 WI App 227, 239 Wis. 2d 178, 619 N.W.2d 108, 99-2719.

"Acceptance and retention of any compensation" under sub. (3) (h) requires that the landowner negotiate the check and retain the check proceeds before the landowner can be barred from contesting the condemnation. Additionally, a landowner who negotiates the check but returns the proceeds to the DOT before filing suit may pursue an action contesting the condemnation. *TJF Nominee Trust v. DOT*, 2001 WI App 116, 244 Wis. 2d 242, 629 N.W.2d 57, 00-2099.

Sub. (8) does not mean that a court may not grant a condemnor possession of condemned premises until a replacement property deemed acceptable by the condemnee is procured, regardless of its acquisition costs, all of which the condemnor must bear or tender, nor does it mean that the condemnee will never have to vacate the condemned property if a replacement property acceptable to the condemnee cannot be acquired for an amount not exceeding the award of compensation plus the maximum relocation benefits to which the condemnee is entitled. *Dotty Dumpling's Dowry, Ltd. v. Community Development Authority of the City of Madison*, 2002 WI App 200, 257 Wis. 2d 377, 651 N.W.2d 1, 01-1913.

A condemnor may obtain a writ of assistance after it has provided the relocation assistance to which a displaced person is statutorily entitled. *Dotty Dumpling's Dowry, Ltd. v. Community Development Authority of the City of Madison*, 2002 WI App 200, 257 Wis. 2d 377, 651 N.W.2d 1, 01-1913.

When the condemnee's counsel instructed the department to not contact the condemnee directly regarding the condemnation, the instruction constituted a special circumstance that excused the department from having to serve the jurisdictional offer on the condemnee personally. *Morris v. DOT*, 2002 WI App 283, 258 Wis. 2d 816, 654 N.W.2d 16, 02-0288.

Income evidence is generally disfavored as a method of measuring property values. It is within the trial court's discretion to admit or exclude this evidence. *National Auto Truckstops v. DOT*, 2003 WI 95, 263 Wis. 2d 649, 665 N.W.2d 198, 02-1384.

Sub. (1) does not apply to appeals of condemnation awards under sub. (11). *Nesbitt Farms, LLC v. City of Madison*, 2003 WI App 122, 265 Wis. 2d 422, 665 N.W.2d 379, 02-2212.

A business that owned a parking lot used for customer and employee parking was an occupant of the lot and a displaced person under s. 32.19 (2) (e) eligible for relocation benefits under sub. (8). *City of Milwaukee v. Roadster LLC*, 2003 WI App 131, 265 Wis. 2d 518, 666 N.W.2d 524, 02-3102.

Sub. (11) does not require service of an authenticated copy of a notice of appeal. To cut off the landowners' right to a review when they complied with the literal language of the service requirement in sub. (11) would be extraordinarily harsh. *The Landings LLC v. The City of Waupaca*, 2005 WI App 181, 287 Wis. 2d 120, 703 N.W.2d 689, 04-1301.

The sale price of a surrounding property voluntarily sold to the condemnation authority is not admissible in determining the fair market value of a property taken by formal condemnation proceedings. That formal condemnation had not been commenced at the time of the sale did not make the evidence admissible when the condemning authority's intent was known at the time of the sale. *Pinczkowski v. Milwaukee County*, 2005 WI 161, 286 Wis. 2d 339, 706 N.W.2d 642, 03-1732.

In certain situations, fair market value may be proved using offers to purchase, but only when they are made with actual intent and pursuant to an actual effort to purchase. In order to qualify as probative evidence, there must be a preliminary foundation of the bona fides of the offer, the financial responsibility of the offeror, and the offeror's qualifications to know the value of the property. *Pinczkowski v. Milwaukee County*, 2005 WI 161, 286 Wis. 2d 339, 706 N.W.2d 642, 03-1732.

Section 801.02 (1) serves to extend by 90 days the 2-year deadline in sub. (9) (a) for the filing of the proof of service. When the original assignment of an appeal to the condemnation commission was premature because the proof of service had not yet been filed, but the defect was corrected within the extended time limits, there was no impediment to the issuance of a fresh assignment of the appeal. *Community Development Authority v. Racine County Condemnation Commission*, 2006 WI App 51, 289 Wis. 2d 613, 712 N.W.2d 380, 05-1370.

Complete condemnation of a property terminates a lease attached to that property, but the parties to a lease may contract for their rights and obligations in the event of a condemnation. Condemnation does not necessarily preclude a lessor from seeking a remedy against a lessee in a breach of contract action. Wisconsin Mall Properties, LLC v. Younkers, Inc. 2006 WI 95, 293 Wis. 2d 573, 717 N.W.2d 703, 05-0323.

In satisfying its statutory obligation to make available a comparable replacement property under sub. (8) (c) and prior to being entitled to a writ of assistance, the condemnor must identify one or more properties that meet the parameters of s. 32.19 (2) (c) to serve as a comparable replacement business. A condemnor has no open-ended obligation to provide a replacement property that is acceptable to the business being relocated. City of Janesville v. CC Midwest, Inc. 2007 WI 93, 302 Wis. 2d 599, 734 N.W.2d 428, 04-0267.

When read in conjunction with sub. (7) (d), s. 59.40 (3) (c) empowers a circuit judge not only to veto the clerk's authority to invest a condemnation award but also to direct the clerk to transfer the award from the clerk's control into a private money market account for the benefit of the persons named in the award or to otherwise invest the funds for the benefit of those persons. HSBC Realty Credit Corporation v. City of Glendale, 2007 WI 94, 303 Wis. 2d 1, 734 N.W.2d 874, 05-1042.

Although sub. (5) allows owners to bring a wide range of cases, the necessity of a condemnation will be upheld absent a showing of fraud, bad faith, or a gross abuse of discretion. A reviewing court may find a gross abuse of discretion where there is utter disregard for the necessity of use of the land or when the land is taken for an illegal purpose. Generally, an allegedly unsafe road design does not constitute an utter disregard for the necessity of the use of the land. Kauer v. Department of Transportation, 2010 WI App 139, 329 Wis. 2d 713, 793 N.W.2d 99, 09-1615.

Sub. (11) makes clear that a party in interest does not lose any rights by not joining in another party's appeal of an award. Sub. (9) (a) 1. makes clear that the unit rule applies in cases in which all parties in interest have not joined in an appeal and instructs that the separate property interests shall, in cases of dispute, be resolved by a separate partition action. A party does not lose its right to bring a claim for partition by accepting payment from the DOT for relocation expenses, which are distinct from the DOT's award for the fair market value of the property taken. The Lamar Company, LLC v. Country Side Restaurant, Inc. 2012 WI 46, 340 Wis. 2d 335, 814 N.W.2d 159, 10-2023.

Statutory restrictions on the exercise of eminent domain in Wisconsin: Dual requirements of prior negotiation and provision of negotiating materials. 63 MLR 489 (1980).

Towards success in eminent domain litigation. Southwick, 1973 WBB No. 5.

New development in law of eminent domain, condemnation and relocation. Thiel. WBB June, 1979.

32.06 Condemnation procedure in other than transportation matters. The procedure in condemnation in all matters except acquisitions under s. 32.05 or 32.22, acquisitions under subch. II, acquisitions under subch. II of ch. 157, and acquisitions under ch. 197, shall be as follows:

(1) DETERMINATION OF NECESSITY OF TAKING. The necessity of the taking shall be determined as provided in s. 32.07.

(2) APPRAISAL.

(a) The condemnor shall cause at least one (or more in the condemnor's discretion) appraisal to be made of the property proposed to be acquired. In making any such appraisal the appraiser shall confer with the owner or one of the owners, or the personal representative of the owner or one of the owners, if reasonably possible.

(b) The condemnor shall provide the owner with a full narrative appraisal upon which the jurisdictional offer is based and a copy of any appraisal made under par. **(a)** and at the same time shall inform the owner of his or her right to obtain an appraisal under this paragraph. The owner may obtain an appraisal by a qualified appraiser of all property proposed to be acquired, and submit the reasonable costs of the appraisal to the condemnor for payment. The owner shall submit a full narrative appraisal to the condemnor within 60 days after the owner receives the condemnor's appraisal. If the owner does not accept a negotiated offer under sub. **(2a)** or the jurisdictional offer under sub. **(3)**, the owner may use an appraisal prepared under this paragraph in any subsequent appeal.

(2a) AGREED PRICE. Before making the jurisdictional offer under sub. **(3)** the condemnor shall attempt to negotiate personally with the owner or one of the owners or his or her representative of the property sought to be taken for the purchase of the same. In such negotiation the condemnor shall consider the owner's appraisal under sub. **(2) (b)** and may contract to pay the items of compensation enumerated in ss. 32.09 and 32.19 where shown to exist. Before attempting to negotiate under this subsection, the condemnor shall provide the owner or his or her representative with copies of applicable pamphlets prepared under s. 32.26 (6). When negotiating under this subsection, the condemnor shall provide the owner or his or her representative with the names of at least 10 neighboring landowners to whom offers are being made, or a list of all offerees if less than 10 owners are affected, together with a map showing all property affected by the project. Upon request by an owner or his or her representative, the condemnor shall provide the name of the owner of any other property which may be taken for the project. The owner or his or her representative shall also have the right, upon request, to examine any maps in the possession of the condemnor showing property affected by the project. The owner or his or her representative may obtain copies of such maps by tendering the reasonable and necessary costs of preparing copies. The condemnor shall record any conveyance by or on behalf of the owner of the property to the condemnor executed as a result of negotiations under this subsection

with the register of deeds of the county in which the property is located. The condemnor shall also record a certificate of compensation stating the identity of all persons having an interest of record in the property immediately prior to its conveyance, the legal description of the property, the nature of the interest acquired and the compensation for such acquisition. The condemnor shall serve upon or mail by certified mail to all persons named therein a copy of the statement and a notice of the right to appeal the amount of compensation under this subsection. Any person named in the certificate may, within 6 months after the date of its recording, appeal from the amount of compensation therein stated by filing a petition with the judge of the circuit court of the county in which the property is located for proceedings to determine the amount of just compensation. Notice of such petition shall be given to all persons having an interest of record in such property. The judge shall forthwith assign the matter to the chairperson of the county condemnation commissioners for hearing under sub. (8). The procedures prescribed under subs. (9) (a) and (b), (10) and (12) and chs. 808 and 809 shall govern such appeals. The date the conveyance is recorded shall be treated as the date of taking and the date of evaluation.

- (3) **MAKING JURISDICTIONAL OFFER.** The condemnor shall make and serve the jurisdictional offer and notice in the form (insofar as applicable) and manner of service provided in s. 32.05 (3) and (4), but lis pendens shall not be filed until date of petition under sub. (7). The offer shall state that if it is not accepted within 20 days, the condemnor may petition for a determination of just compensation by county condemnation commissioners and that either party may appeal from the award of the county condemnation commissioners to the circuit court within 60 days as provided in sub. (10).
- (3m) **UNECONOMIC REMNANT.**
- (a) In this subsection, "uneconomic remnant" means the property remaining after a partial taking of property, if the property remaining is of such size, shape, or condition as to be of little value or of substantially impaired economic viability.
 - (b) If acquisition of only part of a property would leave its owner with an uneconomic remnant, the condemnor shall offer to acquire the remnant concurrently and may acquire it by purchase or by condemnation if the owner consents.
- (4) **RIGHT OF MINORS AND INDIVIDUALS ADJUDICATED INCOMPETENT.** If any person having an ownership interest in the property proposed to be condemned is a minor or is adjudicated incompetent, a special guardian shall be appointed for the person pursuant to s. 32.05 (4).
- (5) **COURT ACTION TO CONTEST RIGHT OF CONDEMNATION.** When an owner desires to contest the right of the condemnor to condemn the property described in the jurisdictional offer for any reason other than that the amount of compensation offered is inadequate, such owner may within 40 days from the date of personal service of the jurisdictional offer or within 40 days from the date of postmark of the certified mail letter transmitting such offer, or within 40 days after date of publication of the jurisdictional offer as to persons for whom such publication was necessary and was made, commence an action in the circuit court of the county wherein the property is located, naming the condemnor as defendant. Such action shall be the only manner in which any issue other than the amount of just compensation or other than proceedings to perfect title under ss. 32.11 and 32.12 may be raised pertaining to the condemnation of the property described in the jurisdictional offer. The trial of the issues raised by the pleadings in such action shall be given precedence over all other actions in said court then on trial. If such action is not commenced within the time limited the owner or other person having any interest in the property shall be forever barred from raising any such objection in any other manner. The commencement of an action by an owner under this subsection shall not prevent a condemnor from filing the petition provided for in sub. (7) and proceeding thereon. Nothing in this subsection shall be construed to limit in any respect the right to determine the necessity of taking as conferred by s. 32.07 nor to prevent the condemnor from proceeding with condemnation during the pendency of the action to contest the right to condemn. This section shall not apply to any owner who had a right to bring a proceeding pursuant to s. 66.431 (7), 1959 stats., prior to its repeal by chapter 526, laws of 1961, effective on October 8, 1961, and, in lieu of this section, s. 66.431 (7), 1959 stats., as it existed prior to such effective date of repeal shall be the owner's exclusive remedy.
- (6) **ACCEPTANCE OF JURISDICTIONAL OFFER.** The owner has 20 days from the date of personal service of the jurisdictional offer or 20 days from the date of postmark of the certified mail letter transmitting such offer or 20 days from the date of filing the final judgment order or remittitur in the circuit court of the county in an action commenced under sub. (5), if the judgment permits the taking of the land, in which to accept the jurisdictional offer and deliver the same to the condemnor. If the offer is accepted, the transfer of title shall be accomplished within 60 days after acceptance including payment of the consideration stipulated in such offer unless such time is extended by mutual written consent of the condemnor and condemnee. If the jurisdictional offer is rejected in writing by all of the owners of record the condemnor may proceed to petition in condemnation forthwith. If the owner fails to convey the condemnor may proceed as hereinafter set forth.
- (7) **PETITION FOR CONDEMNATION PROCEEDINGS.** If the jurisdictional offer is not accepted within the periods limited in sub. (6) or the owner fails to consummate an acceptance as provided in sub. (6), the condemnor may present a verified petition to the circuit court for the county in which the property to be taken is located, for proceedings to determine the necessity of taking, where such determination is required, and the amount of just compensation. The

petition shall state that the jurisdictional offer required by sub. (3) has been made and rejected; that it is the intention of the condemnor in good faith to use the property or right therein for the specified purpose. It shall name the parties having an interest of record in the property as near as may be and shall name the parties who are minors, who are adjudicated incompetent, or whose location is unknown. The petition may not disclose the amount of the jurisdictional offer, and if it does so it is a nullity. The petition shall be filed with the clerk of the court. Notice of the petition shall be given as provided in s. 32.05 (4) to all persons having an interest of record in the property, including the special guardian appointed for minors or individuals adjudicated incompetent. A lis pendens shall be filed on the date of filing the petition. The date of filing the lis pendens is the "date of evaluation" of the property for the purpose of fixing just compensation, except that if the property is to be used in connection with the construction of a facility, as defined under s. 196.491 (1), the "date of evaluation" is the date that is 2 years prior to the date on which the certificate of public convenience and necessity is issued for the facility. The hearing on the petition may not be earlier than 20 days after the date of its filing unless the petitioner acquired possession of the land under s. 32.12 (1) in which event this hearing is not necessary. If the petitioner is entitled to condemn the property or any portion of it, the judge immediately shall assign the matter to the chairperson of the county condemnation commissioners for hearing under s. 32.08. An order by the judge determining that the petitioner does not have the right to condemn or refusing to assign the matter to the chairperson of the county condemnation commissioners may be appealed directly to the court of appeals.

- (8) **COMMISSION HEARING.** Thereafter the commission shall proceed in the manner and with the rights and duties as specified in s. 32.08 to hear the matter and make and file its award with the clerk of the circuit court, specifying therein the property or interests therein taken and the compensation allowed the owner, and the clerk shall give certified mail notice with return receipt requested of such filing, with a copy of the award to condemnor and owner.
- (9) **ABANDONMENT OF PROCEEDINGS; OR PAYMENT OF AWARD.**
- (a) Within 30 days after the date of filing of the commission's award, the condemnor shall petition the circuit court for the county wherein the property is situated, upon 5 days' notice by certified mail to the owner, for leave to abandon the petition for taking if the condemnor desires to abandon the proceeding. The circuit court shall grant the petition upon such terms as it deems just, and shall make a formal order discontinuing the proceeding which order shall be recorded in the judgment record of the court after the record of the commission's award. The order shall operate to divest any title of condemnor to the lands involved and to automatically discharge the lis pendens.
- (b) If condemnor does not elect to abandon the condemnation proceeding as provided in par. (a), it shall within 70 days after the date of filing of the commission's award, pay the amount of the award, plus legal interest from the date of taking but less delinquent tax liens, proportionately allocated as in division in redemption under ss. 74.51 and 75.01 when necessary and less prorated taxes of the year of taking, if any, likewise proportionately allocated when necessary, to the owner and take and file the owner's receipt therefor with the clerk of the circuit court, or at the option of the condemnor pay the same into the office of the clerk of the circuit court for the benefit of the parties having an interest of record on the date of evaluation in the property taken and give notice thereof by certified mail to such parties. If the condemnor pays the amount of said award within 14 days after the date of filing of the commission's award, no interest shall accrue. Title to the property taken shall vest in the condemnor upon the filing of such receipt or the making of such payment.
- (c)
1. In this paragraph, "condemnor" has the meaning given in s. 32.185.
 2. No person occupying real property may be required to move from a dwelling or move his or her business or farm without at least 90 days' written notice of the intended vacation date from the condemnor. The person shall have rent-free occupancy of the acquired property for a period of 30 days commencing with the next 1st or 15th day of the month after title vests in the condemnor, whichever is sooner. Any person occupying the property after the date that title vests in the condemnor is liable to the condemnor for all waste committed or allowed by the occupant on the lands condemned during the occupancy. The condemnor has the right to possession when the persons who occupied the acquired property vacate, or hold over beyond the vacation date established by the condemnor, whichever is sooner, except as provided under subd. 3. If the condemnor is denied the right of possession, the condemnor may, upon 48 hours' notice to the occupant, apply to the circuit court where the property is located for a writ of assistance to be put in possession. The circuit court shall grant the writ of assistance if all jurisdictional requirements have been complied with, if the award has been paid or tendered as required and if the condemnor has made a comparable replacement property available to the occupants, except as provided under subd. 3.
 3. The condemnor may not require the persons who occupied the premises on the date that title vested in the condemnor to vacate until a comparable replacement property is made available. This subdivision does not apply to any person who waives his or her right to receive relocation benefits or services under s. 32.197 or who is not a displaced person, as defined under s. 32.19 (2) (e), unless the acquired property is part of a program or project receiving federal financial assistance.

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(10) APPEAL TO CIRCUIT COURT. Within 60 days after the date of filing of the commission's award either condemnor or owner may appeal to the circuit court by giving notice of appeal to the opposite party and to the clerk of the circuit court as provided in s. 32.05 (10). The clerk shall thereupon enter the appeal as an action pending in said court with the condemnee as plaintiff and the condemnor as defendant. It shall thereupon proceed as an action in said court subject to all the provisions of law relating to actions brought therein, but the only issues to be tried shall be questions of title, if any, as provided by ss. 32.11 and 32.12 and the amount of just compensation to be paid by condemnor, and it shall have precedence over all other actions not then on trial. It shall be tried by jury unless waived by both plaintiff and defendant. The amount of the jurisdictional offer or of the commission's award shall not be disclosed to the jury during such trial.

- (a) If the jury verdict as approved by the court exceeds the commission's award, the owner shall have judgment increased by the amount of legal interest from the date title vests in condemnor to date of entry of judgment on the excess of the verdict over the compensation awarded by the commission.
- (b) If the jury verdict as approved by the court does not exceed the commission's award, the condemnor shall have judgment against the owner for the difference between the verdict and the amount of the commission's award, with legal interest on such difference from the date condemnor paid such award.
- (c) If the jury verdict as approved by the court exceeds the amount of the jurisdictional offer, the condemnor may within 40 days after filing of such verdict petition the court for leave to abandon the proceeding and thereafter sub. (9) (a) shall apply.
- (d) All judgments required to be paid shall be paid within 60 days after entry of judgment unless within this period appeal is taken to the court of appeals or unless condemnor has petitioned for and been granted an order abandoning the condemnation proceeding. Otherwise such judgment shall bear interest from the date of entry of judgment at the rate of 10 percent per year until payment.

(11) WITHDRAWAL OF COMPENSATION PAID INTO COURT; BOND. If either party appeals from the award of the commission, the owner shall not be entitled to receive the amount of compensation paid into court by condemnor unless the owner files with the clerk of the court a surety bond executed by a licensed corporate surety company in an amount equal to one-half of the commission's award, conditioned to pay to the condemnor, any sums together with interest and costs as allowed by the court, by which the award of the commission may be diminished.

(12) EFFECT OF DETERMINATION OF COMPENSATION BY THE COURT WHERE JURY WAIVED. If the action is tried by the court upon waiver of a jury, the determination of the amount of the damages by the court shall be considered in lieu of the words "jury verdict as approved by the court" where such language occurs in this section.

History: 1973 c. 244; 1975 c. 68, 410, 422; 1977 c. 29; 1977 c. 187 s. 134; 1977 c. 438, 440, 447, 449; 1979 c. 37; 1979 c. 110 s. 60 (13); 1981 c. 390; 1983 a. 27; 1983 a. 219 ss. 4, 46; 1983 a. 236 s. 13; 1983 a. 302s. 8; 1985 a. 316 s. 25; 1987 a. 378; 1991 a. 39, 316; 1993 a. 184; 1997 a. 204; 2005 a. 387; 2013 a. 168 s. 21; 2015 a. 196.

There was no failure to negotiate when the condemnor made an offer based on a competent appraisal offer after the condemnee had already rejected an offer that was higher and had refused to make a counteroffer. Herro v. Natural Resources Board, 53 Wis. 2d 157, 192 N.W.2d 104 (1971).

A news report of the amount of the jurisdictional offer did not invalidate the proceedings when the record did not show that the condemnation commission knew of it or was influenced by it. Herro v. Natural Resources Board, 53 Wis. 2d 157, 192 N.W.2d 104 (1971).

Costs may not be recovered if condemnation proceedings are stopped by court order. Martineau v. State Conservation Commission, 54 Wis. 2d 76, 194 N.W.2d 664 (1972).

The issues of title and navigability were entirely collateral to the amount of compensation. When the condemnation proceeding was terminated, the issues collateral thereto were likewise dismissed. Martineau v. State Conservation Commission, 66 Wis. 2d 439, 225 N.W.2d 613 (1975).

An owner who under sub. (5) contests a condemnation on grounds that achievement of the stated public purpose is too remote or contingent must demonstrate a lack of reasonable assurance that the intended use will come to pass. Falkner v. Northern State Power Co. 75 Wis. 2d 116, 248 N.W.2d 885 (1977).

A condemnor did not exercise condemnation powers when it made a jurisdictional offer. A lessee's share of a condemnation award is discussed. Maxey v. Redevelopment Authority of Racine, 94 Wis. 2d 375, 288 N.W.2d 794 (1980).

Time computations under ss. 32.05 (10) (a) and 32.06 (10) are controlled by s. 801.15 (1), not s. 990.001 (4). Matter of Wisconsin Electric Power Co. 110 Wis. 2d 649, 329 N.W.2d 186 (1983).

Notice of appeal under sub. (10) and the unit rule are discussed. Green Bay Broadcasting v. Green Bay Authority, 116 Wis. 2d 1, 342 N.W.2d 27 (1983); reconsidered 119 Wis. 2d 251, 349 N.W.2d 478 (1984).

A condemnee may, under s. 805.04, voluntarily dismiss an appeal to a circuit court without court order. Dickie v. City of Tomah, 160 Wis. 2d 20, 465 N.W.2d 262 (Ct. App. 1990).

Sub. (2a) does not require the condemnor to file the certificate of compensation at the same time that it records the conveyance. Kurylo v. Wisconsin Electric Power Company, 2000 WI App 102, 235 Wis. 2d 166, 612 N.W.2d 380, 99-1342.

The existence of an uneconomic remnant is not an issue of just compensation for a jury to decide under sub. (10). The proper forum in which to declare an uneconomic remnant and to compel the condemnor to include compensation for the remnant in its offer is in an action under sub. (5). Sub. (3m) requires the condemnor to make a concurrent offer to purchase or condemn an uneconomic remnant. A property owner who is left with a substantially diminished parcel of unencumbered property must have the right to contest a condemnation that does not acknowledge an uneconomic remnant. The only statute that provides the property owner with a forum for asserting such a right is sub. (5). Waller v. American Transmission Co., LLC, 2009 WI App 172, 322 Wis. 2d 255, 776 N.W.2d 612, 09-0411.

A clerk of circuit court must comply strictly with the notice requirements in sub. (8) in order to commence the 60-day time limit for an appeal under sub. (10). Dahir Lands, LLC v. American Transmission Company LLC, 2010 WI App 167, 330 Wis. 2d 556, 794 N.W.2d 784, 09-2583.

Whether a property is an uneconomic remnant under sub. (3m) is not just a question of value. A circuit court must also determine whether the property is of substantially impaired economic viability. A court must first determine whether a property is an uneconomic remnant before moving on to the just compensation issue. Waller v. American Transmission Co., LLC, 2011 WI App 91, 334 Wis. 2d 740, 799 N.W.2d 487, 10-1447.

Sub. (5) sets out the proper and exclusive way for a property owner to raise a claim that the owner will be left with an uneconomic remnant after a partial taking by the condemnor. An uneconomic remnant claim should be brought under sub. (5) because the condemnor has failed to include an offer to acquire any uneconomic remnant in the condemnor's jurisdictional offer. The inclusion of an offer to acquire an uneconomic remnant acknowledges the existence of the uneconomic remnant. The exclusion of such an offer indicates that the condemnor disputes the existence of an uneconomic remnant. Waller v. American Transmission Company, LLC, 2013 WI 77, 350 Wis. 2d 242, 833 N.W.2d 764, 12-0805.

A jury verdict need not be set aside on the ground that the before- and after-taking values arrived at by the jury exceed the values offered by the parties' experts. The jury is permitted to accept or reject figures experts use in determining the value of condemned property and to make adjustments to those figures based on its own view of the evidence. Geise v. American Transmission Co. 2014 WI App 72, 355 Wis. 2d 454, 853 N.W.2d 564, 11-0482.

Under sub. (10) (d), a judgment that is appealed within 60 days after entry of judgment does not have to be paid within that time period. The judgment nonetheless bears interest from the date of entry of judgment if it is not paid within that time period, assuming the judgment, or some portion of it, is upheld on appeal. Geise v. American Transmission Co. 2014 WI App 72, 355 Wis. 2d 454, 853 N.W.2d 564, 11-0482.

Condemnation of a lessor's property for purchase by lessees in order to reduce concentration of land ownership was a constitutional "public use." Hawaii Housing Authority v. Midkiff, 467 U.S. 229 (1984).

Statutory restrictions on the exercise of eminent domain in Wisconsin: Dual requirements of prior negotiation and provision of negotiating materials. 63 MLR 489 (1980).

Picking up the Remnants Post-Waller: Properly Limiting the Scope of Uneconomic Remnant Claims in Wisconsin Eminent Domain Proceedings. Magnuson. 98 MLR 1425 (2015).

New development in law of eminent domain, condemnation and relocation. Thiel. WBB June, 1979.

32.07 Necessity, determination of. The necessity of the taking shall be determined as follows:

- (1) A certificate of public convenience and necessity issued under s. 196.491 (3) shall constitute the determination of the necessity of the taking for any lands or interests described in the certificate.
- (2) The petitioner shall determine necessity if application is by the state or any commission, department, board or other branch of state government or by a city, village, town, county, school district, board, commission, public officer, commission created by contract under s. 66.0301, joint local water authority under s. 66.0823, redevelopment authority created under s. 66.1333, local exposition district created under subch. II of ch. 229, local cultural arts district created under subch. V of ch. 229, housing authority created under ss. 66.1201 to 66.1211 or for the right-of-way of a railroad up to 100 feet in width, for a telegraph, telephone or other electric line, for the right-of-way for a gas pipeline, main or service or for easements for the construction of any elevated structure or subway for railroad purposes.
- (3) In all other cases, the judge shall determine the necessity.
- (4) The determination of the public service commission of the necessity of taking any undeveloped water power site made pursuant to s. 32.03 (3) shall be conclusive.

History: 1973 c. 305; 1975 c. 68; 1979 c. 175 s. 53; 1981 c. 346; 1983 a. 27; 1985 a. 187; 1993 a. 134, 263; 1997 a. 184, 204; 1999 a. 65; 1999 a. 150 s. 672; 2009 a. 28; 2011 a. 32.

A public utility need only show that the property sought to be condemned is reasonably necessary, reasonably requisite, and proper for the accomplishment of the desired public purpose. Falkner v. Northern States Power Co. 75 Wis. 2d 116, 248 N.W.2d 885 (1977).

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32.075 Use after condemnation.

- (1) In this section, "public utility" has the meaning given under s. 196.01 (5) and includes a telecommunications carrier, as defined in s. 196.01 (8m).
- (2) Whenever the public service commission has made a finding, either with or without hearing, that it is reasonably certain it will be necessary for a public utility to acquire lands or interests therein for the purpose of the conveyance of telegraph and telephone messages, or for the production, transformation or transmission of electric energy for the public, or for right-of-way for a gas pipeline, main or service, and that such public utility is unlikely to commence construction of its facilities upon such lands within 2 years of such finding, such public utility may file its petition and proceed with condemnation as prescribed in s. 32.06 and no further determination of necessity shall be required. When the lands to be condemned under this subsection are needed for rights-of-way for telegraph, telephone or electric lines or pipelines, it shall not be necessary that the particular parcel or parcels of land be described in the commission's finding, but it shall be sufficient that such finding described the end points of any such lines and the general direction or course of the lines between the end points, but when the public utility files its petition under s. 32.06 it shall specifically describe therein the lands to be acquired. Notwithstanding the completion of the condemnation proceedings and the payment of the award made under this subchapter, the owner may continue to use the land until such time as the public utility constructs its facilities thereon.
- (3)
 - (a) The public service commission shall notify by certified mail any person whose ownership interest in the property was terminated by condemnation by a public utility under this chapter if all of the following occur:
 1. The public utility's legal title was obtained after May 1, 1984, solely by a condemnation award under s. 32.06.
 2. The public service commission revokes a certificate of public convenience and necessity required under s. 196.491 (3) (a) 1. or finds that a state or federal agency has denied or revoked any license, permit, certificate or other requirement on which completion of the public utility's project for which the land was condemned is contingent or that the public utility has for any other reason abandoned a project for which the condemned property was acquired.
 3. The public utility within 365 days after issuance of the public service commission denial, revocation or finding under subd. 2. has not proposed, by application to the commission, an alternative use for the property or the public service commission has denied an alternative use proposed by the public utility.
 - (b) If the person is a minor or an individual adjudicated incompetent, the notice under par. (a) shall be to the special guardian appointed for him or her. The notice under par. (a) shall state that the person, or, if the person is deceased, the person's heirs, may petition the circuit court of the county in which the property is located, within 90 days after receipt of the notice, for an order to require the public utility to return the interest in the property to the petitioner. The circuit court shall grant the petition and shall make a formal order returning the petitioner's interest in the property. The order shall operate to divest any title of the public utility to the property subject to the petition and to automatically discharge any lis pendens filed in relation to the condemnation of the property.
 - (c) An order issued under par. (b) shall direct that:
 1. The public utility return the petitioner's ownership interest in the property.
 2. The public utility remove any lien or other encumbrance that may have accrued or been assessed since acquisition by the public utility.
 3. The petitioner pay to the public utility the fair market value of the property returned to the petitioner under the order, which fair market value shall be determined under a method prescribed by the court.
 4. The public utility pay its prorated share of any real estate or ad valorem taxes due on the date of the order.
 5. If requested by the petitioner, the public utility pay for all costs for return of property to a reasonable topographic configuration or the condition the property was in at the time the public utility first acquired the property, as established by the court and subject to applicable land use restrictions.
 6. The public utility remove from the property, at the option of the petitioner but at no expense or inconvenience to the petitioner, all buildings, equipment and other materials placed on the property by the public utility.
 - (d) In an order issued under par. (b), the court may award the petitioner court costs and reasonable attorney fees and may include in the order any other terms that it deems just and reasonable.

History: 1979 c. 110; 1983 a. 236 s. 12; 1983 a. 338, 538; 1993 a. 496; 1997 a. 204; 2005 a. 387.

32.08 Commissioner of condemnation.

- (1) The office of commissioner of condemnation is created. In counties having a population of less than 100,000 there shall be 6 commissioners; in counties having a population of 100,000 or more and less than 500,000 there shall be 9 commissioners; in counties having a population of 500,000 or more there shall be 12 commissioners. Each such

commissioner must be a resident of the county or of an adjoining county in the same judicial circuit prior to appointment and remain so during the term of office. Not more than one-third of such commissioners shall be attorneys at law, licensed for active practice in this state.

- (2) Such commissioners shall be appointed by the circuit judge or judges of the circuit court for such county and may be removed by said judge or judges at their pleasure. Where any county has more than one circuit judge, the affirmative vote of a majority of such judges shall be necessary to an appointment or a removal. All appointments and removals shall be filed with the clerk of the circuit court for the county. Each commissioner shall take and file the official oath. The first appointments after April 6, 1960 shall be made for staggered terms of 1, 2 and 3 years as fixed by the circuit judge. Thereafter all appointments shall be made for 3-year terms. Vacancies shall be filled for the remainder of the unexpired term.
- (3) The commissioners in each county shall annually elect one of their number as chairperson, and the chairperson shall select and notify the commissioners to serve on each commission of 3 required to sit in condemnation.
- (4) Commissioners shall receive no salary but shall be compensated for actual service at an hourly rate to be fixed by the county board of the county. Commissioners shall also receive mileage at a rate fixed by the county board for necessary and direct round trip travel from their homes to the place where the condemnation commission conducts its hearings. The chairperson of the county commission shall receive such reasonable sum, computed at the hourly rate as fixed by the county board, as shall be allowed by the circuit judge having jurisdiction over the hearing, for his or her administrative work in selecting and notifying the commissioners to serve in the condemnation hearing and his or her necessary out-of-pocket expenses in connection with the hearing. All such compensation and expenses shall be paid by the condemnor on order approved by the circuit judge.
- (5) If the petitioner under s. 32.06 is entitled to condemn the property or any portion of it or interest therein, the circuit judge having jurisdiction of the petition, or to whom an application for county commissioner of condemnation review is taken from a highway taking award, shall assign the matter to the chairperson of the county condemnation commissioners who shall within 7 days select 3 of the commissioners to serve as a commission to ascertain the compensation to be made for the taking of the property or rights in property sought to be condemned, fix the time and place of the hearing before the commission, which time shall not be less than 20 nor more than 30 days after the assignment date, and notify the parties in interest thereof. The judge's order of assignment shall be accompanied by a copy of the petition for condemnation. Notice shall be given to each interested person or, where the persons have appeared in the proceeding by an attorney then to the attorney, by certified mail with return receipt requested, postmarked at least 10 days prior to the date of hearing. If any party cannot be found and has not appeared in the proceedings, a class 3 notice shall be published, under ch. 985, in the community which the chairperson of the condemnation commission directs. Costs of notification shall be paid by the petitioner upon certification by the commission chairperson.
- (6)
 - (a) At the hearing the commissioners shall first view the property sought to be condemned and then hear all evidence desired to be produced. The condemnee shall present his or her testimony first and have the right to close. Except as provided in s. 901.05, in conducting the hearing the commission shall not be bound by common law or statutory rules of evidence. The commission shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant and unduly repetitious testimony. The amount of a prior jurisdictional offer or award shall not be disclosed to the commission. The commission shall give effect to the rules of privilege recognized by law. Basic principles of relevancy, materiality and probative force, as recognized in equitable proceedings, shall govern the proof of all questions of fact. The commission may on its own motion adjourn the hearing once for not more than 7 days, but may by stipulation of all parties grant other adjournments. A majority of the commissioners, being present, may determine all matters.
 - (b) If either party desires that the proceedings by the commission be transcribed, the commission may order the same and the applicant shall pay the cost thereof. Within 10 days after the conclusion of such hearing the commission shall make a written award specifying therein the property taken and the compensation, and file such award with the clerk of the circuit court, who shall cause a copy thereof to be mailed to each party in interest and record the original in the judgment record of such court. The commission shall file with the clerk of the court a sworn voucher for the compensation due each member, which sum, upon approval by the circuit judge, shall be paid by the condemnor.

History: 1977 c. 449; 1983 a. 302 s. 8; 1991 a. 269, 316; 1993 a. 184.

The failure of a condemnation commission to file its award within 10 days did not deprive it of jurisdiction.

Herro v. Natural Resources Board, 53 Wis. 2d 157, 192 N.W.2d 104 (1971).

The 60-day period under s. 32.05 (10) (a) for appealing a condemnation commission award begins to run when the commission has filed its award with the circuit court clerk and the clerk has mailed and recorded the award under sub. (6) (b). Dairyland Fuels, Inc. v. State, 2000 WI App 129, 237 Wis. 2d 467, 614 N.W.2d 829, 99-1296.

32.09 Rules governing determination of just compensation. In all matters involving the determination of just compensation in eminent domain proceedings, the following rules shall be followed:

- (1) The compensation so determined and the status of the property under condemnation for the purpose of determining whether severance damages exist shall be as of the date of evaluation as fixed by s. 32.05 (7) (c) or 32.06 (7).
- (1m) As a basis for determining value, a commission in condemnation or a court may consider the price and other terms and circumstances of any good faith sale or contract to sell and purchase comparable property. A sale or contract is comparable within the meaning of this subsection if it was made within a reasonable time before or after the date of evaluation and the property is sufficiently similar in the relevant market, with respect to situation, usability, improvements and other characteristics, to warrant a reasonable belief that it is comparable to the property being valued.
- (2) In determining just compensation the property sought to be condemned shall be considered on the basis of its most advantageous use but only such use as actually affects the present market value.
- (2m) In determining just compensation for property sought to be condemned in connection with the construction of facilities, as defined under s. 196.491 (1) (e), any increase in the market value of such property occurring after the date of evaluation but before the date upon which the lis pendens is filed under s. 32.06 (7) shall be considered and allowed to the extent it is caused by factors other than the planned facility.
- (3) Special benefits accruing to the property and affecting its market value because of the planned public improvement shall be considered and used to offset the value of property taken or damages under sub. (6), but in no event shall such benefits be allowed in excess of damages described under sub. (6).
- (4) If a depreciation in value of property results from an exercise of the police power, even though in conjunction with the taking by eminent domain, no compensation may be paid for such depreciation except as expressly allowed in subs. (5) (b) and (6) and s. 32.19.
- (5)
 - (a) In the case of a total taking the condemnor shall pay the fair market value of the property taken and shall be liable for the items in s. 32.19 if shown to exist.
 - (b) Any increase or decrease in the fair market value of real property prior to the date of evaluation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, may not be taken into account in determining the just compensation for the property.
- (6) In the case of a partial taking of property other than an easement, the compensation to be paid by the condemnor shall be the greater of either the fair market value of the property taken as of the date of evaluation or the sum determined by deducting from the fair market value of the whole property immediately before the date of evaluation, the fair market value of the remainder immediately after the date of evaluation, assuming the completion of the public improvement and giving effect, without allowance of offset for general benefits, and without restriction because of enumeration but without duplication, to the following items of loss or damage to the property where shown to exist:
 - (a) Loss of land including improvements and fixtures actually taken.
 - (b) Deprivation or restriction of existing right of access to highway from abutting land, provided that nothing herein shall operate to restrict the power of the state or any of its subdivisions or any municipality to deprive or restrict such access without compensation under any duly authorized exercise of the police power.
 - (c) Loss of air rights.
 - (d) Loss of a legal nonconforming use.
 - (e) Damages resulting from actual severance of land including damages resulting from severance of improvements or fixtures and proximity damage to improvements remaining on condemnee's land. In determining severance damages under this paragraph, the condemnor may consider damages which may arise during construction of the public improvement, including damages from noise, dirt, temporary interference with vehicular or pedestrian access to the property and limitations on use of the property. The condemnor may also consider costs of extra travel made necessary by the public improvement based on the increased distance after construction of the public improvement necessary to reach any point on the property from any other point on the property.
 - (f) Damages to property abutting on a highway right-of-way due to change of grade where accompanied by a taking of land.
 - (g) Cost of fencing reasonably necessary to separate land taken from remainder of condemnee's land, less the amount allowed for fencing taken under par. (a), but no such damage shall be allowed where the public improvement includes fencing of right-of-way without cost to abutting lands.
- (6g) In the case of the taking of an easement, the compensation to be paid by the condemnor shall be determined by deducting from the fair market value of the whole property immediately before the date of evaluation, the fair market value of the remainder immediately after the date of evaluation, assuming the completion of the public improvement and giving effect, without allowance of offset for general benefits, and without restriction because of enumeration

but without duplication, to the items of loss or damage to the property enumerated in sub. (6) (a) to (g) where shown to exist.

(6r)

- (a) In the case of a taking of an easement in lands zoned or used for agricultural purposes, for the purpose of constructing or operating a high-voltage transmission line, as defined ins. 196.491 (1) (f), or any petroleum or fuel pipeline, the offer under s. 32.05 (2a) or 32.06 (2a), the jurisdictional offer under s. 32.05 (3) or 32.06 (3), the award of damages under s. 32.05 (7), the award of the condemnation commissioners under s. 32.05 (9) or 32.06 (8) or the assessment under s. 32.57 (5), and the jury verdict as approved by the court under s. 32.05 (10) or (11) or 32.06 (10) or the judgment under s. 32.61 (3) shall specify, in addition to a lump sum representing just compensation under sub. (6) for outright acquisition of the easement, an amount payable annually on the date therein set forth to the condemnee, which amount represents just compensation under sub. (6) for the taking of the easement for one year.
- (b) The condemnee shall choose between the lump sum and the annual payment method of compensation at such time as the condemnee accepts the offer, award or verdict, or the proceedings relative to the issue of compensation are otherwise terminated. Selection of the lump sum method of payment shall irrevocably bind the condemnee and successors in interest.
- (c)
 1. Except as provided under subd. 2., if the condemnee selects the annual payment method of compensation, the fact of such selection and the amount of the annual payment shall be stated in the conveyance or an appendix thereto which shall be recorded with the register of deeds. The first annual payment shall be in addition to payment of any items payable under s. 32.19. Succeeding annual payments shall be determined by multiplying the amount of the first annual payment by the quotient of the state assessment under s. 70.575 for the year in question divided by the state assessment for the year in which the first annual payment for that easement was made, if the quotient exceeds one. A condemnee who selects the annual payment method of compensation, or any successor in interest, may at any time, by agreement with the condemnor or otherwise, waive in writing his or her right, or the right of his or her successors in interest, to receive such payments. Any successor in interest shall be deemed to have waived such right until the date on which written notice of his or her right to receive annual payments is received by the condemnor or its successor in interest.
 2. If lands which are zoned or used for agricultural purposes and which are condemned and compensated by the annual payment method of compensation under this paragraph are no longer zoned or used for agricultural purposes, the right to receive the annual payment method of compensation for a high-voltage transmission line easement shall cease and the condemnor or its successor in interest shall pay to the condemnee or any successor in interest who has given notice as required under subd. 1. a single payment equal to the difference between the lump sum representing just compensation under sub. (6) and the total of annual payments previously received by the condemnee and any successor in interest.
- (7) In addition to the amount of compensation paid pursuant to sub. (6), the owner shall be paid for the items provided for in s. 32.19, if shown to exist, and in the manner described ins. 32.20.
- (8) A commission in condemnation or a court may in their respective discretion require that both condemnor and owner submit to the commission or court at a specified time in advance of the commission hearing or court trial, a statement covering the respective contentions of the parties on the following points:
 - (a) Highest and best use of the property.
 - (b) Applicable zoning.
 - (c) Designation of claimed comparable lands, sale of which will be used in appraisal opinion evidence.
 - (d) Severance damage, if any.
 - (e) Maps and pictures to be used.
 - (f) Costs of reproduction less depreciation and rate of depreciation used.
 - (g) Statements of capitalization of income where used as a factor in valuation, with supporting data.
 - (h) Separate opinion as to fair market value, including before and after value where applicable by not to exceed 3 appraisers.
 - (i) A recitation of all damages claimed by owner.
 - (j) Qualifications and experience of witnesses offered as experts.
- (9) A condemnation commission or a court may make regulations for the exchange of the statements referred to in sub. (8) by the parties, but only where both owner and condemnor furnish same, and for the holding of prehearing or pretrial conference between parties for the purpose of simplifying the issues at the commission hearing or court trial.

History: 1975 c. 68, 191, 410, 425; 1977 c. 438, 440; 1983 a. 236; 1993 a. 490; 1997 a. 204.

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When a strip of land was taken and highway access to a loading dock restricted without a prior finding of necessity to limit access, the plaintiff could recover damages for loss of access because the police power under sub. (4) had not been exercised; rather the taking was by eminent domain. *Crown Zellerbach Corp. v. City of Milwaukee Development Department*, 47 Wis. 2d 142, 177 N.W.2d 94 (1970).

While the general rule is that evidence of net income is inadmissible to establish fair market value, that rule does not preclude admission of net income evidence under certain circumstances for certain purposes, including impeachment, refreshing the recollection of a witness, or when proper objection is not timely made. *Mancheski v. State*, 49 Wis. 2d 46, 181 N.W.2d 420 (1970).

The closing of an intersection under the police power does not require compensation so long as access to property is preserved. There is no property right to the flow of traffic. *Schneider v. State*, 51 Wis. 2d 458, 187 N.W.2d 172 (1971).

It was error to receive testimony of an appraiser who made his appraisal 10 months before the date of the taking and acknowledged that the value had changed in the 10 months but could not update his appraisal. *Schey Enterprises, Inc. v. State*, 52 Wis. 2d 361, 190 N.W.2d 149 (1971).

The elimination of respondent's sewer connection, which had the effect of rendering the existing lateral sewer useless, is a damage resulting from the severance of an improvement within the meaning of sub. (6) (e), which was of such consequence as not to be incidental to the taking under the exercise of appellant's police power that it was a compensable item of damage. *Hanser v. Metropolitan Sewerage District of Milwaukee*, 52 Wis. 2d 429, 190 N.W.2d 161 (1971).

The admissibility of opinion evidence as to the probability of laying out a road, zoning changes, and sanitary facilities is discussed. *Bembinster v. State*, 57 Wis. 2d 277, 203 N.W.2d 897 (1973).

Damages caused by a change of the grade of a street or highway where no land is taken constitutes an exercise of police power that is separate and distinct from the exercise of the power of eminent domain under sub. (6) (f) and is only compensable under s. 32.18. *Jantz v. State*, 63 Wis. 2d 404, 217 N.W.2d 266 (1974).

Inconvenience is a factor only when the landowner's property rights in the remaining portion are so impaired that the owner has, in effect, had that portion taken also. *DeBruin v. Green County*, 72 Wis. 2d 464, 241 N.W.2d 167 (1976).

An owner's opinion as to the value of real estate may be accepted, but in order to support a verdict some basis for the opinion must be shown. *Genge v. Baraboo*, 72 Wis. 2d 531, 241 N.W.2d 183 (1976).

The requirement that property be valued as an integrated and comprehensive entity does not mean that the individual components of value may not be examined or considered in arriving at an overall fair market value. *Milwaukee & Suburban Transport Corp. v. Milwaukee County*, 82 Wis. 2d 420, 263 N.W.2d 503 (1978).

An existing right of access in s. 32.09 (6) (b) includes the right of an abutting property owner to ingress and egress and the right to be judged on criteria for granting permits for access points under s. 86.07 (2). The restriction of access was a compensable taking. *Narloch v. DOT*, 115 Wis. 2d 419, 340 N.W.2d 542 (1983).

A court may apply the "assemblage" doctrine that permits consideration of evidence of prospective use that requires integration of the condemned parcel with other parcels if integration of the lands is reasonably probable. *Clarmar v. City of Milwaukee Redevelopment Authority*, 129 Wis. 2d 81, 383 N.W.2d 890 (1986).

There can be no compensation under sub. (6) (b) without the denial of substantially all beneficial use of a property. *Sippel v. City of St. Francis*, 164 Wis. 2d 527, 476 N.W.2d 579 (Ct. App. 1991).

A change in use is not a prerequisite to finding a special benefit under sub. (3); the real issue is whether the property has gained a benefit not shared by any other parcel. *Red Top Farms v. DOT*, 177 Wis. 2d 822, 503 N.W.2d 354 (Ct. App. 1993).

Damage to property is not compensated as a taking. For flooding to be a taking it must constitute a permanent physical occupation of property. *Menick v. City of Menasha*, 200 Wis. 2d 737, 547 N.W.2d 778 (Ct. App. 1996), 95-0185.

The state's assertion that the plaintiff's property, even if rendered uninhabitable as a residence by state construction activities, could be used for some non-residential purpose could not support a motion for dismissal. Factual issues of damage and causation are properly deferred to the summary judgment or trial stage. *Wikel v. DOT*, 2001 WI App 214, 247 Wis. 2d 626, 635 N.W.2d 213, 00-3215.

Evidence of net income is ordinarily inadmissible for purposes of establishing property values in condemnation cases involving commercial enterprises because income is dependent upon too many variables to serve as a reliable guide in determining fair market value. *Rademann v. DOT*, 2002 WI App 59, 252 Wis. 2d 191, 642 N.W.2d 600, 00-2995.

Comparable sales evidence is admissible as direct evidence of the land's value or for the limited indirect purpose of demonstrating a basis for and giving weight to an expert opinion. Admission of comparable sales as direct evidence of value is more restrictive than the admissibility rule when offered to show a basis for an expert opinion. Admission of comparable sales evidence is within the discretion of the trial court. When offered as the basis for an expert's opinion, the extent to which the offered sales are truly comparable goes to the weight of the testimony, not to admissibility. *Raddeman v. DOT*, 2002 WI App 59, 252 Wis. 2d 191, 642 N.W.2d 600, 00-2995.

The "existing right of access" under sub. (6) (b) includes the right of an abutting property owner to reasonable ingress and egress. A frontage road might not always constitute "reasonable" access. Whether there is reasonable access depends on the specific facts in a case, to be determined by the jury. *National Auto Truckstops v. DOT*, 2003 WI 95, 263 Wis. 2d 649, 665 N.W.2d 198, 02-1384.

When comparable sales are offered as substantive evidence of property value, the other property must be closely comparable to the property being taken. The properties must be located near each other and sufficiently similar in relevant market, usability, improvements, and other characteristics so as to support a finding of comparability. *Alsum v. Department of Transportation*, 2004 WI App 196, 276 Wis. 2d 654, 689 N.W.2d 68, 03-2563.

Sub. (6) does not provide severance damages when compensation for a partial taking is based on the fair market value of the property taken. *Justmann v. Portage County*, 2005 WI App 9, 278 Wis. 2d 487, 692 N.W.2d 273, 03-3310.

Evidence regarding fear and safety concerns of natural gas transmission pipelines, electrical transmission lines, and oil and gasoline pipelines in partial takings cases is admissible if a qualified expert has successfully drawn the pertinent nexus in the calculation of damages between evidence of that fear and the fair market value of the property being condemned following the taking. *Arents v. ANR Pipeline Company*, 2005 WI App 61, 281 Wis. 2d 173, 696 N.W.2d 194, 03-1488.

Evidence of comparable sales is not the only relevant and admissible evidence in determining fair market value when available in a condemnation case. *Arents v. ANR Pipeline Company*, 2005 WI App 61, 281 Wis. 2d 173, 696 N.W.2d 194, 03-1488.

The requirement in sub. (6) to consider the "whole property" does not require that an individual assessment always treat contiguous, commonly-owned tax parcels separately or as a single unit, but requires that no portion of the property be left out of an assessment. When the property's highest and best use that affects its present market value is most appropriately appraised by considering the contiguous tax parcels separately, that is the appropriate appraisal method. Conversely, when the highest and best use is more adequately represented through an appraisal of the property as a single unit, that approach is appropriate. *Spiegelberg v. State*, 2006 WI 75, 291 Wis. 2d 601, 717 N.W.2d 641, 04-3384.

Under Wisconsin eminent domain law, courts apply the unit rule, which prohibits valuing individual property interests or aspects separately from the property as a whole. When a parcel of land is taken by eminent domain, the compensation award is for the land itself, not the sum of the different interests therein. *Hoekstra v. Guardian Pipeline, LLC*, 2006 WI App 245, 298 Wis. 2d 165, 726 N.W.2d 648, 03-2809.

The lessor under a long-term favorable lease who received no compensation for its leasehold interest under the unit rule when the fair market value of the entire property was determined to be zero was not denied the right to just compensation under Article I, Section 13, of the Wisconsin constitution. *City of Milwaukee VFW Post No. 2874 v. Redevelopment Authority of the City of Milwaukee*, 2009 WI 84, 319 Wis. 2d 553, 768 N.W.2d 749, 06-2866.

Wisconsin's project influence statute, sub. (5) (b), contains nothing about comparables. It simply states that any increase or decrease in the fair market value of the subject property caused by the public improvement may not be taken into consideration in determining just compensation. Sub. (5) (b) does not create a bright-line rule mandating that when evidence exists of comparable sales not impacted by a public improvement project, any sale alleged to be comparable that was made after the project plans were known that was located in whole or in part within the project footprint must be excluded as a matter of law. *Spanbauer v. State*, 2009 WI App 83, 320 Wis. 2d 242, 769 N.W.2d 137, 08-1165.

In easement condemnation cases, property owners are compensated for the loss in fair market value of their whole property. Pre-existing easement rights may be considered by a jury when determining just compensation. The circuit court's exclusion of evidence of existing easement rights was erroneous because evidence of those rights was highly probative of the difference in fair market value of the property before and after the new easement was condemned. *Fields v. American Transmission Company, LLC*, 2010 WI App 59, 324 Wis. 2d 417, 782 N.W.2d 729, 09-1008.

Evidence of environmental contamination and of remediation costs is admissible in condemnation proceedings under ch. 32 so long as it is relevant to the fair market value of the property. A property's environmental contamination and the costs to remediate it are relevant to the property's fair market value if they would influence a prudent purchaser who is willing and able, but not obliged, to buy the property. Liability for environmental contamination has no place in a condemnation proceeding under ch. 32. *260 North 12th Street, LLC v. State of Wisconsin Department of Transportation*, 2011 WI 103, 338 Wis. 2d 34, 808 N.W.2d 372, 09-1557.

Damages for a partial taking cannot include damages for the impact caused by loss of access to a highway if the loss of access resulted from the relocation of the highway, rather than from the taking. Damages are allowed under sub. (6g) only for loss that was a consequence of the particular taking. An award for a temporary limited easement cannot serve to bootstrap damages that emanate from a road relocation, especially when no land was taken and the property's boundaries were unchanged. *118th Street Kenosha, LLC v. Wisconsin Department of Transportation*, 2014 WI 125, 359 Wis. 2d 30, 856 N.W.2d 486, 12-2784.

Section 84.25 (3) authorizes DOT to change access to a highway designated as controlled access in whatever way it deems "necessary or desirable." In controlled-access highway cases, abutting property owners are precluded

from compensation for a change in access under sub. (6) (b) as a matter of law. However, exercises of the police power cannot deprive the owner of all or substantially all beneficial use of the property without compensation. If the replacement access is so circuitous as to amount to a regulatory taking of the property, compensation is due and the abutting property owner may bring an inverse condemnation claim under s. 32.10. Provision of some access preserves the abutting property owner's controlled right of access to the property. Reasonableness is not the standard to apply to determine if compensation is due under sub. (6) (b). *Hoffer Properties, LLC v. State of Wisconsin*, 2016 WI 5, 366 Wis. 2d 372, 874 N.W.2d 533, 12-2520.

The owner of condemned property is not entitled to the cost of developing functionally equivalent substitute facilities. *United States v. 564.54 Acres of Land*, 441 U.S. 506 (1979).

32.10 Condemnation proceedings instituted by property owner. If any property has been occupied by a person possessing the power of condemnation and if the person has not exercised the power, the owner, to institute condemnation proceedings, shall present a verified petition to the circuit judge of the county wherein the land is situated asking that such proceedings be commenced. The petition shall describe the land, state the person against which the condemnation proceedings are instituted and the use to which it has been put or is designed to have been put by the person against which the proceedings are instituted. A copy of the petition shall be served upon the person who has occupied petitioner's land, or interest in land. The petition shall be filed in the office of the clerk of the circuit court and thereupon the matter shall be deemed an action at law and at issue, with petitioner as plaintiff and the occupying person as defendant. The court shall make a finding of whether the defendant is occupying property of the plaintiff without having the right to do so. If the court determines that the defendant is occupying such property of the plaintiff without having the right to do so, it shall treat the matter in accordance with the provisions of this subchapter assuming the plaintiff has received from the defendant a jurisdictional offer and has failed to accept the same and assuming the plaintiff is not questioning the right of the defendant to condemn the property so occupied.

History: 1973 c. 170; Sup. Ct. Order, 67 Wis. 2d 575, 749 (1975); 1975 c. 218; 1977 c. 440; 1983 a. 236 s. 12.

A cause of action under this section arises prior to the actual condemnation of the property if the complaint alleges facts that indicate the property owner has been deprived of all, or substantially all, of the beneficial use of the property. *Howell Plaza, Inc. v. State Highway Comm.* 66 Wis. 2d 720, 226 N.W.2d 185 (1975).

In order for the petitioner to succeed in the initial stages of an inverse condemnation proceeding, the petitioner must allege facts that, prima facie, at least show there has been either an occupation of its property, or a taking, which must be compensated under the terms of the Wisconsin Constitution. *Howell Plaza, Inc. v. State Highway Commission*, 66 Wis. 2d 720, 226 N.W.2d 185 (1975).

A landowner's petition for inverse condemnation, like a municipality's petition for condemnation, is not subject to demurrer. *Revival Center Tabernacle of Battle Creek v. Milwaukee*, 68 Wis. 2d 94, 227 N.W.2d 694 (1975).

A taking occurred when a city refused to renew a lessee's theater license because of a proposed renewal project encompassing the theater's location, not when the city made a jurisdictional offer. Property is valued as of the date of the taking. *Maxey v. Redevelopment Authority of Racine*, 94 Wis. 2d 375, 288 N.W.2d 794 (1980).

The doctrine of sovereign immunity cannot bar an action for just compensation based on the taking of private property for public use even though the legislature has failed to establish specific provisions for the recovery of just compensation. *Zinn v. State*, 112 Wis. 2d 417, 334 N.W.2d 67 (1983).

A successful plaintiff in an inverse condemnation action was entitled to litigation expenses, which included expenses related to a direct condemnation action. Expenses related to an allocation proceeding under s. 32.11 were not recoverable. *Maxey v. Racine Redevelopment Authority*, 120 Wis. 2d 13, 353 N.W.2d 812 (Ct. App. 1984).

The owner of property at the time of a taking is entitled to bring an action for inverse condemnation and need not own the property at the time of the commencement of the action. *Riley v. Town of Hamilton*, 153 Wis. 2d 582, 451 N.W.2d 454 (Ct. App. 1989).

A constructive taking occurs when government regulation renders a property useless for all practical purposes. Taking jurisprudence does not allow dividing the property into segments and determining whether rights in a particular segment have been abrogated. *Zealy v. City of Waukesha*, 201 Wis. 2d 365, 548 N.W.2d 528 (1996), 93-2831.

This section does not govern inverse condemnation proceedings seeking just compensation for a temporary taking of land for public use. Such takings claims are based directly on Article I, section 13, of the constitution. *Anderson v. Village of Little Chute*, 201 Wis. 2d 467, 549 N.W.2d 561 (Ct. App. 1996), 95-1677.

The reversal of an agency decision by a court does not convert an action that might otherwise have been actionable as a taking into one that is not. Once there has been sufficient deprivation of the use of property there has been a taking even though the property owner regains full use of the land through rescission of the restriction. *Eberle v. Dane County Board of Adjustment*, 227 Wis. 2d 609, 595 N.W.2d 730 (1999), 97-2869.

When a regulatory taking claim is made, the plaintiff must prove that: 1) a government restriction or regulation is excessive and therefore constitutes a taking; and 2) any proffered compensation is unjust. *Eberle v. Dane County Board of Adjustment*, 227 Wis. 2d 609, 595 N.W.2d 730 (1999), 97-2869.

A claimant who asserted ownership of condemned land, compensation for which was awarded to another as owner with the claimant having had full notice of the proceedings, could not institute an inverse condemnation action because the municipality had exercised its power of condemnation. Koskey v. Town of Bergen, 2000 WI App 140, 237 Wis. 2d 284, 614 N.W.2d 845, 99-2192.

The state holds title to the waters of the state and any private property interest in constructing facilities in those waters is encumbered by the public trust doctrine. A riparian owner does not have a right to unfettered use of the bed of the waterway or to the issuance of a permit to construct a structure, which weighs against a finding that a riparian owner suffered a compensable regulatory taking as the result of a permit denial. R.W. Docks & Slips v. State, 2001 WI 73, 244 Wis. 2d 497, 628 N.W.2d 781, 99-2904.

Taking jurisprudence does not divide a single parcel into discrete segments and attempt to determine whether rights in a given piece have been entirely abrogated but instead focuses on the extent of the interference with rights in the parcel as a whole. R.W. Docks & Slips v. State, 2001 WI 73, 244 Wis. 2d 497, 628 N.W.2d 781, 99-2904.

In order to state a claim of inverse condemnation under this section, the facts alleged must show either that there was an actual physical occupation by the condemning authority or that a government-imposed restriction deprived the owner of all, or substantially all, of the beneficial use of his or her property. E-L Enterprises, Inc. v. Milwaukee Metropolitan Sewerage District, 2010 WI 58, 326 Wis. 2d 82, 785 N.W.2d 409, 08-0921.

A taking occurs in airplane overflight cases when government action results in aircraft flying over a landowner's property low enough and with sufficient frequency to have a direct and immediate effect on the use and enjoyment of the property. The government airport operator bears responsibility if aircraft are regularly deviating from FAA flight patterns and those deviations result in invasions of the superadjacent airspace of neighboring property owners with adverse effects on their property. Placing the burden on property owners to seek enforcement against individual airlines or pilots would effectively deprive the owners of a remedy for such takings. Brenner v. City of New Richmond, 2012 WI 98, 343 Wis. 2d 320, 816 N.W.2d 291, 10-0342.

In order to constitute a taking, the property loss at issue must be the result of government action. The court is not free to disregard this plainly stated rule and search for inaction that might be considered to be the functional equivalent of action, as might be at issue for example in the negligence context. Fromm v. Village of Lake Delton, 2014 WI App 47, 354 Wis. 2d 30, 847 N.W.2d 845, 13-0014.

Section 84.25 (3) authorizes DOT to change access to a highway designated as controlled access in whatever way it deems "necessary or desirable." In controlled-access highway cases, abutting property owners are precluded from compensation for a change in access under s. 32.09 (6) (b) as a matter of law. However, exercises of the police power cannot deprive the owner of all or substantially all beneficial use of the property without compensation. If the replacement access is so circuitous as to amount to a regulatory taking of the property, compensation is due and the abutting property owner may bring an inverse condemnation claim under this section. Provision of some access preserves the abutting property owner's controlled right of access to the property. Reasonableness is not the standard to apply to determine if compensation is due under s. 32.09 (6) (b). Hoffer Properties, LLC v. State of Wisconsin, 2016 WI 5, 366 Wis. 2d 372, 874 N.W.2d 533, 12-2520.

It has long been settled that constitutional takings provisions interpose no barrier to the exercise of the police power of the state. Injury to property resulting from the exercise of the police power of the state does not necessitate compensation. A state acts under its police power when it regulates in the interest of public safety, convenience, and the general welfare of the public. The protection of public rights may be accomplished by the exercise of the police power unless the damage to the property owner is too great and amounts to a confiscation. Claims for such "regulatory takings" must be brought under this section. Hoffer Properties, LLC v. State of Wisconsin, 2016 WI 5, 366 Wis. 2d 372, 874 N.W.2d 533, 12-2520.

32.11 Trial of title. If any defect of title to or encumbrance upon any parcel of land is suggested upon any appeal, or if any person petitions the court in which an appeal is pending setting up a claim adverse to the title set out in said petition to said premises and to the money or any part thereof to be paid as compensation for the property so taken, the court shall thereupon determine the question so presented. Judgment shall be entered on such determination, with costs to the prevailing party. An appeal from such judgment may be taken as from a judgment in an action.

A successful plaintiff in an inverse condemnation action was entitled to litigation expenses, which included expenses related to a direct condemnation action. Expenses related to an allocation proceeding under s. 32.11 were not recoverable. Maxey v. Racine Redevelopment Authority, 120 Wis. 2d 13, 353 N.W.2d 812 (Ct. App. 1984).

32.12 Proceedings to perfect title.

- (1) If any person having the power to acquire property by condemnation enters into the possession of any property and is using the property for a purpose for which condemnation proceedings might be instituted but has not acquired title to the property, or if the title is defective, or if not in possession, has petitioned the circuit court as provided by s. 32.06 (7) and for an order as authorized under this section either at the time of filing the petition for condemnation or thereafter, and the necessity for taking has been determined as authorized by law, the person may proceed to acquire or perfect the title as provided in this subchapter or be authorized to enter into possession as provided in this section.

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At any stage of the proceedings the court in which they are pending may authorize the person, if in possession, to continue in possession, and if not in possession to take possession and have and use the lands during the pendency of the proceedings and may stay all actions or proceedings against the person on account thereof on the paying in court of a sufficient sum or the giving of such securities as the court may direct to pay the compensation therefor when finally ascertained. The "date of taking" in proceedings under this section is the date on which the security required by the order for such security is approved and evidence thereof is filed with the clerk of court. In every such case the party interested in the property may institute and conduct, at the expense of the person, the proceedings to a conclusion if the person delays or omits to prosecute the same.

- (2) No injunction to restrain the possession or use of lands subject to proceedings under sub. (1) by the party interested in the property or the operation thereon of any plant, line, railroad or other structure, shall be granted until compensation therefor has been fixed and determined.
- (3) In case such person or the person through or under whom that person claims title has paid to the owner of such lands or to any former owner thereof, or to any other person having any valid mortgage or other lien thereon, or to any owner, lien holder, mortgagee or other person entitled to any award or part of any award in satisfaction of the whole or any part of such award to which such owner, lien holder, mortgagee or other person may become entitled upon completion of such condemnation proceedings in the manner authorized by this subchapter, such sum with interest thereon from the date of such payment at the rate of 5 percent per year shall be deducted from the award made by said commissioners to such owners or other person.
- (4) In case there is a dispute in relation to the payment of any sum as aforesaid or the amount or date of any payment that may have been made, the court or judge thereof shall at the request of any party, award an issue which shall be tried in the same manner as issues of fact in said court and an appeal from the judgment thereon may be taken in the same manner as from any judgment.

History: 1977 c. 449; 1979 c. 110 s. 60 (13); 1983 a. 236 s. 12; 1991 a. 316.

32.13 Proceedings when land mortgaged. Whenever any person has acquired title to any property for which it could institute condemnation proceedings and said property is subject to any mortgage or other lien and proceedings have been afterwards commenced by the holders of any such mortgage or lien to enforce the same, the court in which such proceedings are pending may on due notice appoint 3 commissioners from among the county commissioners created by s. 32.08 to appraise and value said property in the manner prescribed in this subchapter as of the time when such person acquired title. Such appraisal shall be exclusive of the improvements made by that person or that person's predecessors. Said appraisal, with interest, when confirmed by said court shall stand as the maximum amount of the encumbrance chargeable to the property so taken and judgment shall be rendered according to equity for an amount not exceeding such appraisal, with interest, against such person and may be enforced as in other cases. On the payment of such amount such person shall hold said property free and discharged from said mortgage or lien. An appeal may be taken from the award of such commission by the plaintiff and tried and determined as an appeal from the county condemnation commissioners under this subchapter and the action to enforce such mortgage or lien shall in the meantime be stayed.

History: 1983 a. 236 s. 12; 1991 a. 316.

32.14 Amendments. The court or judge may at any time permit amendments to be made to a petition filed pursuant to s. 32.06, amend any defect or informality in any of the proceedings authorized by this subchapter and may cause any parties to be added and direct such notice to be given to any party of interest as it deems proper.

History: 1983 a. 236 s. 12.

32.15 How title in trustee acquired. In case any title or interest in real estate lawfully required by any person having the power of condemnation is vested in any trustee not authorized to sell, release and convey the same or in any minor or person adjudged mentally incompetent, the circuit court may in a summary proceeding authorize and empower such trustee or the general guardian of such minor or person adjudged mentally incompetent to sell and convey the same for the purposes required on such terms as may be just. If such minor or person adjudged mentally incompetent has no general guardian, the court may appoint a special guardian for such sale, release or conveyance. The court may require from such trustee, or general or special guardian, such security as it deems proper before any conveyance or release authorized in this section is executed. The terms of the same shall be reported to the court on oath. If the court is satisfied that such terms are just to the party interested in such real estate, it shall confirm the report and direct the conveyance or release to be executed. Such conveyance or release shall have the same effect as if executed by one having legal power to sell and convey the land.

History: 1977 c. 83.

32.16 Abandonment of easements for public use. An easement for public use acquired by gift or purchase or by condemnation under this subchapter shall not be deemed abandoned on the grounds of nonuser thereof for any period less than that prescribed in the applicable statutes of limitations in ch. 893. Nothing contained in this section shall be presumed to adversely affect any highway right possessed by the state or any county or municipality thereof.

History: 1983 a. 236 s. 12.

32.17 General provisions.

- (1) Where power of condemnation is given to a state officer the title acquired shall be in the name of the state. Payments of the costs and expenses of such condemnation shall be paid from the appropriation covering the purposes for which the property is acquired.
- (2) Any condemnation proceedings authorized under any local or special law of this state, except those applicable to cities of the 1st class, shall be conducted under the procedure provided in this subchapter.
- (3) Where disbursements and costs, including expert witness fees and reasonable actual attorney fees in case of abandonment of proceedings by the condemnor are recoverable from a condemnor under this subchapter, they shall be recoverable from the state or any of its agencies when the state or such agency is the condemnor.

History: 1983 s. 236 s. 12; 1993 a. 490.

32.18 Damage caused by change of grade of street or highway where no land is taken; claim; right of action. Where a street or highway improvement project undertaken by the department of transportation, a county, city, town or village, causes a change of the grade of such street or highway in cases where such grade was not previously fixed by city, village or town ordinance, but does not require a taking of any abutting lands, the owner of such lands at the date of such change of grade may file with the department of transportation in the case of state trunk highways, a county in the case of county highways or the city, town or village, causing such change of grade to be effected, whichever has jurisdiction over the street or highway, a claim for any damages to said lands occasioned by such change of grade. Special benefits may be offset against any claims for damages under this section. Such claim shall be filed within 90 days following the completion of said project; if allowed, it shall be paid in the case of the department of transportation, out of the state highway funds, otherwise, out of the funds of the respective county, city, village or town against which the claim is made as the case may be. If it is not allowed within 90 days after such date of filing it shall be deemed denied. Thereupon such owner may within 90 days following such denial commence an action against the department of transportation, the city, county, village or town as the case may be, to recover any damages to the lands shown to have resulted from such change of grade. Any judgment recovered against the department of transportation shall be paid out of the state highway funds, otherwise out of the funds of city, county, village or town against which the judgment is recovered. Where a grade has been established by ordinance, the property owner's remedy shall be as provided by municipal law. This section shall in no way contravene, limit or restrict s. 88.87.

History: 1977 c. 29 s. 1654 (8) (c); 1977 c. 273.

A municipality may not initiate the running of the second 90-day period by affirmatively denying a claim within the first 90-day period. A claimant has 180 days from the filing of the original claim to commence legal action. Johnson v. City of Onalaska, 153 Wis. 2d 611, 451 N.W.2d 466 (Ct. App. 1989).

The state was not a proper party for claims against the Department of Transportation as the two are distinct legal entities. Service on the state of a summons and complaint that named the state and not the DOT as a party does not constitute service on the DOT necessary to establish personal jurisdiction over the DOT. Hoops Enterprises, III, LLC v. Super Western, Inc. 2013 WI App 7, 345 Wis. 2d 733, 827 N.W.2d 120, 12-0062.

32.185 Condemnor. "Condemnor", for the purposes of ss. 32.19 to 32.27, means any municipality, board, commission, public officer, or business entity vested with the power of eminent domain which acquires property for public purposes either by negotiated purchase when authorized by statute to employ its powers of eminent domain or by the power of eminent domain. "Condemnor" also means a displacing agency. In this section, "displacing agency" means any state agency, political subdivision of the state or person carrying out a program or project with public financial assistance that causes a person to be a displaced person, as defined in s. 32.19 (2) (e).

History: 1975 c. 224; 1987 a. 399; 2015 a. 55.

Cross-reference: See also s. Adm 92.001, Wis. adm. code.

32.19 Additional items payable.

- (1) **DECLARATION OF PURPOSE.** The legislature declares that it is in the public interest that persons displaced by any public project be fairly compensated by payment for the property acquired and other losses hereinafter described and suffered as the result of programs designed for the benefit of the public as a whole; and the legislature further finds and declares that, notwithstanding subch. II, or any other provision of law, payment of such relocation assistance and assistance in the acquisition of replacement housing are proper costs of the construction of public improvements. If the public improvement is funded in whole or in part by a nonlapsible trust, the relocation payments and assistance constitute a purpose for which the fund of the trust is accountable.

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(2) **DEFINITIONS.** In this section and ss. 32.25 to 32.27:

- (a) "Business" means any lawful activity, excepting a farm operation, conducted primarily:
1. For the purchase, sale, lease or rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;
 2. For the sale of services to the public;
 3. By a nonprofit organization; or
 4. Solely for the purpose of sub. (3) for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.
- (b) "Comparable dwelling" means one which, when compared with the dwelling being taken, is substantially equal concerning all major characteristics and functionally equivalent with respect to: the number and size of rooms and closets, area of living space, type of construction, age, state of repair, size and utility of any garage or other outbuilding, type of neighborhood and accessibility to public services and places of employment. "Comparable dwelling" shall meet all of the standard building requirements and other code requirements of the local governmental body and shall also be decent, safe and sanitary and within the financial means of the displaced person, as defined by the department of administration.
- (c) "Comparable replacement business" means a replacement business which, when compared with the business premises being acquired by the condemnor, is adequate for the needs of the business, is reasonably similar in all major characteristics, is functionally equivalent with respect to condition, state of repair, land area, building square footage required, access to transportation, utilities and public service, is available on the market, meets all applicable federal, state or local codes required of the particular business being conducted, is within reasonable proximity of the business acquired and is suited for the same type of business conducted by the acquired business at the time of acquisition.
- (d) "Comparable replacement farm operation" means a replacement farm operation which, when compared with the farm operation being acquired by the condemnor, is adequate for the needs of the farmer, is reasonably similar in all major characteristics, is functionally equivalent with respect to type of farm operation, condition and state of repair of farm buildings, soil quality, yield per acre, land area, access to transportation, utilities and public services, is within reasonable proximity of the acquired farm operation, is available on the market, meets all applicable federal, state or local codes required of the particular farm operation acquired and is suited for the same type of farming operation conducted by the displaced person at the time of acquisition.
- (e)
1. "Displaced person" means, except as provided under subd. 2., any person who moves from real property or who moves his or her personal property from real property:
 - a. As a direct result of a written notice of intent to acquire or the acquisition of the real property, in whole or in part or subsequent to the issuance of a jurisdictional offer under this subchapter, for public purposes; or
 - b. As a result of rehabilitation, demolition or other displacing activity, as determined by the department of administration, if the person is a tenant-occupant of a dwelling, business or farm operation and the displacement is permanent.
 2. "Displaced person" does not include:
 - a. Any person determined to be unlawfully occupying the property or to have occupied the property solely for the purpose of obtaining assistance under ss. 32.19 to 32.27; or
 - b. Any person, other than a person who is an occupant of the property at the time it is acquired, who occupies the property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project for which it is being acquired.
- (f) "Farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities for sale and home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.
- (g) "Owner displaced person" means a displaced person who owned the real property being acquired and also owned the business or farm operation conducted on the real property being acquired.
- (h) "Person" means:
1. Any individual, partnership, limited liability company, corporation or association which owns a business concern; or
 2. Any owner, part owner, tenant or sharecropper operating a farm; or
 3. An individual who is the head of a family; or
 4. An individual not a member of a family, except that 2 or more tenant occupants of the same dwelling unit shall be considered as one person.
- (i) "Tenant displaced person" means a displaced person who owned the business or farm operation conducted on the real property being acquired but leased or rented the real property.

- (2m) INFORMATION ON PAYMENTS.** Before initiating negotiations to acquire the property under s. 32.05 (2a), 32.06 (2a) or subch. II, the condemnor shall provide displaced persons with copies of applicable pamphlets prepared under s. 32.26 (6).
- (3) RELOCATION PAYMENTS.** Any condemnor which proceeds with the acquisition of real and personal property for purposes of any project for which the power of condemnation may be exercised, or undertakes a program or project that causes a person to be a displaced person, shall make fair and reasonable relocation payments to displaced persons, business concerns and farm operations under this section. Payments shall be made as follows:
- (a) *Moving expenses; actual.*** The condemnor shall compensate a displaced person for the actual and reasonable expenses of moving the displaced person and his or her family, business or farm operation, including personal property; actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property; actual reasonable expenses in searching for a replacement business or farm operation; and actual reasonable expenses necessary to reestablish a business or farm operation, not to exceed \$10,000, unless compensation for such expenses is included in the payment provided under sub. (4m).
 - (b) *Moving expenses; optional fixed payments.***
 - 1. 'Dwellings.' Any displaced person who moves from a dwelling and who elects to accept the payments authorized by this paragraph in lieu of the payments authorized by par. (a) may receive an expense and dislocation allowance, determined according to a schedule established by the department of administration.
 - 2. 'Business and farm operations.' Any displaced person who moves or discontinues his or her business or farm operation, is eligible under criteria established by the department of administration by rule and elects to accept payment authorized under this paragraph in lieu of the payment authorized under par. (a), may receive a fixed payment in an amount determined according to criteria established by the department of administration by rule, except that such payment shall not be less than \$1,000 nor more than \$20,000. A person whose sole business at the displacement dwelling is the rental of such property to others is not eligible for a payment under this subdivision.
 - (c) *Optional payment for businesses.*** Any displaced person who moves his or her business, and elects to accept the payment authorized in par. (a), may, if otherwise qualified under par. (b) 2., elect to receive the payment authorized under par. (b) 2., minus whatever payment the displaced person received under par. (a), if the displaced person discontinues the business within 2 years of the date of receipt of payment under par. (a), provided that the displaced person meets eligibility criteria established by the department of administration by rule. In no event may the total combined payment be less than \$1,000 nor more than \$20,000.
 - (d) *Federally financed projects.*** Notwithstanding pars. (a) to (c), in the case of a program or project receiving federal financial assistance, a condemnor shall, in addition to any payment under pars. (a) to (c), make any additional payment required to comply with the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 USC 4601 to 4655, and any regulations adopted thereunder.
- (4) REPLACEMENT HOUSING.**
- (a) *Owner-occupants.*** In addition to amounts otherwise authorized by this subchapter, the condemnor shall make a payment, not to exceed \$25,000, to any displaced person who is displaced from a dwelling actually owned and occupied, or from a mobile home site actually owned or occupied, by the displaced person for not less than 180 days prior to the initiation of negotiations for the acquisition of the property. For the purposes of this paragraph, a corporation organized under ch. 181 that is a nonprofit corporation, as defined in s. 181.0103 (17), may, if otherwise eligible, be considered a displaced owner. A displaced owner may elect to receive the payment under par. (b) 1. in lieu of the payment under this paragraph. Such payment includes only the following:
 - 1. The amount, if any, which when added to the acquisition payment, equals the reasonable cost of a comparable replacement dwelling available on the private market, as determined by the condemnor.
 - 1m. In the case of a person displaced from a mobile home site who meets one of the conditions under subd. 1m. a., b. or c., the amount, if any, which when added to the trade-in or salvage value of the mobile home equals the reasonable cost of a comparable mobile home which is decent, safe and sanitary, plus an amount equal to 48 times the difference between the monthly rent being paid for the site on which the mobile home is located and the monthly rent for a comparable mobile home site or the amount necessary to enable the displaced person to make a down payment on the purchase of a comparable mobile home site. If a comparable mobile home dwelling is not available, the replacement housing payment shall be calculated on the basis of the next highest type of mobile home or a conventional dwelling that is available and meets the requirements and standards for a comparable dwelling. The owner of a mobile home shall be eligible for payments under this subdivision if one of the following conditions is met:
 - a. The mobile home is not considered to be a decent, safe and sanitary dwelling unit.

- b. The structural condition of the mobile home is such that it cannot be moved without substantial damage or unreasonable cost.
 - c. There are no adequate or available replacement sites to which the mobile home can be moved.
 - 2. The amount of increased interest expenses and other debt service costs incurred by the owner to finance the purchase of another property substantially similar to the property taken, if at the time of the taking the land acquired was subject to a bona fide mortgage or was held under a vendee's interest in a bona fide land contract, and such mortgage or land contract had been executed in good faith not less than 180 days prior to the initiation of negotiations for the acquisition of such property. The computation of the increased interest costs shall be determined according to rules promulgated by the department of administration.
 - 3. Reasonable incidental fees, commissions, discounts, surveying costs, title evidence costs and other closing costs incurred in the purchase of replacement housing, but not including prepaid expenses.
- (ag) Limitation.** Payment under par. (a) shall be made only to a displaced person who purchases and occupies a decent, safe and sanitary replacement dwelling not later than one year after the date on which the person moves from the dwelling acquired for the project, or the date on which the person receives payment from the condemnor, whichever is later, except that the condemnor may extend the period for good cause. If the period is extended, payment under par. (a) shall be based on the costs of relocating the displaced person to a comparable replacement dwelling within one year of the date on which the person moves from the dwelling acquired for the project.
- (b) Tenants and certain others.** In addition to amounts otherwise authorized by this subchapter, the condemnor shall make a payment to any individual or family displaced from any dwelling which was actually and lawfully occupied by such individual or family for not less than 90 days prior to the initiation of negotiations for the acquisition of such property or, if displacement is not a direct result of acquisition, such other event as determined by the department of administration by rule. For purposes of this paragraph, a corporation organized under ch. 181 that is a nonprofit corporation, as defined in s. 181.0103 (17), may, if otherwise eligible, be considered a displaced tenant. Subject to the limitations under par. (bm), such payment shall be either:
- 1. The amount, if any, which, when added to the rental cost of the acquired dwelling, equals the reasonable cost of leasing or renting a comparable dwelling available on the private market for a period not to exceed 4 years, as determined by the condemnor, but not to exceed \$8,000; or
 - 2. If the person elects to purchase a comparable dwelling, the amount determined under subd. 1. plus expenses under par. (a) 3.
- (bm) Limitations.**
- 1. Payment under par. (b) shall be made only to a displaced person who rents, leases or purchases a decent, safe and sanitary replacement dwelling and occupies that dwelling not later than one year after the date on which the person moves from the displacement dwelling, except that the condemnor may extend the period for good cause.
 - 2. If a displaced person occupied the dwelling acquired for at least 90 days but not more than 180 days prior to the initiation of negotiations for the acquisition of the property, the payment under par. (b) may not exceed the amount the displaced person would receive if the displaced person was eligible for a payment under par. (a).
- (c) Additional payment.** If a comparable dwelling is not available within the monetary limits established in par. (a) or (b), the condemnor may exceed the monetary limits and make payments necessary to provide a comparable dwelling.
- (d) Federally financed projects.** Notwithstanding pars. (a) to (c), in the case of a program or project receiving federal financial assistance, a condemnor shall, in addition to any payment under pars. (a) to (c), make any additional payment required to comply with the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 USC 4601 to 4655, and any regulations adopted thereunder.
- (4m) BUSINESS OR FARM REPLACEMENT PAYMENT.**
- (a) Owner-occupied business or farm operation.** In addition to amounts otherwise authorized by this subchapter, the condemnor shall make a payment, not to exceed \$50,000, to any owner displaced person who has owned and occupied the business operation, or owned the farm operation, for not less than one year prior to the initiation of negotiations for the acquisition of the real property on which the business or farm operation lies, and who actually purchases a comparable replacement business or farm operation for the acquired property within 2 years after the date the person vacates the acquired property or receives payment from the condemnor, whichever is later. An owner displaced person who has owned and occupied the business operation, or owned the farm operation, for not less than one year prior to the initiation of negotiations for the acquisition of the real property on which the business or farm operation lies may elect to receive the payment under par. (b) 1. in lieu of the payment under this paragraph, but the amount of payment under par. (b) 1. to

such an owner displaced person may not exceed the amount the owner displaced person is eligible to receive under this paragraph. The additional payment under this paragraph shall include the following amounts:

1. The amount, if any, which when added to the acquisition cost of the property, other than any dwelling on the property, equals the reasonable cost of a comparable replacement business or farm operation for the acquired property, as determined by the condemnor.
2. The amount, if any, which will compensate such owner displaced person for any increased interest and other debt service costs which such person is required to pay for financing the acquisition of any replacement property, if the property acquired was encumbered by a bona fide mortgage or land contract which was a valid lien on the property for at least one year prior to the initiation of negotiations for its acquisition. The amount under this subdivision shall be determined according to rules promulgated by the department of administration.
3. Reasonable expenses incurred by the displaced person for evidence of title, recording fees and other closing costs incident to the purchase of the replacement property, but not including prepaid expenses.

(b) *Tenant-occupied business or farm operation.* In addition to amounts otherwise authorized by this subchapter, the condemnor shall make a payment to any tenant displaced person who has owned and occupied the business operation, or owned the farm operation, for not less than one year prior to initiation of negotiations for the acquisition of the real property on which the business or farm operation lies or, if displacement is not a direct result of acquisition, such other event as determined by the department of administration, and who actually rents or purchases a comparable replacement business or farm operation for the displaced business or farm operation within 2 years after the date the person vacates the acquired property. At the option of the tenant displaced person, such payment shall be either:

1. The amount, not to exceed \$30,000, which is necessary to lease or rent a comparable replacement business or farm operation for a period of 4 years. The payment shall be computed by determining the average monthly rent paid for the property from which the person was displaced for the 12 months prior to the initiation of negotiations or, if displacement is not a direct result of acquisition, such other event as determined by the department of administration and the monthly rent of a comparable replacement business or farm operation, and multiplying the difference by 48; or
2. If the tenant displaced person elects to purchase a comparable replacement business or farm operation, the amount determined under subd. 1. plus expenses under par. (a) 3.

(5) **EMINENT DOMAIN.** Nothing in this section or ss. 32.25 to 32.27 shall be construed as creating in any condemnation proceedings brought under the power of eminent domain, any element of damages.

History: 1971 c. 99, 103, 244, 287; 1973 c. 192; 1975 c. 224, 273; 1977 c. 418, 438, 440; 1979 c. 32, 221, 358, 361; 1981 c. 390 s. 252; 1983 a. 27 ss. 881 to 888; 1983 a. 186, 189; 1983 a. 236 ss. 12, 13; 1983 a. 538; 1987 a. 399; 1993 a. 112; 1995 a. 27 ss. 1713 to 1722, 9116 (5); 1995 a. 225; 1997 a. 79; 2011 a. 32; 2015 a. 55.

Cross-reference: See also s. Adm 92.001, Wis. adm. code.

Owners of rental property who do not physically occupy the real property taken for public use are ineligible for business replacement payments under sub. (4m). A business that owned a parking lot used for customer and employee parking was an occupant of the lot and a displaced person under sub. (2) (e) eligible for relocation benefits under s. 32.05 (8). City of Milwaukee v. Roadster LLC, 2003 WI App 131, 265 Wis. 2d 518, 666 N.W.2d 524, 02-3102.

Both statutory and administrative code provisions contemplate that the initial offer of a replacement housing payment is not static in amount. These provisions contemplate a more dynamic approach, allowing for recomputation of the payment after the acquisition damages have been more fully assessed. Pinczkowski v. Milwaukee County, 2005 WI 161, 286 Wis. 2d 339, 706 N.W.2d 642, 03-1732.

Sub. (2) (c) does not require: 1) identification of a property that is identical to the property condemned; or 2) that at the moment of identification, the property, without modification, can be used by the business that was relocated. Rather, it requires identification of a property that with modification can be used for the occupier's business. A condemnor has no open-ended obligation to provide a replacement property that is acceptable to the business being relocated. City of Janesville v. CC Midwest, Inc. 2007 WI 93, 302 Wis. 2d 599; 734 N.W.2d 428, 04-0267.

The definition of "displaced person" in sub. (2) (e) 1. b. provides that a "displaced person" is one whose move is prompted by "rehabilitation, demolition, or other displacing activity" and is an alternative to in sub. (2) (e) 1. a., which contains no reference to the physical condition or habitability of the condemned property, and instead defines "displaced person" in terms of "direct" causation. Sub. (2) (e) 1. b. contains no explicit requirement that a person's move must be "forced" or involuntary in order to render that person "displaced." Waller v. American Transmission Company, LLC, 2013 WI 77, 350 Wis. 2d 242, 833 N.W.2d 764, 12-0805.

A suit against a state agency constitutes a suit against the state for purposes of sovereign immunity. If the legislature has not specifically consented to the suit, then sovereign immunity deprives the court of personal jurisdiction. The legislature has specifically directed the manner in which suits may be brought against the state to vindicate rights under this section. The displaced person must file a claim under s. 32.20, which must, under that

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section's specific language, precede any resort to court. *Aesthetic and Cosmetic Plastic Surgery Center, LLC v. Department of Transportation*, 2014 WI App 88, 356 Wis. 2d 197, 853 N.W.2d 607, 13-2052.

State debt financing of relocation payments is permissible under art. VIII, s. 7 (2) (a). 62 Atty. Gen. 42.

Relocation benefits and services, when an owner initiates negotiations for the acquisition, is discussed. 62 Atty. Gen. 168.

State agencies engaging in advance land acquisitions must comply with this section et seq., Wisconsin's relocation assistance and payment law. 63 Atty. Gen. 201.

Wisconsin condemners are not bound by the federal relocation act. Relocation assistance and payments to displaced persons must be made in accordance with ss. 32.19 to 32.27. Unrelated individuals who share a common dwelling for convenience sake without a common head of the household are persons under this section. 63 Atty. Gen. 229.

Religious societies incorporated under ch. 187 are "persons" within the meaning of the relocation assistance act and are entitled to the benefits of the act if they otherwise qualify. 63 Atty. Gen. 578.

An owner of rental property, regardless of its size, is engaged in "business" under sub. (2) (d) [now sub. (2) (a)]. 69 Atty. Gen. 11.

Owners of rental property who do not physically occupy real property taken for public use are not eligible for business replacement payments under sub. (4m). 69 Atty. Gen. 263.

Condemnors may not offer displaced persons a loan or alternative assistance in lieu of payments. Condemnors may not obtain waivers of benefits as a condition for participation in acquisition program. 70 Atty. Gen. 94.

A tenant who rents new property in reasonable anticipation of displacement prior to actual displacement is entitled to replacement payments under sub. (4m) (b). 70 Atty. Gen. 120.

There was no constitutional "taking" when tenants were ordered to vacate temporarily their uninhabitable dwelling to permit repairs pursuant to a housing code. *Devines v. Maier*, 728 F.2d 876 (1984).

Compensation for lost rents. 1971 WLR 657.

32.195 Expenses incidental to transfer of property. In addition to amounts otherwise authorized by this subchapter, the condemnor shall reimburse the owner of real property acquired for a project for all reasonable and necessary expenses incurred for:

- (1) Recording fees, transfer taxes and similar expenses incidental to conveying such property.
- (2) Penalty costs for prepayment of any mortgage entered into in good faith encumbering such real property if the mortgage is recorded or has been filed for recording as provided by law prior to the date specified in s. 32.19 (4) (a) 2.
- (3) The proportional share of real property taxes paid which are allocable to a period subsequent to the date of vesting of title in the condemnor or the effective date of possession of such real property by the condemnor, whichever is earlier.
- (4) The cost of realigning personal property on the same site in partial takings or where realignment is required by reason of elimination or restriction of existing used rights of access.
- (5) Expenses incurred for plans and specifications specifically designed for the property taken and which are of no value elsewhere because of the taking.
- (6) Reasonable net rental losses when all of the following are true:
 - (a) The losses are directly attributable to the public improvement project.
 - (b) The losses are shown to exceed the normal rental or vacancy experience for similar properties in the area.
- (7) Cost of fencing reasonably necessary pursuant to s. 32.09 (6) (g) shall, when incurred, be payable in the manner described in s. 32.20.

History: 1973 c. 192 ss. 4, 6; 1979 c. 110 s. 60 (10); 1983 a. 236 s. 12; 1995 a. 225.

Cross-reference: See also s. Adm 92.001, Wis. adm. code.

An owner who is legally liable for expenses incurred for plans relating to condemned property is entitled to reimbursement under sub. (5). *Shepherd Legan Aldrian Ltd. v. Village of Shorewood*, 182 Wis. 2d 472, 513 N.W.2d 686 (Ct. App. 1994).

32.196 Relocation payments not taxable. Except for reasonable net rental losses under s. 32.195 (6), no payments received under s. 32.19 or 32.195 may be considered income for the purposes of ch. 71; nor may such payments be considered income or resources to any recipient of public assistance and such payments shall not be deducted from the amount of aid to which the recipient would otherwise be entitled under any welfare law.

History: 1983 a. 27 s. 888.

Cross-reference: See also s. Adm 92.001, Wis. adm. code.

32.197 Waiver of relocation assistance. An owner-occupant of property being acquired may waive his or her right to receive any relocation payments or services under this subchapter if the property being acquired is not contiguous to any property which may be acquired by the condemnor and is not part of a previously identified or proposed project

where it is reasonable to conclude that acquisition by the condemnor may occur in the foreseeable future. Prior to the execution of any waiver under this section, the condemnor shall provide to the owner-occupant, in writing, full information about the specific payments and services being waived by the owner-occupant. The department of administration shall by rule establish procedures for relocation assistance waivers under this section to ensure that the waivers are voluntarily and knowledgeably executed.

History: 1983 a. 27; 1983 a. 236 s. 12; 1995 a. 27 ss. 1723, 9116 (5); 2011 a. 32.

Cross-reference: See also s. Adm 92.001, Wis. adm. code.

32.20 Procedure for collection of itemized items of compensation. Claims for damages itemized in ss. 32.19 and 32.195 shall be filed with the condemnor carrying on the project through which condemnee's or claimant's claims arise. All such claims must be filed after the damages upon which they are based have fully materialized but not later than 2 years after the condemnor takes physical possession of the entire property acquired or such other event as determined by the department of administration by rule. If such claim is not allowed within 90 days after the filing thereof, the claimant has a right of action against the condemnor carrying on the project through which the claim arises. Such action shall be commenced in a court of record in the county wherein the damages occurred. In causes of action, involving any state commission, board or other agency, excluding counties, the sum recovered by the claimant shall be paid out of any funds appropriated to such condemning agency. Any judgment shall be appealable by either party and any amount recovered by the body against which the claim was filed, arising from costs, counterclaims, punitive damages or otherwise may be used as an offset to any amount owed by it to the claimant, or may be collected in the same manner and form as any other judgment.

History: 1977 c. 29 s. 1654 (8) (c); 1981 c. 249; 1987 a. 399; 1995 a. 27 ss. 1724, 9116 (5); 2011 a. 32.

Cross-reference: See also s. Adm 92.001, Wis. adm. code.

This statute mandates the procedure for making any and all claims by condemnees. Rotter v. Milwaukee County Expressway & Transportation Commission, 72 Wis. 2d 553, 241 N.W.2d 440 (1976).

To stop this time limit from beginning to run, the condemnee must avoid giving physical possession of the property to the condemnor. The statute provides no exception for the circumstance in which the condemnor and condemnee engage in good faith negotiations as to the amount of relocation expenses to be paid. The legislature specifically used the term "physical" to avoid uncertainty in identifying the exact time when the legal right to possession arises. C. Coakley Relocation Systems v. City of Milwaukee, 2007 WI App 209, 305 Wis. 2d 487, 740 N.W.2d 636, 06-2292.

Affirmed. 2008 WI 68, 310 Wis. 2d 456, 750 N.W.2d 900, 06-2292.

32.21 Emergency condemnation. Whenever any lands or interest therein are urgently needed by any state board, or commission, or other agency of the state, and a contract for the purchase or use of the property cannot be made for a reasonable price, or for any other reason, including the unavailability of the owner or owners, the board, commission or agency may, with the approval of the governor, issue an award of damages and upon tender of the award to the owner or owners, or deposit in a court of record in the county where the lands are situated in cases where an owner is not available or tender is refused, take immediate possession of said property. Deposit in a court of record may be made by registered mail addressed to the clerk of the court. The governor shall determine whether or not such an award shall issue. Appeal from said award of damages will lie as in other similar cases and all provisions of this subchapter shall govern, except as to the provision herein concerning the immediate issuance of the award tender and immediate possession.

History: 1981 c. 390 s. 252; 1983 a. 236 s. 12.

Cross-reference: See also s. Adm 92.001, Wis. adm. code.

32.22 Special procedure for immediate condemnation.

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

- (a) "Blighted property" means any property which, by reason of abandonment, dilapidation, deterioration, age or obsolescence, inadequate provisions for ventilation, light, air or sanitation, high density of population and overcrowding, faulty lot layout in relation to size, adequacy, accessibility or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, or the existence of conditions which endanger life or property by fire or other causes, or any combination of such factors, is detrimental to the public health, safety or welfare.
- (b) "Municipality" means a city, a village, a town, a housing authority created under ss. 66.1201 to 66.1211, a redevelopment authority created under s. 66.1333 or a community development authority created under s. 66.1335.
- (c) "Owner" means any person holding record title in the property.
- (d) "Residential" means used principally for dwelling purposes.

(2) **APPLICABILITY.** Any municipality may use the procedures in this section for the condemnation of blighted residential property, in lieu of the procedures in s. 32.06. Any 1st class city may use the procedures in this section for

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the condemnation of blighted residential property, in lieu of the procedures in subch. II. The procedures in this section may only be used to acquire all of the property in a single parcel. Except as provided in sub. (12), the procedures in this section may not be used by a municipality to acquire blighted residential property for any purpose which requires the razing of the residential building.

(3) DETERMINATION OF NECESSITY OF TAKING. The necessity of taking shall be determined under s. 32.07.

(4) APPRAISAL; INFORMATION ON BLIGHT; WARRANT.

(a)

1. The municipality shall prepare one or more appraisals of any blighted residential property proposed to be acquired under this section. In preparing any appraisal under this paragraph, the appraiser shall confer with the owner or the owner's representative, if either can be located with reasonable diligence. The condemnor shall provide the owner with a full narrative appraisal upon which the petition under sub. (5) is based and a copy of any other appraisal made under this paragraph and at the same time shall inform the owner of his or her right to obtain an appraisal under subd. 2.
2. The owner may obtain an appraisal by a qualified appraiser of all property proposed to be acquired. The owner may submit the reasonable costs of the appraisal to the condemnor for payment, along with a copy of the owner's full narrative appraisal and evidence of the owner's payment for the appraisal within 60 days after the petition is filed under sub. (5). After receipt of the statement of appraisal costs, proof of payment and a copy of the appraisal, the municipality shall promptly reimburse the owner for the reasonable costs of the appraisal. The condemnor shall not be required to reimburse more than one owner under this subdivision for an appraisal relating to the condemnation under this section of any single parcel of real estate. If record title exists in more than one person, the person obtaining reimbursement under this subdivision shall provide a copy of the owner's appraisal to each other person who is an owner, as defined in sub. (1)(c).

(b) Before submitting the petition under sub. (5), the municipality shall ascertain that the property is blighted and shall note any other evidence of blight, such as unlocked doors, unlocked or broken windows and screens, lack of gas, electric or water service, absence of personal belongings in the building and any conditions which render the building untenable.

(c) Prior to entry into any building proposed to be acquired under this section, the condemnor shall obtain a special condemnation warrant under this paragraph. To obtain a special condemnation warrant, the condemnor shall petition the circuit court for the county in which the property proposed to be acquired is located and shall mail a copy of the petition for a warrant under this paragraph by registered or certified mail to the owner's last-known address if any. The court shall issue the warrant on the condemnor's affidavit that the condemnor intends to condemn the property under this section; that the condemnor has mailed a copy of the petition for the warrant as required in this paragraph; and that an external inspection of the property indicates that it is blighted.

(5) PETITION FOR CONDEMNATION PROCEEDINGS.

(a) A municipality may present a verified petition to the circuit court for the county in which the property to be taken is located, for proceedings to take immediate possession of blighted residential property and for proceedings to determine the necessity of taking, where such determination is required. The compensation offered for the property shall accompany the petition.

(b) The petition shall:

1. Describe the property and interests sought to be acquired.
2. Name all owners of record of the property.
3. State the authority of the municipality to condemn the property.
4. Describe the facts which indicate that property is blighted.
5. Itemize the compensation offered for the property according to the items of damages under s. 32.09.
6. Describe the condemnor's plan to preserve the property pending rehabilitation.
7. Describe the condemnor's plan to rehabilitate the property and return it to the housing market.

(6) ACTION ON THE PETITION.

(a) Immediately upon receipt of the petition, the circuit court shall examine the evidence presented by the municipality showing that the property is blighted. If the circuit court finds that the property is blighted, the court shall immediately direct the municipality to serve a copy of the petition and a notice on the owner under s. 801.12(1), and to post a copy of the petition and notice on the main entrance to the residential building. The notice shall state that:

1. The owner may accept the compensation offered by filing a petition with the clerk of the court.
2. The owner may commence a court action to contest the right of condemnation as provided in sub. (8) within 40 days from completion of service of process.
3. The owner may appeal for greater compensation without prejudice to the right to use the compensation given by the award under sub. (10) within 2 years from the date of taking of the property.

4. Acceptance of the award is an absolute bar to an action to contest the right of condemnation under sub. (8).
- (b) If any owner is a minor or an individual adjudicated incompetent, a special guardian shall be appointed under s. 32.05 (4).
- (7) **POSSESSION AND PROTECTION OF THE PROPERTY.** Within one working day after the municipality files proof of service of the petition and notice under s. 801.12 (1), the court shall grant the municipality immediate possession of the property. After obtaining the right to possession of the property, the municipality may take any action necessary to protect the property. The municipality shall post a notice on the main entrance to the building directing any occupant of the property to contact the municipality for information on relocation assistance.
- (8) **ACTION TO CONTEST RIGHT OF CONDEMNATION.**
- (a) If an owner desires to contest the right of the condemnor to condemn the property described in the petition, for any reason other than that the amount of compensation offered is inadequate, the owner may within 40 days from the date of service and posting of the notice under sub. (6) commence an action in the circuit court of the county in which the property is located, naming the condemnor as defendant. If the action is based on the allegation that the condemned property is not blighted, the owner shall demonstrate by a preponderance of the credible evidence that the property is not blighted.
- (b) An action under this subsection shall be the only manner in which any issue other than the amount of just compensation, or other than proceedings to perfect title under ss. 32.11 and 32.12, may be raised pertaining to the condemnation of the property described in the petition. The trial of the issues raised by the pleadings in an action under this subsection shall be given precedence over all other actions in the circuit court then not actually on trial. If the action under this subsection is not commenced within the time limited, or if compensation offered for the condemned property is accepted, the owner or other person having any interest in the property shall be barred from raising any objection to the condemnor's right to condemn the property under this section in any manner.
- (c) Nothing in this subsection limits in any respect the right to determine the necessity of taking under s. 32.07. Nothing in this subsection limits the right of the municipality to exercise control over the property under sub. (7).
- (d) If the final judgment of the court is that the municipality is not authorized to condemn the property, the court shall award the owner a sum equal to actual damages, if any, caused by the municipality in exercising control over the property, in addition to the amounts provided in s. 32.28.
- (9) **PAYMENT OF COMPENSATION; TRANSFER OF TITLE.**
- (a) If the owner accepts the compensation offered, or if the owner does not accept the compensation offered but no timely action is commenced under sub. (8), or if in an action under sub. (8) the circuit court holds that the municipality may condemn the property, the court shall order the title transferred to the municipality and the compensation paid to the owner.
- (b) The clerk of court shall give notice of the order under par. (a) by certified mail, or by a class 3 notice under ch. 985, if any owner cannot be found, or any owner's address is unknown. The notice shall indicate that the owner may receive his or her proper share of the award by petition to and order of the court. The petition may be filed with the clerk of the court without fee.
- (10) **ACTION TO CONTEST AMOUNT OF COMPENSATION.** Within 2 years after the date of taking under this section, an owner may appeal from the award using the procedures in s. 32.05 (9) to (12) and chs. 808 and 809 without prejudice to the owner's right to use the compensation received under sub. (9) pending final determination under this subsection. For purposes of this subsection, the "date of taking" and the "date of evaluation" shall be the date of filing the petition in circuit court under sub. (5). For the purposes of this subsection, the "basic award" shall be the amount paid into the circuit court by the municipality under sub. (5). If the owner is successful on the appeal and the circuit court awards an amount higher than the basic award, the court shall award the owner the amounts provided in s. 32.28.
- (11) **CLAIMS BY OCCUPANTS.**
- (a) If within 2 years after the petition is filed by the municipality, any person claims to have been a lawful occupant of the property condemned on the date the petition was filed, that individual may submit a request for relocation assistance under s. 32.25 to the municipality. The municipality shall, within 30 days after receipt of the request, either grant this request or apply to the circuit court for the county in which the property is located for a resolution of the claim.
- (b) If an application is made to the circuit court under par. (a), the court shall conduct a hearing and determine whether the claimant had a lawful right to occupy the property and whether the claimant actually occupied the property on the date the petition was filed. If the court finds in favor of the claimant, the court shall direct the municipality to provide the relocation assistance and other aid available under s. 32.25 to a displaced person at the time of condemnation, unless the municipality abandons the proceedings and the claimant is able to resume occupancy of the property.

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- (c) No determination by a court under par. (b) in favor of a claimant affects the right of the municipality to condemn the property under this section in any case in which the owner accepts the compensation offered by the municipality or in which the claim under par. (a) is made after the latest date on which the owner could have filed an action under sub. (8).

(12) DISPOSITION OF CONDEMNED PROPERTY.

- (a) Nothing in this section requires the municipality to rehabilitate a residential building, if it appears at any time that total cost of rehabilitation, including structural repairs and alterations, exceeds 80 percent of the estimated fair market value of the building when rehabilitation is complete. If the municipality determines under this paragraph not to rehabilitate a residential building condemned under this section, the municipality shall sell the building to any corporation organized under ch. 181 that is a nonprofit corporation, as defined in s. 181.0103 (17), or any cooperative organized under ch. 185 or 193 which:
1. Offers to purchase the building within 60 days after the municipality determines not to rehabilitate the building for an amount which is not less than the amount paid by the municipality to acquire the building from the previous owner under this section;
 2. Agrees to submit to the municipality its plans to rehabilitate the building within 3 months after the date on which the nonprofit corporation or cooperative acquires title to the building, to commence significant rehabilitation activities within 6 months after that date and to complete the rehabilitation program and return the building to residential use within 18 months after that date; and
 3. Agrees to execute a quitclaim deed returning the property to the municipality without compensation or reimbursement if the nonprofit corporation or cooperative fails to satisfy any of the requirements of subd. 2.
- (b) If the municipality undertakes and completes the rehabilitation of any residential building acquired under this section, the municipality shall:
1. Sell, lease or otherwise convey the rehabilitated building to any person authorized to exercise condemnation powers under this section.
 2. Sell the rehabilitated building to any person not authorized to exercise condemnation powers under this section. If the condemnor sells the building to any person not authorized to exercise condemnation powers under this section, the sale price shall be not less than fair market value of the rehabilitated building at the time of the sale.
- (c) If a residential building is not rehabilitated or conveyed under par. (a) or (b), the municipality may use the property condemned under this section for any lawful purpose, including any purpose which requires razing of the building.

History: 1979 c. 37; 1983 a. 219 s. 46; 1983 a. 236 s. 13; 1989 a. 347; 1993 a. 246; 1997 a. 79; 1999 a. 150 s. 672; 2005 a. 387, 441.

Note: *Chapter 37, laws of 1979, which created this section, gives the legislative intent in section 1.*

Cross-reference: See also s. Adm 92.001, Wis. adm. code.

32.25 Relocation payment plan and assistance services.

- (1) Except as provided under sub. (3) and s. 85.09 (4m), no condemnor may proceed with any activity that may involve the displacement of persons, business concerns or farm operations until the condemnor has filed in writing a relocation payment plan and relocation assistance service plan and has had both plans approved in writing by the department of administration.
- (2) The relocation assistance service plan shall contain evidence that the condemnor has taken reasonable and appropriate steps to:
- (a) Determine the cost of any relocation payments and services or the methods that are going to be used to determine such costs.
 - (b) Assist owners of displaced business concerns and farm operations in obtaining and becoming established in suitable business locations or replacement farms.
 - (c) Assist displaced owners or renters in the location of comparable dwellings.
 - (d) Supply information concerning programs of federal, state and local governments which offer assistance to displaced persons and business concerns.
 - (e) Assist in minimizing hardships to displaced persons in adjusting to relocation.
 - (f) Secure, to the greatest extent practicable, the coordination of relocation activities with other project activities and other planned or proposed governmental actions in the community or nearby areas which may affect the implementation of the relocation program.
 - (g) Determine the approximate number of persons, farms or businesses that will be displaced and the availability of decent, safe and sanitary replacement housing.
 - (h) Assure that, within a reasonable time prior to displacement, there will be available, to the extent that may reasonably be accomplished, housing meeting the standards established by the department of administration for decent, safe and sanitary dwellings. The housing, so far as practicable, shall be in areas not generally less

desirable in regard to public utilities, public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced and equal in number to the number of such displaced families or individuals and reasonably accessible to their places of employment.

- (i) Assure that a person shall not be required to move from a dwelling unless the person has had a reasonable opportunity to relocate to a comparable dwelling.
- (3)
- (a) Subsection (1) does not apply to any of the following activities engaged in by a condemnor:
 1. Obtaining an appraisal of property.
 2. Obtaining an option to purchase property, regardless of whether the option specifies the purchase price, if the property is not part of a program or project receiving federal financial assistance.

History: 1971 c. 99, 103; 1979 c. 361; 1983 a. 27, 236; 1987 a. 5, 399; 1991 a. 269; 1995 a. 27 ss. 1725, 1726, 9116 (5); 2011 a. 32.

Cross-reference: See also s. Adm 92.001, Wis. adm. code.

32.26 Authority of the department of administration.

- (1) In addition to all other powers granted in this subchapter, the department of administration shall formulate local standards for decent, safe and sanitary dwelling accommodations.
- (2)
 - (a) The department of administration shall promulgate rules to implement and administer ss. 32.19 to 32.27.
 - (b) The department of administration and the department of transportation shall establish interdepartmental liaison procedures for the purpose of cooperating and exchanging information to assist the department of administration in promulgating rules under par. (a).
- (3) The department of administration may make investigations to determine if the condemnor is complying with ss. 32.19 to 32.27. The department may seek an order from the circuit court requiring a condemnor to comply with ss. 32.19 to 32.27 or to discontinue work on that part of the project which is not in substantial compliance with ss. 32.19 to 32.27. The court shall give hearings on these actions precedence on the court's calendar.
- (4) Upon the request of the department of administration, the attorney general shall aid and prosecute all necessary actions or proceedings for the enforcement of this subchapter and for the punishment of all violations of this subchapter.
- (5) Any displaced person may, prior to commencing court action against the condemnor under s. 32.20, petition the department of administration for review of his or her complaint, setting forth in the petition the reasons for his or her dissatisfaction. The department may conduct an informal review of the situation and attempt to negotiate an acceptable solution. If an acceptable solution cannot be negotiated within 90 days, the department shall notify all parties, and the petitioner may then proceed under s. 32.20. The informal review procedure provided by this subsection is not a condition precedent to the filing of a claim and commencement of legal action pursuant to s. 32.20. In supplying information required by s. 32.25 (2) (d), the condemnor shall clearly indicate to each displaced person his or her right to proceed under this paragraph and under s. 32.20, and shall supply full information on how the displaced person may contact the department of administration.
- (6) The department of administration, with the cooperation of the attorney general, shall prepare pamphlets in simple language and in readable format describing the eminent domain laws of this state, including the reasons for condemnation, the procedures followed by condemnors, how citizens may influence the condemnation process and the rights of property owners and citizens affected by condemnation. The department shall make copies of the pamphlets available to all condemnors, who may be charged a price for the pamphlets sufficient to recover the costs of production.
- (7) The department of administration shall provide technical assistance on relocation plan development and implementation to any condemnor carrying out a project which may result in the displacement of any person.

History: 1971 c. 103; 1971 c. 211 s. 126; 1977 c. 438, 449; 1979 c. 361; 1983 a. 236 s. 12; 1985 a. 332 s. 251 (5); 1987 a. 399; 1995 a. 27 ss. 1727 to 1735, 9116 (5); 2011 a. 32.

Cross-reference: See also s. Adm 92.001, Wis. adm. code.

32.27 Records to be kept by condemnor.

- (1) **CONTENTS OF RECORDS.** The condemnor shall maintain records for each project requiring a relocation payment plan. The records shall contain such information as are necessary to carry out ss. 32.19 and 32.25 to 32.27. The records shall be preserved by the condemnor for a period of not less than 3 years after conclusion of the project to which the records pertain.
- (2) **COSTS OF RELOCATION PAYMENTS AND SERVICES; SHARING FORMULA.**
 - (a) The costs of relocation payments and services shall be computed and paid by the condemnor and included as part of the total project cost.
 - (b) If there is a project cost-sharing agreement between the condemnor and another unit or level of government, the costs of relocation payments and services shall be shared in the same proportion as other project costs

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unless otherwise provided. This direct proportion formula may be changed to take advantage of federal relocation subsidies. It is intended that the payments and services described by ss. 32.19 to 32.27 are required for any project whether or not it is subject to federal regulation under P.L. 91-646; 84 Stat. 1894. The intent of this paragraph is to assure that condemners take maximum advantage of federal payment or assistance for relocation, and to ensure that in no event will any displaced person receive a combined payment in excess of payments authorized or required by s. 32.19 or by federal law.

History: 1971 c. 103; 1977 c. 418; 1991 a. 189.

Cross-reference: See also s. Adm 92.001, Wis. adm. code.

32.28 Costs.

- (1) In this section, "litigation expenses" means the sum of the costs, disbursements and expenses, including reasonable attorney, appraisal and engineering fees necessary to prepare for or participate in actual or anticipated proceedings before the condemnation commissioners, board of assessment or any court under this chapter.
- (2) Except as provided in sub. (3), costs shall be allowed under ch. 814 in any action brought under this chapter. If the amount of just compensation found by the court or commissioners of condemnation exceeds the jurisdictional offer or the highest written offer prior to the jurisdictional offer, the condemnee shall be deemed the successful party under s. 814.02 (2).
- (3) In lieu of costs under ch. 814, litigation expenses shall be awarded to the condemnee if:
 - (a) The proceeding is abandoned by the condemnor;
 - (b) The court determines that the condemnor does not have the right to condemn part or all of the property described in the jurisdictional offer or there is no necessity for its taking;
 - (c) The judgment is for the plaintiff in an action under s. 32.10;
 - (d) The award of the condemnation commission under s. 32.05 (9) or 32.06 (8) exceeds the jurisdictional offer or the highest written offer prior to the jurisdictional offer by at least \$700 and at least 15 percent and neither party appeals the award to the circuit court;
 - (e) The jury verdict as approved by the court under s. 32.05 (11) exceeds the jurisdictional offer or the highest written offer prior to the jurisdictional offer by at least \$700 and at least 15 percent;
 - (f) The condemnee appeals an award of the condemnation commission which exceeds the jurisdictional offer or the highest written offer prior to the jurisdictional offer by at least \$700 and at least 15 percent, if the jury verdict as approved by the court under s. 32.05 (10) or 32.06 (10) exceeds the award of the condemnation commission by at least \$700 and at least 15 percent;
 - (g) The condemnor appeals the award of the condemnation commission, if the jury verdict as approved by the court under s. 32.05 (10) or 32.06 (10) exceeds the jurisdictional offer or the highest written offer prior to the jurisdictional offer by at least \$700 and at least 15 percent;
 - (h) The condemnee appeals an award of the condemnation commission which does not exceed the jurisdictional offer or the highest written offer prior to the jurisdictional offer by 15 percent, if the jury verdict as approved by the court under s. 32.05 (10) or 32.06 (10) exceeds the jurisdictional offer or the highest written offer prior to the jurisdictional offer by at least \$700 and at least 15 percent; or
 - (i) The condemnee appeals an assessment of damages and benefits under s. 32.61 (3), if the judgment is at least \$700 and at least 15 percent greater than the award made by the city.

History: 1977 c. 440; 1983 a. 236; 1995 a. 140.

Under sub. (3) (d), the difference between the award and offer must meet both the \$700 and 15 percent tests, but the two are not cumulative. Acquisition of Certain Lands by Benson, 101 Wis. 2d 691, 305 N.W.2d 184 (Ct. App. 1981).

A condemnee may not recover attorney fees incurred prior to a jurisdictional offer. A contingent fee of 40 percent of an award, plus interest, was reasonable. A condemnor must pay an appraiser for time spent as an adviser during most of a trial. Klunker v. State, 109 Wis. 2d 602, 327 N.W.2d 145 (Ct. App. 1982).

An evidentiary hearing on the reasonableness of litigation expenses is discretionary, not mandatory. Appellate litigation expenses may be awarded. Narloch v. DOT, 115 Wis. 2d 419, 340 N.W.2d 540 (1983).

For attorney fees to be found reasonable, a condemnee is not required to retain counsel from the locality where the condemned property is located. It implies a reasonable choice of counsel based on the facts of the case. Standard Theatres v. DOT, 118 Wis. 2d 730, 349 N.W.2d 661 (1984).

Litigation expenses were properly awarded under sub. (3) (b) when the condemnor failed to establish the necessity for taking the property. Toombs v. Washburn County, 119 Wis. 2d 346, 350 N.W.2d 720 (Ct. App. 1984).

A successful plaintiff in an inverse condemnation action was entitled to litigation expenses, which included expenses related to a direct condemnation action. Expenses related to an allocation proceeding under s. 32.11 were not recoverable. Maxey v. Racine Redevelopment Authority, 120 Wis. 2d 13, 353 N.W.2d 812 (Ct. App. 1984).

An award under s. 32.06 (8) exclusively for tenant's immovable fixtures constitutes a separate award for purposes of s. 32.28 (3) (d). The unit rule of damages is inapplicable. Litigation expenses are awarded by court order, not by the clerk under s. 814.10. Green Bay Redevelopment Authority v. Bee Frank, 120 Wis. 2d 402, 355 N.W.2d 240 (1984).

A contingent fee contract while not improper, is only a guide in awarding expenses under sub. (3) (e). *Milwaukee Rescue Mission v. Milwaukee Redevelopment Authority*, 161 Wis. 2d 472, 468 N.W.2d 663 (1991).

A judge who assigns a condemnation petition to the commission may award attorney fees when neither party appeals the commission's award. Contingent fees as the basis of an award are discussed. *Village of Shorewood v. Steinberg*, 174 Wis. 2d 191, 496 N.W.2d 191 (1993).

The award of litigation expenses upon abandonment of condemnation proceedings applies to all ch. 32 condemnations. Expenses may be awarded when any proceeding in the process is abandoned. *Pelfrense v. Dane County Regional Airport*, 186 Wis. 2d 538, 521 N.W.2d 460 (Ct. App. 1994).

When an award is appealed, but does not proceed to a verdict, the issue of litigation expenses is treated as arising under sub. (3) (d). *Dickie v. City of Tomah*, 190 Wis. 2d 455, 527 N.W.2d 697 (Ct. App. 1994).

Attorney fees may not be awarded when an attorney-client relationship does not exist. An attorney represented by his own law firm is not entitled to attorney fees. *Dickie v. City of Tomah*, 190 Wis. 2d 455, 527 N.W.2d 697 (Ct. App. 1994).

When language in a lease provided that the lessor would receive all of any condemnation award, the calculation of the 15 percent under sub. (3) (e) was based on the entire jurisdictional offer, even though under terms of the lease the lessee was entitled to payments from the lessor upon condemnation. *Van Asten v. DOT*, 214 Wis. 2d 135, 571 N.W.2d 420 (Ct. App. 1997), 96-1835.

Sub. (3) (b) entitles a successful condemnee to litigation expenses when the condemnor fails to negotiate in good faith before issuing the jurisdictional offer. Good faith negotiation prior to issuing a jurisdictional offer is not merely a technical obligation, but rather, is a fundamental, statutory requirement necessary to validly commence condemnation and confer jurisdiction on the condemnation commission and the courts. *The Warehouse II, LLC v. State of Wisconsin Department of Transportation*, 2006 WI 62, 291 Wis. 2d 80, 715 N.W.2d 213, 03-2865.

This section does not expressly state that fees are only recoverable prior to abandonment or if the continuation of proceedings was not attributable to the condemnee. However the circuit court in this case properly exercised its discretion in determining that the fees incurred after abandonment were not reasonable or necessary. *DSG Evergreen F.L.P. v. Town of Perry*, 2007 WI App 115, 300 Wis. 2d 590, 731 N.W.2d 667, 06-0585.

Litigation expenses shall be awarded to an owner under sub. (3) (d) if the owner conveys the property and receives a certificate of compensation pursuant to s. 32.06 (2a), with no jurisdictional offer issued under s. 32.06 (3); timely appeals to the circuit court, which refers the matter to the chairperson of the county condemnation commissioners; is awarded at least \$700 and at least 15 percent more than the negotiated price under s. 32.06 (2a); and neither party appeals the commission's award. *Klemm v. American Transmission Company, LLC*, 2011 WI 37, 333 Wis. 2d 580, 798 N.W.2d 223, 09-2784.

32.29 False statements prohibited. Any officer, agent, or employee of a governmental body or business entity granted condemnation power under s. 32.02 (1) or (3) to (16) who intentionally makes or causes to be made a statement which he or she knows to be false to any owner of property concerning the condemnation of such property or to any displaced person concerning his or her relocation benefits under s. 32.19, 32.20, 32.25, or 32.26 or who fails to provide the information required under s. 32.26 (6) shall be fined not less than \$50 nor more than \$1,000, or imprisoned for not more than one year in the county jail or both.

History: 1977 c. 158; 1983 a. 27 s. 879; Stats. 1983 s. 32.29; 2015 a. 55.

SUBCHAPTER II ALTERNATE EMINENT DOMAIN PROCEDURES IN 1ST CLASS CITIES

32.50 Definitions. In this subchapter:

- (1) "Benefit district" means the area benefiting from and assessed for an improvement under this subchapter.
- (2) "Board" means the board of assessment.
- (3) "City" means any 1st class city.
- (4) "Common council" means the common council of the city.

History: 1983 a. 236.

32.51 Exercise of eminent domain.

- (1) PURPOSES. In addition to the powers granted under subch. I, any city may condemn or otherwise acquire property under this subchapter for:
 - (a) Any purpose stated in article XI, section 3a, of the constitution.
 - (b) Public alleys, grounds, harbors, libraries, museums, school sites, vehicle parking areas, airports, markets, hospitals, ward yards, bridges, viaducts, water systems and water mains.
 - (c) Constructing and maintaining sewers.
 - (d) Slum elimination.
 - (e) Low-income housing.

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- (f) Blighted area redevelopment.
 - (g) Any other municipal purposes.
- (2) **LEVYING ASSESSMENTS.** Any city may levy assessments on property benefited to finance improvements under this subchapter.
- History:** 1983 a. 236, 538; 1995 a. 378.

32.52 Board of assessment.

- (1) **CREATION.** There is created a board, to which the mayor shall appoint 5 members with the appointments confirmed by the common council. If the common council rejects any appointment, the mayor shall submit a new appointment within 30 days.
- (2) **TERMS.** The terms of the first 5 members of the board are staggered at 1, 2, 3, 4 and 5 years, each term commencing on January 1 of the year of the appointment. Subsequent appointments occur annually in December to succeed the member whose term expires the following January 1. The term of each subsequent appointment is 5 years, commencing on January 1 following the appointment.
- (3) **QUALIFICATIONS OF MEMBERS.** One member shall have a general understanding of real estate values in the city and shall be a real estate broker licensed under s. 452.12 with at least 5 years' experience. One member shall be a civil engineer and have a general understanding of building and construction costs. Three members shall own real property in the city. All members shall be residents and electors of the city.
- (4) **ORGANIZATION.** The board shall elect a chairperson to preside over all meetings of the board. The common council shall determine the compensation of each board member and of permanent employees of the board and may increase the compensation provided to full-time board members. The board shall determine the compensation of temporary employees. Permanent or temporary technical advisers and experts of the board are not classified under s. 63.23, but all other clerks and employees of the board are classified under s. 63.23.
- (5) **BUDGET PROCESS.** The board shall annually prepare a budget for its operation on or before September 1. The common council may levy an annual tax to support the board's operations. If the common council appropriates funds to the board, the board may draw from the funds only upon written order signed by a board member and the city comptroller.
- History:** 1983 a. 236.

32.53 Resolution of necessity. If the common council proposes any public improvement involving the acquisition of private property or the use of public property, it shall pass a resolution by a three-fourths vote of the entire membership of the common council declaring the need to acquire or use certain property for a specified purpose. The common council shall state in its resolution the general nature of the proposed improvement and require the board to submit a report and tentative plan of the proposed improvement to the common council for its approval. The board may require the city engineer to submit to the board a detailed map and description of the property necessary for the proposed improvement plus adjacent property and other surveys, maps, descriptions of property or estimates of cost the board needs to prepare the report and tentative plan.

History: 1983 a. 236.

32.54 Report and tentative plan of improvement.

- (1) **CONTENTS.** The board shall submit to the common council a report and tentative plan of improvement following passage of a resolution under s. 32.53. The report and tentative plan shall include the following:
- (a) An estimate of the total cost of the improvement.
 - (b) A map and description of all property to be taken or used or that may be benefited. The board shall indicate on the map the extent and boundary of the benefit district and a maximum and minimum benefit assessment rate for any representative parcel of property within the benefit district to indicate the estimated amount of the benefits that may be assessed.
- (2) **COST ESTIMATE.** The board shall include the value of any city property and the cost of any previously completed improvement it incorporates into the report and tentative plan as part of the estimate of the cost of the improvement. The cost of grading, paving or repaving or laying out or improving any curbs, gutters or sidewalks for which benefits have been legally assessed prior to the adoption of the plan of improvement may not be included in the estimate, the determination of benefits or the cost of the proposed improvement.

History: 1983 a. 236.

32.55 Hearing on the report and tentative plan of improvement.

- (1) **NOTICE.** Upon receiving the report and tentative plan of improvement the common council shall refer the report to a council committee for a public hearing to discuss the tentative plan, the relative costs and benefits and the necessity of the proposed improvement. At least 10 days before the public hearing, the common council shall send notice of the hearing to the last-known mailing address of any owner of property that may be damaged or benefited by the proposed improvement.

(2) APPROVAL, REVISION, ABANDONMENT.

(a) After the hearing the common council shall:

1. Approve the report and tentative plan, if it determines that taking the property mentioned in the plan is necessary, and commence implementation of the plan; or
2. Remand the report and tentative plan to the board for reconsideration and revision.

(b) If the common council remands the report and tentative plan, the board shall reconsider the report and tentative plan and submit a revised report and tentative plan to the common council. The common council shall refer the revised report and tentative plan to a council committee for a public hearing as provided in sub. (1). After the hearing, the common council may approve the revised report and tentative plan or revise the report and tentative plan itself and commence implementation of the plan. Instead of approving the original or revised report and tentative plan, the common council may abandon the proposed improvement.

(c) After approving the report and tentative plan the city may begin purchasing property to implement the plan.

(3) RECORDS. The city attorney shall record the common council's resolution approving the original or revised report and tentative plan with a description of the property to be condemned plus a map showing the condemned property and the benefit district in the office of the register of deeds of the county in which the property is located.

History: 1983 a. 236; 1993 a. 301.

32.56 Altering the plan of improvement.

(1) PROCEDURE. The city may alter the plan of improvement after its approval under s. 32.55 (2) at any time prior to the confirmation of the assessment of benefits and damages. The board shall submit to the common council the proposed alteration of the plan plus an amended estimate of the cost and the benefits and an amended map of the proposed improvement. The common council shall approve the alteration by resolution before the alteration is effective. If the city alters the plan while benefits and damages are being assessed under s. 32.57, the board shall reassess benefits and damages based on the altered plan.

(2) RECORDING THE ALTERATION. The city attorney shall record the common council's resolution approving the alteration under sub. (1) plus a description of the alteration in the office of the register of deeds of the county in which the property is located.

History: 1983 a. 236; 1993 a. 301.

32.57 Determining benefits and damages.

(1) RESOLUTION. After approving the plan under s. 32.55 (2), the common council may adopt a resolution directing the board to determine the damages to be paid for property condemned and the benefits to be assessed against property benefited within the benefit district. The board shall include the cost of all property acquired by purchase or condemnation for the improvement, as well as the cost of physical improvements that are approved under s. 32.55 (2), in the assessment of benefits and shall report its findings to the common council.

(2) EXEMPT PROPERTY. The board may not assess benefits against any property:

- (a) Owned exclusively by the federal government.
- (b) Included in a tax certificate previously issued under s. 74.57.
- (c) Owned exclusively by or held in trust exclusively for this state, if exempt from taxation. Land contracted to be sold by this state is not exempt from assessment. State land that is part of a pedestrian mall under s. 62.71 is exempt from assessment only if it is held or used exclusively for highway purposes. State payment of assessments against a pedestrian mall is governed by s. 66.0705 (2).
- (d) Owned or occupied rent free exclusively by any county, city, village, town, school district or free public library.
- (e) Used exclusively for public parks, boulevards or pleasure drives by any city or village.
- (f) Owned by a military organization as a public park or memorial ground and not used for profit.
- (g) Owned by any religious, charitable, scientific, literary, educational or benevolent association, incorporated historical society or public library association or by any fraternal society, order or association operating under the lodge system if the property is used not for profit or lease exclusively for the purposes of the association and is necessary for the location and convenience of the buildings of the association. This paragraph does not apply to any university, college or high school fraternity or sorority. Property reserved for a chartered college or university is exempt from assessment. Leasing buildings owned by associations listed in this paragraph for schools, public lectures, concerts or parsonage does not waive this exemption from assessment.
- (h) Owned by any corporation formed solely to encourage the fine arts without capital stock and paying no dividends or profits to its members.
- (i) Under any endowment or trust for the benefit of a state historical society.
- (j) Owned and used exclusively by any state or county agricultural society or by any corporation or association for the encouragement of industry by agricultural and industrial fairs and exhibitions or for exhibition and sale of agricultural and dairy stock, products and property. Real property exempt under this paragraph may not exceed 80 acres. The corporation or association may permit use of this property as places of amusement.

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- (k) Owned or operated for cemetery purposes by any cemetery authority, as defined in s. 157.061 (2), including any building located in the cemetery and owned and occupied exclusively by the cemetery authority for cemetery purposes or any property held under s. 157.064 or 157.11.
 - (l) Used as a children's home.
 - (m) On which a Wisconsin national guard armory is located.
 - (n) Of any public art gallery to which the public has free access not less than 3 days per week.
 - (o) Of any religious organization, up to 320 acres, used as a home for the mentally ill, as defined in s. 51.01 (13).
 - (p) On which is located a memorial hall to members of the armed forces, owned by the Grand Army of the Republic, the Women's Relief Corps, the Sons of Veterans, the United Spanish War Veterans, the American Legion or the Veterans of Foreign Wars.
 - (q) Owned and used exclusively by any collective bargaining unit established under ch. 111.
 - (r) Owned and used exclusively by any farmers' organization.
 - (s) Owned by the Boy Scouts and Girl Scouts of America.
 - (t) Owned by an incorporated turner society and used exclusively for educational purposes.
- (3) PRELIMINARY HEARING.**
- (a) After the city adopts a resolution under sub. (1), the board shall publish a class 3 notice under ch. 985 that at a specified time and place the board shall meet to hear the testimony of any interested party regarding the benefits or damages resulting from the proposed improvement. The notice shall also briefly describe the general nature of the proposed improvement for which the assessment of benefits and damages is to be made and the general boundary line of the benefit district.
 - (b) At least 12 days before the hearing the board shall commence publishing the class 3 notice and mail a copy of the notice to the last-known mailing address of any owner of property that may be damaged or benefited by the proposed improvement. The board shall also mail a copy of the notice to a mortgagee of each parcel of property affected by damages. Failure of these notices to reach an owner or mortgagee does not invalidate the assessment of benefits or damages.
 - (c) The board shall hold the preliminary hearing for at least 3 successive days, Sundays and legal holidays excluded, at which it shall hear testimony and consider evidence on the damages and the benefits resulting from the proposed improvement. Following the testimony, the board shall appraise the damages to property to be condemned by the proposed improvement. The board shall add the damages, the estimated expense of the proposed improvement and the cost of the proceedings and shall apportion the total cost among the property benefited in proportion to the benefits resulting from the proposed improvement. The board shall reduce its assessment of benefits to real property remaining of a larger parcel from which a portion has been given or dedicated for use as part of the proposed improvement by the reasonable value of the real property given or dedicated.
- (4) TENTATIVE ASSESSMENT OF BENEFITS AND DAMAGES.** The damages appraised under sub. (3) (c) are the compensation to all owners of the property. The board shall state separately the assessment of benefits to each piece of property. The board shall balance the appraisal of damages against any assessment of benefits to remaining property and record the difference.
- (5) REVIEW HEARING.**
- (a) After tentatively assessing benefits and damages under sub. (4), the board shall commence publishing a class 3 notice under ch. 985 stating that the tentative assessment is complete and will be open for review at a certain time and place. The notice shall also include the information required under sub. (3) (a).
 - (b) At least 18 days before the review hearing the board shall publish the notice and shall mail a copy of the notice as specified in sub. (3) (b). Failure of these notices to reach an owner or mortgagee does not invalidate the assessment of benefits and damages.
 - (c) The board shall hold the review hearing for at least 2 days, at which it shall hear testimony and consider evidence on the amount of benefits and damages assessed.
 - (d) Following the review hearing the board shall review the testimony and evidence received and determine its final assessment of benefits and damages. The board shall list its final assessment of benefits and damages separately and shall also list the difference between the benefits and damages to each parcel of property, so that the owner pays or receives only the difference. The board shall report its final assessment in writing to the common council.
- (6) COMMON COUNCIL HEARING.**
- (a) The common council shall record the date the final assessment report is submitted under sub. (5) (d) in its journal with a brief statement describing for what purpose and in what general locality the assessment has been made. The common council may not act upon the report until the day after the report's submission.
 - (b) The common council may confirm the assessment or remand the assessment to the board for revision and correction. If the common council remands the assessment to the board, the board shall review, correct and revise the assessment by holding a public hearing and providing notice of the hearing under sub. (3), reappraising damages and benefits under sub. (4) and allowing review of the revised assessment

under sub. (5). The common council shall hear the revised assessment under this subsection. If the common council fails to confirm the assessment or remand the assessment to the board for revision and correction, it shall adopt a resolution terminating the project. Termination does not prevent the city from including the same property in a subsequent public improvement that involves the same or another municipal purpose.

(7) RECORDS.

- (a) After confirming the assessment under sub. (6)(b) the common council shall deliver a certified copy of the assessment to both the city treasurer and the city comptroller.
- (b) The city attorney shall record with the register of deeds the resolution confirming the assessment of benefits and damages together with a description of the property to be condemned and the map showing the location of the condemned property. The assessment of benefits and damages need not be recorded with the register of deeds.

History: 1983 a. 236; 1985 a. 316 s. 25; 1987 a. 378; 1989 a. 307; 1993 a. 301; 1999 a. 150 s. 672.

32.58 Benefit assessment payments.

- (1) **MAILING BILLS TO OWNERS.** After the common council confirms the final assessment of benefits and damages the city treasurer shall mail a bill for the full amount of the benefit assessment to the last-known mailing address of any owner of each parcel of property within the benefit district, as listed on the tax roll. The bill may be paid without interest if payment is remitted to the city treasurer within 45 days of the date of billing. Failure of this mailing to reach an owner does not affect the assessment or create any liability.
- (2) **LATE PAYMENTS.**
 - (a)
 - 1. This paragraph does not apply if the city issues bonds under s. 32.67 or 32.69 (2).
 - 2. If any property owner fails to pay the benefit assessment in full within 45 days of the date of billing, the city treasurer shall place the assessment plus any interest accruing on the tax roll, subject to the following conditions:
 - a. If the unpaid principal equals or exceeds \$125, the bill shall be spread equally over the first available tax roll and the next 5 tax rolls. The common council may direct that unpaid assessments to finance a municipal parking system under s. 66.0829, plus interest accruing, be spread over the first available tax roll and up to the next 19 tax rolls.
 - b. If the unpaid principal is less than \$125, the bill shall be added to the first available tax roll.
 - c. The common council shall establish the interest rate on unpaid principal.
 - (b)
 - 1. Any property owner may pay the outstanding principal and interest on a benefit assessment in full at any time. Unless the city issues or will issue bonds under s. 32.67 or 32.69 (2), interest on the benefit assessment is computed to the date of payment. If the city issues or will issue bonds, interest is computed to a date 6 months following the date of payment and interest on an installment of the assessment that falls due within this 6-month period is computed to the date the installment falls due.
 - 2. After payment in full the city comptroller may purchase any bond issued against the assessment, without action of the common council, to prevent further payment of interest on the bond. The city may cancel the bond after purchase. The city comptroller shall report to the common council each July concerning all bonds purchased and canceled.
- (3) **FAILURE TO PAY.** If any property owner is delinquent in paying a benefit assessment:
 - (a) The county treasurer, under s. 74.57 or the city treasurer, if authorized to act under s. 74.87, may include the owner's property in a tax certificate to collect the delinquent assessment, unless a special improvement bond under s. 32.67 is issued against the property. If the city has issued a special improvement bond against the owner's property, it may foreclose the property to collect the delinquent assessment. Even if only part of the property is within the benefit district and assessed benefits, the entire property may be sold or foreclosed to collect the delinquent assessment.
 - (b) The city may attach a lien on the owner's property as of the date the assessment is placed on the tax roll under sub. (2)(a). The lien has the same priority as liens under s. 70.01.
- (4) **SEPARATE ACCOUNT.** The city treasurer shall keep a separate account for the collection of benefit assessments that finance special improvement bonds issued under s. 32.67. The amounts collected shall be used to pay the principal and interest on the bonds.

History: 1983 a. 236; 1987 a. 378; 1999 a. 150 s. 672.

32.61 Appeal to circuit court.

- (1) **LIMITATION ON REMEDIES.** An appeal to the circuit court is the only remedy for damages incurred under this subchapter and is the exclusive method of reviewing any assessment of benefits.
- (2) **STATUTE OF LIMITATIONS; BOND.** Any person with any interest in property assessed benefits or damages may, within 20 days after the common council confirms the assessment, appeal to the circuit court of the county in which

the assessment is made by filing with the clerk of the circuit court a notice of appeal. The notice shall state the person's residence and interest in the property, the interest of any other person in the property, any lien attached to the property and the grounds of the appeal, together with a \$100 bond to the city for the payment of court costs. At least 2 sureties shall sign the bond and state on the bond that each has a net worth in property within this state not exempt from execution at least equal to \$100. If the city attorney objects to the bond or sureties the judge shall determine the suitability of the bond or sureties. Any surety company authorized to do business in this state may sign the bond as surety. Within this 20-day period the appellant shall also deliver a copy of the notice of appeal and bond to the city attorney. The city clerk shall send to the clerk of the circuit court a certified copy of the assessment of benefits and damages. If more than one person appeals, the city clerk shall send only one certified copy of the assessment for all appeals. Any person may pay any benefits assessed against his or her property without prejudice to the right of appeal under this section.

- (3) **PROCEDURE ON APPEAL; PARTIES; COSTS.** The appeal shall be conducted before a jury. The court may permit any person interested in the benefits or damages to the same piece of property to become a party to the appeal if the person submits a petition setting forth the nature and extent of the interest. If the judgment is less than the damages assessed by the city, the judgment less the taxable costs of the city is full compensation for the damages. If the judgment is greater than the damages assessed by the city, the judgment is full compensation for the damages, plus interest only on the amount by which the judgment increases the award. If the city pays the award of damages under s. 32.62 (2) (c), the city may withdraw the award prior to the determination of an appeal only if it files a bond approved by the court to repay the amount withdrawn with costs and with interest from the date of the withdrawal. If the judgment decreases the benefits assessed by the city or increases the damages assessed, the appellant shall recover taxable costs on the appeal. Under any other judgment, the city recovers taxable costs. The city may pay any increased cost from its general fund by levying a tax or by issuing a general obligation bond under s. 67.04. The appeal has preference over all other civil cases not on trial and may be brought on for trial by either party.
- (4) **ASSESSMENT CHANGES ON APPEAL.**
- (a) The city shall correct its tax roll to reflect any changes in benefits assessed by the judgment under sub. (3).
 - (b) If the appellant pays any installment or all of any benefits assessed prior to a judgment reducing the benefits assessed, the city shall refund the excess payment plus interest. If the county issues a tax certificate on any property for any delinquent benefit assessment that is subsequently reduced by a judgment, the county shall refund the amount reduced plus interest upon presentation of a receipt showing the redemption of the property under s. 75.01.
 - (c) If the appellant pays any installment or all of any benefits assessed or if the county issues a tax certificate on any property for any delinquent benefit assessment prior to a judgment increasing the benefits assessed, the city shall enter the increase in benefits, plus interest on the increase in benefits from the date of the judgment entered on appeal, on the tax roll against the property. The city shall enter the revised assessment on the tax roll in one sum if the original benefit assessment was payable or paid in one sum, or shall add equal portions of the revised assessment to any subsequent benefit assessment installments assessed against the property and enter the additions on the following tax rolls.
 - (d) If the city issues particular special improvement bonds under s. 32.67 (2) prior to a judgment reducing the benefits assessed against the property, any foreclosure of the bonds shall be for the reduced amount only of the benefits assessed. The city shall reimburse the bondholder for the difference due on the bonds.

History: 1983 a. 236; 1985 a. 135; 1987 a. 378.

32.62 Transfer of title.

- (1) **FEE SIMPLE TITLE TO CITY.** If the city acquires any property by gift, purchase or condemnation under this subchapter, the city holds fee simple title to the property except that the city may acquire only an easement for streets, alleys, bridges, viaducts or water or sewer mains or branches and may acquire temporary construction easements.
- (2) **PROCEDURE.**
- (a) The city acquires title to any property if any of the following occur:
 1. The city pays the property owner the damages assessed under s. 32.57.
 2. The city reserves sufficient funds to pay the property owner the damages assessed under s. 32.57 and the board provides the property owner with 10 days' notice of the availability of the funds prior to acquisition by publication in any newspaper of general circulation in the city.
 3. The city deposits the damages assessed under s. 32.57 with the clerk of the circuit court for the county in which the property is located for payment by order of the court under par. (c).
 - (b) Any person entitled to payment for an assessment of damages exceeding \$200 shall furnish to the city an abstract of title extended down to date to prove ownership, before the city may pay the assessment of damages. If the assessment of damages does not exceed \$200, the claimant may furnish a certificate of title to prove ownership instead of an abstract of title.

- (c) The city may deposit the assessed damages with the clerk of the circuit court for the county in which the property is located. Deposit with the circuit court clerk relieves the city of any responsibility for the payment of damages and vests title to the property with the city. The circuit court has jurisdiction over the application of any party interested in the assessed damages, after notifying all interested parties and receiving proof of the applicant's interest, to distribute the payment of damages.
- (d)
1. The city may deposit the assessed damages with the clerk of the circuit court for the county in which the property is located if either of the following persons fails to accept a payment of damages:
 - a. A trustee vested with title to property condemned under this subchapter but who is not authorized to convey the property.
 - b. A guardian of a person with an interest in property condemned under this subchapter.
 2. The city shall notify the trustee or guardian of the deposit under subd. 1. Deposit with the circuit court clerk relieves the city of any responsibility for the payment of damages and vests title to the property with the city. The circuit court has jurisdiction over the application of any trustee or guardian to determine the rights of the parties and distribute the payment of damages.
- (e) Payment of damages assessed under s. 32.57 voids all encumbrances to title, including any contract, lease or covenant attached to the property. Payment of assessed damages satisfies the interests in the property of all parties to the encumbrances.
- (3) **PAYMENT OF TAXES.** The city may collect any unpaid property taxes, including property taxes assessed for the current year prior to transfer of title to the city, by reducing the assessed damages payable to the property owner proportionately. The court with jurisdiction under sub. (2)(c) or (d) may reduce the assessed damages proportionately prior to ordering the distribution of the assessed damages.
- (4) **WRIT OF ASSISTANCE.** If the city is unable to obtain possession of the property under sub. (2), a circuit court may grant a writ of assistance with 24 hours' notice to assist the transfer of title. If the city receives a writ of assistance pending an appeal, the appellant may receive the money paid into court upon the order of the court without prejudice to the appeal.

History: 1983 a. 236.

32.63 Completing certain improvements.

- (1) **APPLICATION.** This section applies to any plan of improvement that includes the acquisition of property either for the purpose of laying out or improving an alley or street, as defined in s. 340.01 (2) and (64), or for the purpose of establishing any park or memorial ground and that includes any of the following improvements:
- (a) Creating or improving gutters, curbs or sidewalks of the alley or street.
 - (b) Improving any park or memorial ground.
 - (c) Erecting any bridge or viaduct.
- (2) **PERFORMANCE.** After approving the plan of improvement under s. 32.55, the city may complete the improvement without submitting further estimates of the cost of the improvement to the common council. The common council may not revise its assessment of benefits or damages for the improvement.

History: 1983 a. 236.

32.66 Bonding. The common council may, by resolution, authorize the issuance of general special improvement bonds or particular special improvement bonds to finance an improvement. The common council may register the bonds as to principal under s. 67.09 and may call the bonds on terms it prescribes.

History: 1983 a. 236.

32.67 Special improvement bonds.

- (1) **GENERAL SPECIAL IMPROVEMENT BONDS.** General special improvement bonds are payable as to principal and interest on April 1, as provided in sub. (3) from the collection of assessments of benefits for any improvement. The city comptroller shall issue the bonds. The common council shall determine the amount and denominations in which the bonds are issued and set the interest rate. The common council may issue the bonds in series. The bonds shall have interest coupons attached, bear the seal of the city and be signed by the mayor, one member of the board of assessment and the city comptroller. The mayor's signature may be engraved.
- (2) **PARTICULAR SPECIAL IMPROVEMENT BONDS.**
- (a) The common council may authorize the issuance of particular special improvement bonds directly against any affected property. The city shall set the interest rate for these bonds.
 - (b) The city comptroller shall issue the bonds for the amounts assessed against the property. The bonds shall be made payable as provided by the authorizing resolution of the common council in equal annual installments plus interest on the unpaid part of the bond accruing to the date of payment on April 1, as provided in sub. (3). The bonds shall be designated "Particular Special Improvement Bonds" (naming the improvement), be made payable to bearer, state the amount of the assessment of benefits due and the amount of each installment plus

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interest payable and the times of payment, describe the property upon which the bond is assessed, bear the seal of the city, be issued in the city's name and be signed by the mayor, one member of the board of assessment and the city comptroller. The signature of the mayor may be engraved. Coupons shall be attached to each bond in amounts equal to the installment payments due plus interest remaining on unpaid portions of the bond.

- (c) The lien of the bond attaches on the date the assessment is placed on the tax roll under par. (e).
 - (d) If the city fails to pay any installment of the bond plus interest because the assessment against the property is delinquent, the bondholder may require the entire amount of the bond plus interest to be paid within 3 years after the default. The bondholder may foreclose against the property in the manner provided under s. 75.19. The bondholder may also recover reasonable attorney fees and costs. The time for redemption of the property may be shortened by order of the court. A copy of the bond foreclosed may be filed as a part of the judgment roll in the action in place of the original.
 - (e) If bonds are issued, the city comptroller shall place benefit assessments against property financing the bonds on the tax roll for the year of issuance or, if the city comptroller is unable to place the assessments on this tax roll, on the next year's tax roll. Placement of benefit assessments on the tax roll is only for the purpose of collection by the city treasurer at the same time as other taxes are collected. If the owner defaults on payment of the assessment no tax certificate may be issued for the property under s. 74.57. The sole remedy for the enforcement of the payment of the bonds is the foreclosure action against the property under par. (d).
- (3) **TIME OF BOND PAYMENTS.** Bonds or coupons are payable at the office of the city treasurer on April 1 following the expiration of the tax collection period of each year in which the assessments may be placed on the tax roll for collection, to the extent the assessments financing the bonds or coupons are received.
- (4) **NOT A DEBT OF THE CITY.**
- (a) No bond issued under this section is a debt of the city, except to the extent the city treasurer collects assessments for payment of the bonds.
 - (b) The common council may guarantee to pay any deficiencies in the collection of any assessment in an amount up to the principal and interest of any bond or coupon. If the city pays a deficiency it may become the owner of the bond or coupon, subrogated to the rights of the bondholder. The city may apply any redemption payments on delinquent assessments to the payment of any coupons or bonds it holds.

History: 1983 a. 236; 1987 a. 378.

32.68 Tax delinquent fund. The city may create a tax delinquent fund to cover delinquent payment of assessments. The common council may authorize payment of deficiencies in the collection of assessments to pay the amount due on bonds issued under s. 32.67.

History: 1983 a. 236.

32.69 Alternative financing by general obligation bonds, taxation or anticipation notes.

- (1) **FUNDING.** The city may finance any improvement under this subchapter by issuing general obligation bonds, levying a tax or by borrowing on anticipation notes. The city may collect assessments on property that finances bonds under s. 32.67 and apply the assessments to pay the principal and interest of general obligation bonds, or to reduce general taxes if the city levies a tax to finance an improvement. If the city issues no bonds under s. 32.67, the city shall apply all assessments collected to pay the principal and interest of general obligation bonds or to reduce taxes if the city levies a tax to finance an improvement.
- (2) **GENERAL OBLIGATION BONDING.** The common council may adopt an initial resolution to issue general obligation bonds to pay the cost of laying out or improving any alley or street, as defined in s. 340.01 (2) and (64), without submitting the initial resolution to the electors of the city unless a number of electors equal to or greater than 10 percent of the votes cast for governor in the city at the last general election file a petition conforming to the requirements of s. 8.40 with the city clerk requesting submission. The city shall conduct any referendum for approval of the initial resolution as provided in s. 67.05 (5).
- (3) **ANTICIPATION NOTES.** The common council may authorize borrowing on notes signed by the mayor and city comptroller in anticipation of the incoming assessments to pay the cost of any improvement authorized under this subchapter. The city shall pay the notes out of the assessments received in the year of issuance. The city shall pay the notes not later than April 1 following the date of issuance. The city may pay any deficit due to delinquencies in the collection of assessments out of the tax delinquent fund under s. 32.68.

History: 1983 a. 236; 1989 a. 192.

32.70 Statute of limitations. Unless the action commences within one year after January 1 following the date the assessment of benefits is placed on the tax roll under s. 32.58 (2), no person may contest the sale of property or issuance of any tax certificate for nonpayment of an assessment. Commencing an action is subject to s. 32.61 and does not prevent the issuance or payment of any bonds issued under s. 32.67 or 32.69.

History: 1983 a. 236; 1987 a. 378.

32.71 Liberal construction. This subchapter shall be liberally construed to provide the city with the largest possible power and leeway of action.

History: 1983 a. 236.

32.72 Approval by the electorate.

- (1) Sections 32.50 to 32.71 do not take effect in any city until the following question is submitted to the electors of the city at a special election and adopted by a majority vote of the electors voting: "Shall subchapter II of chapter 32, Wisconsin Statutes, be effective in the city of, thus allowing the city to acquire and condemn property for street widening and similar purposes, financed through assessments of benefits and damages?". The question shall be filed as provided in s. 8.37.
- (2) Notwithstanding sub. (1), this subchapter is effective in any city that has used chapter 275, laws of 1931, to acquire and condemn property before April 27, 1984.

History: 1983 a. 236; 1983 a. 538 ss. 39, 264; 1999 a. 182.

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COUNTIES

59.52 County administration.

59.58 Transportation.

59.69 Planning and zoning authority.

59.52 County administration.**(1) DEPARTMENT OF ADMINISTRATION.**

- (a) In counties with a population of 500,000 or more, the county may create a department of administration, provide for the appointment by the county executive of a director of such department and assign such administrative functions to the department as it considers appropriate, subject to the limitations of this paragraph. No such function shall be assigned to the department where the performance of the same by some other county office, department or commission is required by any provision of the constitution or statutes of this state, except that administrative functions under the jurisdiction of the county civil service commission or the county auditor may be so assigned notwithstanding sub. (8) and ss. 59.47, 59.60 and 63.01 to 63.17. Such director shall be appointed by the county executive in the unclassified civil service and is subject to confirmation by the county board, as provided in s. 59.17 (2) (bm).
- (b) Any county with a population of less than 500,000 may create a department of administration and assign any administrative function to the department as it considers appropriate, except that no administrative function may be assigned to the department if any other provision of state law requires the performance of the function by any other county office, department or commission unless the administrative function is under the jurisdiction of the county civil service commission or the county auditor, in which case, the function may be assigned to the department notwithstanding sub. (8) and ss. 59.47, 59.60 and 63.01 to 63.17. Except as provided under par. (a), in any county with a county executive or county administrator, the county executive or county administrator shall have the authority to appoint and supervise the head of a department of administration; and except as provided under par. (a), the appointment is subject to confirmation by the county board unless the appointment is made under a civil service system competitive examination procedure established under sub. (8) or ch. 63.
- (2) **PUBLIC RECORDS.** The board may prescribe the form and manner of keeping the records in any county office and the accounts of county officers. The board may enact an ordinance designating legal custodians for the county. Unless prohibited by law, the ordinance may require the clerk or the clerk's designee to act as legal custodian for the board and for any committees, commissions, boards or authorities created by ordinance or resolution of the board.
- (3) **RECORDS WHERE KEPT; PUBLIC EXAMINATION; REBINDING; TRANSCRIBING.**
- (a) The books, records, papers and accounts of the board shall be deposited with the respective county clerks and shall be open without any charge to the examination of all persons.
- (b) When any book, public record or the record of any city, village or town plat in any county office shall, from any cause, become unfit for use in whole or in part, the board shall order that the book, record or plat be rebound or transcribed. If the order is to rebind such book, record or plat, the rebinding must be done under the direction of the officer in charge of the book, record or plat, and in that officer's office. If the order is to transcribe such book, record or plat, the officer having charge of the same shall provide a suitable book for that purpose; and thereupon such officer shall transcribe the same in the book so provided and carefully compare the transcript with the originals, and make the same a correct copy thereof, and shall attach to the transcript a certificate over that officer's official signature that that officer has carefully compared the matter therein contained with, and that the same is a correct and literal copy of the book, record or plat from which the same was transcribed, naming such book. The certified copy of the book, record or plat shall have the same effect in all respects as the original, and the original book, record or plat shall be deposited with the treasurer and carefully preserved, except that in counties having a population of 500,000 or more where a book containing a tract index is rewritten or transcribed the original book may be destroyed. The order of the board directing the transcribing of any book, record or plat duly certified by the clerk shall, with such certificate, be recorded in each copy of the book, record or plat transcribed. The fee of the officer for such service shall be fixed by the board, not exceeding 10 cents per folio, or if such books or any part thereof consist of printed forms, not to exceed 5 cents per folio for such books or records, to be paid by the county.

(4) DESTRUCTION, TRANSFER OF OBSOLETE RECORDS.

- (a) *Destruction of obsolete county records.* Whenever necessary to gain needed vault and filing space, county or court officers and the custodian of the records of all courts of record in the state may, subject to pars. (b) and (c), destroy obsolete records in their custody as follows:
1. Notices of tax apportionment that are received from the secretary of state, after 3 years.
 2. Copies of notices of tax apportionment that are sent to local taxing districts by the clerk, after 3 years.
 3. Records of bounty claims that are forwarded to the department of natural resources, after one year.
 4. Lists of officers of a municipality that are certified to the county clerk by the municipal clerks, after the date of the expiration of the term listed.
 5. Crop reports that are submitted to the clerk by the local assessors, after 3 years.
 6. Illegal tax certificates that are charged back to local taxing districts, 3 years after the date of charging back such certificates.
 7. Notices of application for the taking of tax deeds and certificates of nonoccupancy, proofs of service and tax certificates that are filed with the clerk in connection with the taking of tax deeds, after 15 years.
 8. Official bonds, after 6 years.
 9. Claims that are paid by the county, and papers supporting such claims, after 7 years.
 10. Contracts, notices of taking bids, and insurance policies to which the county is a party, 7 years after the last effective day thereof.
 11. Reports of town treasurers that are submitted to the clerk on dog licenses sold and records of dog licenses issued, after 3 years.
 12. The clerk's copies of all receipts that are issued by the treasurer, 4 years or until after being competently audited, whichever is earlier.
 13. Copies of notices that are given by the clerk to the town assessors setting out lands owned by the county and lands sold by the county, after 3 years.
 14. Tax receipts, after 15 years.
 15. All other receipts of the treasurer, after 7 years.
 16. Canceled checks, after 7 years.
 17. Oaths of office, after 7 years.
 18. Case records and other record material of all public assistance that are kept as required under ch. 49, if no payments have been made for at least 3 years and if a face sheet or similar record of each case and a financial record of all payments for each aid account are preserved in accordance with rules adopted by the department of health services or by the department of children and families. If the department of health services or the department of children and families has preserved such case records and other record material on computer disc or tape or similar device, a county may destroy the original records and record material under rules adopted by the department that has preserved those case records or other record material.
 19. Marriage license applications and records and papers pertaining to the applications, including antenuptial physical examinations and test certificates, consents of parent or guardian for marriage and orders of the court waiving the waiting period, after 10 years.
 20. Books in the office of the register of deeds in counties with a population of 500,000 or more containing copies of deeds, mortgages, other miscellaneous documents and military discharges that are authorized by law to be recorded in the office if the records first shall be photographed or microphotographed and preserved in accordance with ch. 228.
- (b) *Transfer of obsolete county records.* Before the destruction of public records under par. (a), the proper officers in counties with a population of less than 500,000 shall make a written offer to the historical society under s. 44.09 (1). If the offer is accepted by the society within 60 days, the officers shall transfer title to noncurrent records in their custody as follows:
1. Original papers, resolutions and reports that are connected with board proceedings.
 2. Tax rolls.
 3. Original minutes of the board.
- (c) *Destruction of county records, when.* If title is not accepted by the historical society within 60 days after a written offer is made under par. (b), county officers in counties with a population of less than 500,000 may destroy records as follows:
1. Original papers, resolutions and reports appearing in county board proceedings, 6 years following the date of first publication of the same in the official proceedings of the board.
 2. Tax rolls, after 15 years.
 3. No assessment roll that contains forest crop acreage may be destroyed without the prior approval of the secretary of revenue.

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- (5) **OFFICIAL SEALS.** The board may provide an official seal for the county and the county officers required to have one; and for the circuit court, with such inscription and devices as that court requires.
- (6) **PROPERTY.** Except as provided in s. 59.17 (2) (b) 3., the board may:
- (a) *How acquired; purposes.* Take and hold land acquired under ch. 75 and acquire, lease or rent property, real and personal, for public uses or purposes of any nature, including without limitation acquisitions for county buildings, airports, parks, recreation, highways, dam sites in parks, parkways and playgrounds, flowages, sewage and waste disposal for county institutions, lime pits for operation under s. 59.70 (24), equipment for clearing and draining land and controlling weeds for operation under s. 59.70 (18), ambulances, acquisition and transfer of real property to the state for new collegiate institutions or research facilities, and for transfer to the state for state parks and for the uses and purposes specified in s. 23.09 (2) (d).
 - (b) *Control; actions.* Make all orders concerning county property and commence and maintain actions to protect the interests of the county.
 - (c) *Transfers.* Direct the clerk to lease, sell or convey or contract to sell or convey any county property, not donated and required to be held for a special purpose, on terms that the board approves. In addition, any county property may be leased, rented or transferred to the United States, the state, any other county within the state or any municipality or school district within the county. Oil, gas and mineral rights may be reserved and leased or transferred separately.
 - (d) *Construction, maintenance and financing of county-owned buildings and public works projects.*
 - 1. Construct, purchase, acquire, lease, develop, improve, extend, equip, operate and maintain all county buildings, structures and facilities hereinafter in this subsection referred to as "projects", including without limitation because of enumeration swimming pools, stadiums, golf courses, tennis courts, parks, playgrounds, bathing beaches, bathhouses and other recreational facilities, exhibition halls, convention facilities, convention complexes, including indoor recreational facilities, dams in county lands, garbage incinerators, courthouses, jails, schools, hospitals and facilities for medical education use in conjunction with such hospitals, homes for the aged or indigent, regional projects, sewage disposal plants and systems, and including all property, real and personal, pertinent or necessary for such purposes.
 - 2. Finance such projects, including necessary sites, by the issuance of revenue bonds under s. 66.0621, and payable solely from the income, revenues and rentals and fees derived from the operation of the project financed from the proceeds of the bonds. If any such project is constructed on a site owned by the county before the issuance of the bonds, the county shall be reimbursed from the proceeds of the bonds in the amount of not less than the reasonable value of the site. The reasonable value of the site shall be determined by the board after having obtained written appraisals of value by 2 general appraisers, as defined in s. 458.01 (11), in the county having a reputation for skill and experience in appraising real estate values. Any bonds issued under this subsection shall not be included in arriving at the constitutional debt limitation.
 - 3. Operate or lease such projects in their entirety or in part, and impose fees or charges for the use of or admission to such projects. Such projects may include space designed for leasing to others if such space is incidental to the purposes thereof.
 - (e) *Leases to department of natural resources.* Lease lands owned by the county to the department of natural resources for game management purposes. Lands so leased shall not be eligible for entry under s. 28.11. Of the rental paid by the state to the county for lands so leased, 60 percent shall be retained by the county and 40 percent shall be paid by the county to the town in which the lands are located and of the amount received by the town, 40 percent shall be paid by the town to the school district in which the lands are located. The amount so paid by a town to a joint school district shall be credited against the amount of taxes certified for assessment in that town by the clerk of the joint school district under s. 120.17 (8), and the assessment shall be reduced by such amount. In case any leased land is located in more than one town or school district the amounts paid to them shall be apportioned on the basis of area. This paragraph shall not affect the distribution of rental moneys received on leases executed before June 22, 1955.
- (7) **JOINT COOPERATION.** The board may join with the state, other counties and municipalities in a cooperative arrangement as provided by s. 66.0301, including the acquisition, development, remodeling, construction, equipment, operation and maintenance of land, buildings and facilities for regional projects, whether or not such projects are located within the county.
- (8) **CIVIL SERVICE SYSTEM.**
- (a) The board may establish a civil service system of selection, tenure and status, and the system may be made applicable to all county personnel, except the members of the board, constitutional officers and members of boards and commissions. The system may also include uniform provisions in respect to classification of positions and salary ranges, payroll certification, attendance, vacations, sick leave, competitive examinations, hours of work, tours of duty or assignments according to earned seniority, employee grievance procedure, disciplinary actions, layoffs and separations for just cause, as described in par. (b), subject to approval of a

civil service commission or the board. The board may request the assistance of the department of administration and pay for such services, under s. 16.58.

- (b) A law enforcement employee of the county may not be suspended, demoted, dismissed or suspended and demoted by the civil service commission or by the board, based either on its own investigation or on charges filed by the sheriff, unless the commission or board determines whether there is just cause, as described in this paragraph, to sustain the charges. In making its determination, the commission or the board shall apply the following standards, to the extent applicable:
1. Whether the employee could reasonably be expected to have had knowledge of the probable consequences of his or her alleged conduct.
 2. Whether the rule or order that the employee allegedly violated is reasonable.
 3. Whether the sheriff, before filing a charge against the employee, made a reasonable effort to discover whether the employee did in fact violate a rule or order.
 4. Whether the effort described under subd. 3, was fair and objective.
 5. Whether the sheriff discovered substantial evidence that the employee violated the rule or order as described in the charges filed against the employee.
 6. Whether the sheriff is applying the rule or order fairly and without discrimination to the employee.
 7. Whether the proposed discipline reasonably relates to the seriousness of the alleged violation and to the employee's record of service with the sheriff's department.
- (c) If a law enforcement employee of the county is dismissed, demoted, suspended or suspended and demoted by the civil service commission or the board under the system established under par. (a), the person dismissed, demoted, suspended or suspended and demoted may appeal from the order of the civil service commission or the board to the circuit court by serving written notice of the appeal on the secretary of the commission or the board within 10 days after the order is filed. Within 5 days after receiving written notice of the appeal, the commission or the board shall certify to the clerk of the circuit court the record of the proceedings, including all documents, testimony and minutes. The action shall then be at issue and shall have precedence over any other cause of a different nature pending in the court, which shall always be open to the trial thereof. The court shall upon application of the accused or of the board or the commission fix a date of trial which shall not be later than 15 days after the application except by agreement. The trial shall be by the court and upon the return of the board or the commission, except that the court may require further return or the taking and return of further evidence by the board or the commission. The question to be determined by the court shall be: Upon the evidence is there just cause, as described in par. (b), to sustain the charges against the employee? No cost shall be allowed either party and the clerk's fees shall be paid by the county. If the order of the board or the commission is reversed, the accused shall be immediately reinstated and entitled to pay as though in continuous service. If the order of the board or the commission is sustained, it shall be final and conclusive.
- (9) **PURCHASING AGENT.** The board may appoint a person or committee as county purchasing agent, and provide compensation for their services. Any county officer or supervisor may be the agent or a committee member. The purchasing agent shall provide all supplies and equipment for the various county offices and the board chairperson shall promptly sign orders in payment therefor. The board may require that all purchases be made in the manner determined by it.
- (10) **SALARIES AND AUTOMOBILE ALLOWANCE; WHEN PAYABLE.** Salaries of county officers and employees shall be paid at the end of each month, but the board of any county may authorize the payment of such salaries semimonthly or once in every 2 weeks in such manner as it may determine. Payment for automobile allowance to officers and employees, duly authorized to use privately owned automobiles in their work for the county, shall be made upon certification of the respective department heads in a manner similar to that in which salaries are paid, provided such method of payment of automobile allowance is authorized by ordinance specifically stating the departments to which it applies.
- (11) **INSURANCE.** The board may:
- (a) *Liability and property damage.* Provide public liability and property damage insurance, either in commercial companies or by self-insurance created by setting up an annual fund for such purpose or by a combination thereof, covering without limitation because of enumeration motor vehicles, malfeasance of professional employees, maintenance and operation of county highways, parks, parkways and airports and any other county activities involving the possibility of damage to the general public.
 - (b) *Fire and casualty.* Provide for fire and casualty insurance for all county property.
 - (c) *Employee insurance.* Provide for individual or group hospital, surgical, and life insurance for county officers and employees and for payment of premiums for county officers and employees. A county with at least 100 employees may elect to provide health care benefits on a self-insured basis to its officers and employees. A county and one or more cities, villages, towns, other counties, county housing authorities, or school districts that together have at least 100 employees may jointly provide health care benefits to their officers and employees on a self-insured basis. Counties that elect to provide health care benefits on a self-insured basis to their officers and employees shall be subject to the requirements set forth under s. 120.13 (2) (c) to (e) and (g).

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- (d) *Bonds of officers and employees.* Provide for the protection of the county and public against loss or damage resulting from the act, neglect or default of county officers, department heads and employees and may contract for and procure bonds or contracts of insurance to accomplish that purpose either from commercial companies or by self-insurance created by setting up an annual fund for such purpose or by a combination thereof. Any number of officers, department heads or employees not otherwise required by statute to furnish an official bond may be combined in a schedule or blanket bond or contract of insurance. So far as applicable ss. 19.01 (2), (2m), (3), (4) (d) and (dm) and (4m) and 19.07 shall apply to the bonds or contracts of insurance. The bond shall be for a definite period. Each renewal of the bond shall constitute a new bond for the principal amount covering the renewal period.

Cross-reference: See also s. Ins 8.11, Wis. adm. code.

(12) ACCOUNTS AND CLAIMS; SETTLEMENT. The board may:

- (a) Examine and settle all accounts of the county and all claims, demands or causes of action against the county and issue county orders therefor. In counties with a population of less than 50,000, the board may delegate its power in regard to current accounts, claims, demands or causes of action against the county to a standing committee where the amount does not exceed \$5,000. In counties with a population of 50,000 or more, the board may delegate its power in regard to current accounts, claims, demands or causes of action against the county to a standing committee if the amount does not exceed \$10,000. Instead of delegating its power under this paragraph to a standing committee, the board may, by resolution adopted by majority vote, delegate such power to the chairperson of a standing committee. Such a resolution remains in effect for one year after its effective date or until rescinded, whichever occurs first.
- (b) Delegate its power in regard to any claim, demand or cause of action not exceeding \$500 to the corporation counsel. If the corporation counsel finds that payment of the claim to a claimant is justified, the corporation counsel may order the claim paid. The claim shall be paid upon certification of the corporation counsel and shall be annually reported to the board.

(13) INJURED COUNTY WORKERS. The board may, in addition to any payments made under ch. 102, make further payment in such amounts as the board determines to any county employee injured at any time before January 1, 1937, while performing services for the county, in cases in which such further payments were made over a period of time following the injury and were based on a moral obligation to such employee.

(14) OPTICAL DISC AND ELECTRONIC STORAGE.

- (a) Upon request of any office, department, commission, board, or agency of the county, the board may authorize any county record that is in the custody of the office, department, commission, board, or agency to be transferred to, or maintained in, optical disc or electronic storage in accordance with rules of the department of administration under s. 16.612. The board may thereafter authorize destruction of the original record, if appropriate, in accordance with sub. (4) and ss. 16.61 (3) (e) and 19.21 (5) unless preservation is required by law.
- (b) Any copy of a county record generated from optical imaging or electronic formatting of an original record is considered an original record if all of the following conditions are met:
1. The devices used to transform the record to optical disc or electronic format and to generate a copy of the record from optical disc or electronic format are ones that accurately reproduce the content of the original.
 2. The optical disc or electronic copy and the copy generated from optical disc or electronic format comply with the minimum standards of quality for such copies, as established by the rule of the department of administration under s. 16.612.
 3. The record is arranged, identified, and indexed so that any individual document or component of the record can be located with the use of proper equipment.
 4. The legal custodian of the record executes a statement of intent and purpose describing the record to be transferred to optical disc or electronic format and the disposition of the original record, and executes a certificate verifying that the record was received or created and transferred to optical disc or electronic format in the normal course of business and that the statement of intent and purpose is properly recorded in his or her office.
- (c) The statement of intent and purpose executed under par. (b) 4. is presumptive evidence of compliance with all conditions and standards prescribed under par. (b).
- (d) A copy of a record generated from an original record stored on an optical disc or in electronic format that conforms with the standards prescribed under par. (b) shall be taken as, stand in lieu of, and have all of the effect of the original record and shall be admissible in evidence in all courts and all other tribunals or agencies, administrative or otherwise, in all cases where the original document is admissible. A transcript, exemplification, or certified copy of such a record so generated, for the purposes specified in this paragraph, is deemed to be a transcript, exemplification, or certified copy of the original. An enlarged copy of any record so generated, made in accordance with the standards prescribed under par. (b) and certified by the custodian as provided in s. 889.18 (2), has the same effect as an actual-size copy.

- (15) PRINTING IN LOCAL TAX ROLLS, ETC.** The board may provide for the printing in assessment rolls and tax rolls and on data cards for local municipal officials, the descriptions of properties and the names of the owners thereof, but no municipality shall be subject to any tax levied to effect these functions where the municipality provides its own printing for the functions.
- (16) PAYMENTS IN LIEU OF TAX.** The board may:
- (a) *Institutions, state farms, airports.*** Appropriate each year to any municipality and school district in which a county farm, hospital, charitable or penal institution or state hospital, charitable or penal institution or state-owned lands used for agricultural purposes or county or municipally owned airport is located, an amount of money equal to the amount which would have been paid in municipal and school tax upon the lands without buildings, if those lands were privately owned. The valuation of the lands, without buildings, and computation of the tax shall be made by the board. In making the computation under this paragraph, lands on which a courthouse or jail are located and unimproved county lands shall not be included.
 - (b) *County veterans housing.***
 1. If a county has acquired land and erected on that land housing facilities for rent by honorably discharged U.S. veterans of any war and the land and housing facilities are exempt from general taxation, appropriate money and pay to any school district or joint school district wherein the land and housing facilities are located a sum of money which shall be computed by obtaining the product of the following factors:
 - a. The tax rate for school district purposes of the school years for which the payment is made.
 - b. The ratio of the assessed valuation to the equalized valuation of the municipality in which the school district lies, multiplied by the actual cost incurred by the county for the acquisition of the land and improvements on the land used for such purposes.
 2. In case of a joint school district, computation shall be made on the basis of the valuation of the several municipalities in which the school district lies. If school buildings are inadequate to accommodate the additional school population resulting from the county veterans housing program, and the school district cannot legally finance the necessary increased facilities, the board may appropriate money and grant assistance to the school district but the assistance shall be used solely to finance the purchase of land and the erection and equipment of the necessary additional facilities.
- (17) RETURN OF RENTS TO MUNICIPALITIES.** The board may return to municipalities all or any part of rent moneys received by the county under leases of county-owned lands.
- (18) RETURN OF FOREST INCOME TO TOWNS.** The board may return and distribute to the several towns in the county all or any part of any money received by the county from the sale of any product from county-owned lands which are not entered under the county forest law under s. 28.11.
- (19) DONATIONS, GIFTS AND GRANTS.** The board may accept donations, gifts or grants for any public governmental purpose within the powers of the county.
- (20) SHERIFF'S FAMILY PENSION.** The board may appropriate money to the family of any sheriff or sheriff's deputies killed while in the discharge of official duties.
- (21) COUNTY COMMISSIONS.** Except in counties having a population of 500,000 or more, the board may fix and pay the compensation of members of the county park commission and the county planning and zoning commission for attendance at meetings at a rate not to exceed the compensation permitted supervisors.
- (22) COUNTY BOARDS' ASSOCIATION.** By a two-thirds vote, the board may purchase membership in an association of county boards for the protection of county interests and the furtherance of better county government.
- (23) PURCHASE OF PUBLICATIONS.** The board may purchase publications dealing with governmental problems and furnish copies thereof to supervisors, officers and employees.
- (24) PARKING AREAS.** The board may enact ordinances establishing areas for parking of vehicles on lands owned or leased by the county; for regulating or prohibiting parking of vehicles on such areas or parts of such areas, including, but not limited to, provision for parking in such areas or parts thereof for only certain purposes or by only certain personnel; for forfeitures for violations thereof, but not to exceed \$50 for each offense; and for the enforcement of such ordinances.
- (25) ADVISORY AND CONTINGENT REFERENDA.** The board may conduct a countywide referendum for advisory purposes or for the purpose of ratifying or validating a resolution adopted or ordinance enacted by the board contingent upon approval in the referendum.
- (26) TRANSCRIPTS.** The board may procure transcripts or abstracts of the records of any other county affecting the title to real estate in such county, and such transcripts or abstracts shall be prima facie evidence of title.
- (27) BAIL BONDS.** The authority of the board to remit forfeited bond moneys to the bondsmen or their heirs or legal representatives, where such forfeiture arises as a result of failure of a defendant to appear and where such failure to appear is occasioned by a justifiable cause, is hereby confirmed.
- (28) COLLECTION OF COURT IMPOSED PENALTIES.** The board may adopt a resolution authorizing the clerk of circuit court, under s. 59.40 (4), to contract with a debt collector, as defined in s. 427.103 (3), or enter into an agreement with the department of revenue under s. 71.93 (8) for the collection of debt.

(29) PUBLIC WORK, HOW DONE; PUBLIC EMERGENCIES.

- (a) All public work, including any contract for the construction, repair, remodeling or improvement of any public work, building, or furnishing of supplies or material of any kind where the estimated cost of such work will exceed \$25,000 shall be let by contract to the lowest responsible bidder. Any public work, the estimated cost of which does not exceed \$25,000, shall be let as the board may direct. If the estimated cost of any public work is between \$5,000 and \$25,000, the board shall give a class 1 notice under ch. 985 before it contracts for the work or shall contract with a person qualified as a bidder under s. 66.0901 (2). A contract, the estimated cost of which exceeds \$25,000, shall be let and entered into under s. 66.0901, except that the board may by a three-fourths vote of all the members entitled to a seat provide that any class of public work or any part thereof may be done directly by the county without submitting the same for bids. This subsection does not apply to public construction if the materials for such a project are donated or if the labor for such a project is provided by volunteers. This subsection does not apply to highway contracts which the county highway committee or the county highway commissioner is authorized by law to let or make.
- (b) The provisions of par. (a) are not mandatory for the repair or reconstruction of public facilities when damage or threatened damage thereto creates an emergency, as determined by resolution of the board, in which the public health or welfare of the county is endangered. Whenever the board by majority vote at a regular or special meeting determines that an emergency no longer exists, this paragraph no longer applies.

(30) LIMITATION ON PERFORMANCE OF HIGHWAY WORK. Notwithstanding ss. 66.0131, 66.0301, and 83.035, a county may not use its own workforce to perform a highway improvement project on a highway under the jurisdiction of another county or a municipality that is located in a different county unless one of the following applies:

- (a) A portion of the project lies within the county performing the work and no portion of the project extends beyond an adjoining county.
- (b) The project lies, wholly or in part, within a municipality that lies partially within the county performing the work.

(31) PUBLIC CONTRACTS, POPULOUS COUNTIES.

- (a) In this subsection, "county" means any county with a population of 750,000 or more.
- (b)
 1. Any contract with a value of at least \$100,000, but not more than \$300,000, to which a county is a party and which satisfies any other statutory requirements, may take effect only if the board's finance committee does not vote to approve or reject the contract within 14 days after the contract is signed or countersigned by the county executive, or as described in subd. 2.
 2. If a board's finance committee votes to approve a contract described under subd. 1, the contract may take effect. If a board's finance committee votes to reject a contract described under subd. 1, the contract may take effect only if the contract is approved by a vote of the board within 30 days after the board's finance committee votes to reject the contract.
- (c) Any single contract, or group of contracts between the same parties which generally relate to the same transaction, with a value or aggregate value of more than \$300,000, to which a county is a party and which satisfies any other statutory requirements, may take effect only if it is approved by a vote of the board.
- (d) With regard to any contract to which a county is a party and which is subject to review by the board or by a committee of the board under this subsection, the board's finance committee is the only committee which has jurisdiction over the contract.
- (e) With regard to any transaction to which s. 59.17 (2) (b) 3. applies, such a transaction is not subject to the provisions of pars. (b), (c), and (d).

(32) RESEARCH DEPARTMENT. In any county with a population of 750,000 or more, the board may enact an ordinance creating a department in county government to provide independent and nonpartisan research services for the board and the county executive. The department may not consist of more than 4.0 full-time equivalent positions. Employees of the department shall be hired and supervised by the comptroller, and shall serve at the pleasure of the comptroller. Such a department shall respond to requests for services from the board and the county executive. The authority to create a department under this subsection may not be exercised after the county board enacts its budget for the 2017 fiscal year.

History: 1995 a.

201 ss. 104, 111 to 115, 117 to 122, 124, 127, 134, 139, 140, 157, 174, 181, 185, 186, 190, 238, 242, 252 to 256, 354, 356 to 360, 414 to 419, 432; 1995 a. 225 s. 135; 1997 a. 35, 237; 1999 a. 9, 83; 1999 a. 150 s. 672; 2001 a. 16, 104; 2005 a. 22, 59; 2007 a. 20 ss. 1846, 9121 (6) (a); 2009 a. 369; 2011 a. 32; 2013 a. 14; 2013 a. 173 s. 33; 2015 a. 55, 196.

Cross-reference: See s. 66.0137 (5) as to payment of insurance premiums for employees.

Cross-reference: See s. 66.0517 concerning appointment of a county weed commissioner.

A county can contract with employees for special reserved parking privileges in a county ramp. Dane Co. v. McManus, 55 Wis. 2d 413, 198 N.W.2d 667 (1972).

Section 59.08 [now s. 59.52 (29)] does not compel the purchase of equipment from the lowest bidder. *Joyce v. Dunn County*, 192 Wis. 2d 699, 531 N.W.2d 628 (Ct. App. 1995).

Sub. (8) (c) does not provide the exclusive appeal remedy for discipline and termination of deputy sheriffs. A collective bargaining agreement providing for arbitration of disputes is enforceable. An employee may not pursue both a statutory appeal and arbitration however. *Eau Claire County v. General Teamsters Union Local No. 662*, 2000 WI 57, 235 Wis. 2d 385, 611 N.W.2d 744, 98-3197.

Limitations on the power of a county to sell property without calling for public bids are discussed. 60 Atty. Gen. 425.

Counties are without power to furnish equipment or supplies for, or to contract to do repair work, on private roads and driveways. 61 Atty. Gen. 304.

A county board is without authority to establish an alternative retirement system. 61 Atty. Gen. 371.

A county civil service ordinance enacted under s. 59.07 (20) [now 59.52 (8)], or a collective bargaining agreement under s. 111.70, establishing a procedure to be followed prior to the discharge of a classified employee, supersedes and modifies s. 59.38 (1) [now s. 59.40 (1) (a)]. 63 Atty. Gen. 147.

Section 59.07 (1) [now s. 59.52 (6)] is not sufficiently broad to permit a county to furnish housing for elderly and low-income persons when specific statutes provide for furnishing such housing. 63 Atty. Gen. 297.

Under s. 59.07 (1) (d) 1. [now s. 59.52 (6) (d) 1.], counties have authority to establish a hospital outpatient health facility to be used to train general practitioners of medicine as part of a program with the Medical College of Wisconsin. 65 Atty. Gen. 172.

Under s. 59.07 (1) (c) [now s. 59.52 (6) (c)], counties may make gifts of land or interests in lands only to enumerated public entities. 67 Atty. Gen. 236.

Under s. 59.07 (3) [now s. 59.52 (12)], a county board may require that all bills and claims be examined by it. 68 Atty. Gen. 38.

A county may enact an ordinance requiring its contractors to agree to a policy of nondiscrimination in employment, even though the ordinance provides broader protection than state and federal laws. 70 Atty. Gen. 64.

Section 59.08 (1) [now s. 59.52 (29) (a)] does not apply to architectural services. 76 Atty. Gen. 182.

A county has no statutory authority to award contracts only to unionized contractors. Federal preemption rules probably foreclose the exercise of such authority in any event. Federal preemption rules foreclose denying contracts to employers engaged in labor disputes. 79 Atty. Gen. 86.

A county may not acquire land specifically for the purpose of leasing it to a private entity to operate a racetrack; it may lease land initially acquired for a public purpose to such private entity, unless the land has become surplus. 80 Atty. Gen. 80.

A county board may not give land to a private corporation; the adequacy of a promise to build a factory on the land as consideration for the conveyance of land involves the application of the public purpose doctrine to the specific facts of the conveyance. 80 Atty. Gen. 341.

A county with a population of less than 250,000 is not required to designate an official newspaper. A county is not required to seek bids for the publication of legal notices. Even if a county does not competitively bid the publication of its own proceedings as provided in sub. (3), it may print its own proceedings or post them on its web site. A county may not, in lieu of publication in a printed newspaper or posting on a physical bulletin board, post its legal notices on its official web site. OAG 2-08.

The removal of the county auditor is subject to the specific civil service provisions established by ordinance or resolution of the county board under ss. 63.01 to 63.17 and is not governed by the more general removal provision contained in s. 17.10 (3). Rather than creating the separate office of county auditor pursuant under s. 59.47 (2), a county board could create a department of administration under s. 59.52 (1) (b) and assign administrative audit functions to that department under that statute. If the administrative function is under the jurisdiction of the county auditor the function may be assigned to the department of administration. A person in the department of administration who performs audit functions therefore need not be appointed using civil service procedures. OAG 6-08.

Municipal competitive bidding statutes do not apply to projects undertaken by intergovernmental agreement or when the municipalities that will perform the work have made a determination under sub. (29) to do the work themselves with their own employees. OAG 5-09.

59.58 Transportation.

(1) **AIRPORTS.** The board may:

- (a) Construct, purchase, acquire, develop, improve, extend, equip, operate and maintain airports and airport facilities and buildings, including without limitation because of enumeration, terminal buildings, hangars and parking structures and lots, and including all property that is appurtenant to or necessary for such purposes.
- (b) Finance such projects, including necessary sites, by the issuance of revenue bonds as provided in s. 66.0621, and payable solely from the income, revenues and rentals derived from the operation of the project financed from the proceeds of the bonds. If any such project is constructed on a site owned by the county prior to the issuance of the bonds the county shall be reimbursed from the proceeds of the bonds in the amount of not less

than the reasonable value of the site. The reasonable value of the site shall be determined by the board after having obtained written appraisals of value by 2 general appraisers, as defined in s. 458.01 (11), in the county having a reputation for skill and experience in appraising real estate values. Any bonds issued under this subsection shall not be included in arriving at the constitutional debt limitation.

- (c) Operate airport projects or lease such projects in their entirety or in part, and any project may include space designed for leasing to others if the space is incidental to the purposes of the project.

(2) COUNTY TRANSIT COMMISSION.

- (a) A county in this state may establish, maintain and operate a comprehensive unified local transportation system, the major portion of which is or is to be located within or the major portion of the service of which is or is to be supplied to the inhabitants of such county, and which system is or is to be used chiefly for the transportation of persons and freight.
- (b) The transit commission shall be designated "Transit Commission" preceded by the name of the establishing county.
- (c) In this subsection:
 1. "Commission" means the local transit commission created hereunder.
 2. "Comprehensive unified local transportation system" means a transportation system that is comprised of motor bus lines and any other local public transportation facilities, the major portions of which are within the county.
- (d) The commission shall consist of not less than 7 members to be appointed by the board, one of whom shall be designated chairperson, except that in a county having a county executive, the executive shall make the appointments.
- (e)
 1. The first members of the commission shall be appointed for staggered 3-year terms. The term of office of each member thereafter appointed shall be 3 years.
 2. No person holding stocks or bonds in a corporation subject to the jurisdiction of the commission, or who is in any other manner pecuniarily interested in any such corporation, shall be a member of, nor be employed by, the commission.
- (f) The commission may appoint a secretary and employ such accountants, engineers, experts, inspectors, clerks and other employees and fix their compensation, and purchase such furniture, stationery and other supplies and materials, as are reasonably necessary to enable it properly to perform its duties and exercise its powers.
- (g)
 1. The commission may adopt rules relative to the calling, holding and conduct of its meetings, the transaction of its business, the regulation and control of its agents and employees, the filing of complaints and petitions and the service of notices thereof and conduct hearings.
 2. For the purpose of receiving, considering and acting upon any complaints or applications which may be presented to it or for the purpose of conducting investigations or hearings on its own motion the commission shall hold regular meetings at least once a week except in the months of July and August in each year and special meetings on the call of the chairperson or at the request of the board.
 3. The commission may adopt a seal, of which judicial notice shall be taken in all courts of this state. Any process, writ, notice or other instrument which the commission may be authorized by law to issue shall be considered sufficient if signed by the secretary of the commission and authenticated by such seal. All acts, orders, decisions, rules and records of the commission, and all reports, schedules and documents filed with the commission may be proved in any court in this state by a copy thereof certified by the secretary under the seal of the commission.
- (h) The jurisdiction, powers and duties of the commission shall extend to the comprehensive unified local transportation system for which the commission is established including any portion of such system extending into adjacent or suburban territory within this state lying outside of the county not more than 30 miles from the nearest point marking the corporate limits of the county.
- (i) The initial acquisition of the properties for the establishment of, and to comprise, the comprehensive unified local transportation system shall be subject to s. 66.0803 or ch. 197.
- (j)
 1. Any county may by contract under s. 66.0301 establish a joint municipal transit commission, in cooperation with any municipality, county or federally recognized Indian tribe or band.
 2. Notwithstanding any other provision of this subsection, no joint municipal transit commission under subd. 1. may provide service outside the corporate limits of the parties to the contract under s. 66.0301 which establish the joint municipal transit commission unless the joint municipal transit commission receives financial support for the service under a contract with a public or private organization for the service. This subdivision does not apply to service provided by a joint municipal transit commission outside the corporate limits of the parties to the contract under s. 66.0301 which establish the joint municipal transit commission if the joint municipal transit commission is

providing the service on April 28, 1994, without receiving financial support from a public or private organization for the service, and elects to continue the service.

- (k)
1. In lieu of providing transportation services, a county may contract with a private organization for the services.
 2. Notwithstanding any other provision of this subsection, no county may contract with a private organization to provide service outside the corporate limits of the county unless the county receives financial support for the service under a contract with a public or other private organization for the service. This subdivision does not apply to service provided under subd. 1. outside the corporate limits of a county if a private organization is providing the service on April 28, 1994, without receiving financial support from a public or private organization for the service, and the county elects to continue the service.
- (l) Notwithstanding any other provision of this subsection, no transit commission may provide service outside the corporate limits of the county which establishes the transit commission unless the transit commission receives financial support for the service under a contract with a public or private organization for the service. This paragraph does not apply to service provided by a transit commission outside the corporate limits of the county which establishes the transit commission if the transit commission is providing the service on April 28, 1994, without receiving financial support from a public or private organization for the service, and elects to continue the service.
- (3) **PUBLIC TRANSIT IN COUNTIES.** A board may:
- (a) Purchase and lease buses to private transit companies that operate within and outside the county.
 - (b) Apply for federal aids to purchase such buses or other facilities considered essential for operation.
 - (c) Make grants and provide subsidies to private transit companies that operate bus lines principally within the county to stabilize, preserve or enhance levels of transit service to the public.
 - (d) Acquire a transportation system by purchase, condemnation under s. 32.05 or otherwise and provide funds for the operation and maintenance of such a system. "Transportation system" means all land, shops, structures, equipment, property, franchises and rights of whatever nature required for transportation of passengers or freight within the county, or between counties, and includes, but is not limited to, elevated railroads, subways, underground railroads, motor vehicles, motor buses and any combination thereof, and any other form of mass transportation. Such acquisition and operation between counties shall be subject to ch. 194 and whenever the proposed operations between such counties would be competitive with the urban or suburban operations of another existing common carrier of passengers or freight, the county shall coordinate proposed operations with such carrier to eliminate adverse financial impact for such carrier. This coordination may include, but is not limited to, route overlapping, transfers, transfer points, schedule coordination, joint use of facilities, lease of route service and acquisition of route and corollary equipment. If such coordination does not result in mutual agreement, the proposals shall be submitted to the department of transportation for arbitration. The following forms of transportation are excepted from the definition of "transportation system":
 1. Taxicabs.
 2. School bus transportation businesses or systems that are engaged primarily in the transportation of children to or from school, and which are subject to the regulatory jurisdiction of the department of transportation and the department of public instruction.
 3. Charter or contract operations to, from or between points that are outside the county or contiguous or cornering counties.
 - (e) Acquire all of the capital stock of a corporation that owns and operates a transportation system.
 - (f) Use a public road, street or highway for the transportation of passengers for hire without obtaining a permit or license from a municipality for the operation of a transportation system within such municipality but such use shall be subject to approval by the department of transportation.
 - (g) Upon the acquisition of a transportation system:
 1. Operate and maintain it or lease it to an operator or contract for its use by an operator.
 2. Contract for superintendence of the system with an organization which has personnel with the experience and skill necessary.
 3. Delegate responsibility for the operation and maintenance of the system to an appropriate administrative officer, board or commission of the county notwithstanding s. 59.84 or any other statute.
 4. Maintain and improve a railroad right-of-way and improvements on the right-of-way for future use.
 - (h)
 1. A county may contract under s. 66.0301 to establish a joint transit commission with other municipalities, as defined under s. 66.0301 (1) (b).
 2. Notwithstanding any other provision of this subsection, no joint transit commission under subd. 1. may provide service outside the corporate limits of the parties to the contract under s. 66.0301 which

establish the joint transit commission unless the joint transit commission receives financial support for the service under a contract with a public or private organization for the service. This subdivision does not apply to service provided by a joint transit commission outside the corporate limits of the parties to the contract under s. 66.0301 which establish the joint transit commission if the joint transit commission is providing the service on April 28, 1994, without receiving financial support from a public or private organization for the service, and elects to continue the service.

(i) Paragraphs (d) to (h) 1. shall only apply if a board by a two-thirds vote of its membership so authorizes.

(j)

1. Notwithstanding any other provision of this subsection, no county which acquires a transportation system under this subsection may provide service outside the corporate limits of the county unless the county receives financial support for the service under a contract with a public or private organization for the service. This paragraph does not apply to service provided by a county outside the corporate limits of the county if the county is providing the service on April 28, 1994, without receiving financial support from a public or private organization for the service, and elects to continue the service.
2. Notwithstanding any other provision of this subsection, no county which establishes a transportation system under this subsection may contract with an operator to provide service under par. (g) 1. outside the corporate limits of the county unless the county receives financial support for the service under a contract with a public or private organization for the service. This subdivision does not apply to service provided under par. (g) 1. outside the corporate limits of a county under a contract between the county and an operator if an operator is providing the service on April 28, 1994, without receiving financial support from a public or private organization for the service, and the county elects to continue the service.

(4) COUNTY OBLIGATIONS TO EMPLOYEES OF COUNTY MASS TRANSPORTATION SYSTEMS.

(a) A board acquiring a transportation system under sub. (3) (d) shall assume all the employer's obligations under any contract between the employees and management of the system.

(b) A board acquiring, constructing, controlling or operating a transportation system under sub. (3) (d) shall negotiate an agreement protecting the interests of employees affected by the acquisition, construction, control or operation. Such agreements shall include, but are not limited to, provisions for:

1. The preservation of rights, privileges and benefits under an existing collective bargaining agreement or other agreement.
2. The preservation of rights and benefits under existing pension plans covering prior service, and continued participation in social security.
3. The continuation of collective bargaining rights.
4. The protection of individual employees against a worsening of their positions with respect to their employment to the extent provided by section 13 (c) of the urban mass transportation act, as amended (49 USC 1609 (c)).
5. Assurances of employment to employees of the transportation systems and priority of reemployment of employees who are terminated or laid off.
6. Assurances of first opportunity of employment in order of seniority to employees of any nonacquired system, affected by a new, competitive or supplemental public transportation system, in unfilled nonsupervisory positions for which they can qualify after a reasonable training period.
7. Paid training or retraining programs.
8. Signed written labor agreements.

(c) An agreement under par. (b) may include provisions for the submission of labor disputes to final and binding arbitration by an impartial umpire or board of arbitration acceptable to the parties.

(d) In all negotiations under this subsection, the county executive, if such office exists in the county, shall be a member of the county negotiating body.

(5) SPECIALIZED TRANSPORTATION SERVICES. The board may coordinate specialized transportation services, as defined in s. 85.21 (2) (g), for county residents who are disabled or are aged 60 or older, including services funded under 42 USC 3001 to 3057n, 42 USC 5001 and 42 USC 5011 (b), under ss. 49.43 to 49.499 and 85.21 and under other public funds administered by the county.

History: 1995 a. 201 ss. 197, 231, 386, 388, 465, 466 to 474; 1997 a. 27, 35; 1999 a. 150 s. 672; 2005 a. 25; 2007 a. 20; 2009 a. 28; 2011 a. 32.

Section 59.968 (3) [now s. 59.58 (3) (c)] authorizes a county to subsidize a bus company operating a route principally located within the county, even though the route is only 5 percent of the company's total business. 65 Atty. Gen. 191.

59.69 Planning and zoning authority.

- (1) **PURPOSE.** It is the purpose of this section to promote the public health, safety, convenience and general welfare; to encourage planned and orderly land use development; to protect property values and the property tax base; to permit the careful planning and efficient maintenance of highway systems; to ensure adequate highway, utility, health, educational and recreational facilities; to recognize the needs of agriculture, forestry, industry and business in future growth; to encourage uses of land and other natural resources which are in accordance with their character and adaptability; to provide adequate light and air, including access to sunlight for solar collectors and to wind for wind energy systems; to encourage the protection of groundwater resources; to preserve wetlands; to conserve soil, water and forest resources; to protect the beauty and amenities of landscape and man-made developments; to provide healthy surroundings for family life; and to promote the efficient and economical use of public funds. To accomplish this purpose the board may plan for the physical development and zoning of territory within the county as set forth in this section and shall incorporate therein the master plan adopted under s. 62.23 (2) or (3) and the official map of any city or village in the county adopted under s. 62.23 (6).
- (2) **PLANNING AND ZONING AGENCY OR COMMISSION.**
- (a)
1. Except as provided under subd. 2., the board may create a planning and zoning committee as a county board agency or may create a planning and zoning commission consisting wholly or partially of persons who are not members of the board, designated the county zoning agency. In lieu of creating a committee or commission for this purpose, the board may designate a previously established committee or commission as the county zoning agency, authorized to act in all matters pertaining to county planning and zoning.
 2. If the board in a county with a county executive authorizes the creation of a county planning and zoning commission, designated the county zoning agency, the county executive shall appoint the commission, subject to confirmation by the board.
 3. If a county planning and zoning commission is created under subd. 2., the county executive may appoint, for staggered 3-year terms, 2 alternate members of the commission, who are subject to confirmation by the board. Annually, the county executive shall designate one of the alternate members as first alternate and the other as 2nd alternate. The first alternate shall act, with full power, only when a member of the commission refuses to vote because of a conflict of interest or when a member is absent. The 2nd alternate shall act only when the first alternate refuses to vote because of a conflict of interest or is absent, or if more than one member of the commission refuses to vote because of a conflict of interest or is absent.
- (b) From its members, the county zoning agency shall elect a chairperson whose term shall be for 2 years, and the county zoning agency may create and fill other offices.
- (bm) The head of the county zoning agency appointed under sub. (10) (b) 2. shall have the administrative powers and duties specified for the county zoning agency under this section, and the county zoning agency shall be only a policy-making body determining the broad outlines and principles governing such administrative powers and duties and shall be a quasi-judicial body with decision-making power that includes but is not limited to conditional use, planned unit development and rezoning. The building inspector shall enforce all laws, ordinances, rules and regulations under this section.
- (bs) As part of its approval process for granting a conditional use permit under this section, a county may not impose on a permit applicant a requirement that is expressly preempted by federal or state law.
- (c) Subject to change by the board, the county zoning agency may adopt such rules and regulations governing its procedure as it considers necessary or advisable. The county zoning agency shall keep a record of its planning and zoning studies, its resolutions, transactions, findings and determinations.
- (cm) In addition to the members who serve on, or are appointed to, a planning and zoning committee, commission, or agency under par. (a), the committee, commission, or agency shall also include, as a nonvoting member, a representative from a military base or installation, with at least 200 assigned military personnel or that contains at least 2,000 acres, that is located in the county, if the base's or installation's commanding officer appoints such a representative.
- (d) The county may accept, review and expend funds, grants and services and may contract with respect thereto and may provide such information and reports as may be necessary to secure such financial aid and services, and within such funds as may be made available, the county zoning agency may employ, or contract for the services of, such professional planning technicians and staff as are considered necessary for the discharge of the duties and responsibilities of the county zoning agency.
- (e) Wherever a public hearing is specified under this section, the hearing shall be conducted by the county zoning agency in the county courthouse or in such other appropriate place as may be selected by the county zoning agency. The county zoning agency shall give notice of the public hearing by publication in the county as a class 2 notice under ch. 985, and shall consider any comments made, or submitted by, the commanding

officer, or the officer's designee, of a military base or installation, with at least 200 assigned military personnel or that contains at least 2,000 acres, that is located in or near the county.

- (f) Whenever a county development plan, part thereof or amendment thereto is adopted by, or a zoning ordinance or amendment thereto is enacted by, the board, a duplicate copy shall be certified by the clerk and sent to the municipal clerks of the municipalities affected thereby, and also to the commanding officer, or the officer's designee, of any military base or installation, with at least 200 assigned military personnel or that contains at least 2,000 acres, that is located in or near the county.
 - (g) Neither the board nor the county zoning agency may condition or withhold approval of a permit under this section based upon the property owner entering into a contract, or discontinuing, modifying, extending, or renewing any contract, with a 3rd party under which the 3rd party is engaging in a lawful use of the property.
- (3) THE COUNTY DEVELOPMENT PLAN.**
- (a) The county zoning agency may direct the preparation of a county development plan or parts of the plan for the physical development of the unincorporated territory within the county and areas within incorporated jurisdictions whose governing bodies by resolution agree to having their areas included in the county's development plan. The plan may be adopted in whole or in part and may be amended by the board and endorsed by the governing bodies of incorporated jurisdictions included in the plan. The county development plan, in whole or in part, in its original form or as amended, is hereafter referred to as the development plan. To the extent that the development plan applies to unincorporated areas of a county with the population described in s. 60.23 (34), it applies only to those unincorporated areas that are subject to county zoning. Beginning on January 1, 2010, or, if the county is exempt under s. 66.1001 (3m), the date under s. 66.1001 (3m) (b), if the county engages in any program or action described in s. 66.1001 (3), the development plan shall contain at least all of the elements specified in s. 66.1001 (2).
 - (b) The development plan shall include the master plan, if any, of any city or village, that was adopted under s. 62.23 (2) or (3) and the official map, if any, of such city or village, that was adopted under s. 62.23 (6) in the county, without change. In counties with a population of at least 485,000, the development plan shall also include, and integrate, the master plan and the official map of a town that was adopted under s. 60.62 (6) (a) or (b), without change.
 - (c) The development plan may be in the form of descriptive material, reports, charts, diagrams or maps. Each element of the development plan shall describe its relationship to other elements of the plan and to statements of goals, objectives, principles, policies or standards.
 - (d) The county zoning agency shall hold a public hearing on the development plan before approving it. After approval of the plan the county zoning agency shall submit the plan to the board for its approval and adoption. The plan shall be adopted by resolution and when adopted it shall be certified as provided in sub. (2) (f). The development plan shall serve as a guide for public and private actions and decisions to assure the development of public and private property in appropriate relationships.
 - (e) Except for a town that has adopted a master plan and official map as described in par. (b), a master plan adopted under s. 62.23 (2) and (3) and an official map that is established under s. 62.23 (6) shall control in unincorporated territory in a county affected thereby, whether or not such action occurs before the adoption of a development plan.
- (4) EXTENT OF POWER.** For the purpose of promoting the public health, safety and general welfare the board may by ordinance effective within the areas within such county outside the limits of incorporated villages and cities establish districts of such number, shape and area, and adopt such regulations for each such district as the board considers best suited to carry out the purposes of this section. The board may establish mixed-use districts that contain any combination of uses, such as industrial, commercial, public, or residential uses, in a compact urban form. The board may not enact a development moratorium, as defined in s. 66.1002 (1) (b), under this section or s. 59.03, by acting under ch. 236, or by acting under any other law, except that this prohibition does not limit any authority of the board to impose a moratorium that is not a development moratorium. The powers granted by this section shall be exercised through an ordinance which may, subject to sub. (4e), determine, establish, regulate and restrict:
- (a) The areas within which agriculture, forestry, industry, mining, trades, business and recreation may be conducted, except that no ordinance enacted under this subsection may prohibit forestry operations that are in accordance with generally accepted forestry management practices, as defined under s. 823.075 (1) (d).
 - (b) The areas in which residential uses may be regulated or prohibited.
 - (c) The areas in and along, or in or along, natural watercourses, channels, streams and creeks in which trades or industries, filling or dumping, erection of structures and the location of buildings may be prohibited or restricted.
 - (d) Trailer or tourist camps, motels, and manufactured and mobile home communities.
 - (e) Designate certain areas, uses or purposes which may be subjected to special regulation.
 - (f) The location of buildings and structures that are designed for specific uses and designation of uses for which buildings and structures may not be used or altered.
 - (g) The location, height, bulk, number of stories and size of buildings and other structures.

- (h) The location of roads and schools.
 - (i) Building setback lines.
 - (j) Subject to s. 66.10015 (3), the density and distribution of population.
 - (k) The percentage of a lot which may be occupied, size of yards, courts and other open spaces.
 - (l) Places, structures or objects with a special character, historic interest, aesthetic interest or other significant value, historic landmarks and historic districts.
 - (m) Burial sites, as defined in s. 157.70 (1) (b).
- (4c) CONSTRUCTION SITE ORDINANCE LIMITS.** Except as provided in s. 101.1206 (5m), an ordinance that is enacted under sub. (4) may only include provisions that are related to construction site erosion control if those provisions are limited to sites described in s. 281.33 (3) (a) 1. a. and b.
- (4d) ANTENNA FACILITIES.** The board may not enact an ordinance or adopt a resolution on or after May 6, 1994, or continue to enforce an ordinance or resolution on or after May 6, 1994, that affects satellite antennas with a diameter of 2 feet or less unless one of the following applies:
- (a) The ordinance or resolution has a reasonable and clearly defined aesthetic or public health or safety objective.
 - (b) The ordinance or resolution does not impose an unreasonable limitation on, or prevent, the reception of satellite-delivered signals by a satellite antenna with a diameter of 2 feet or less.
 - (c) The ordinance or resolution does not impose costs on a user of a satellite antenna with a diameter of 2 feet or less that exceed 10 percent of the purchase price and installation fee of the antenna and associated equipment.
- (4e) MIGRANT LABOR CAMPS.** The board may not enact an ordinance or adopt a resolution that interferes with any of the following:
- (a) Any repair or expansion of migrant labor camps, as defined in s. 103.90 (3). An ordinance or resolution of the county that is in effect on September 1, 2001, and that interferes with any construction, repair, or expansion of migrant labor camps is void.
 - (b) The construction of new migrant labor camps, as defined in s. 103.90 (3), that are built on or after September 1, 2001, on property that is adjacent to a food processing plant, as defined in s. 97.29 (1) (h), or on property owned by a producer of vegetables, as defined in s. 100.235 (1) (g), if the camp is located on or contiguous to property on which vegetables are produced or adjacent to land on which the producer resides.
- (4f) AMATEUR RADIO ANTENNAS.** The board may not enact an ordinance or adopt a resolution on or after April 17, 2002, or continue to enforce an ordinance or resolution on or after April 17, 2002, that affects the placement, screening, or height of antennas, or antenna support structures, that are used for amateur radio communications unless all of the following apply:
- (a) The ordinance or resolution has a reasonable and clearly defined aesthetic, public health, or safety objective, and represents the minimum practical regulation that is necessary to accomplish the objectives.
 - (b) The ordinance or resolution reasonably accommodates amateur radio communications.
- (4g) AIRPORT AREAS.** In a county which has created a county zoning agency under sub. (2) (a), the county's development plan shall include the location of any part of an airport, as defined in s. 62.23 (6) (am) 1. a., that is located in the county and of any part of an airport affected area, as defined in s. 62.23 (6) (am) 1. b., that is located in the county.
- (4h) PAYDAY LENDERS.**
- (a) *Definitions.* In this subsection:
 1. "Licensee" has the meaning given in s. 138.14 (1) (i).
 2. "Payday lender" means a business, owned by a licensee, that makes payday loans.
 3. "Payday loan" has the meaning given in s. 138.14 (1) (k).
 - (b) *Limits on locations of payday lenders.* Except as provided in par. (c), no payday lender may operate in a county unless it receives a permit to do so from the county zoning agency, and the county zoning agency may not issue a permit to a payday lender if any of the following applies:
 1. The payday lender would be located within 1,500 feet of another payday lender.
 2. The payday lender would be located within 150 feet of a single-family or 2-family residential zoning district.
 - (c) *Exceptions.*
 1. Paragraph (b) only applies in the unincorporated parts of the county which have not adopted a zoning ordinance as authorized under s. 60.62 (1).
 2. A county may regulate payday lenders by enacting a zoning ordinance that contains provisions that are more strict than those specified in par. (b).
 3. If a county has enacted an ordinance regulating payday lenders that is in effect on January 1, 2011, the ordinance may continue to apply and the county may continue to enforce the ordinance, but only if the ordinance is at least as restrictive as the provisions of par. (b).
 4. Notwithstanding the provisions of subd. 3., if a payday lender that is doing business on January 1, 2011, from a location that does not comply with the provisions of par. (b), the payday lender may continue to operate from that location notwithstanding the provisions of par. (b).

(4m) HISTORIC PRESERVATION.

- (a) Subject to par. (b), a county, as an exercise of its zoning and police powers for the purpose of promoting the health, safety and general welfare of the community and of the state, may regulate by ordinance any place, structure or object with a special character, historic interest, aesthetic interest or other significant value, for the purpose of preserving the place, structure or object and its significant characteristics. Subject to pars. (b) and (c), the county may create a landmarks commission to designate historic landmarks and establish historic districts. Subject to par. (b), the county may regulate all historic landmarks and all property within each historic district to preserve the historic landmarks and property within the district and the character of the district.
- (b) Before the county designates a historic landmark or establishes a historic district, the county shall hold a public hearing. If the county proposes to designate a place, structure, or object as a historic landmark or establish a historic district that includes a place, structure, or object, the county shall, by 1st class mail, notify the owner of the place, structure, or object of the determination and of the time and place of the public hearing on the determination.
- (c) An owner of property that is affected by a decision of a county landmarks commission may appeal the decision to the board. The board may overturn a decision of the commission by a majority vote of the board.

(5) FORMATION OF ZONING ORDINANCE; PROCEDURE.

- (a) When the county zoning agency has completed a draft of a proposed zoning ordinance, it shall hold a public hearing thereon, following publication in the county of a class 2 notice, under ch. 985. If the proposed ordinance has the effect of changing the allowable use of any property, the notice shall include either a map showing the property affected by the ordinance or a description of the property affected by the ordinance and a statement that a map may be obtained from the zoning agency. After such hearing the agency may make such revisions in the draft as it considers necessary, or it may submit the draft without revision to the board with recommendations for adoption. Proof of publication of the notice of the public hearing held by such agency shall be attached to its report to the board.
- (b) When the draft of the ordinance, recommended for enactment by the zoning agency, is received by the board, it may enact the ordinance as submitted, or reject it, or return it to the agency with such recommendations as the board may see fit to make. In the event of such return subsequent procedure by the agency shall be as if the agency were acting under the original directions. When enacted, a copy of the ordinance shall be submitted by the clerk to each town clerk, under par. (g), for consideration by the town board.
- (c) A county ordinance enacted under this section shall not be effective in any town until it has been approved by the town board. If the town board approves an ordinance enacted by the county board, under this section, a certified copy of the approving resolution attached to one of the copies of such ordinance submitted to the town board shall promptly be filed with the county clerk by the town. The ordinance shall become effective in the town as of the date of the filing, which filing shall be recorded by the county clerk in the clerk's office, reported to the town board and the county board, and printed in the proceedings of the county board. The ordinance shall supersede any prior town ordinance in conflict therewith or which is concerned with zoning, except as provided by s. 60.62. A town board may withdraw from coverage of a county zoning ordinance as provided under s. 60.23 (34).
- (d) The board may by a single ordinance repeal an existing county zoning ordinance and reenact a comprehensive revision thereto in accordance with this section. "Comprehensive revision", in this paragraph, means a complete rewriting of an existing zoning ordinance which changes numerous zoning provisions and alters or adds zoning districts. The comprehensive revision may provide that the existing ordinance shall remain in effect in a town for a period of up to one year or until the comprehensive revision is approved by the town board, whichever period is shorter. If the town board fails to approve the comprehensive revision within a year neither the existing ordinance nor the comprehensive revision shall be in force in that town. Any repeal and reenactment prior to November 12, 1965, which would be valid under this paragraph is hereby validated.
- (e) The board may amend an ordinance or change the district boundaries. The procedure for such amendments or changes is as follows:
 - 1. A petition for amendment of a county zoning ordinance may be made by a property owner in the area to be affected by the amendment, by the town board of any town in which the ordinance is in effect; by any member of the board or by the agency designated by the board to consider county zoning matters as provided in sub. (2) (a). The petition shall be filed with the clerk who shall immediately refer it to the county zoning agency for its consideration, report and recommendations. Immediate notice of the petition shall be sent to the county supervisor of any affected district. A report of all petitions referred under this paragraph shall be made to the county board at its next succeeding meeting.
 - 2. Upon receipt of the petition by the agency it shall call a public hearing on the petition. Notice of the time and place of the hearing shall be given by publication in the county of a class 2 notice, under ch. 985. If an amendment to an ordinance, as described in the petition, has the effect of changing the

allowable use of any property, the notice shall include either a map showing the property affected by the amendment or a description of the property affected by the amendment and a statement that a map may be obtained from the zoning agency. A copy of the notice shall be submitted by the clerk under par. (g) to the town clerk of each town affected by the proposed amendment at least 10 days prior to the date of such hearing. If the petition is for any change in an airport affected area, as defined in s. 62.23 (6) (am) 1. b., the agency shall mail a copy of the notice to the owner or operator of the airport bordered by the airport affected area.

3. Except as provided under subd. 3m., if a town affected by the proposed amendment disapproves of the proposed amendment, the town board of the town may file a certified copy of the resolution adopted by the board disapproving of the petition with the agency before, at or within 10 days after the public hearing. If the town board of the town affected in the case of an ordinance relating to the location of boundaries of districts files such a resolution, or the town boards of a majority of the towns affected in the case of all other amendatory ordinances file such resolutions, the agency may not recommend approval of the petition without change, but may only recommend approval with change or recommend disapproval.
- 3m. A town may extend its time for disapproving any proposed amendment under subd. 3. by 20 days if the town board adopts a resolution providing for the extension and files a certified copy of the resolution with the clerk of the county in which the town is located. The 20-day extension shall remain in effect until the town board adopts a resolution rescinding the 20-day extension and files a certified copy of the resolution with the clerk of the county in which the town is located.
4. As soon as possible after the public hearing, the agency shall act, subject to subd. 3., on the petition either approving, modifying and approving, or disapproving it. If its action is favorable to granting the requested change or any modification thereof, it shall cause an ordinance to be drafted effectuating its determination and shall submit the proposed ordinance directly to the board with its recommendations. If the agency after its public hearing recommends denial of the petition it shall report its recommendation directly to the board with its reasons for the action. Proof of publication of the notice of the public hearing held by the agency and proof of the giving of notice to the town clerk of the hearing shall be attached to either report. Notification of town board resolutions filed under subd. 3. shall be attached to either such report.
5. Upon receipt of the agency report the board may enact the ordinance as drafted by the zoning agency or with amendments, or it may deny the petition for amendment, or it may refuse to deny the petition as recommended by the agency in which case it shall rerefer the petition to the agency with directions to draft an ordinance to effectuate the petition and report the ordinance back to the board which may then enact or reject the ordinance.
- 5g. If a protest against a proposed amendment is filed with the clerk at least 24 hours prior to the date of the meeting of the board at which the report of the zoning agency under subd. 4. is to be considered, duly signed and acknowledged by the owners of 50 percent or more of the area proposed to be altered, or by abutting owners of over 50 percent of the total perimeter of the area proposed to be altered included within 300 feet of the parcel or parcels proposed to be rezoned, action on the ordinance may be deferred until the zoning agency has had a reasonable opportunity to ascertain and report to the board as to the authenticity of the ownership statements. Each signer shall state the amount of area or frontage owned by that signer and shall include a description of the lands owned by that signer. If the statements are found to be true, the ordinance may not be enacted except by the affirmative vote of three-fourths of the members of the board present and voting. If the statements are found to be untrue to the extent that the required frontage or area ownership is not present the protest may be disregarded.
- 5m. If a proposed amendment under this paragraph would make any change in an airport affected area, as defined under s. 62.23 (6) (am) 1. b., and the owner or operator of the airport bordered by the airport affected area files a protest against the proposed amendment with the clerk at least 24 hours prior to the date of the meeting of the board at which the report of the zoning agency under subd. 4. is to be considered, no ordinance which makes such a change may be enacted except by the affirmative vote of two-thirds of the members of the board present and voting.
6. If an amendatory ordinance makes only the change sought in the petition and if the petition was not disapproved prior to, at or within 10 days under subd. 3. or 30 days under subd. 3m., whichever is applicable, after the public hearing by the town board of the town affected in the case of an ordinance relating to the location of district boundaries or by the town boards of a majority of the towns affected in the case of all other amendatory ordinances, it shall become effective on passage. The county clerk shall record in the clerk's office the date on which the ordinance becomes effective and notify the town clerk of all towns affected by the ordinance of the effective date and also insert the effective date in the proceedings of the county board. The county clerk shall submit a copy of any

other amendatory ordinance, under par. (g), within 7 days of its enactment, to the town clerk of each town in which lands affected by the ordinance are located. If after 40 days from the date of the enactment a majority of the towns have not filed certified copies of resolutions disapproving the amendment with the county clerk, or if, within a shorter time a majority of the towns in which the ordinance is in effect have filed certified copies of resolutions approving the amendment with the county clerk, the amendment shall be in effect in all of the towns affected by the ordinance. The county clerk shall submit under par. (g), within 7 days of its enactment, any ordinance relating to the location of boundaries of districts only to the town clerk of the town in which the lands affected by the change are located. Such an ordinance shall become effective 40 days after enactment of the ordinance by the county board unless such town board prior to such date files a certified copy of a resolution disapproving of the ordinance with the county clerk. If such town board approves the ordinance, the ordinance shall become effective upon the filing of the resolution of the town board approving the ordinance with the county clerk. The clerk shall record in the clerk's office the date on which the ordinance becomes effective and notify the town clerk of all towns affected by such ordinance of such effective date and also make such report to the county board, which report shall be printed in the proceedings of the county board.

7. When any lands previously under the jurisdiction of a county zoning ordinance have been finally removed from such jurisdiction by reason of annexation to an incorporated municipality, and after the regulations imposed by the county zoning ordinance have ceased to be effective as provided in sub. (7), the board may, on the recommendation of its zoning agency, enact amendatory ordinances that remove or delete the annexed lands from the official zoning map or written descriptions without following any of the procedures provided in subs. 1. to 6., and such amendatory ordinances shall become effective upon enactment and publication. A copy of the ordinance shall be forwarded by the clerk to the clerk of each town in which the lands affected were previously located. Nothing in this paragraph shall be construed to nullify or supersede s. 66.1031.
- (f) The county zoning agency shall maintain a list of persons who submit a written or electronic request to receive notice of any proposed ordinance or amendment that affects the allowable use of the property owned by the person. Annually, the agency shall inform residents of the county that they may add their names to the list. The agency may satisfy this requirement to provide such information by any of the following means: publishing a 1st class notice under ch. 985; publishing on the county's Internet site; 1st class mail; or including the information in a mailing that is sent to all property owners. If the county zoning agency completes a draft of a proposed zoning ordinance under par. (a) or if the agency receives a petition under par. (e) 2., the agency shall send a notice, which contains a copy or summary of the proposed ordinance or petition, to each person on the list whose property, the allowable use or size or density requirements of which, may be affected by the proposed ordinance or amendment. The notice shall be by mail or in any reasonable form that is agreed to by the person and the agency, including electronic mail, voice mail, or text message. The agency may charge each person on the list who receives a notice by 1st class mail a fee that does not exceed the approximate cost of providing the notice to the person. An ordinance or amendment that is subject to this paragraph may take effect even if the agency fails to send the notice that is required by this paragraph.
- (g)
1. Except as provided in subd. 2., when a county clerk is required to submit materials to a town clerk as described in pars. (b) and (e) 2. and 6., the county clerk shall submit the materials by certified mail.
 2. A county clerk may submit to a town clerk by electronic mail the materials described in subd. 1. if the county clerk includes with the electronic mail a request that the town clerk promptly confirm receipt of the materials by return electronic mail. If the county clerk does not receive such confirmation within 2 business days, the county clerk shall submit the materials to the town clerk by certified mail.

(5m) TERMINATION OF COUNTY ZONING.

- (a) Subject to par. (b), if a county clerk receives a notice from a town under s. 60.23 (34) (b) 1. before July 1 of the year before a year in which a town may withdraw from county zoning under s. 60.23 (34), a county board may enact an ordinance, before October 1 of the year in which the county clerk receives the notice, to repeal all of its zoning ordinances enacted under this section if it so notifies, in writing, all of the towns that are subject to its zoning ordinances. If a county does not repeal all of its zoning ordinances as described in this paragraph, it shall amend its zoning ordinances to specify that the ordinances do not apply in the town from which it received the notice.
- (b) An ordinance enacted under par. (a) shall have a delayed effective date of one year. No county board may repeal under this subsection a county shoreland zoning or floodplain zoning ordinance.
- (6) **OPTIONAL ADDITIONAL PROCEDURES.** Nothing in this section shall be construed to prohibit the zoning agency, the board or a town board from adopting any procedures in addition to those prescribed in this section and not in conflict therewith. Such procedures may, but are not required to, provide for public hearings before the county board. The

public hearing provided by sub. (5) (a) and (e) 2. is deemed to be sufficient for the requirements of due process whether or not the county board holds a further public hearing thereafter.

- (7) **CONTINUED EFFECT OF ORDINANCE.** Whenever an area which has been subject to a county zoning ordinance petitions to become part of a city or village, the regulations imposed by the county zoning ordinance shall continue in effect, without change, and shall be enforced by the city or village until the regulations have been changed by official action of the governing body of the city or village, except that in the event an ordinance of annexation is contested in the courts, the county zoning shall prevail and the county shall have jurisdiction over the zoning in the area affected until ultimate determination of the court action.
- (8) **EXCHANGE OF TAX DEEDED LANDS.** When a county acquires lands by tax deeds, the board may exchange such lands for other lands in the county for the purpose of promoting the regulation and restriction of agricultural and forestry lands and may exchange such lands for other lands for the purpose of creating a park or recreational area.
- (9) **ZONING OF COUNTY-OWNED LANDS.**
- (a) The county board may by ordinance zone and rezone lands owned by the county without necessity of securing the approval of the town boards of the towns wherein the lands are situated and without following the procedure outlined in sub. (5), provided that the county board shall give written notice to the town board of the town wherein the lands are situated of its intent to so rezone and shall hold a public hearing on the proposed rezoning ordinance and give notice of the hearing by posting in 5 public places in the town.
 - (b) This subsection does not apply to land that is subject to a town zoning ordinance which is purchased by the county for use as a solid or hazardous waste disposal facility or hazardous waste storage or treatment facility, as these terms are defined under s. 289.01.

(10) NONCONFORMING USES.

- (ab) In this subsection "nonconforming use" means a use of land, a dwelling, or a building that existed lawfully before the current zoning ordinance was enacted or amended, but that does not conform with the use restrictions in the current ordinance.
- (am) An ordinance enacted under this section may not prohibit the continuance of the lawful use of any building, premises, structure, or fixture for any trade or industry for which such building, premises, structure, or fixture is used at the time that the ordinances take effect, but the alteration of, or addition to, or repair in excess of 50 percent of its assessed value of any existing building, premises, structure, or fixture for the purpose of carrying on any prohibited trade or new industry within the district where such buildings, premises, structures, or fixtures are located, may be prohibited. The continuance of the nonconforming use of a temporary structure may be prohibited. If the nonconforming use is discontinued for a period of 12 months, any future use of the building, premises, structure, or fixture shall conform to the ordinance.
- (at) Notwithstanding par. (am), a manufactured home community licensed under s. 101.935 that is a legal nonconforming use continues to be a legal nonconforming use notwithstanding the occurrence of any of the following activities within the community:
1. Repair or replacement of homes.
 2. Repair or replacement of infrastructure.
- (b)
1. Except as provided under subd. 2., the board shall designate an officer to administer the zoning ordinance, who may be the secretary of the zoning agency, a building inspector appointed under s. 59.698 or other appropriate person.
 2. Notwithstanding subd. 1. and s. 59.698, in a county with a county zoning agency and a county executive or county administrator, the county executive or county administrator shall appoint and supervise the head of the county zoning agency and the county building inspector, in separate or combined positions. The appointment is subject to confirmation by the board unless the board, by ordinance, elects to waive confirmation or unless the appointment is made under a civil service system competitive examination procedure established under s. 59.52 (8) or ch. 63. The board, by resolution or ordinance, may provide that, notwithstanding s. 17.10 (6), the head of the county zoning agency and the county building inspector, whether serving in a separate or combined position, if appointed under this subdivision, may not be removed from his or her position except for cause.
 3. The officer designated under subd. 1. or 2. shall cause a record to be made immediately after the enactment of an ordinance or amendment thereto, or change in district boundary, approved by the town board, of all lands, premises and buildings in the town used for purposes not conforming to the regulations applicable to the district in which they are situated. The record shall include the legal description of the lands, the nature and extent of the uses therein, and the names and addresses of the owner or occupant or both. Promptly on its completion the record shall be published in the county as a class 1 notice, under ch. 985. The record, as corrected, shall be on file with the register of deeds 60 days after the last publication and shall be prima facie evidence of the extent and number of nonconforming uses existing on the effective date of the ordinance in the town. Corrections before

the filing of the record with the register of deeds may be made on the filing of sworn proof in writing, satisfactory to the officer administering the zoning ordinance.

- (c) The board shall prescribe a procedure for the annual listing of nonconforming uses, discontinued or created, since the previous listing and for all other nonconforming uses. Discontinued and newly created nonconforming uses shall be recorded with the register of deeds immediately after the annual listing.
 - (d) Paragraphs (b) and (c) shall not apply to counties issuing building permits or occupancy permits as a means of enforcing the zoning ordinance or to counties which have provided other procedures for this purpose.
 - (e)
 - 1. In this paragraph, "amortization ordinance" means an ordinance that allows the continuance of the lawful use of a nonconforming building, premises, structure, or fixture that may be lawfully used as described under par. (am), but only for a specified period of time, after which the lawful use of such building, premises, structure, or fixture must be discontinued without the payment of just compensation.
 - 2. Subject to par. (am), an ordinance enacted under this section may not require the removal of a nonconforming building, premises, structure, or fixture by an amortization ordinance.
- (10e) REPAIR AND MAINTENANCE OF CERTAIN NONCONFORMING STRUCTURES.**
- (a) In this subsection:
 - 1. "Development regulations" means the part of a zoning ordinance enacted under this section that applies to elements including setback, height, lot coverage, and side yard.
 - 2. "Nonconforming structure" means a dwelling or other building that existed lawfully before the current zoning ordinance was enacted or amended, but that does not conform with one or more of the development regulations in the current zoning ordinance.
 - (b) An ordinance enacted under this section may not prohibit, or limit based on cost, the repair, maintenance, renovation, or remodeling of a nonconforming structure.
- (10m) RESTORATION OF CERTAIN NONCONFORMING STRUCTURES.**
- (a) Restrictions that are applicable to damaged or destroyed nonconforming structures and that are contained in an ordinance enacted under this section may not prohibit the restoration of a nonconforming structure if the structure will be restored to the size, subject to par. (b), location, and use that it had immediately before the damage or destruction occurred, or impose any limits on the costs of the repair, reconstruction, or improvement if all of the following apply:
 - 1. The nonconforming structure was damaged or destroyed on or after March 2, 2006.
 - 2. The damage or destruction was caused by violent wind, vandalism, fire, flood, ice, snow, mold, or infestation.
 - (b) An ordinance enacted under this section to which par. (a) applies shall allow for the size of a structure to be larger than the size it was immediately before the damage or destruction if necessary for the structure to comply with applicable state or federal requirements.
- (11) PROCEDURE FOR ENFORCEMENT OF COUNTY ZONING ORDINANCE.** The board shall prescribe rules, regulations and administrative procedures, and provide such administrative personnel as it considers necessary for the enforcement of this section, and all ordinances enacted in pursuance thereof. The rules and regulations and the districts, setback building lines and regulations authorized by this section, shall be prescribed by ordinances which shall be declared to be for the purpose of promoting the public health, safety and general welfare. The ordinances shall be enforced by appropriate forfeitures. Compliance with such ordinances may also be enforced by injunctive order at the suit of the county or an owner of real estate within the district affected by the regulation.
- (12) PRIOR ORDINANCES EFFECTIVE.** Nothing in this section shall invalidate any county zoning ordinance enacted under statutes in effect before July 20, 1951.
- (13) CONSTRUCTION OF SECTION.** The powers granted in this section shall be liberally construed in favor of the county exercising them, and this section shall not be construed to limit or repeal any powers now possessed by a county.
- (14) LIMITATION OF ACTIONS.** A landowner, occupant or other person who is affected by a county zoning ordinance or amendment, who claims that the ordinance or amendment is invalid because procedures prescribed by the statutes or the ordinance were not followed, shall commence an action within the time provided by s. 893.73 (1), except this subsection and s. 893.73 (1) do not apply unless there has been at least one publication of a notice of a zoning hearing in a local newspaper of general circulation and unless there has been held a public hearing on the ordinance or amendment at the time and place specified in the notice.
- (15) COMMUNITY AND OTHER LIVING ARRANGEMENTS.** For purposes of this section, the location of a community living arrangement for adults, as defined in s. 46.03 (22), a community living arrangement for children, as defined in s. 48.743 (1), a foster home, as defined in s. 48.02 (6), or an adult family home, as defined in s. 50.01 (1), in any municipality, shall be subject to the following criteria:
- (a) No community living arrangement may be established after March 28, 1978, within 2,500 feet, or any lesser distance established by an ordinance of a municipality, of any other such facility. Agents of a facility may apply for an exception to this requirement, and such exceptions may be granted at the discretion of the

municipality. Two community living arrangements may be adjacent if the municipality authorizes that arrangement and if both facilities comprise essential components of a single program.

- (b)
1. Community living arrangements shall be permitted in each municipality without restriction as to the number of facilities, so long as the total capacity of the community living arrangements does not exceed 25 or 1 percent of the municipality's population, whichever is greater. When the capacity of the community living arrangements in the municipality reaches that total, the municipality may prohibit additional community living arrangements from locating in the municipality. In any municipality, when the capacity of community living arrangements in an aldermanic district in a city or a ward in a village or town reaches 25 or 1 percent of the population, whichever is greater, of the district or ward, the municipality may prohibit additional community living arrangements from being located within the district or ward. Agents of a facility may apply for an exception to the requirements of this subdivision, and such exceptions may be granted at the discretion of the municipality.
 2. No community living arrangement may be established after January 1, 1995, within 2,500 feet, or any lesser distance established by an ordinance of the municipality, of any other such facility. Agents of a facility may apply for an exception to this requirement, and exceptions may be granted at the discretion of the municipality. Two community living arrangements may be adjacent if the municipality authorizes that arrangement and if both facilities comprise essential components of a single program.
- (bm) A foster home that is the primary domicile of a foster parent and that is licensed under s. 48.62 or an adult family home certified under s. 50.032 (1m) (b) shall be a permitted use in all residential areas and is not subject to pars. (a) and (b) except that foster homes operated by corporations, child welfare agencies, religious associations, as defined in s. 157.061 (15), associations, or public agencies shall be subject to pars. (a) and (b).
- (br)
1. No adult family home described in s. 50.01 (1) (b) may be established within 2,500 feet, or any lesser distance established by an ordinance of the municipality, of any other adult family home described in s. 50.01 (1) (b) or any community living arrangement. An agent of an adult family home described in s. 50.01 (1) (b) may apply for an exception to this requirement, and the exception may be granted at the discretion of the municipality.
 2. An adult family home described in s. 50.01 (1) (b) that meets the criteria specified in subd. 1. and that is licensed under s. 50.033 (1m) (b) is permitted in the municipality without restriction as to the number of adult family homes and may locate in any residential zone, without being required to obtain special zoning permission except as provided in par. (i).
- (c) If the community living arrangement has capacity for 8 or fewer persons being served by the program, meets the criteria listed in pars. (a) and (b), and is licensed, operated, or permitted under the authority of the department of health services or the department of children and families, that facility is entitled to locate in any residential zone, without being required to obtain special zoning permission except as provided in par. (i).
- (d) If the community living arrangement has capacity for 9 to 15 persons being served by the program, meets the criteria listed in pars. (a) and (b), and is licensed, or operated, or permitted under the authority of the department of health services or the department of children and families, the facility is entitled to locate in any residential area except areas zoned exclusively for single-family or 2-family residences, except as provided in par. (i), but is entitled to apply for special zoning permission to locate in those areas. The municipality may grant special zoning permission at its discretion and shall make a procedure available to enable such facilities to request such permission.
- (e) If the community living arrangement has capacity for serving 16 or more persons, meets the criteria listed in pars. (a) and (b), and is licensed, operated, or permitted under the authority of the department of health services or the department of children and families, that facility is entitled to apply for special zoning permission to locate in areas zoned for residential use. The municipality may grant special zoning permission at its discretion and shall make a procedure available to enable such facilities to request such permission.
- (f) The department of health services shall designate a single subunit within that department to maintain appropriate records indicating the location and the capacity of each community living arrangement for adults, and the information shall be available to the public. The department of children and families shall designate a single subunit within that department to maintain appropriate records indicating the location and the capacity of each community living arrangement for children, and the information shall be available to the public.
- (g) In this subsection, "special zoning permission" includes, but is not limited to, the following: special exception, special permit, conditional use, zoning variance, conditional permit and words of similar intent.
- (h) The attorney general shall take action, upon the request of the department of health services or the department of children and families, to enforce compliance with this subsection.

- (i) Not less than 11 months nor more than 13 months after the first licensure of an adult family home under s. 50.033 or of a community living arrangement and every year thereafter, the common council or village or town board of a municipality in which a licensed adult family home or a community living arrangement is located may make a determination as to the effect of the adult family home or community living arrangement on the health, safety or welfare of the residents of the municipality. The determination shall be made according to the procedures provided under par. (j). If the common council or village or town board determines that the existence in the municipality of a licensed adult family home or a community living arrangement poses a threat to the health, safety or welfare of the residents of the municipality, the common council or village or town board may order the adult family home or community living arrangement to cease operation unless special zoning permission is obtained. The order is subject to judicial review under s. 68.13, except that a free copy of the transcript may not be provided to the licensed adult family home or community living arrangement. The licensed adult family home or community living arrangement shall cease operation within 90 days after the date of the order, or the date of final judicial review of the order, or the date of the denial of special zoning permission, whichever is later.
- (im) The fact that an individual with acquired immunodeficiency syndrome or a positive HIV test, as defined in s. 252.01 (2m), resides in a community living arrangement with a capacity for 8 or fewer persons may not be used under par. (i) to assert or prove that the existence of the community living arrangement in the municipality poses a threat to the health, safety or welfare of the residents of the municipality.
- (j) A determination under par. (i) shall be made after a hearing before the common council or village or town board. The municipality shall provide at least 30 days' notice to the licensed adult family home or the community living arrangement that such a hearing will be held. At the hearing, the licensed adult family home or the community living arrangement may be represented by counsel and may present evidence and call and examine witnesses and cross-examine other witnesses called. The common council or village or town board may call witnesses and may issue subpoenas. All witnesses shall be sworn by the common council, town board or village board. The common council or village or town board shall take notes of the testimony and shall mark and preserve all exhibits. The common council or village or town board may, and upon request of the licensed adult family home or the community living arrangement shall, cause the proceedings to be taken by a stenographer or by a recording device, the expense thereof to be paid by the municipality. Within 20 days after the hearing, the common council or village or town board shall mail or deliver to the licensed adult family home or the community living arrangement its written determination stating the reasons therefor. The determination shall be a final determination.

History: 1971 c. 40 s. 93; 1971 c. 86, 224; 1973 c. 274; 1977 c. 205; 1979 c. 233 ss. 2 to 5, 7 and 8; 1979 c. 323; 1981 c. 341, 354, 374; 1983 a. 192 s. 303 (1); 1983 a. 410; 1983 a. 532 s. 36; 1985 a. 29, 136, 196, 281, 316; 1987 a. 161, 395; 1989 a. 80, 201; 1991 a. 255, 269, 316; 1993 a. 16, 27, 246, 327, 400, 446, 491; 1995 a. 27 ss. 9130 (4), 9126 (19); 1995 a. 201 s. 475; Stats. 1995 s. 59.69; 1995 a. 225 s. 174; 1995 a. 227; 1997 a. 3, 35; 1999 a. 9, 148, 185; 2001 a. 16, 30, 50, 105; 2003 a. 214; 2005 a. 26, 79, 81, 112, 171, 208; 2007 a. 11; 2007 a. 20 ss. 1852 to 1857, 9121 (6) (a); 2009 a. 28, 209, 351, 372, 405; 2011 a. 32, 170; 2013 a. 20; 2013 a. 165 s. 115; 2015 a. 55, 176, 178, 214, 223, 391.

Note: 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.

A zoning ordinance may distinguish between foster homes and therapeutic homes for the care of children. Browndale International v. Board of Adjustment, 60 Wis. 2d 182, 208 N.W.2d 121 (1973).

A plaintiff is not required to exhaust administrative remedies when his or her claim is that a zoning ordinance is unconstitutional, but may ask for a declaratory judgment. An ordinance classifying land as agricultural when it is unfit for agriculture is unreasonable and amounts to a taking of the land without compensation. Kmiec v. Town of Spider Lake, 60 Wis. 2d 640, 211 N.W.2d 471 (1973).

A property owner does not acquire a "vested interest" in the continuance of a nonconforming use, and such status will be denied if the specific use was casual and occasional, or if the use was merely accessory or incidental to the principal use. Walworth County v. Hartwell, 62 Wis. 2d 57, 214 N.W.2d 288 (1974).

Under s. 59.97 [now s. 59.69] (5) (c), a county zoning ordinance becomes effective in a town upon approval of the text by the town board and the filing of the approving resolution with the town clerk and not when it merely adopts a zoning map. Racine County v. Alby, 65 Wis. 2d 574, 223 N.W.2d 438 (1974).

Zoning ordinances, being in derogation of common law, are to be construed in favor of the free use of private property. Cohen v. Dane County Board of Adjustment, 74 Wis. 2d 87, 246 N.W.2d 112 (1976).

A municipality is not required to show irreparable injury before obtaining an injunction under s. 59.97 [now s. 59.69] (11). County of Columbia v. Bylewski, 94 Wis. 2d 153, 288 N.W.2d 129 (1980).

Under s. 59.97 [now s. 59.69] (9) a county may rezone county-owned land contrary to town zoning laws and without town approval. Town of Ringle v. County of Marathon, 104 Wis. 2d 297, 311 N.W.2d 595 (1981).

The primary authority to enact, repeal, and amend a zoning ordinance is at the county, not town, level. The county is responsible for any liabilities that may arise from adoption. No liability arises to a town from the town's

approval of a county ordinance enacted following the repeal of a prior effective ordinance. *M & I Marshall Bank v. Town of Somers*, 141 Wis. 2d 271, 414 N.W.2d 824 (1987).

When it is claimed that zoning resulted in a taking of land without compensation, there is no compensable taking unless the regulation resulted in a diminution of value so great that it amounts to a confiscation. *M & I Marshall Bank v. Town of Somers*, 141 Wis. 2d 271, 414 N.W.2d 824 (1987).

For purposes of determining a nonconforming use for a quarry site, all land that contains the mineral and is integral to the operation is included, although a particular portion may not be under actual excavation. *Smart v. Dane County Board of Adjustment*, 177 Wis. 2d 445, 501 N.W.2d 782 (1993).

The power to regulate nonconforming uses includes the power to limit the extension or expansion of the use if it results in a change in the character of the use. *Waukesha County v. Pewaukee Marina, Inc.* 187 Wis. 2d 18, 522 N.W.2d 536 (Ct. App. 1994).

When a zoning ordinance is changed, a builder may have a vested right, enforceable by mandamus, to build under the previously existing ordinance if the builder has submitted, prior to the change, an application for a permit in strict and complete conformance with the ordinance then in effect. *Lake Bluff Housing Partners v. South Milwaukee*, 197 Wis. 2d 157, 540 N.W.2d 189 (1995), 94-1155.

Unless the zoning ordinance provides otherwise, a court should measure the sufficiency of a conditional use application at the time that notice of the final public hearing is first given. *Weber v. Town of Saukville*, 209 Wis. 2d 214, 562 N.W.2d 412 (1997), 94-2336.

A permit issued for a use prohibited by a zoning ordinance is illegal *per se*. A conditional use permit only allows a property owner to put the property to a use that is expressly permitted as long as conditions have been met. A use begun under an illegal permit cannot be a prior nonconforming use. *Foresight, Inc. v. Babl*, 211 Wis. 2d 599, 565 N.W.2d 279 (Ct. App. 1997), 96-1964.

A nonconforming use, regardless of its duration, may be prohibited or restricted if it also constitutes a public nuisance or is harmful to public health, safety, or welfare. *Town of Delafield v. Sharpley*, 212 Wis. 2d 332, 568 N.W.2d 779 (Ct. App. 1997), 96-2458.

A county executive's power to veto ordinances and resolutions extends to rezoning petitions that are in essence proposed amendments to the county zoning ordinance. The veto is subject to limited judicial review. *Schmeling v. Phelps*, 212 Wis. 2d 898, 569 N.W.2d 784 (Ct. App. 1997), 96-2661.

Sub. (11) does not eliminate the traditional equitable power of a circuit court. It is within the power of the court to deny a county's request for injunctive relief when a zoning ordinance violation is proven. The court should take evidence and weigh equitable considerations including that of the state's citizens. *Forest County v. Goode*, 219 Wis. 2d 654, 579 N.W.2d 715 (1998), 96-3592.

Construction in violation of zoning regulations, even when authorized by a voluntarily issued permit, is unlawful. However, in rare cases, there may be compelling equitable reasons when a requested order of abatement should not be issued. *Lake Bluff Housing Partners v. City of South Milwaukee*, 222 Wis. 2d 222, 588 N.W.2d 45 (Ct. App. 1998), 97-1339.

A conditional use permit did not impose a condition that the conditional use not be conducted outside the permitted area. It was improper to revoke the permit based on that use. An enforcement action in relation to the parcel where the use was not permitted was an appropriate remedy. *Bettendorf v. St. Croix County Board of Adjustment*, 224 Wis. 2d 735, 591 N.W.2d 916 (Ct. App. 1999), 98-2327.

Once a municipality has shown an illegal change in use to a nonconforming use, the municipality is entitled to terminate the entire nonconforming use. The decision is not within the discretion of the court reviewing the order. *Village of Menomonee Falls v. Preuss*, 225 Wis. 2d 746, 593 N.W.2d 496 (Ct. App. 1999), 98-0384.

To violate substantive due process guarantees, a zoning decision must involve more than simple errors in law or an improper exercise of discretion; it must shock the conscience. The city's violation of a purported agreement regarding zoning was not a violation. A court cannot compel a political body to adhere to an agreement regarding zoning if that body has legitimate reasons for breaching. *Eternalist Foundation, Inc. v. City of Platteville*, 225 Wis. 2d 759, 593 N.W.2d 84 (Ct. App. 1999), 98-1944.

While the DNR has the authority to regulate the operation of game farms, its authority does not negate the power to enforce zoning ordinances against game farms. Both are applicable. *Willow Creek Ranch v. Town of Shelby*, 2000 WI 56, 235 Wis. 2d 409, 611 N.W.2d 693, 97-2075.

A change in method or quantity of production of a nonconforming use is not a new use when the original character of the use remains the same. The incorporation of modern technology into the business of the operator of a nonconforming use is allowed. *Racine County v. Cape*, 2002 WI App 19, 250 Wis. 2d 44, 639 N.W.2d 782, 01-0740.

Financial investment is a factor to consider when determining whether a zoning violation must be abated, but it does not outweigh all other equitable factors to be considered. *Lake Bluff Housing Partners v. City of South Milwaukee*, 2001 WI App 150, 246 Wis. 2d 785, 632 N.W.2d 485, 00-1958.

While a mere increase in the volume, intensity, or frequency of a nonconforming use is not sufficient to invalidate it, if the increase in volume, intensity, or frequency of use is coupled with some identifiable change or extension, the enlargement will invalidate a legal nonconforming use. A proposed elimination of cabins and the

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expansion from 21 to 44 RV sites was an identifiable change in a campground and extension of the use for which it had been licensed. *Lessard v. Burnett County Board of Adjustment*, 2002 WI App 186, 256 Wis. 2d 821, 649 N.W.2d 728, 01-2986.

To find discontinuance of a nonconforming use, proof of intent to abandon the nonconforming use is not required. *Lessard v. Burnett County Board of Adjustment*, 2002 WI App 186, 256 Wis. 2d 821, 649 N.W.2d 728, 01-2986.

A conditional use permit (CUP) is not a contract. A CUP is issued under an ordinance. A municipality has discretion to issue a permit and the right to seek enforcement of it. Noncompliance with the terms of a CUP is tantamount to noncompliance with the ordinance. *Town of Cedarburg v. Shewczyk*, 2003 WI App 10, 259 Wis. 2d 818, 656 N.W.2d 491, 02-0902.

Spot zoning grants privileges to a single lot or area that are not granted or extended to other land in the same use district. Spot zoning is not per se illegal but, absent any showing that a refusal to rezone will in effect confiscate the property by depriving all beneficial use thereof should only be indulged in when it is in the public interest and not solely for the benefit of the property owner who requests the rezoning. *Step Now Citizens Group v. Town of Utica*, 2003 WI App 109, 264 Wis. 2d 662, 663 N.W.2d 833, 02-2760.

The failure to comply with an ordinance's notice requirements, when all statutory notice requirements were met, did not defeat the purpose of the ordinance's notice provision. *Step Now Citizens Group v. Town of Utica*, 2003 WI App 109, 264 Wis. 2d 662, 663 N.W.2d 833, 02-2760.

Under Goode a landowner may contest whether he or she is in violation of the zoning ordinance and, if so, can further contest on equitable grounds the enforcement of a sanction for the violation. *Town of Delafield v. Winkelman*, 2004 WI 17, 269 Wis. 2d 109, 675 N.W.2d 470, 02-0979.

A municipality cannot be estopped from seeking to enforce a zoning ordinance, but a circuit court has authority to exercise its discretion in deciding whether to grant enforcement. Upon the determination of an ordinance violation, the proper procedure for a circuit court is to grant an injunction enforcing the ordinance, except when it is presented with compelling equitable reasons to deny it. *Village of Hobart v. Brown County*, 2005 WI 78, 281 Wis. 2d 628, 698 N.W.2d 83, 03-1907.

An existing conditional use permit (CUP) is not a vested property right and the revocation of the permit is not an unconstitutional taking. A CUP merely represents a species of zoning designations. Because landowners have no property interest in zoning designations applicable to their properties, a CUP is not property and no taking occurs by virtue of a revocation. *Rainbow Springs Golf Company, Inc. v. Town of Mukwonago*, 2005 WI App 163, 284 Wis. 2d 519, 702 N.W.2d 40, 04-1771.

A municipality may not effect a zoning change by simply printing a new map marked "official map." *Village of Hobart v. Brown County*, 2007 WI App 250, 306 Wis. 2d 263, 742 N.W.2d 907, 07-0891.

Zoning that restricts land so that the landowner has no permitted use as of right must bear a substantial relation to the health, safety, morals, or general welfare of the public in order to withstand constitutional scrutiny. *Town of Rhine v. Bizzell*, 2008 WI 76, 311 Wis. 2d 1, 751 N.W.2d 780, 06-0450.

Having a vested interest in the continuance of a use is fundamental to protection of a nonconforming use. There can be no vested interest if the use is not actually and actively occurring at the time the ordinance amendment takes effect. However, it does not follow that any use that is actually occurring on the effective date of the amendment is sufficient to give the owner a vested interest in its continued use. To have a vested interest in the continuation of a use requires that if the continuance of the use were to be prohibited, substantial rights would be adversely affected, which will ordinarily mean that there has been a substantial investment in the use. The longevity of a use and the degree of development of a use are subsumed in an analysis of what investments an owner has made, rather than separate factors to be considered. *Town of Cross Plains v. Kitt's "Field of Dreams" Korner, Inc.* 2009 WI App 142, 321 Wis. 2d 671, 775 N.W.2d 283, 08-0546.

There must be reasonable reliance on the existing law in order to acquire a vested interest in a nonconforming use. Reasonable reliance on the existing law was not present when the owners knew the existing law was soon to change at the time the use was begun. *Town of Cross Plains v. Kitt's "Field of Dreams" Korner, Inc.* 2009 WI App 142, 321 Wis. 2d 671, 775 N.W.2d 283, 08-0546.

The town board's recommendation on a form that was signed by the town board and clerk and dated but not certified as a resolution by the town clerk did not effectively satisfy the statutory elements of a certified copy of a resolution under sub. (5) (e) 3. Although the legislature intended the town board to serve as a political check on the otherwise unfettered discretion of the county board in wielding its legislative zoning power, it prescribed a specific procedure by which towns perform that function. *Johnson v. Washburn County*, 2010 WI App 50, 324 Wis. 2d 366, 781 N.W.2d 706, 09-0371.

When a village eliminated the selling of cars as a conditional use in general business districts a previously granted conditional use permit (CUP) was voided, the property owner was left with a legal nonconforming use to sell cars, and the village could not enforce the strictures of the CUP against the property owner. Therefore, the owner could continue to sell cars in accordance with the historical use of the property, but if the use were to go beyond the historical use of the property, the village could seek to eliminate the property's status as a legal nonconforming use.

Hussein v. Village of Germantown Board of Zoning Appeals, 2011 WI App 96, 334 Wis. 2d 764, 800 N.W.2d 551, 10-2178.

A county has the authority under both subs. (1) and (4) and s. 59.70 (22) to enact ordinances regulating billboards and other similar structures. When a town approves a county zoning ordinance under sub. (5) (c) that includes a billboard ordinance, the town's billboard ordinance adopted under s. 60.23 (29) does not preempt a county's authority to regulate billboards in that town. *Adams Outdoor Advertising, L.P. v. County of Dane*, 2012 WI App 28, 340 Wis. 2d 175, 811 N.W.2d 421, 10-0178.

The fact that a county is within a regional planning commission does not affect county zoning power. 61 Atty. Gen. 220.

The authority of a county to regulate mobile homes under this section and other zoning questions are discussed. 62 Atty. Gen. 292.

Zoning ordinances utilizing definitions of "family" to restrict the number of unrelated persons who may live in a single family dwelling are of questionable constitutionality. 63 Atty. Gen. 34.

Under s. 59.97 [now s. 59.69] (5) (c), town board approval of a comprehensive county zoning ordinance must extend to the ordinance in its entirety and may not extend only to parts of the ordinance. 63 Atty. Gen. 199.

A county that has enacted a countywide comprehensive zoning ordinance under this section may not authorize the withdrawal of town approval of the ordinance or exclude any town from the ordinance. 67 Atty. Gen. 197.

The office of county planning and zoning commission member is incompatible with the position of executive director of the county housing authority. 81 Atty. Gen. 90.

An amendment to a county zoning ordinance adding a new zoning district does not necessarily constitute a comprehensive revision requiring town board approval of the entire ordinance under s. 59.97 [now s. 59.69] (5) (d). 81 Atty. Gen. 98.

A county's power under sub. (4) is broad enough to encompass regulation of the storage of junked, unused, unlicensed, or abandoned motor vehicles on private property. Because sub. (10) protects "trade or industry," a county zoning ordinance could prohibit an existing non-commercial, nonconforming use or a use that is "casual and occasional." OAG 2-00.

A county's minimum lot size zoning ordinance applies to parcels created by a court through division in a partition or probate action, even if such division would be exempted from a municipality's subdivision authority under s. 236.45 (2) (am) 1. OAG 1-14.

Architectural Appearances Ordinances and the 1st Amendment. Rice. 76 MLR 439 (1992).

- 60.24 Powers and duties of town board chairperson.
60.47 Public contracts and competitive bidding.
60.61 General zoning authority.
60.62 Zoning authority if exercising village powers.

60.24 Powers and duties of town board chairperson.

- (3) **OTHER RESPONSIBILITIES.** In addition to the powers and duties under this section, the town board chairperson has the following responsibilities:

(s) Appoint members to the airport commission under s. 114.14 (2).

History: 1983 a. 532; 1985 a. 225; 1987 a. 197, 399; 1989 a. 336; 1997 a. 127, 192, 287; 1999 a. 150 ss. 10, 672; 2003 a. 214; 2009 a. 42.

Note: 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.

The offices of president of a common school district board and chairperson of a town board within the school district and the offices of school board member and town clerk are probably compatible. 74 Atty. Gen. 50.

60.47 Public contracts and competitive bidding.

- (1) **DEFINITIONS.** In this section:

- (a) "Public contract" means a contract for the construction, execution, repair, remodeling or improvement of any public work or building or for the furnishing of materials or supplies, with an estimated cost greater than \$5,000.
(b) "Responsible bidder" means a person who, in the judgment of the town board, is financially responsible and has the capacity and competence to faithfully and responsibly comply with the terms of the public contract.

- (2) **NOTICE; ADVERTISEMENT FOR BIDS.** Except as provided in subs. (4) and (5):

- (a) No town may enter into a public contract with an estimated cost of more than \$5,000 but not more than \$25,000 unless the town board, or a town official or employee designated by the town board, gives a class 1 notice under ch. 985 before execution of that public contract.
(b) No town may enter into a public contract with a value of more than \$25,000 unless the town board, or a town official or employee designated by the town board, advertises for proposals to perform the terms of the public contract by publishing a class 2 notice under ch. 985. The town board may provide for additional means of advertising for bids.

- (3) **CONTRACTS TO LOWEST RESPONSIBLE BIDDER.** The town board shall let a public contract for which advertising for proposals is required under sub. (2)(b) to the lowest responsible bidder. Section 66.0901 applies to public contracts let under sub. (2)(b).

- (4) **CONTRACTS WITH GOVERNMENTAL ENTITIES.** This section does not apply to public contracts entered into by a town with a municipality, as defined under s. 66.0301 (1) (a).

- (5) **EXCEPTION FOR EMERGENCIES AND DONATED MATERIALS AND LABOR.** This section is optional with respect to public contracts for the repair and construction of public facilities when damage or threatened damage to the facility creates an emergency, as declared by resolution of the town board, that endangers the public health or welfare of the town. This subsection no longer applies when the town board declares that the emergency no longer exists. This section is optional with respect to a public contract if the materials related to the contract are donated or if the labor that is necessary to execute the public contract is provided by volunteers.

- (6) **APPLICATION TO WORK BY TOWN.** This section does not apply to any public work performed directly by the town.

History: 1983 a. 532; 1989 a. 272; 1999 a. 9; 1999 a. 150 s. 672; 2005 a. 202.

Sub. (3) does not imply a broad range of discretion beyond determining whether a bidder is responsible.

D.M.K., Inc. v. Town of Pittsfield, 2006 WI App 40, 290 Wis. 2d 474, 711 N.W.2d 672, 05-0221.

An unsuccessful bidder was not entitled to maintain a suit for damages, but was instead required to seek an injunction. Only if the bidder successfully obtained an injunction would it be entitled to limited damages, not including lost profits, as, if successful, the bidder could force the town to award it the contracts, or alternatively, to relet them.

D.M.K., Inc. v. Town of Pittsfield, 2006 WI App 40, 290 Wis. 2d 474, 711 N.W.2d 672, 05-0221.

A disappointed bidder may recover bid preparation expenses for a violation of the competitive bidding statute regardless of whether it has sought injunctive relief. North Twin Builders, LLC v. Town of Phelps, 2011 WI App 77, 334 Wis. 2d 148, 800 N.W.2d 1, 09-3036.

60.61 General zoning authority.**(1) PURPOSE AND CONSTRUCTION.**

- (a) Ordinances adopted under this section shall be designed to promote the public health, safety and general welfare.
- (b) Authority granted under this section shall be liberally construed in favor of the town exercising the powers. This section may not be construed to limit or repeal any powers possessed by any town.

(1m) BUILDING CODE ENFORCEMENT. A town board may enact and enforce building code ordinances under ss. 62.17, 101.65, 101.76 and 101.86.

(2) EXTENT OF AUTHORITY. Subject to subs. (3) and (3m), if a town is located in a county which has not enacted a county zoning ordinance under s. 59.69, the town board, by ordinance, may:

- (a) Regulate, restrict and determine all of the following:
 1. The areas within which agriculture, forestry, mining and recreation may be conducted, except that no ordinance enacted under this subsection may prohibit forestry operations that are in accordance with generally accepted forestry management practices, as defined under s. 823.075 (1) (d).
 2. The location of roads, schools, trades and industries.
 3. The location, height, bulk, number of stories and size of buildings and other structures.
 4. The percentage of a lot which may be occupied.
 5. The size of yards, courts and other open spaces.
 6. Subject to s. 66.10015 (3), the density and distribution of population.
 7. The location of buildings designed for specified uses.
 8. The trades, industries or purposes that may be engaged in or subject to regulation.
 9. The uses for which buildings may not be erected or altered.
- (b) Establish districts of such number, shape and area necessary to carry out the purposes under par. (a). The town board may establish mixed-use districts that contain any combination of uses, such as industrial, commercial, public, or residential uses, in a compact urban form.
- (c) Establish building setback lines.
- (d) Regulate, restrict and determine the areas in or along natural watercourses, channels, streams and creeks in which trades and industries, filling or dumping, erection of structures and the location of buildings may be prohibited or restricted.
- (e) Adopt an official map showing areas, outside the limits of villages and cities, suited to carry out the purposes of this section. Any map adopted under this paragraph shall show the location of any part of an airport, as defined in s. 62.23 (6) (am) 1. a., located in the town and of any part of an airport affected area, as defined in s. 62.23 (6) (am) 1. b., located in the town.
- (f) Regulate, restrict and determine the location, height, bulk, number of stories and size of buildings and other structures and objects of natural growth in any area of the town in the vicinity of an airport owned by the town or privately owned, divide the territory into several areas and impose different restrictions for each area. In exercising its power under this paragraph, the town board may, by eminent domain, remove or alter any buildings, structures or objects of natural growth which are contrary to the restrictions imposed in the area in which they are located, except railroad buildings, bridges or facilities other than telegraph, telephone and overhead signal system poles and wires.
- (g) Encourage the protection of groundwater resources.
- (h) Provide for the preservation of burial sites, as defined in s. 157.70 (1) (b).
- (i) Provide adequate access to sunlight for solar collectors and to wind for wind energy systems.

(3) EXERCISE OF AUTHORITY. Before exercising authority under sub. (2), the town board shall petition the county board to initiate, at any regular or special meeting, action to enact a county zoning ordinance under s. 59.69. The town board may proceed under sub. (2) if:

- (a) The county board fails or refuses, at the meeting, to direct the county zoning agency to proceed under s. 59.69;
- (b) The county zoning agency's report and the recommended county zoning ordinance prepared pursuant to the report are not presented to the county board within one year; or
- (c) The county zoning agency report and recommended county zoning ordinance are presented to the county board within one year and the county board at its next meeting following receipt of the report fails to adopt the ordinance.

(3c) ANTENNA FACILITIES. The town board may not enact an ordinance or adopt a resolution on or after May 6, 1994, or continue to enforce an ordinance or resolution on or after May 6, 1994, that affects satellite antennas with a diameter of 2 feet or less unless one of the following applies:

- (a) The ordinance or resolution has a reasonable and clearly defined aesthetic or public health or safety objective.
- (b) The ordinance or resolution does not impose an unreasonable limitation on, or prevent, the reception of satellite-delivered signals by a satellite antenna with a diameter of 2 feet or less.

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- (c) The ordinance or resolution does not impose costs on a user of a satellite antenna with a diameter of 2 feet or less that exceed 10 percent of the purchase price and installation fee of the antenna and associated equipment.
- (3d) AMATEUR RADIO ANTENNAS.** The town board may not enact an ordinance or adopt a resolution on or after April 17, 2002, or continue to enforce an ordinance or resolution on or after April 17, 2002, that affects the placement, screening, or height of antennas, or antenna support structures, that are used for amateur radio communications unless all of the following apply:
- (a) The ordinance or resolution has a reasonable and clearly defined aesthetic, public health, or safety objective, and represents the minimum practical regulation that is necessary to accomplish the objectives.
 - (b) The ordinance or resolution reasonably accommodates amateur radio communications.
- (3m) MIGRANT LABOR CAMPS.** The town board may not enact an ordinance or adopt a resolution that interferes with any repair or expansion of migrant labor camps, as defined in s. 103.90 (3), that are in existence on May 12, 1992, if the repair or expansion is required by an administrative rule promulgated by the department of workforce development under ss. 103.90 to 103.97. An ordinance or resolution of the town that is in effect on May 12, 1992, and that interferes with any repair or expansion of existing migrant labor camps that is required by such an administrative rule is void.
- (3r) ZONING IN SHORELANDS.**
- (a) In this subsection, "shorelands" has the meaning given in s. 59.692 (1) (b).
 - (b) A town may enact a zoning ordinance under this section that applies in shorelands, except as provided in par. (c).
 - (c) A town zoning ordinance enacted under this section may not impose restrictions or requirements in shorelands with respect to matters regulated by a county shoreland zoning ordinance enacted under s. 59.692 affecting the same shorelands, regardless of whether the county shoreland zoning ordinance was enacted separately from, or together with, an ordinance enacted under s. 59.69, except as provided in s. 59.692 (2) (b).
- (4) PROCEDURE.**
- (a) The town board shall appoint a town zoning committee consisting of 5 members. The town zoning committee shall also include, as a nonvoting member, a representative from a military base or installation, with at least 200 assigned military personnel or that contains at least 2,000 acres, that is located in the town, if the base's or installation's commanding officer appoints such a representative.
 - (b) Before the town board may adopt an ordinance under sub. (2), the town zoning committee shall recommend zoning district boundaries and appropriate regulations and restrictions for the districts. In carrying out its duties, the town zoning committee shall develop a preliminary report and hold a public hearing on the report before submitting a final report to the town board. The town zoning committee shall give notice of the public hearing on the preliminary report and of the time and place of the public hearing on the report by a class 2 notice under ch. 985. The town zoning committee shall consider any comments made, or submitted, by the commanding officer, or the officer's designee, of a military base or installation, with at least 200 assigned military personnel or that contains at least 2,000 acres, that is located in or near the town. If the town zoning committee makes a substantial change in its report following the public hearing, it shall hold another public hearing on the report. After the final report of the town zoning committee is submitted to the town board, the board may adopt an ordinance under sub. (2) following a public hearing held by the board on the proposed ordinance. The town board shall give notice of the public hearing on the proposed ordinance and of the time and place of the public hearing on the ordinance by a class 2 notice under ch. 985. If the proposed ordinance has the effect of changing the allowable use of any property, the notice shall include either a map showing the property affected by the ordinance or a description of the property affected by the ordinance and a statement that a map may be obtained from the town board. A copy of an adopted ordinance shall be sent to the commanding officer, or the officer's designee, of any military base or installation, with at least 200 assigned military personnel or that contains at least 2,000 acres, that is located in or near the town.
 - (c)
 1. After the town board has adopted a town zoning ordinance, the board may alter, supplement or change the boundaries or regulations established in the ordinance if a public hearing is held on the revisions. The board shall give notice of any proposed revisions in the zoning ordinance and of the time and place of the public hearing on them by a class 2 notice under ch. 985. If the proposed amendment would have the effect of changing the allowable use of any property, the notice shall include either a map showing the property affected by the amendment or a description of the property affected by the amendment and a statement that a map may be obtained from the town board. The board shall allow any interested person to testify at the hearing, and shall consider any comments made, or submitted, by the commanding officer, or the officer's designee, of a military base or installation, with at least 200 assigned military personnel or that contains at least 2,000 acres, that is located in or near the town. If any proposed revision under this subdivision would make any change in an airport affected area, as defined in s. 62.23 (6) (am) 1. b., the board shall mail a copy of such notice to the owner or operator of the airport bordered by the airport affected area.

2. A proposed amendment, supplement or change to the town zoning ordinance must be adopted by not less than a three-fourths vote of the town board if a protest against the proposed amendment, supplement or change is presented to the town board prior to or at the public hearing under subd. 1. and:
 - a. The protest is signed and acknowledged by the owners of at least 50 percent of the area proposed to be altered; or
 - b. The protest is signed and acknowledged by the abutting owners of at least 50 percent of the total perimeter of the area proposed to be altered that is included within 300 feet of the parcel or parcels to be rezoned.
 3. A proposed amendment, supplement or change to the town zoning ordinance must be adopted by not less than a two-thirds vote of the town board if the proposed amendment, supplement or change would make any change in an airport affected area, as defined under s. 62.23 (6) (am) 1. b., and if a protest against the proposed revision is presented to the town board prior to or at the public hearing under subd. 1. by the owner or operator of the airport bordered by the airport affected area.
- (d)
1. In this paragraph, "comprehensively revise" means to incorporate numerous and substantial changes in the zoning ordinance.
 2. The town board may, by a single ordinance, comprehensively revise an existing town zoning ordinance. The ordinance shall be adopted under par. (b).
- (e) Neither the town board nor the town zoning committee may condition or withhold approval of a permit under this section based upon the property owner entering into a contract, or discontinuing, modifying, extending, or renewing any contract, with a 3rd party under which the 3rd party is engaging in a lawful use of the property.
- (f) The town board shall maintain a list of persons who submit a written or electronic request to receive notice of any proposed ordinance or amendment that affects the allowable use of the property owned by the person. Annually, the town board shall inform residents of the town that they may add their names to the list. The town board may satisfy this requirement to provide such information by any of the following means: publishing a 1st class notice under ch. 985; publishing on the town's Internet site; 1st class mail; or including the information in a mailing that is sent to all property owners. If the town zoning committee completes a final report on a proposed zoning ordinance and the town board is prepared to vote on the proposed ordinance under par. (b) or if the town board is prepared to vote on a proposed amendment under par. (c) 1., the town board shall send a notice, which contains a copy or summary of the proposed ordinance or amendment, to each person on the list whose property, the allowable use or size or density requirements of which, may be affected by the proposed ordinance or amendment. The notice shall be by mail or in any reasonable form that is agreed to by the person and the town board, including electronic mail, voice mail, or text message. The town board may charge each person on the list who receives a notice by 1st class mail a fee that does not exceed the approximate cost of providing the notice to the person. An ordinance or amendment that is subject to this paragraph may take effect even if the town board fails to send the notice that is required by this paragraph.
- (g) As part of its approval process for granting a conditional use permit under this section, a town may not impose on a permit applicant a requirement that is expressly preempted by federal or state law.
- (5) **NONCONFORMING USES.**
- (ab) In this subsection "nonconforming use" means a use of land, a dwelling, or a building that existed lawfully before the current zoning ordinance was enacted or amended, but that does not conform with the use restrictions in the current ordinance.
- (am) An ordinance adopted under this section may not prohibit the continued use of any building, premises, structure, or fixture for any trade or industry for which the building, premises, structure, or fixture is used when the ordinance takes effect. An ordinance adopted under this section may prohibit the alteration of, or addition to, any existing building, premises, structure, or fixture used to carry on an otherwise prohibited trade or industry within the district. If a use that does not conform to an ordinance adopted under this section is discontinued for a period of 12 months, any future use of the land, building, premises, structure, or fixture shall conform to the ordinance.
- (b) Except as provided in par. (d), immediately after the publication of a town zoning ordinance, the town board shall provide for the compilation of a record of the present use of all buildings and premises used for purposes not in conformity with the zoning ordinance. The record shall contain the names and addresses of the owner of the nonconforming use and any occupant other than the owner, the legal description of the land, and the nature and extent of the use of the land. The record shall be published in the town as a class 1 notice under ch. 985. Within 60 days after final publication, upon presentation of proof to the town board, errors or omissions in the record may be corrected. At the expiration of the 60-day period, the record shall be filed in the office of the town clerk after the record is first recorded in the office of the register of deeds. The record is prima facie evidence of the extent and number of nonconforming uses existing at the time the ordinance takes

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effect. Errors or omissions in the record shall be corrected by the town board upon petition of any citizen or by the board on its own motion. The decision of the board concerning errors or omissions is final.

- (c) Immediately after the record of nonconforming uses is filed with the town clerk, the clerk shall furnish the town assessor the record of nonconforming uses within the town. After the assessment for the following year and each succeeding assessment, the town assessor shall file a written report, certified by the board of review, with the town clerk listing all nonconforming uses which have been discontinued since the prior assessment. The town clerk shall record discontinued nonconforming uses as soon as reported by the assessor. In this paragraph, "town assessor" includes the county assessor assessing the town under s. 70.99.
- (d) Paragraphs (b) and (c) do not apply to towns issuing building permits as a means of enforcing the zoning ordinance or of identifying nonconforming uses or to towns which have established other procedures for this purpose.
- (e)
 - 1. In this paragraph, "amortization ordinance" means an ordinance that allows the continuance of the lawful use of a nonconforming building, premises, structure, or fixture that may be lawfully used as described under par. (am), but only for a specified period of time, after which the lawful use of such building, premises, structure, or fixture must be discontinued without the payment of just compensation.
 - 2. Subject to par. (am), an ordinance enacted under this section may not require the removal of a nonconforming building, premises, structure, or fixture by an amortization ordinance.

(5e) REPAIR AND MAINTENANCE OF CERTAIN NONCONFORMING STRUCTURES.

(a) In this subsection:

- 1. "Development regulations" means the part of a zoning ordinance enacted under this section that applies to elements including setback, height, lot coverage, and side yard.
- 2. "Nonconforming structure" means a dwelling or other building that existed lawfully before the current zoning ordinance was enacted or amended, but that does not conform with one or more of the development regulations in the current zoning ordinance.

(b) An ordinance enacted under this section may not prohibit, or limit based on cost, the repair, maintenance, renovation, or remodeling of a nonconforming structure.

(5m) RESTORATION OF CERTAIN NONCONFORMING STRUCTURES.

(a) Restrictions that are applicable to damaged or destroyed nonconforming structures and that are contained in an ordinance adopted under this section may not prohibit the restoration of a nonconforming structure if the structure will be restored to the size, subject to par. (b), location, and use that it had immediately before the damage or destruction occurred, or impose any limits on the costs of the repair, reconstruction, or improvement if all of the following apply:

- 3. 1. The nonconforming structure was damaged or destroyed on or after March 2, 2006.
- 4. 2. The damage or destruction was caused by violent wind, vandalism, fire, flood, ice, snow, mold, or infestation.

(b) An ordinance adopted under this section to which par. (a) applies shall allow for the size of a structure to be larger than the size it was immediately before the damage or destruction if necessary for the structure to comply with applicable state or federal requirements.

(6) **ENFORCEMENT.** The town board may by ordinance provide for the enforcement of all ordinances adopted under this section. The board may impose forfeitures and other penalties for violation of ordinances adopted under this section. To enforce compliance with ordinances adopted under this section, the town or the owner of real estate within a district affected by the ordinance may seek a court order.

History: 1983 a. 532, 538; 1985 a. 136, 316; 1991 a. 255; 1993 a. 246, 301, 400, 414, 491; 1995 a. 27 s. 9130 (4); 1995 a. 201; 1997 a. 3.; 2001 a. 50; 2005 a. 26, 79, 81, 112, 171, 208; 2007 a. 97; 2009 a. 351; 2011 a. 170; 2015 a. 41, 55, 391.

60.62 Zoning authority if exercising village powers.

- (1) Except as provided in s. 60.23 (33) and subject to subs. (2) and (4), if a town board has been granted authority to exercise village powers under s. 60.10 (2) (c), the board may adopt zoning ordinances under s. 61.35.
- (2) If the county in which the town is located has enacted a zoning ordinance under s. 59.69, the exercise of the authority under sub. (1) is subject to approval by the town meeting or by a referendum vote of the electors of the town held at the time of any regular or special election. The question for the referendum vote shall be filed as provided in s. 8.37.
- (3)
 - (a) In counties having a county zoning ordinance, no zoning ordinance or amendment of a zoning ordinance may be adopted under this section unless approved by the county board. This paragraph applies only in counties with a population of less than 485,000, and does not apply to a town that has withdrawn from county zoning.
 - (b) With regard to a town to which all of the following apply, the town may not adopt or amend a zoning ordinance under this section without county board approval:
 1. The town is located in a county that has a population exceeding 380,000.
 2. The county in which the town is located is adjacent to a county that has a population exceeding 800,000.
 3. The county in which the town is located has a zoning ordinance in effect on January 1, 2013.
 - (c) As part of its approval process for granting a conditional use permit under this section or s. 61.35, a town may not impose on a permit applicant a requirement that is expressly preempted by federal or state law.
- (4)
 - (a) Notwithstanding ss. 61.35 and 62.23 (1) (a), a town with a population of less than 2,500 that acts under this section may create a "Town Plan Commission" under s. 62.23 (1) (a) that has 5 members, all of whom shall be appointed by the town board chairperson, subject to confirmation by the town board. The town chairperson shall also select the presiding officer. The town board chairperson may appoint town board members to the commission and may appoint other town elected or appointed officials to the commission, except that the commission shall always have at least one citizen member who is not a town official. Appointees to the town plan commission may be removed only by a majority vote of the town board. All other provisions of ss. 61.35 and 62.23 shall apply to a town plan commission that has 5 members.
 - (b) If a town plan commission consists of 7 members and the town board enacts an ordinance or adopts a resolution reducing the size of the commission to 5 members, the commission shall continue to operate with 6 or 7 members until the expiration of the terms of the 2 citizen members, who were appointed under s. 62.23 (1) (a), whose terms expire soonest after the effective date of the ordinance or resolution that reduces the size of the commission.
 - (c) If a town plan commission consists of 5 members and the town board enacts an ordinance or adopts a resolution increasing the size of the commission to 7 members, the town board chairperson shall appoint the 2 new members under s. 62.23 (1) (a).
 - (d) Notwithstanding ss. 61.35 and 62.23 (1) (a), if a town with a population of at least 2,500 acts under this section and creates a "Town Plan Commission" under s. 62.23 (1) (a), all members of the commission shall be appointed by the town board chairperson, subject to confirmation by the town board. The town chairperson shall also select the presiding officer. The town board chairperson may appoint town board members to the commission and may appoint other town elected or appointed officials to the commission, except that the commission shall always have at least 3 citizen members who are not town officials. Appointments shall be made by the town board chairperson during the month of April for terms that expire in April or at any other time if a vacancy occurs during the middle of a term except that the appointees to the town plan commission may be removed before the expiration of the appointee's term by a majority vote of the town board. All other provisions of ss. 61.35 and 62.23 shall apply to a town plan commission to which this paragraph applies.
- (5) **ZONING IN SHORELANDS.**
 - (a) In this subsection, "shorelands" has the meaning given in s. 59.692 (1) (b).
 - (b) A town may enact a zoning ordinance under this section that applies in shorelands, except as provided in par. (c).
 - (c) A town zoning ordinance enacted under this section may not impose restrictions or requirements in shorelands with respect to matters regulated by a county shoreland zoning ordinance enacted under s. 59.692 affecting the same shorelands, regardless of whether the county shoreland zoning ordinance was enacted separately from, or together with, an ordinance enacted under s. 59.69, except as provided in s. 59.692 (2) (b).
- (6)
 - (a) Not later than 60 days before a town board that wishes to withdraw from county zoning and the county development plan may enact an ordinance under s. 60.23 (34), the town board shall enact a zoning ordinance under this section, an official map under s. 62.23 (6), and a comprehensive plan under s. 66.1001.
 - (b) If a town receives notification under s. 59.69 (5m) that the county board has repealed its zoning ordinances, the town board shall enact a zoning ordinance under this section, an official map under s. 62.23 (6), and a

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comprehensive plan under s. 66.1001, all of which take effect on the effective date of the county's repeal of its zoning ordinance.

History: 1983 a. 532; 1995 a. 201; 1997 a. 27; 1999 a. 9, 182; 2005 a. 207; 2009 a. 372; 2013 a. 287; 2015 a. 41, 55, 178.

An amended PUD ordinance that allowed the placement of a PUD in any district, subject only to the approval of the town board as a conditional use, was invalid as it allowed the town to rezone without county board approval. City of Waukesha v. Town of Waukesha, 198 Wis. 2d 592, 543 N.W.2d 515 (Ct. App. 1995), 94-0812.

Permitting general town regulation of shorelands under village powers conflicts with the statutory scheme of ss. 59.692 and 281.31, which, by their plain language, appear to deliberately exclude towns from having shoreland zoning authority, except in the circumstance identified in s. 59.692 (2) (b). Hegwood v. Town of Eagle Zoning Board of Appeals, 2013 WI App 118, 351 Wis. 2d 196, 839 N.W.2d 111, 12-2058.

Judicial review of a county board's legislative decision concerning approval or disapproval of town zoning ordinances submitted under sub. (3) is limited to cases of abuse of discretion, excess of power, or error of law. 79 Atty. Gen. 117.

**CHAPTER 62
CITIES**

62.15 Public works.

62.23 City planning.

62.15 Public works.

- (1) **CONTRACTS; HOW LET; EXCEPTION FOR DONATED MATERIALS AND LABOR.** All public construction, the estimated cost of which exceeds \$25,000, shall be let by contract to the lowest responsible bidder; all other public construction shall be let as the council may direct. If the estimated cost of any public construction exceeds \$5,000 but is not greater than \$25,000, the board of public works shall give a class 1 notice, under ch. 985, of the proposed construction before the contract for the construction is executed. This provision does not apply to public construction if the materials for such a project are donated or if the labor for such a project is provided by volunteers. The council may also by a vote of three-fourths of all the members-elect provide by ordinance that any class of public construction or any part thereof may be done directly by the city without submitting the same for bids.
- (1a) **ESCALATOR CLAUSES.** Contracts may include escalator clauses providing for additional charges for labor and materials if as a result of general inflation the rates and prices of the same to the contractor increase during performance of the contract. Such escalator provision shall be applicable to all bidders and shall not exceed 15 percent of the amount of the firm bid nor the amount of the increase paid by the contractor. Each bid on a contract that is to include an escalator provision shall be accompanied by a schedule enumerating the estimated rates and prices of items of labor and materials used in arriving at the bid. Only as to such items as are enumerated shall an increased charge be allowed the contractor.
- (1b) **EXCEPTION AS TO PUBLIC EMERGENCY.** The provisions of sub. (1) and s. 281.41 are not mandatory for the repair and reconstruction of public facilities when damage or threatened damage thereto creates an emergency, as determined by resolution of the board of public works or board of public utility commissioners, in which the public health or welfare of the city is endangered. Whenever the city council determines by majority vote at a regular or special meeting that an emergency no longer exists, this subsection no longer applies.
- (1c) **INCREASED QUANTITY CLAUSES.** Contracts may include clauses providing for increasing the quantity of construction required in the original contract by an amount not to exceed 15 percent of the original contract price.
- (1d) **LIMITATION ON HIGHWAY WORK PERFORMED BY A COUNTY.** Notwithstanding ss. 66.0131, 66.0301, and 83.035, a city having a population of 5,000 or more may not have a highway improvement project performed by a county workforce except as provided under s. 86.31 (2) (b).
- (2) **PLANS; CONTRACT; BOND.** When the work is required or directed to be let to the lowest responsible bidder, the board of public works shall prepare plans and specifications for the same, containing a description of the work, the materials to be used and such other matters as will give an intelligent idea of the work required and file the same with the city clerk for the inspection of bidders, and shall also prepare a form of contract and bond with sureties required, and furnish a copy of the same to all persons desiring to bid on the work.
- (3) **ADVERTISEMENT FOR BIDS.** After the plans, specifications and form of contract have been prepared, the board of public works shall advertise for proposals for doing such work by publishing a class 2 notice, under ch. 985. No bid shall be received unless accompanied by a certified check or a bid bond equal to at least 5 percent but not more than 10 percent of the bid payable to the city as a guaranty that if the bid is accepted the bidder will execute and file the proper contract and bond within the time limited by the city. If the successful bidder so files the contract and bond, upon the execution of the contract by the city the check shall be returned. In case the successful bidder fails to file such contract and bond the amount of the check or bid bond shall be forfeited to the city as liquidated damages. The notice published shall inform bidders of this requirement.
- (4) **SURETIES, JUSTIFICATION.** The sureties shall justify as to their responsibility and by their several affidavits show that they are worth in the aggregate at least the amount mentioned in the contract in property not by law exempt from execution. A certified check in amount equal to 5 percent of the bid, and a provision in the contract for the retention by the city of 20 percent of the estimates made from time to time may be accepted in place of sureties.
- (4m) **SUBSTANTIAL COMPLIANCE.** If any certified check or bid bond is in substantial compliance with the minimum guaranty requirements of subs. (3) or (4), the letting authority may, in its discretion, accept such check or bid bond and allow such bidder 30 days to furnish such additional guaranty as may be required by said authority. Substantial compliance hereunder may be found if said check or bond is insufficient by not more than one-fourth of one percent of the bid.
- (5) **REJECTION OF BIDS; PERFORMANCE OF WORK BY CITY.**
- (a) Unless the power has been expressly waived, the city may reject any bid. The board of public works may reject any bid, if, in its opinion, any combination has been entered into to prevent free competition.
- (b) If the council finds that any of the bids are fraudulent, collusive, excessive, or against the best interests of the city, it may, by resolution adopted by two-thirds of its members, reject any bids received and order the work done directly by the city under the supervision of the board of public works.

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- (c) If a city performs any work under par. (b), it may secure all necessary materials to perform the work.
 - (d) The city shall collect the cost of all work performed under par. (b) in the same manner as if done by any other person under contract with the city and may, subject to par. (e), defray such costs by special assessment.
 - (e) If the city imposes a special assessment under par. (d), it may not assess against any property an amount that is greater than would have been assessed against the property had the lowest bid received under this section been accepted. The city shall bear any costs in excess of that bid.
- (6) **INCOMPETENT BIDDERS.** Whenever any bidder shall be, in the judgment of said board, incompetent or otherwise unreliable for the performance of the work on which the bidder bids, the board shall report to the council a schedule of all the bids for such work, together with a recommendation to accept the bid of the lowest responsible bidder, with their reasons; and thereupon the council may direct said board either to let the work to such competent and reliable bidder or to readvertise the same; and the failure to let such contract to the lowest bidder in compliance with this provision shall not invalidate such contract or any special assessment made to pay the liability incurred thereunder.
- (7) **PATENTED MATERIAL OR PROCESS.** Any public work, whether chargeable in whole or in part to the city, or to any lot or lots or parcels of land therein, may be done by the use of a patented article, materials or process, in whole or in part, or in combination with articles, materials, or processes not patented, when the city shall have obtained from the owner of the patented article, materials or process, before advertising for bids for such work, an agreement to furnish to any contractor, desiring to bid upon such work as a whole, the right to use the patented article, materials and processes in the construction of said work, and also to furnish to any contractor the patented article itself upon the payment of what the authorities of said city charged with the duty of letting a contract for such public work shall determine to be a reasonable price therefor, which price shall be publicly stated and furnished upon application to any contractor desiring to bid on said work.
- (8) **ALTERNATIVE PLANS AND SPECIFICATIONS.** Different plans and specifications for any public work may be prepared by the proper authorities requiring the use of different kinds of materials, whether patented or not, thereby bringing one kind of article, material or process in competition with one or more other kinds of articles, materials or processes designed to accomplish the same general purpose, and bids received for each such kind of article, material or process, and thereafter a contract let for one kind of article, material or process; provided, that before any contract is let all the bids received shall be opened, and considered before the kind of article or process to be used in such work shall be decided upon by the proper city authorities, and thereupon the proper city authorities shall first determine which kind of article, material or process shall be used in the work, and the contract shall be let to the lowest responsible bidder for the kind of article, material or process so selected for use in the proposed public work.
- (9) **GUARANTY.**
- (a) Any contract for doing public work may contain a provision requiring the contractor to keep the work done under the contract in good order or repair for not to exceed 5 years.
 - (b) The inclusion in the contract of a provision described in par. (a) shall not invalidate any special assessment or certificate thereof or tax certificate based thereon.
- (10) **ESTIMATES; DEPOSIT; DEFAULT; COMPLETION.** As the work progresses under any contract for the performance of which a surety bond has been furnished, s. 66.0901 (9) (b) shall apply. All contracts shall contain a provision authorizing such board, in case the work under any contract is defaulted or not completed within the time required, to take charge of or authorize the surety to take charge of the work and finish it at the expense of the contractor and the sureties, and to apply the amounts retained from estimates to the completion of the work. In no case shall the 5 percent deposit described in sub. (4) be returned to a successful bidder until the contract is performed; but it, together with the retained amounts, shall be used in whole or in part to complete the work. Any amount remaining from the deposit or from retained estimates after the completion of a contract shall be paid to the contractor.
- (11) **STREET OBSTRUCTION.** All contractors doing any work which shall in any manner obstruct the streets or sidewalks shall put up and maintain barriers conforming to the standards for traffic control devices in the manual adopted by the department of transportation under s. 84.02 (4) (e) to prevent accidents, and be liable for all damages caused by failure so to do. All contracts shall contain a provision covering this liability, and also a provision making the contractor liable for all damages caused by the negligent digging up of streets, alleys or public grounds, or which may result from the contractor's carelessness in the prosecution of such work.
- (12) **CONTRACTS; HOW EXECUTED.** All contracts shall be signed by the mayor and clerk, unless otherwise provided by resolution or ordinance, and approved as to form by the city attorney. No contract shall be executed on the part of the city until the comptroller shall have countersigned the same and made an endorsement thereon showing that sufficient funds are in the treasury to meet the expense thereof, or that provision has been made to pay the liability that will accrue thereunder.
- (14) **REPORT TO COUNCIL OF NONBID CONTRACTS.**
- (a) Whenever the council of any city shall have provided by ordinance that any class of public work or any part thereof may be done directly by the city without submitting the same for bids as provided in sub. (1), and the public work shall be done in accordance with the ordinance, the board of public works shall keep an accurate account of the cost of the public work, including the necessary overhead expense.

- (b) Upon the completion of the work described in par. (a), the board of public works shall make a complete report of the work to the council, stating in detail the items of cost and the total cost of doing the work. The city clerk shall publish the report as a part of the proceedings of the council.
- (c) Any member of the board of public works who fails to comply with the provisions of this subsection shall be liable to a forfeiture of \$50 to be recovered as in the case of other penalties.

History: 1975 c. 244, 390, 421; 1985 a. 183; 1987 a. 378; 1991 a. 316; 1995 a. 225, 227; 1999 a. 9; 1999 a. 150 s. 672; 2005 a. 202; 2009 a. 173, 177; 2011 a. 32, 246.

When work has been performed for a municipality under a contract that is void or unenforceable, a cause of action for unjust enrichment can be maintained with damages limited to the actual cost to the plaintiff and not exceeding the unit cost of the original contract; any recovery being limited to the value of the actual benefit conferred. Blum v. Hillsboro, 49 Wis. 2d 667, 183 N.W.2d 47 (1971).

When a contract establishes a "unit price" for work done, with only an estimate of the total, excess work may be paid for without regard to the 15 percent limitation in sub. (1c). Gottschalk Bros., Inc. v. Wausau, 56 Wis. 2d 848, 203 N.W.2d 140 (1973).

A mayor may not veto council action or inaction on public works contracts. Sturzl Const. Co., Inc. v. City of Green Bay, 88 Wis. 2d 403, 276 N.W.2d 771 (1979).

A city cannot waive liquidated damages under sub. (3). The award, acceptance, and execution of public contracts is discussed. City of Merrill v. Wenzel Brothers, Inc. 88 Wis. 2d 676, 277 N.W.2d 799 (1979).

The low bidder has no absolute right to the contract. The statute implies the exercise of discretion in letting the contract. An administrative rule will not be interpreted to prevent the exercise of that discretion. Envirologix v. City of Waukesha, 192 Wis. 2d 277, 531 N.W.2d 357 (Ct. App. 1995).

Acceptance of a late bid is not precluded by this section and is within the city's discretionary powers. Power Systems Analysis v. City of Bloomer, 197 Wis. 2d 817, 541 N.W.2d 214 (Ct. App. 1995), 95-0458.

Municipal competitive bidding statutes do not apply to projects undertaken by intergovernmental agreement or when the municipalities that will perform the work have made a determination under sub. (1) to do the work themselves with their own employees. OAG 5-09.

Recovery for value of services furnished without compliance with statutory bidding requirements. Redmond, 55 MLR 397.

62.23 City planning.

(1) COMMISSION.

- (a) The council of any city may by ordinance create a "City Plan Commission," to consist of 7 members. The commission shall also include, as a nonvoting member, a representative from a military base or installation, with at least 200 assigned military personnel or that contains at least 2,000 acres, that is located in the city, if the base's or installation's commanding officer appoints such a representative. All members of the commission, other than the representative appointed by the commanding officer of a military base or installation, shall be appointed by the mayor, who shall also choose the presiding officer. The mayor may appoint himself or herself to the commission and may appoint other city elected or appointed officials, except that the commission shall always have at least 3 citizen members who are not city officials. Citizen members shall be persons of recognized experience and qualifications. The council may by ordinance provide that the membership of the commission shall be as provided thereunder.
- (d) The members of the commission shall be appointed to hold office for a period of 3 years. Appointments shall be made by the mayor during the month of April for terms that expire in April or at any other time if a vacancy occurs during the middle of a term.
- (e) The city plan commission shall have power and authority to employ experts and a staff, and to pay for their services and such other expenses as may be necessary and proper, not exceeding, in all, the appropriation that may be made for such commission by the legislative body, or placed at its disposal through gift, and subject to any ordinance or resolution enacted by the governing body.
- (f) Any city may by ordinance increase the number of members of the city plan commission so as to provide that the building commissioner or building inspector shall serve as a member thereof.

- (2) **FUNCTIONS.** It shall be the function and duty of the commission to make and adopt a master plan for the physical development of the city, including any areas outside of its boundaries that in the commission's judgment bear relation to the development of the city provided, however, that in any county where a regional planning department has been established, areas outside the boundaries of a city may not be included in the master plan without the consent of the county board of supervisors. The master plan, with the accompanying maps, plats, charts, and descriptive and explanatory matter, shall show the commission's recommendations for such physical development, and shall, as described in sub. (3)(b), contain at least the elements described in s. 66.1001(2). The commission may from time to time amend, extend, or add to the master plan or carry any part or subject matter into greater detail. The commission may adopt rules for the transaction of business and shall keep a record of its resolutions, transactions, findings, and determinations, which record shall be a public record.

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(3) THE MASTER PLAN.

- (a) The master plan shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the municipality which will, in accordance with existing and future needs, best promote public health, safety, morals, order, convenience, prosperity or the general welfare, as well as efficiency and economy in the process of development.
- (b) The commission may adopt the master plan as a whole by a single resolution, or, as the work of making the whole master plan progresses, may from time to time by resolution adopt a part or parts of a master plan. Beginning on January 1, 2010, or, if the city is exempt under s. 66.1001 (3m), the date under s. 66.1001 (3m) (b), if the city engages in any program or action described in s. 66.1001 (3), the master plan shall contain at least all of the elements specified in s. 66.1001 (2). The adoption of the plan or any part, amendment, or addition, shall be by resolution carried by the affirmative votes of not less than a majority of all the members of the city plan commission. The resolution shall refer expressly to the elements under s. 66.1001 and other matters intended by the commission to form the whole or any part of the plan, and the action taken shall be recorded on the adopted plan or part of the plan by the identifying signature of the secretary of the commission, and a copy of the plan or part of the plan shall be certified to the common council, and also to the commanding officer, or the officer's designee, of any military base or installation, with at least 200 assigned military personnel or that contains at least 2,000 acres, that is located in or near the city. The purpose and effect of the adoption and certifying of the master plan or part of the plan shall be solely to aid the city plan commission and the council in the performance of their duties.

(4) MISCELLANEOUS POWERS OF THE COMMISSION.

The commission may make reports and recommendations relating to the plan and development of the city to public officials and agencies, public utility companies, civic, educational, professional and other organizations, and citizens. It may recommend to the mayor or council, programs for public improvements and the financing thereof. All public officials shall, upon request, furnish to the commission, within a reasonable time, such available information as it may require for its work. The commission, its members and employees, in the performance of its functions, may enter upon any land, make examinations and surveys, and place and maintain necessary monuments and marks thereon. In general, the commission shall have such powers as may be necessary to enable it to perform its functions and promote municipal planning.

(5) MATTERS REFERRED TO CITY PLAN COMMISSION.

The council, or other public body or officer of the city having final authority thereon, shall refer to the city plan commission, for its consideration and report before final action is taken by the council, public body or officer, the following matters: The location and architectural design of any public building; the location of any statue or other memorial; the location, acceptance, extension, alteration, vacation, abandonment, change of use, sale, acquisition of land for or lease of land for any street, alley or other public way, park, playground, airport, area for parking vehicles, or other memorial or public grounds; the location, extension, abandonment or authorization for any public utility whether publicly or privately owned; all plats of lands in the city or within the territory over which the city is given platting jurisdiction by ch. 236; the location, character and extent or acquisition, leasing or sale of lands for public or semipublic housing, slum clearance, relief of congestion, or vacation camps for children; and the amendment or repeal of any ordinance adopted pursuant to this section. Unless such report is made within 30 days, or such longer period as may be stipulated by the common council, the council or other public body or officer, may take final action without it.

(6) OFFICIAL MAP.

- (a) As used in this subsection, "waterways" includes rivers, streams, creeks, ditches, drainage channels, watercourses, lakes, bays, ponds, impoundment reservoirs, retention and detention basins, marshes and other surface water areas, regardless of whether the areas are natural or artificial.
- (am)
1. In this paragraph:
 - a. "Airport" means an airport as defined under s. 114.002 (7) which is owned or operated by a county, city, village or town either singly or jointly with one or more counties, cities, villages or towns.
 - b. "Airport affected area" means the area established by an agreement under s. 66.1009. If a county, city, village or town has not established such an agreement, "airport affected area" in that county, city, village or town means the area located within 3 miles of the boundaries of an airport.
 2. If the council of any city which is not located in whole or in part in a county with a population of 500,000 or more has established an official map under par. (b), the map shall show the location of any part of an airport located within the area subject to zoning by the city and any part of an airport affected area located within the area subject to zoning by the city.
- (b) The council of any city may by ordinance or resolution establish an official map of the city or any part thereof showing the streets, highways, historic districts, parkways, parks and playgrounds laid out, adopted and established by law. The city may also include the location of railroad rights-of-way, waterways and public transit facilities on its map. A city may include a waterway on its map only if the waterway is included in a

comprehensive surface water drainage plan. The map is conclusive with respect to the location and width of streets, highways, waterways and parkways, and the location and extent of railroad rights-of-way, public transit facilities, parks and playgrounds shown on the map. The official map is declared to be established to conserve and promote the public health, safety, convenience or general welfare. The ordinance or resolution shall require the city clerk at once to record with the register of deeds of the county or counties in which the city is situated a certificate showing that the city has established an official map. An ordinance or resolution establishing any part of an official map enacted prior to June 16, 1965, which would be valid under this paragraph is hereby validated.

- (c) The city council may amend the official map of the city so as to establish the exterior lines of planned new streets, highways, historic districts, parkways, railroad rights-of-way, public transit facilities, waterways, parks or playgrounds, or to widen, narrow, extend or close existing streets, highways, historic districts, parkways, railroad rights-of-way, public transit facilities, waterways, parks or playgrounds. No such change may become effective until after a public hearing concerning the proposed change before the city council or a committee appointed by the city council from its members, at which parties in interest and citizens shall have an opportunity to be heard. Notice of the public hearing shall be published as a class 2 notice under ch. 985. Before amending the map, the council shall refer the matter to the city plan commission for report, but if the city plan commission does not make its report within 60 days of reference, it forfeits the right to further suspend action. When adopted, amendments become a part of the official map of the city, and are conclusive with respect to the location and width of the streets, highways, historic districts, waterways and parkways and the location and extent of railroad rights-of-way, public transit facilities, parks and playgrounds shown on the map. The placing of any street, highway, waterway, parkway, railroad right-of-way, public transit facility, park or playground line or lines upon the official map does not constitute the opening or establishment of any street, parkway, railroad right-of-way, public transit facility, park or playground or alteration of any waterway, or the taking or acceptance of any land for these purposes.
- (d) The locating, widening or closing, or the approval of the locating, widening or closing of streets, highways, waterways, parkways, railroad rights-of-way, public transit facilities, parks or playgrounds by the city under provisions of law other than this section shall be deemed to amend the official map, and are subject to this section, except that changes or additions made by a subdivision plat approved by the city under ch. 236 do not require the public hearing specified in par. (c) if the changes or additions do not affect any land outside the platted area.
- (e) No permit may be issued to construct or enlarge any building within the limits of any street, highway, waterway, railroad right-of-way, public transit facility or parkway, shown or laid out on the map except as provided in this section. The street, highway, waterway, railroad right-of-way, public transit facility or parkway system shown on the official map may be shown on the official map as extending beyond the boundaries of a city or village a distance equal to that within which the approval of land subdivision plats by the city council or village board is required as provided by s. 236.10 (1) (b) 2. Any person desiring to construct or enlarge a building within the limits of a street, highway, railroad right-of-way, public transit facility or parkway so shown as extended may apply to the authorized official of the city or village for a building permit. Any person desiring to construct or enlarge a building within the limits of a street, highway, waterway, railroad right-of-way, public transit facility or parkway shown on the official map within the incorporated limits of the municipality shall apply to the authorized official of the city or village for a building permit. Unless an application is made, and the building permit granted or not denied within 30 days, the person is not entitled to compensation for damage to the building in the course of construction of the street, highway, railroad right-of-way, public transit facility or parkway shown on the official map. Unless an application is made, and the building permit granted or not denied within 30 days, the person is not entitled to compensation for damage to the building in the course of construction or alteration of the waterway shown on the official map within the incorporated limits of the municipality. If the land within the mapped street, highway, waterway, railroad right-of-way, public transit facility or parkway is not yielding a fair return, the board of appeals in any municipality which has established such a board having power to make variances or exceptions in zoning regulations may, by the vote of a majority of its members, grant a permit for a building or addition in the path of the street, highway, waterway, railroad right-of-way, public transit facility or parkway, which will as little as practicable increase the cost of opening the street, highway, waterway, railroad right-of-way, public transit facility or parkway or tend to cause a change of the official map. The board may impose reasonable requirements as a condition of granting the permit to promote the health, convenience, safety or general welfare of the community. The board shall refuse a permit where the applicant will not be substantially affected by not constructing the addition or by placing the building outside the mapped street, highway, waterway, railroad right-of-way, public transit facility or parkway.
- (f) In any city in which there is no such board of appeals, the city council shall have the same powers and shall be subject to the same restrictions. For this purpose such council is authorized to act as a discretionary

administrative or quasi-judicial body. When so acting it shall not sit as a legislative body but in a separate meeting and with separate minutes kept.

- (g) Before taking any action authorized in this subsection, the board of appeals or city council shall hold a hearing at which parties in interest and others shall have an opportunity to be heard. At least 15 days before the hearing notice of the time and place of the hearing shall be published as a class 1 notice, under ch. 985. Any such decision shall be subject to review by certiorari issued by a court of record in the same manner and pursuant to the same provisions as in appeals from the decisions of a board of appeals upon zoning regulations.
- (h) In any city which has established an official map as herein authorized no public sewer or other municipal street utility or improvement shall be constructed in any street, highway or parkway until such street, highway or parkway is duly placed on the official map. No permit for the erection of any building shall be issued unless a street, highway or parkway giving access to such proposed structure has been duly placed on the official map. Where the enforcement of the provisions of this section would entail practical difficulty or unnecessary hardship, and where the circumstances of the case do not require the structure to be related to existing or proposed streets, highways or parkways, the applicant for such a permit may appeal from the decision of the administrative officer having charge of the issue of permits to the board of appeals in any city which has established a board having power to make variances or exceptions in zoning regulations, and the same provisions are applied to such appeals and to such boards as are provided in cases of appeals on zoning regulations. The board may in passing on such appeal make any reasonable exception, and issue the permit subject to conditions that will protect any future street, highway or parkway layout. Any such decision shall be subject to review by certiorari issued by a court of record in the same manner and pursuant to the same provisions as in appeals from the decision of such board upon zoning regulations. In any city in which there is no such board of appeals the city council shall have the same powers and be subject to the same restrictions, and the same method of court review shall be available. For such purpose such council is authorized to act as a discretionary administrative or quasi-judicial body. When so acting it shall not sit as a legislative body, but in a separate meeting and with separate minutes kept.
- (i) In those counties where the county maintains and operates parks, parkways, playgrounds, bathing beaches and other recreational facilities within the limits of any city, such city shall not include said facilities in the master plan without the approval of the county board of supervisors.

(7) ZONING.

- (ab) *Definition.* In this subsection "nonconforming use" means a use of land, a dwelling, or a building that existed lawfully before the current zoning ordinance was enacted or amended, but that does not conform with the use restrictions in the current ordinance.
- (am) *Grant of power.* For the purpose of promoting health, safety, morals or the general welfare of the community, the council may regulate and restrict by ordinance, subject to par. (hm), the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, subject to s. 66.10015 (3) the density of population, and the location and use of buildings, structures and land for trade, industry, mining, residence or other purposes if there is no discrimination against temporary structures. This subsection and any ordinance, resolution or regulation enacted or adopted under this section, shall be liberally construed in favor of the city and as minimum requirements adopted for the purposes stated. This subsection may not be deemed a limitation of any power granted elsewhere.
- (b) *Districts.* For any and all of said purposes the council may divide the city into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this section; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration or use of buildings, structures or land. All such regulations shall be uniform for each class or kind of buildings and for the use of land throughout each district, but the regulations in one district may differ from those in other districts. No ordinance enacted or regulation adopted under this subsection may prohibit forestry operations that are in accordance with generally accepted forestry management practices, as defined under s. 823.075 (1) (d). The council may establish mixed-use districts that contain any combination of uses, such as industrial, commercial, public, or residential uses, in a compact urban form. The council may with the consent of the owners establish special districts, to be called planned development districts, with regulations in each, which in addition to those provided in par. (c), will over a period of time tend to promote the maximum benefit from coordinated area site planning, diversified location of structures and mixed compatible uses. Such regulations shall provide for a safe and efficient system for pedestrian and vehicular traffic, attractive recreation and landscaped open spaces, economic design and location of public and private utilities and community facilities and insure adequate standards of construction and planning. Such regulations may also provide for the development of the land in such districts with one or more principal structures and related accessory uses, and in planned development districts and mixed-use districts the regulations need not be uniform.

- (c) *Purposes in view.* Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote health and the general welfare; to provide adequate light and air, including access to sunlight for solar collectors and to wind for wind energy systems; to encourage the protection of groundwater resources; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements; and to preserve burial sites, as defined in s. 157.70 (1) (b). Such regulations shall be made with reasonable consideration, among other things, of the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such city.
- (d) *Method of procedure.*
1.
 - a. Upon the request of the city council, the city plan commission, the board of public land commissioners, or if the city has neither, the city plan committee of the city council shall prepare and recommend a district plan and regulations for the city. Following the formulation of tentative recommendations a public hearing shall be held by, at the council's option, the council, the plan commission, the board of public land commissioners or the plan committee. The entity holding the hearing shall consider any comments made, or submitted, by the commanding officer, or the officer's designee, of a military base or installation, with at least 200 assigned military personnel or that contains at least 2,000 acres, that is located in or near the city. At least 10 days' prior written notice of any such hearings shall be given to the clerk of any municipality whose boundaries are within 1,000 feet of any lands included in the proposed plan and regulations, and to the commanding officer, or the officer's designee, of any military base or installation, with at least 200 assigned military personnel or that contains at least 2,000 acres, that is located in or near the city, but failure to give such notice shall not invalidate such district plan or regulations. Publication of a class 2 notice, under ch. 985, of the tentative recommendations and hearings thereon must be made once during each of the 2 weeks prior to such hearing. If the proposed district plan and regulations have the effect of changing the allowable use of any property within the city, the notice shall include either a map showing the property affected by the plan and regulations or a description of the property affected by the plan and regulations and a statement that a map may be obtained from the city council.
 - b. The council may make changes in the tentative recommendations after first submitting the proposed changes to the plan commission, board of public land commissioners or plan committee for recommendation and report and after publishing a class 2 notice, under ch. 985, of the proposed changes and hearings thereon as well as the notice to the clerk of any contiguous municipality and to the commanding officer, or the officer's designee, of any military base or installation, with at least 200 assigned military personnel or that contains at least 2,000 acres, that is located in or near the city, as required in subd. 1. a. Hearings on the proposed changes may be held by, at the council's option, the council, the plan commission, the board of public land commissioners or the plan committee. The entity holding the hearing shall consider any comments made, or submitted, by the commanding officer, or the officer's designee, of a military base or installation, with at least 200 assigned military personnel or that contains at least 2,000 acres, that is located in or near the city. If the proposed changes to the proposed district plan and regulations have the effect of changing the allowable use of any property within the city, the notice shall include either a map showing the property affected by the changes or a description of the property affected by the changes and a statement that a map may be obtained from the city council.
 2. The council may adopt amendments to an existing zoning ordinance after first submitting the proposed amendments to the city plan commission, board of public land commissioners or plan committee for recommendation and report and after providing the notices as required in subd. 1. b. of the proposed amendments and hearings thereon. In any city which is not located in whole or in part in a county with a population of 500,000 or more, if the proposed amendments would make any change in an airport affected area, as defined in sub. (6) (am) 1. b., the council shall mail a copy of such notice to the owner or operator of the airport bordered by the airport affected area. A hearing shall be held on the proposed amendments by, at the council's option, the council, the plan commission, the board of public land commissioners or the plan committee. The entity holding the hearing shall consider any comments made, or submitted, by the commanding officer, or the officer's designee, of a military base or installation, with at least 200 assigned military personnel or that contains at least 2,000 acres, that is located in or near the city. If the proposed amendments have the effect of changing the allowable use of any property within the city, the notice shall include either a map showing the property affected by the amendments or a description of the property affected by

the amendments and a statement that a map may be obtained from the city council. If the council does not receive recommendations and a report from the plan commission, board of public land commissioners or plan committee within 60 days of submitting the proposed amendments, the council may hold hearings without first receiving the recommendations and report.

2m.

- a. In case of a protest against an amendment proposed under subd. 2., duly signed and acknowledged by the owners of 20 percent or more either of the areas of the land included in such proposed amendment, or by the owners of 20 percent or more of the area of the land immediately adjacent extending 100 feet therefrom, or by the owners of 20 percent or more of the land directly opposite thereto extending 100 feet from the street frontage of such opposite land, such amendment shall not become effective except by the favorable vote of three-fourths of the members of the council voting on the proposed change.
 - b. In any city which is not located in whole or in part in a county with a population of 500,000 or more, if a proposed amendment under subd. 2. would make any change in an airport affected area, as defined under sub. (6) (am) 1. b. and the owner or operator of the airport bordered by the airport affected area protests against the amendment, the amendment shall not become effective except by the favorable vote of two-thirds of the members of the council voting on the proposed change.
3. The council may repeal or repeal and reenact the entire district plan and all zoning regulations in accordance with subd. 1. The council may repeal or repeal and reenact a part or parts of the district plan and regulations in accordance with subds. 2. and 2m.
 4. The city council shall maintain a list of persons who submit a written or electronic request to receive notice of any proposed zoning action that may be taken under subd. 1. a. or b. or 2. that affects the allowable use of the person's property. Annually, the city council shall inform residents of the city that they may add their names to the list. The city council may satisfy this requirement to provide such information by any of the following means: publishing a 1st class notice under ch. 985; publishing on the city's Internet site; 1st class mail; or including the information in a mailing that is sent to all property owners. If the plan commission, the board of public land commissioners, or city plan committee of the city council completes action on any tentative recommendations that are noticed under subd. 1. a., proposed changes to a proposed district plan and regulations that are submitted under subd. 1. b., or proposed amendments that are submitted under subd. 2., and the city council is prepared to vote on the tentative recommendations, proposed changes to a proposed district plan, and regulations or proposed amendments, the city council shall send a notice, which contains a copy or summary of the tentative recommendations, proposed changes to a proposed district plan, and regulations or proposed amendments, to each person on the list whose property, the allowable use of which, may be affected by the tentative recommendations or proposed changes or amendments. The notice shall be by mail or in any reasonable form that is agreed to by the person and the city council, including electronic mail, voice mail, or text message. The city council may charge each person on the list who receives a notice by 1st class mail a fee that does not exceed the approximate cost of providing the notice to the person. An ordinance or amendment that is subject to this subdivision may take effect even if the city council fails to send the notice that is required by this subdivision.

(da) Interim zoning. The common council of any city which has not adopted a zoning ordinance may, without referring the matter to the plan commission, enact an interim zoning ordinance to preserve existing uses while the comprehensive zoning plan is being prepared. Such ordinance may be enacted as is an ordinary ordinance but shall be effective for no longer than 2 years after its enactment.

(e) Board of appeals.

1. The council which enacts zoning regulations pursuant to this section shall by ordinance provide for the appointment of a board of appeals, and shall provide in such regulations that said board of appeals may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purpose and intent and in accordance with general or specific rules therein contained. Nothing in this subdivision shall preclude the granting of special exceptions by the city plan commission or the common council in accordance with the zoning regulations adopted pursuant to this section which were in effect on July 7, 1973 or adopted after that date.
2. The board of appeals shall consist of 5 members appointed by the mayor subject to confirmation of the common council for terms of 3 years, except that of those first appointed one shall serve for one year, 2 for 2 years and 2 for 3 years. The members of the board shall serve at such compensation to be fixed by ordinance, and shall be removable by the mayor for cause upon written charges and after public hearing. The mayor shall designate one of the members as chairperson. The board may

- employ a secretary and other employees. Vacancies shall be filled for the unexpired terms of members whose terms become vacant. The mayor shall appoint, for staggered terms of 3 years, 2 alternate members of such board, in addition to the 5 members above provided for. Annually, the mayor shall designate one of the alternate members as 1st alternate and the other as 2nd alternate. The 1st alternate shall act, with full power, only when a member of the board refuses to vote because of interest or when a member is absent. The 2nd alternate shall so act only when the 1st alternate so refuses or is absent or when more than one member of the board so refuses or is absent. The above provisions, with regard to removal and the filling of vacancies, shall apply to such alternates.
3. The board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this section. Meetings of the board shall be held at the call of the chairperson and at such other times as the board may determine. The chairperson, or in the chairperson's absence, the acting chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.
 - 3m. If a quorum is present, the board of appeals may take action under this subsection by a majority vote of the members present.
 4. Appeals to the board of appeals may be taken by any person aggrieved or by any officer, department, board or bureau of the city affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of appeals a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.
 5. An appeal shall stay all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of appeals after the notice of appeal shall have been filed with the officer, that by reason of facts stated in the certificate a stay would, in the officer's opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of appeals or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.
 6. The board of appeals shall fix a reasonable time for the hearing of the appeal or other matter referred to it, and give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney. In any action involving a listed property, as defined in s. 44.31 (4), the board shall consider any suggested alternatives or recommended decision submitted by the landmarks commission or the planning commission.
 7. The board of appeals shall have the following powers: To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of this section or of any ordinance adopted pursuant thereto; to hear and decide special exception to the terms of the ordinance upon which such board is required to pass under such ordinance; to authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in practical difficulty or unnecessary hardship, so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done. The council of a city may enact an ordinance specifying an expiration date for a variance granted under this subdivision if that date relates to a specific date by which the action authorized by the variance must be commenced or completed. If no such ordinance is in effect at the time a variance is granted, or if the board of appeals does not specify an expiration date for the variance, a variance granted under this subdivision does not expire unless, at the time it is granted, the board of appeals specifies in the variance a specific date by which the action authorized by the variance must be commenced or completed. An ordinance enacted after April 5, 2012, may not specify an expiration date for a variance that was granted before April 5, 2012. A variance granted under this subdivision runs with the land. The board may permit in appropriate cases, and subject to appropriate conditions and safeguards in harmony with the general purpose and intent of the ordinance, a building or premises to be erected or used for such public utility purposes in any location which is reasonably necessary for the public convenience and welfare.
 8. In exercising the above mentioned powers such board may, in conformity with the provisions of such section, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as

ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken, and may issue or direct the issue of a permit.

10. Any person or persons, jointly or severally aggrieved by any decision of the board of appeals, or any taxpayer, or any officer, department, board or bureau of the municipality, may, within 30 days after the filing of the decision in the office of the board of appeals, commence an action seeking the remedy available by certiorari. The court shall not stay proceedings upon the decision appealed from, but may, on application, on notice to the board of appeals and on due cause shown, grant a restraining order. The board of appeals shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof. If necessary for the proper disposition of the matter, the court may take evidence, or appoint a referee to take evidence and report findings of fact and conclusions of law as it directs, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify, the decision brought up for review.
 14. Costs shall not be allowed against the board unless it shall appear to the court that the board acted with gross negligence or in bad faith, or with malice, in making the decision appealed from.
 15. All issues in any proceedings under this section shall have preference over all other civil actions and proceedings.
- (ea) *Filing fees.* The common council may by ordinance or resolution establish reasonable fees for the filing of a petition for amendment of the zoning ordinance or official map, or for filing an appeal to the board of appeals.
- (em) *Historic preservation.*
1. Subject to subd. 2., a city, as an exercise of its zoning and police powers for the purpose of promoting the health, safety and general welfare of the community and of the state, may regulate by ordinance, or if a city contains any property that is listed on the national register of historic places in Wisconsin or the state register of historic places shall, not later than 1995, enact an ordinance to regulate, any place, structure or object with a special character, historic, archaeological or aesthetic interest, or other significant value, for the purpose of preserving the place, structure or object and its significant characteristics. Subject to subds. 2. and 3., a city may create a landmarks commission to designate historic or archaeological landmarks and establish historic districts. Subject to subd. 2., the city may regulate, or if the city contains any property that is listed on the national register of historic places in Wisconsin or the state register of historic places shall regulate, all historic or archaeological landmarks and all property within each historic district to preserve the historic or archaeological landmarks and property within the district and the character of the district.
 2. Before the city designates a historic landmark or establishes a historic district, the city shall hold a public hearing. If the city proposes to designate a place, structure, or object as a historic landmark or establish a historic district that includes a place, structure, or object, the city shall, by 1st class mail, notify the owner of the place, structure, or object of the determination and of the time and place of the public hearing on the determination.
 3. An owner of property that is affected by a decision of a city landmarks commission may appeal the decision to the common council. The common council may overturn a decision of the commission by a majority vote of the common council.
- (f) *Enforcement and remedies.*
1. The council may provide by ordinance for the enforcement of this section and of any ordinance or regulation made thereunder. In case of a violation of this section or of such ordinance or regulation such council may provide for the punishment by fine and by imprisonment for failure to pay such fine. It is also empowered to provide civil penalties for such violation.
 2. In case any building or structure is or is proposed to be erected, constructed, reconstructed, altered, converted or maintained, or any building, structure or land is or is proposed to be used in violation of this section or of any ordinance or other regulation made under authority conferred hereby, the proper authorities of the city, or any adjacent or neighboring property owner who would be specially damaged by such violation may, in addition to other remedies, institute appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use; to restrain, correct or abate such violation; to prevent the occupancy of said building, structure or land; or to prevent any illegal act, conduct, business or use in or about such premises.
- (g) *Conflict with other laws.* Wherever the regulations made under authority of this section require a greater width or size of yards, courts or other open spaces, or require a lower height of building or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of this section shall govern. Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts or other open spaces, or require a lower height of building or a less

number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of this section, the provisions of such statute or local ordinance or regulation shall govern.

- (gm) Permits.** Neither the city council, nor the city plan commission, nor the city plan committee of the city council, nor the board of appeals may condition or withhold approval of a permit under this section based upon the property owner entering into a contract, or discontinuing, modifying, extending, or renewing any contract, with a 3rd party under which the 3rd party is engaging in a lawful use of the property.
- (h) Nonconforming uses.** The continued lawful use of a building, premises, structure, or fixture existing at the time of the adoption or amendment of a zoning ordinance may not be prohibited although the use does not conform with the provisions of the ordinance. The nonconforming use may not be extended. The total structural repairs or alterations in such a nonconforming building, premises, structure, or fixture shall not during its life exceed 50 percent of the assessed value of the building, premises, structure, or fixture unless permanently changed to a conforming use. If the nonconforming use is discontinued for a period of 12 months, any future use of the building, premises, structure, or fixture shall conform to the ordinance.
- (ham) Manufactured home communities.** Notwithstanding par. (h), a manufactured home community licensed under s. 101.935 that is a legal nonconforming use continues to be a legal nonconforming use notwithstanding the occurrence of any of the following activities within the community:
1. Repair or replacement of homes.
 2. Repair or replacement of infrastructure.
- (hb) Repair and maintenance of certain nonconforming structures.**
1. In this paragraph:
 - a. "Development regulations" means the part of a zoning ordinance enacted under this subsection that applies to elements including setback, height, lot coverage, and side yard.
 - b. "Nonconforming structure" means a dwelling or other building that existed lawfully before the current zoning ordinance was enacted or amended, but that does not conform with one or more of the development regulations in the current zoning ordinance.
 2. An ordinance enacted under this subsection may not prohibit, or limit based on cost, the repair, maintenance, renovation, or remodeling of a nonconforming structure.
- (hc) Restoration or replacement of certain nonconforming structures.**
1. Restrictions that are applicable to damaged or destroyed nonconforming structures and that are contained in an ordinance enacted under this subsection may not prohibit the restoration or replacement of a nonconforming structure if the structure will be restored to, or replaced at, the size, subject to subd. 2., location, and use that it had immediately before the damage or destruction occurred, or impose any limits on the costs of the repair, reconstruction, or improvement if all of the following apply:
 - a. The nonconforming structure was damaged or destroyed on or after March 2, 2006.
 - b. The damage or destruction was caused by violent wind, vandalism, fire, flood, ice, snow, mold, or infestation.
 2. An ordinance enacted under this subsection to which subd. 1. applies shall allow for the size of a structure to be larger than the size it was immediately before the damage or destruction if necessary for the structure to comply with applicable state or federal requirements.
- (he) Antenna facilities.** The governing body of a city may not enact an ordinance or adopt a resolution on or after May 6, 1994, or continue to enforce an ordinance or resolution on or after May 6, 1994, that affects satellite antennas with a diameter of 2 feet or less unless one of the following applies:
1. The ordinance or resolution has a reasonable and clearly defined aesthetic or public health or safety objective.
 2. The ordinance or resolution does not impose an unreasonable limitation on, or prevent, the reception of satellite-delivered signals by a satellite antenna with a diameter of 2 feet or less.
 3. The ordinance or resolution does not impose costs on a user of a satellite antenna with a diameter of 2 feet or less that exceed 10 percent of the purchase price and installation fee of the antenna and associated equipment.
- (hf) Amateur radio antennas.** The governing body of a city may not enact an ordinance or adopt a resolution on or after April 17, 2002, or continue to enforce an ordinance or resolution on or after April 17, 2002, that affects the placement, screening, or height of antennas, or antenna support structures, that are used for amateur radio communications unless all of the following apply:
1. The ordinance or resolution has a reasonable and clearly defined aesthetic, public health, or safety objective, and represents the minimum practical regulation that is necessary to accomplish the objectives.
 2. The ordinance or resolution reasonably accommodates amateur radio communications.
- (hg) Amortization prohibited.**

1. In this paragraph, "amortization ordinance" means an ordinance that allows the continuance of the lawful use of a nonconforming building, premises, structure, or fixture that may be lawfully used as described under par. (h), but only for a specified period of time, after which the lawful use of such building, premises, structure, or fixture must be discontinued without the payment of just compensation.
2. Subject to par. (h), an ordinance enacted under this subsection may not require the removal of a nonconforming building, premises, structure, or fixture by an amortization ordinance.

(hi) Payday lenders.

1. In this paragraph:
 - a. "Licensee" has the meaning given in s. 138.14 (1) (i).
 - b. "Payday lender" means a business, owned by a licensee, that makes payday loans.
 - c. "Payday loan" has the meaning given in s. 138.14 (1) (k).
2. Except as provided in subds. 3., 4., and 5., no payday lender may operate in a city unless it receives a permit to do so from the city council, and the city council may not issue a permit to a payday lender if any of the following applies:
 - a. The payday lender would be located within 1,500 feet of another payday lender.
 - b. The payday lender would be located within 150 feet of a single-family or 2-family residential zoning district.
3. A city may regulate payday lenders by enacting a zoning ordinance that contains provisions that are more strict than those specified in subd. 2.
4. If a city has enacted an ordinance regulating payday lenders that is in effect on January 1, 2011, the ordinance may continue to apply and the city may continue to enforce the ordinance, but only if the ordinance is at least as restrictive as the provisions of subd. 2.
5. Notwithstanding the provisions of subd. 4., if a payday lender that is doing business on January 1, 2011, from a location that does not comply with the provisions of subd. 2., the payday lender may continue to operate from that location notwithstanding the provisions of subd. 2.

(hm) Migrant labor camps. The council of a city may not enact an ordinance or adopt a resolution that interferes with any repair or expansion of migrant labor camps, as defined in s. 103.90 (3), that are in existence on May 12, 1992, if the repair or expansion is required by an administrative rule promulgated by the department of workforce development under ss. 103.90 to 103.97. An ordinance or resolution of a city that is in effect on May 12, 1992, and that interferes with any repair or expansion of existing migrant labor camps that is required by such an administrative rule is void.

(i) Community and other living arrangements. For purposes of this section, the location of a community living arrangement for adults, as defined in s. 46.03 (22), a community living arrangement for children, as defined in s. 48.743 (1), a foster home, as defined in s. 48.02 (6), or an adult family home, as defined in s. 50.01 (1), in any city shall be subject to the following criteria:

1. No community living arrangement may be established after March 28, 1978 within 2,500 feet, or any lesser distance established by an ordinance of the city, of any other such facility. Agents of a facility may apply for an exception to this requirement, and such exceptions may be granted at the discretion of the city. Two community living arrangements may be adjacent if the city authorizes that arrangement and if both facilities comprise essential components of a single program.
2. Community living arrangements shall be permitted in each city without restriction as to the number of facilities, so long as the total capacity of such community living arrangements does not exceed 25 or one percent of the city's population, whichever is greater. When the capacity of the community living arrangements in the city reaches that total, the city may prohibit additional community living arrangements from locating in the city. In any city of the 1st, 2nd, 3rd or 4th class, when the capacity of community living arrangements in an aldermanic district reaches 25 or one percent of the population, whichever is greater, of the district, the city may prohibit additional community living arrangements from being located within the district. Agents of a facility may apply for an exception to the requirements of this subdivision, and such exceptions may be granted at the discretion of the city.
- 2m. A foster home that is the primary domicile of a foster parent and that is licensed under s. 48.62 or an adult family home certified under s. 50.032 (1m) (b) shall be a permitted use in all residential areas and is not subject to subds. 1. and 2. except that foster homes operated by corporations, child welfare agencies, churches, associations, or public agencies shall be subject to subds. 1. and 2.
- 2r.
 - a. No adult family home described in s. 50.01 (1) (b) may be established within 2,500 feet, or any lesser distance established by an ordinance of the city, of any other adult family home described in s. 50.01 (1) (b) or any community living arrangement. An agent of an adult family home

described in s. 50.01 (1) (b) may apply for an exception to this requirement, and the exception may be granted at the discretion of the city.

b. An adult family home described in s. 50.01 (1) (b) that meets the criteria specified in subd. 2r. a., and that is licensed under s. 50.033 (1m) (b) is permitted in the city without restriction as to the number of adult family homes and may locate in any residential zone, without being required to obtain special zoning permission except as provided in subd. 9.

3. In all cases where the community living arrangement has capacity for 8 or fewer persons being served by the program, meets the criteria listed in subds. 1. and 2., and is licensed, operated, or permitted under the authority of the department of health services or the department of children and families, that facility is entitled to locate in any residential zone, without being required to obtain special zoning permission except as provided in subd. 9.
4. In all cases where the community living arrangement has capacity for 9 to 15 persons being served by the program, meets the criteria listed in subds. 1. and 2., and is licensed, operated, or permitted under the authority of the department of health services or the department of children and families, that facility is entitled to locate in any residential area except areas zoned exclusively for single-family or 2-family residences except as provided in subd. 9., but is entitled to apply for special zoning permission to locate in those areas. The city may grant such special zoning permission at its discretion and shall make a procedure available to enable such facilities to request such permission.
5. In all cases where the community living arrangement has capacity for serving 16 or more persons, meets the criteria listed in subds. 1. and 2., and is licensed, operated, or permitted under the authority of the department of health services or the department of children and families, that facility is entitled to apply for special zoning permission to locate in areas zoned for residential use. The city may grant such special zoning permission at its discretion and shall make a procedure available to enable such facilities to request such permission.
6. The department of health services shall designate a single subunit within that department to maintain appropriate records indicating the location and number of persons served by each community living arrangement for adults, and such information shall be available to the public. The department of children and families shall designate a single subunit within that department to maintain appropriate records indicating the location and number of persons served by each community living arrangement for children, and such information shall be available to the public.
7. In this paragraph, "special zoning permission" includes but is not limited to the following: special exception, special permit, conditional use, zoning variance, conditional permit and words of similar intent.
8. The attorney general shall take all necessary action, upon the request of the department of health services or the department of children and families, to enforce compliance with this paragraph.
9. Not less than 11 months nor more than 13 months after the first licensure of an adult family home under s. 50.033 or of a community living arrangement and every year thereafter, the common council of a city in which a licensed adult family home or a community living arrangement is located may make a determination as to the effect of the adult family home or community living arrangement on the health, safety or welfare of the residents of the city. The determination shall be made according to the procedures provided under subd. 10. If the common council determines that the existence in the city of a licensed adult family home or a community living arrangement poses a threat to the health, safety or welfare of the residents of the city, the common council may order the adult family home or community living arrangement to cease operation unless special zoning permission is obtained. The order is subject to judicial review under s. 68.13, except that a free copy of the transcript may not be provided to the adult family home or community living arrangement. The adult family home or community living arrangement must cease operation within 90 days after the date of the order, or the date of final judicial review of the order, or the date of the denial of special zoning permission, whichever is later.
- 9m. The fact that an individual with acquired immunodeficiency syndrome or a positive HIV test, as defined in s. 252.01 (2m), resides in a community living arrangement with a capacity for 8 or fewer persons may not be used under subd. 9. to assert or prove that the existence of the community living arrangement in the city poses a threat to the health, safety or welfare of the residents of the city.
10. A determination made under subd. 9. shall be made after a hearing before the common council. The city shall provide at least 30 days' notice to the licensed adult family home or the community living arrangement that such a hearing will be held. At the hearing, the licensed adult family home or the community living arrangement may be represented by counsel and may present evidence and call and examine witnesses and cross-examine other witnesses called. The common council may call witnesses and may issue subpoenas. All witnesses shall be sworn by the common council. The common council shall take notes of the testimony and shall mark and preserve all exhibits. The

common council may, and upon request of the licensed adult family home or the community living arrangement shall, cause the proceedings to be taken by a stenographer or by a recording device, the expense thereof to be paid by the city. Within 20 days after the hearing, the common council shall mail or deliver to the licensed adult family home or the community living arrangement its written determination stating the reasons therefor. The determination shall be a final determination.

- (7a) EXTRATERRITORIAL ZONING.** The governing body of any city which has created a city plan commission under sub. (1) and has adopted a zoning ordinance under sub. (7) may exercise extraterritorial zoning power as set forth in this subsection. Insofar as applicable sub. (7) (am), (b), (c), (ea), (h) and (i) shall apply to extraterritorial zoning ordinances enacted under this subsection. This subsection shall also apply to the governing body of any village.
- (a) Extraterritorial zoning jurisdiction means the unincorporated area within 3 miles of the corporate limits of a first, second or third class city, or 1 1/2 miles of a fourth class city or a village. Wherever extraterritorial zoning jurisdictions overlap, the provisions of s. 66.0105 shall apply and any subsequent alteration of the corporate limits of the city by annexation, detachment or consolidation proceedings shall not affect the dividing line as initially determined under s. 66.0105. The governing body of the city shall specify by resolution the description of the area to be zoned within its extraterritorial zoning jurisdiction sufficiently accurate to determine its location and such area shall be contiguous to the city. The boundary line of such area shall follow government lot or survey section or fractional section lines or public roads, but need not extend to the limits of the extraterritorial zoning jurisdiction. Within 15 days of the adoption of the resolution the governing body shall declare its intention to prepare a comprehensive zoning ordinance for all or part of its extraterritorial zoning jurisdiction by the publication of the resolution in a newspaper having general circulation in the area proposed to be zoned, as a class 1 notice, under ch. 985. The city clerk shall mail a certified copy of the resolution and a scale map reasonably showing the boundaries of the extraterritorial jurisdiction to the clerk of the county in which the extraterritorial jurisdiction area is located and to the town clerk of each town, any part of which is included in such area.
- (b) The governing body may enact, without referring the matter to the plan commission, an interim zoning ordinance to preserve existing zoning or uses in all or part of the extraterritorial zoning jurisdiction while the comprehensive zoning plan is being prepared. Such ordinance may be enacted as is an ordinary ordinance but shall be effective for no longer than 2 years after its enactment, unless extended as provided in this paragraph. Within 15 days of its passage, the governing body of the city shall publish the ordinance in a newspaper having general circulation in the area proposed to be zoned as a class 1 notice, under ch. 985, or as a notice, as described under s. 62.11 (4) (c) 2., and the city clerk shall mail a certified copy of the ordinance to the clerk of the county in which the extraterritorial jurisdiction is located and to the clerk of each town affected by the interim zoning ordinance and shall file a copy of the ordinance with the city plan commission. The governing body of the city may extend the interim zoning ordinance for no longer than one year, upon the recommendation of the joint extraterritorial zoning committee established under par. (c). No other interim zoning ordinance shall be enacted affecting the same area or part thereof until 2 years after the date of the expiration of the interim zoning ordinance or the one year extension thereof. While the interim zoning ordinance is in effect, the governing body of the city may amend the districts and regulations of the ordinance according to the procedure set forth in par. (f).
- (c) If the governing body of the city adopts a resolution under par. (a), it shall direct the plan commission to formulate tentative recommendations for the district plan and regulations within all or a part of the extraterritorial zoning jurisdiction as described in the resolution adopted under par. (a). When the plan commission is engaged in the preparation of such district plan and regulations, or amendments thereto, a joint extraterritorial zoning committee shall be established. Such joint committee shall consist of 3 citizen members of the plan commission, or 3 members of the plan commission designated by the mayor if there are no citizen members of the commission, and 3 town members from each town affected by the proposed plan and regulations, or amendments thereto. The 3 town members shall be appointed by the town board for 3 year terms and shall be residents of the town and persons of recognized experience and qualifications. Town board members are eligible to serve. If the town board fails to appoint the 3 members within 30 days following receipt of the certified resolution under par. (a), the board shall be subject to a mandamus proceeding which may be instituted by any resident of the area to be zoned or by the city adopting such resolution. The entire plan commission shall participate with the joint committee in the preparation of the plan and regulations, or amendments thereto. Only the members of the joint committee shall vote on matters relating to the extraterritorial plan and regulations, or amendments thereto. A separate vote shall be taken on the plan and regulations for each town and the town members of the joint committee shall vote only on matters affecting the particular town which they represent. The governing body shall not adopt the proposed plan and regulations, or amendments thereto, unless the proposed plan and regulations, or amendments thereto, receive a favorable vote of a majority of the 6 members of the joint committee. Such vote shall be deemed action taken by the entire plan commission.

- (d) The joint committee shall formulate tentative recommendations for the district plan and regulations and shall hold a public hearing thereon. Notice of a hearing shall be given by publication in a newspaper having general circulation in the area to be zoned, as a class 2 notice, under ch. 985, during the preceding 30 days, and by mailing the notice to the town clerk of the town for which the plan and regulations are proposed. The notice shall contain the layout of tentative districts either by maps or words of description, and may contain the street names and house lot numbers for purposes of identification if the joint committee or the governing body so determines. At a public hearing an opportunity to be heard shall be afforded to representatives of the town board of the town and to any person in the town for which the plan and regulations are proposed.
 - (e) The governing body of the city may adopt by ordinance the proposed district plan and regulations recommended by the joint committee after giving notice and holding a hearing as provided in par. (d), or the governing body may change the proposed districts and regulations after first submitting the proposed changes to the joint committee for recommendation and report. The joint committee and the governing body may hold a hearing on the proposed changes after giving notice as provided in par. (d). The joint committee recommendation on the proposed changes shall be submitted to the governing body in accordance with the voting requirements set forth in par. (c).
 - (f) The governing body of the city may amend the districts and regulations of the extraterritorial zoning ordinance after first submitting the proposed amendment to the joint committee for recommendation and report. The procedure set forth in pars. (c), (d) and (e) shall apply to amendments to the extraterritorial zoning ordinance. In the case of a protest against an amendment the applicable provisions under sub. (7) (d) shall be followed.
 - (g) Insofar as applicable the provisions of subs. (7) (e), (f), (8) and (9) shall apply. The governing body of a city which adopts an extraterritorial zoning ordinance under this subsection may specifically provide in the ordinance for the enforcement and administration of this subsection. A town which has been issuing building permits may continue to do so, but the city building inspector shall approve such permits as to zoning prior to their issuance.
- (8) OTHER MEASURES OF ENFORCEMENT AND REMEDIES; PENALTY.** Any building erected, constructed or reconstructed in violation of this section or regulations adopted pursuant thereto shall be deemed an unlawful structure, and the building inspector or city attorney or other official designated by the council may bring action to enjoin such erection, construction or reconstruction, or cause such structure to be vacated or removed. It shall be unlawful to erect, construct or reconstruct any building or structure in violation of this section or regulations adopted pursuant thereto. Any person, firm or corporation violating such provisions shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than \$500. Each and every day during which said illegal erection, construction or reconstruction continues shall be deemed a separate offense. In case any building or structure is or is proposed to be erected, constructed or reconstructed, or any land is or is proposed to be used in violation of this section or regulations adopted pursuant thereto, the building inspector or the city attorney or any adjacent or neighboring property owner who would be specially damaged by such violation, may, in addition to other remedies provided by law, institute injunction, mandamus, abatement or any other appropriate action or proceeding to prevent or enjoin or abate or remove such unlawful erection, construction or reconstruction.
- (9) BUILDING INSPECTION.**
- (a) The city council may provide for the enforcement of this section and all other laws and ordinances relating to buildings by means of the withholding of building permits, imposition of forfeitures and injunctive action, and for such purposes may establish and fill the position of building inspector. From and after the establishment of such position and the filling of the same, it shall be unlawful to erect, construct or reconstruct any building or other structure without obtaining a building permit from such building inspector; and such building inspector shall not issue any permit unless the requirements of this section are complied with.
 - (b) The council may by ordinance designate general fire limits and regulate for safety and fire prevention the construction, alteration, enlargement and repair of buildings and structures within such limits, and may designate special fire limits within the general limits, and prescribe additional regulations therein. Any such proposed ordinance or amendment thereto shall be referred to the city plan commission, if such commission exists, for consideration and report, before final action is taken thereon by the council. However, no such ordinance or amendment thereto shall be adopted or become effective until after a public hearing in relation thereto, which may be held by the city plan commission or council, at which parties in interest and citizens shall have an opportunity to be heard. Notice of the time and place of the hearing shall be published as a class 2 notice, under ch. 985.
- (9a) MAY EXERCISE POWERS OF BOARD OF PUBLIC LAND COMMISSIONERS.** In cities of the first class, said city plan commission may exercise all of the powers conferred on board of public land commissioners under s. 27.11.
- (10) WIDENING STREETS.**
- (a) When the council by resolution declares it necessary for the public use to widen any street or a part thereof, it may proceed as prescribed in ch. 32, except as herein modified. The determination of necessity by the council shall not be a taking, but shall be an establishment of new future boundary lines.

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- (b) After such establishment no one shall erect any new structure within the new lines, nor rebuild or alter the front or add to the height of any existing structure without receding the structure to conform to the new lines. No damages shall be received for any construction in violation hereof.
 - (c) The council may at any time after the establishment of new lines provide compensation for any of the lands to be taken, whereupon such lands shall be deemed taken, and the required further proceedings shall be commenced.
 - (d) If a structure on lands taken under this subsection is not removed after 3 months' written notice served in the manner directed by the council, the city may cause it to be removed, and may dispose of it and apply the proceeds to the expense of removal. Excess proceeds shall be paid to the owner. Excess expenses shall be a lien on the rest of the owner's land abutting on the street to be widened under this subsection. If the excess expenses are not paid, they shall be assessed against the owner's land abutting on the street and collected as are other real estate taxes. If the owner does not own the adjoining piece of land abutting on the new line, the owner shall be personally liable to the city for the expense of removal.
 - (e) Until the city has taken all of the lands within the new lines, it may lease any taken lands, to the person owning the taken lands at the time of the taking, at an annual rental of not more than 5 percent of the amount paid for the taken lands by the city or of the market value, if the lands were donated. Improvements may be maintained on the leased lands until all lands within the new lines are taken, whereupon the improvements shall be removed as provided in par. (d). No damages shall be had for improvements made under a lease entered into under this paragraph.
- (11) BUILDING LINES.**
- (a) The council may by ordinance, in districts consisting of one side of a block or more, establish the distance from the street that structures may be erected. The city engineer shall thereupon make a survey and plat, and report the same, with description of any structure then situated contrary to such ordinance, to the council.
 - (b) The council may by ordinance make such regulation or prohibition of construction on any parts of lots or parcels of land or on any specified part of any particular realty, as shall be for the public health, safety or welfare.
 - (c) Whenever to carry out any ordinance under this subsection it is necessary to take property for public use, the procedure of ch. 32 shall be followed.
- (13) FUNDS.** Funds to carry out the purposes of this section may be raised by taxation or by bonds issued as provided in ss. 67.05, 67.06, 67.07, 67.08 and 67.10.
- (14) ASSESSMENTS.** The expense of acquiring, establishing, laying out, widening, enlarging, extending, paving, repaving and improving streets, arterial highways, parkways, boulevards, memorial grounds, squares, parks and playgrounds, and erecting bridges under any plan adopted by the common council pursuant to this section or s. 27.11, including the cost of all lands and improvements thereon which it is necessary to acquire to carry out such plan, whether acquired by direct purchase or lease, or through condemnation, and also including the cost of constructing any bridge, viaduct or other improvement which is a part of the plan adopted by the common council, may be assessed, in whole or in part, to the real estate benefited thereby, in the same manner in which under existing law in such city benefits and damages are assessable for improvements of streets. Whenever plans are adopted which are supplementary to each other the common council may by ordinance combine such plans into a single plan within the meaning of this section. Section 66.0713 shall apply to all assessments made under this subsection.
- (15) EXCESS CONDEMNATION.** Whenever any of the purposes of sub. (14) are planned to be carried out by excess condemnation, benefits may be assessed in the manner provided in said subsection.
- (16) BENEFITS FROM PUBLIC BUILDINGS.** Any benefits of public buildings and groups thereof may be assessed in the manner provided in s. 62.23 (14).
- (17) ACQUIRING LAND.**
- (a) Cities may acquire by gift, lease, purchase or condemnation any lands (a) within its corporate limits for establishing, laying out, widening, enlarging, extending and maintaining memorial grounds, streets, squares, parkways, boulevards, parks, playgrounds, sites for public buildings, and reservations in and about and along and leading to any or all of the same; (b) any lands adjoining or near to such city for use, sublease or sale for any of the following purposes:
 1. To relieve congested sections by providing housing facilities suitable to the needs of such city;
 2. To provide garden suburbs at reasonable cost to the residents of such city;
 3. To establish city owned vacation camps for school children and minors up to 20 years of age, such camps to be equipped to give academic and vocational opportunities, including physical training.
 - (b) After the establishment, layout and completion of such improvements, such city may convey or lease any such real estate thus acquired and not necessary for such improvements, with reservations concerning the future use and occupation of such real estate, so as to protect such public works and improvements, and their environs, and to preserve the view, appearance, light, air and usefulness of such public works, and to promote the public health and welfare.

(c) The acquisition and conveyance of lands for such purpose is a public purpose and is for public health and welfare.

(18) LAKES AND RIVERS. The city may improve lakes and rivers within the city and establish the shorelines thereof so far as existing shores are marsh, and where a navigable stream traverses or runs along the border of a city, such city may make improvements therein throughout the county in which such city shall be located in aid of navigation, and for the protection and welfare of public health and wildlife.

History: 1973 c. 60; 1975 c. 281; 1977 c. 205; 1979 c. 221, 355; 1981 c. 289, 341, 354, 374; 1983 a. 49, 410; 1985 a. 136 ss. 7 to 9, 10; 1985 a. 187, 225, 281, 316; 1987 a. 161, 395; 1989 a. 201; 1991 a. 255, 316; 1993 a. 27, 184, 301, 327, 400, 446, 471, 490, 491; 1995 a. 27 ss. 9126 (19), 9130 (4); 1995 a. 225; 1997 a. 3, 35, 246; 1999 a. 9, 148; 1999 a. 150 s. 672; 2001 a. 30 ss. 16, 17, 108; 2001 a. 50; 2005 a. 26, 34, 79, 81, 112, 171, 208; 2007 a. 20 ss. 1868 to 1873, 9121 (6) (a); 2007 a. 72; 2009 a. 28, 209, 276, 351, 372, 405; 2011 a. 32, 135, 170; 2013 a. 347; 2015 a. 176, 223, 391.

A contract made by a zoning authority to zone, rezone, or not to zone is illegal. An ordinance made pursuant to the contract is void as a municipality may not surrender its governmental powers and functions or thus inhibit the exercise of its police or legislative powers. When a zoning authority does not make an agreement to zone but is motivated to zone by agreements as to use of the land made by others or by voluntary restrictions running with the land, although suggested by the authority, the zoning ordinance is valid and not considered to be contract or conditional zoning. State ex rel. Zupancic v. Schimenz, 46 Wis. 2d 22, 174 N.W.2d 533 (1970).

The rezoning of one parcel in a neighborhood shopping area for local business was not a violation of s. 62.23 (7) (b) because there was no minimum size requirement and "local business" was not substantially different from "neighborhood shopping." State ex rel. Zupancic v. Schimenz, 46 Wis. 2d 22, 174 N.W.2d 533 (1970).

Spot rezoning from residential to industrial is arbitrary and unreasonable when the result would be detrimental to the surrounding residential area, had no substantial relation to the public health, safety, morals, or general welfare of the community, and the reasons advanced therefor were neither material nor substantial enough to justify the amendment. Heaney v. Oshkosh, 47 Wis. 2d 303, 177 N.W.2d 74 (1970).

A nonconforming use may be continued even though it violated an earlier regulatory ordinance, so long as the earlier use was not prohibited. Franklin v. Gerovac, 55 Wis. 2d 51, 197 N.W.2d 772 (1972).

The owner of a tract of land may, by leaving a 100 foot strip along one side unchanged, eliminate the right of property owners adjacent to the strip to legally protest. Rezoning a 42 acre parcel cannot be considered spot zoning. Rodgers v. Menomonee Falls, 55 Wis. 2d 563, 201 N.W.2d 29 (1972).

A zoning ordinance adopted by a new city that changed the zoning of the former town did not expire in 2 years under sub. (7) (da), even though labeled an interim ordinance. New Berlin v. Stein, 58 Wis. 2d 417, 206 N.W.2d 207 (1973).

A long-standing interpretation of a zoning ordinance by zoning officials is to be given great weight by the court. State ex rel. B'nai B'rith Foundation v. Walworth County, 59 Wis. 2d 296, 208 N.W.2d 113 (1973).

A challenge to a refusal by the board of appeals to hear an appeal on the grounds of an alleged constitutional lack of due process in the proceedings can only be heard in a statutory certiorari proceeding, not in an action for declaratory judgment. Master Disposal v. Village of Menomonee Falls, 60 Wis. 2d 653, 211 N.W.2d 477 (1973).

Sub. (9) (a) is not a direct grant of power to the building inspector. Racine v. J-T Enterprises of America, Inc. 64 Wis. 2d 691, 221 N.W.2d 869 (1973).

A municipal ordinance rezoning property upon the occurrence of specified conditions and providing that "the property shall revert back to its present zoning" if the conditions are not met is valid as effecting a rezoning of the realty immediately upon the failure to satisfy the conditions because the rezoning, rather than becoming effective immediately and reverting to the previous classification upon noncompliance with the conditions, never becomes effective until the conditions are met. Konkel v. Delafield Common Council, 68 Wis. 2d 574, 229 N.W.2d 606 (1975).

The minimum requirements of sub. (7) (a) [now sub. (7) (am)] do not include publication of a map. Proof of a nonconforming use is discussed. City of Lake Geneva v. Smuda, 75 Wis. 2d 532, 249 N.W.2d 783 (1977).

When the zoning board of appeals had power under sub. (7) (e) 1. and 7. to invalidate conditions imposed by the plan commission and to afford relief to affected property owners without invalidating a disputed ordinance, the owners' failure to challenge the conditions before the board precluded the owners from challenging in court the constitutionality of the commission's implementation of the ordinance. Nodell Investment Corp. v. Glendale, 78 Wis. 2d 416, 254 N.W.2d 310 (1977).

Sub. (7a) (b) allows interim freezes of existing zoning or, if none exists, interim freezing of existing uses. It does not allow a city to freeze the more restrictive of zoning or uses. Town of Grand Chute v. City of Appleton, 91 Wis. 2d 293, 282 N.W.2d 629 (Ct. App. 1979).

A zoning board acted in excess of its power by reopening a proceeding that had once been terminated. Goldberg v. Milwaukee Zoning Appeals Board, 115 Wis. 2d 517, 340 N.W.2d 558 (Ct. App. 1983).

A variance runs with the land. Goldberg v. Milwaukee Zoning Appeals Board, 115 Wis. 2d 517, 340 N.W.2d 558 (Ct. App. 1983).

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Notice under sub. (7) (d) 1. b. is required when a proposed amendment makes a substantial change. *Herdeman v. City of Muskego*, 116 Wis. 2d 687, 343 N.W.2d 814 (Ct. App. 1983).

A zoning ordinance that denied an owner the entire use value of its property was unconstitutional. *State ex rel. Nagawicka Is. Corp. v. Delafield*, 117 Wis. 2d 23, 343 N.W.2d 816 (Ct. App. 1983).

A zoning ordinance itself can be the "comprehensive plan" required by sub. (7) (c). No separate comprehensive plan need be adopted by a city as a condition precedent to enacting a zoning ordinance. *Bell v. City of Elkhorn*, 122 Wis. 2d 558, 364 N.W.2d 144 (1985).

A city had no authority to elect against the notice provisions of sub. (7) (d). *Gloudeman v. City of St. Francis*, 143 Wis. 2d 780, 422 N.W.2d 864 (Ct. App. 1988).

Under sub. (7) (e) 7., the board does not have authority to invalidate a zoning ordinance and must accept the ordinance as written. *Ledger v. Waupaca Board of Appeals*, 146 Wis. 2d 256, 430 N.W.2d 370 (Ct. App. 1988).

Under sub. (7) (i) 1., "adjacent" means contiguous. *Brazeau v. DHSS*, 154 Wis. 2d 752, 454 N.W.2d 32 (Ct. App. 1990).

Sub. (7) (e) 1. allows a municipality to provide by ordinance that the municipal governing body has exclusive authority to consider special exception permit applications; the board of appeals retains exclusive authority absent such ordinance. *Town of Hudson v. Hudson Town Board of Adjustment*, 158 Wis. 2d 263, 461 N.W.2d 827 (Ct. App. 1990).

Impermissible prejudice of an appeals board member is discussed. *Marris v. City of Cedarburg*, 176 Wis. 2d 14, 498 N.W.2d 843 (1993).

Sub. (7) (i) 1. does not excuse a municipality for failing to make reasonable accommodation of a group home as required by federal law. *Tellurian Ucan, Inc. v. Goodrich*, 178 Wis. 2d 205, 504 N.W.2d 342 (Ct. App. 1993).

The federal fair housing act controls sub. (7) (i) 1. to the extent that its spacing requirements may not be used for a discriminatory purpose. *"K" Care, Inc. v. Town of Lac du Flambeau*, 181 Wis. 2d 59, 510 N.W.2d 697 (Ct. App. 1993).

General, rather than explicit, standards regarding the granting of special exceptions may be adopted and applied by the governing body. The applicant has the burden of formulating conditions showing that the proposed use will meet the standards. Upon approval, additional conditions may be imposed by the governing body. *Kraemer & Sons v. Sauk County Adjustment Bd.* 183 Wis. 2d 1, 515 N.W.2d 256 (1994).

Casual, occasional, accessory, or incidental use after the primary nonconforming use is terminated cannot serve to perpetuate a nonconforming use. *Village of Menomonee Falls v. Veirstahler*, 183 Wis. 2d 96, 515 N.W.2d 290 (Ct. App. 1994).

The power to regulate nonconforming uses includes the power to limit the extension or expansion of the use if it results in a change in the character of the use. *Waukesha County v. Pewaukee Marina, Inc.* 187 Wis. 2d 18, 522 N.W.2d 536 (Ct. App. 1994).

Sub. (7) (f) 1. allowing "civil penalties" for zoning violations does not authorize imposing a lien against the subject property retroactive to the date of the violation. *Waukesha State Bank v. Village of Wales*, 188 Wis. 2d 374, 525 N.W.2d 110 (Ct. App. 1994).

Though a conditional use permit was improperly issued by a town board, rather than a board of appeals, the permit was not void when the subject property owner acquiesced to the error for many years. *Brooks v. Hartland Sportsman's Club*, 192 Wis. 2d 606, 531 N.W.2d 445 (Ct. App. 1995).

When a zoning ordinance is changed, a builder may have a vested right, enforceable by mandamus, to build under the previously existing ordinance if the builder has submitted, prior to the change, an application for a permit in strict and complete conformance with the ordinance then in effect. *Lake Bluff Housing Partners v. South Milwaukee*, 197 Wis. 2d 157, 540 N.W.2d 189 (1995), 94-1155.

Unless the zoning ordinance provides otherwise, a court should measure the sufficiency of a conditional use application at the time that notice of the final public hearing is first given. *Weber v. Town of Saukville*, 209 Wis. 2d 214, 562 N.W.2d 412 (1997), 94-2336.

A permit issued for a use prohibited by a zoning ordinance is illegal per se. A conditional use permit only allows a property owner to put the property to a use that is expressly permitted, as long as conditions have been met. A use begun under an illegal permit cannot be a prior nonconforming use. *Foresight, Inc. v. Babl*, 211 Wis. 2d 599, 565 N.W.2d 279 (Ct. App. 1997), 96-1964.

A municipal attorney may not serve as both prosecutor and advisor to the tribunal in a hearing under sub. (7) (i). *Nova Services, Inc. v. Village of Saukville*, 211 Wis. 2d 691, 565 N.W.2d 283 (Ct. App. 1997), 96-2198.

Sub. (7a) authorizes transfer of zoning administration and enforcement to cities and villages upon enactment of an interim extraterritorial ordinance. Filing an application for a conditional use permit prior to adoption of the interim ordinance did not prevent the transfer of decision making; the applicant had no vested right by virtue of having requested a permit whose issuance was discretionary. *Village of DeForest v. County of Dane*, 211 Wis. 2d 804, 565 N.W.2d 296 (Ct. App. 1997), 96-1574.

An area variance and a use variance each require unnecessary hardship, but there is an "unnecessarily burdensome" test for an area variance while the test for a use variance is "no feasible use." *State v. Kenosha County Board of Adjustment*, 212 Wis. 2d 310, 569 N.W.2d 54 (Ct. App. 1997), 96-1235.

A nonconforming use, regardless of its duration, may be prohibited or restricted if it also constitutes a public nuisance or is harmful to public health, safety, or welfare. *Town of Delafield v. Sharpley*, 212 Wis. 2d 332, 568 N.W.2d 779 (Ct. App. 1997), 96-2458.

The legal standard of unnecessary hardship requires that the property owner demonstrate that without a variance there is no reasonable use for the property. When the property owner has a reasonable use for the property, the statute takes precedence and the variance should be denied. *State v. Kenosha County Board of Adjustment*, 218 Wis. 2d 396, 577 N.W.2d 813 (1998), 96-1235. See also *State v. Outagamie*, 2001 WI 78, 244 Wis. 2d 613, 628 N.W.2d 376, 98-1046.

A certiorari action exists only to test the validity of judicial or quasi-judicial determinations. It does not allow for answers, denials, or defenses by the respondent. *Merkel v. Village of Germantown*, 218 Wis. 2d 572, 581 N.W.2d 552 (Ct. App. 1998), 97-3347.

It is within the power of the court to deny a municipality's request for injunctive relief when a zoning ordinance violation is proven. The court should take evidence and weigh equitable interests including those of the state's citizens. *Forest County v. Goode*, 219 Wis. 2d 654, 579 N.W.2d 715 (1998), 96-3592.

Sub. (7) (e) 6. does not mandate a hearing for each variance application-only those that satisfy the legal requirements for applications. A city rule that a variance request would not be reheard unless accompanied by evidence of a substantial change of circumstances did not violate due process or equal protection guarantees. Denial of a variance based on the rule was not arbitrary and capricious. *Tateoka v. City of Waukesha Board of Zoning Appeals*, 220 Wis. 2d 656, 583 N.W.2d 871 (Ct. App. 1998), 97-1802.

Construction in violation of zoning, even when authorized by a voluntarily issued permit, is unlawful. Those who build in violation of zoning rules are not shielded from razing under sub. (8) because construction was completed before the lawfulness of the zoning was determined. However, in rare cases, there may be compelling equitable reasons when a requested order of abatement should not be issued. *Lake Bluff Housing v. City of South Milwaukee*, 222 Wis. 2d 222, 588 N.W.2d 45 (Ct. App. 1998), 97-1339.

The burden is on the applicant for a variance to demonstrate through evidence that without the variance he or she is prevented from enjoying any reasonable use of the property. *State ex rel. Spinner v. Kenosha County Board of Adjustment*, 223 Wis. 2d 99, 588 N.W.2d 662 (Ct. App. 1998), 97-2094.

A conditional use permit did not impose a condition that the conditional use not be conducted outside the permitted area. It was improper to revoke the permit based on that use. An enforcement action in relation to the parcel where the use was not permitted is an appropriate remedy. *Bettendorf v. St. Croix County Board of Adjustment*, 224 Wis. 2d 735, 591 N.W.2d 916 (Ct. App. 1999), 98-2327.

Once a municipality has shown an illegal change in use to a nonconforming use, the municipality is entitled to terminate the entire nonconforming use. The decision is not within the discretion of the court reviewing the order. *Village of Menomonee Falls v. Preuss*, 225 Wis. 2d 746, 593 N.W.2d 496 (Ct. App. 1999), 98-0384.

To violate substantive due process guarantees, a zoning decision must involve more than simple errors in law or an improper exercise of discretion; it must shock the conscience. The city's violation of a purported agreement regarding zoning was not a violation. A court cannot compel a political body to adhere to an agreement regarding zoning if it has legitimate reasons for breaching. *Eternalist Foundation v. City of Platteville*, 225 Wis. 2d 759, 593 N.W.2d 84 (Ct. App. 1999), 98-1944.

Review of a certiorari action is limited to determining: 1) whether the board kept within its jurisdiction; 2) whether the board proceeded on a correct theory of law; 3) whether the board's action was arbitrary, oppressive, or unreasonable; and 4) whether the evidence was such that the board might reasonably make its order. *Kapischke v. County of Walworth*, 226 Wis. 2d 320, 595 N.W.2d 42 (Ct. App. 1999), 98-0796.

Zoning may not be legislated or modified by initiative under s. 9.20. An ordinance constituting a pervasive regulation of, or prohibition on, the use of land is zoning. *Heitman v. City of Mauston*, 226 Wis. 2d 542, 595 N.W.2d 450 (Ct. App. 1999), 98-3133.

A town with village powers has the authority to adopt ordinances authorizing its plan commission to review and approve industrial site plans before issuing a building permit. An ordinance regulating development need not be created with a particular degree of specificity other than is necessary to give developers reasonable notice of the areas of inquiry that the town will examine in approving or disapproving proposed sites. *Town of Grand Chute v. U.S. Paper Converters, Inc.* 229 Wis. 2d 674, 600 N.W.2d 33 (Ct. App. 1999), 98-2797.

The state, in administering the Fair Housing Act, may not order a zoning board to issue a variance based on characteristics unique to the landowner rather than the land. *County of Sawyer Zoning Board v. Department of Workforce Development*, 231 Wis. 2d 534, 605 N.W.2d 627 (Ct. App. 1999), 99-0707.

While the DNR has the authority to regulate the operation of game farms, its authority does not negate the power to enforce zoning ordinances against game farms. Both are applicable. *Willow Creek Ranch v. Town of Shelby*, 2000 WI 56, 235 Wis. 2d 409, 611 N.W.2d 693, 97-2075.

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Statutory certiorari review exists to test the validity of agency decisions by reviewing the record, and the court has jurisdiction only for that limited purpose. An action to enforce a variance is an entirely different matter. It is coercive, and personal jurisdiction must be established by serving a summons and complaint or original writ separate from any related certiorari action. *Winkelman v. Town of Delafield*, 2000 WI App 254, 239 Wis. 2d 542, 620 N.W.2d 438, 99-3158.

The consideration by a separate city council committee, without notice, of a duplicate file of matters then under consideration by the city's zoning committee was not void. *Oliveira v. City of Milwaukee*, 2001 WI 27, 242 Wis. 2d 1, 624 N.W.2d 117, 98-2474.

If residents would not be living in a proposed community living arrangement because of disabilities, although some may have disabilities, a municipality is not required by the federal American with Disabilities Act or Fair Housing Amendments Act to make reasonable accommodations in the application of the sub. (7) (i) 1. 2500 foot requirement. *State ex rel. Bruskevitz v. City of Madison*, 2001 WI App 233, 248 Wis. 2d 297, 635 N.W.2d 797, 00-2563.

A change in method or quantity of production of a nonconforming use is not a new use when the original character of the use remains the same. The incorporation of modern technology into the business of the operator of a nonconforming use is allowed. *Racine County v. Cape*, 2002 WI App 19, 250 Wis. 2d 44, 639 N.W.2d 782, 01-0740.

Financial investment is a factor to consider when determining whether a zoning violation must be abated, but it does not outweigh all other equitable factors to be considered. *Lake Bluff Housing Partners v. City of South Milwaukee*, 2001 WI App 150, 246 Wis. 2d 785, 632 N.W.2d 485, 00-1958.

A variance authorizes a landowner to establish or maintain a use prohibited by zoning regulations. A special exception allows the landowner to put the property to a use expressly permitted but that conflicts with some requirement of the ordinance. The grant of a special exception does not require the showing of hardship required for a variance. *Fabyan v. Waukesha County Board of Adjustment*, 2001 WI App 162, 246 Wis. 2d 851, 632 N.W.2d 116, 00-3103.

The public policy of promoting confidence in impartial tribunals may justify expansion of the certiorari record when evidence outside of the record demonstrates procedural unfairness. However, before a circuit court may authorize expansion, the party alleging bias must make a prima facie showing of wrongdoing. *Sills v. Walworth City Land*, 2002 WI App 111, 254 Wis. 2d 538, 648 N.W.2d 878, 01-0901.

While an increase in the volume, intensity, or frequency of a nonconforming use is not sufficient to invalidate it, if the increase is coupled with some element of identifiable change or extension, the enlargement will invalidate a legal nonconforming use. A proposed elimination of cabins and the expansion from 21 to 44 RV sites was an identifiable change in a campground and extension of the use for which it had been licensed. *Lessard v. Burnett County Board of Adjustment*, 2002 WI App 186, 256 Wis. 2d 821, 649 N.W.2d 728, 01-2986.

To find discontinuance of a nonconforming use, proof of intent to abandon the nonconforming use is not required. *Lessard v. Burnett County Board of Adjustment*, 2002 WI App 186, 256 Wis. 2d 821, 649 N.W.2d 728, 01-2986.

A purpose of sub. (5) is that a plan commission have the opportunity to review and make a recommendation on a final plat before the governing body makes a final decision, but not to require that body to wait more than 30 days for the plan commission's report. *KW Holdings, LLC v. Town of Windsor*, 2003 WI App 9, 259 Wis. 2d 357, 656 N.W.2d 752, 02-0706.

A conditional use permit (CUP) is not a contract. A CUP is issued under an ordinance. A municipality has discretion to issue a permit and the right to seek enforcement of it. Noncompliance with the terms of a CUP is tantamount to noncompliance with the ordinance. *Town of Cedarburg v. Shewczyk*, 2003 WI App 10, 259 Wis. 2d 818, 656 N.W.2d 491, 02-0902.

An ordinance requirement that no special use permit will be granted unless it is "necessary for the public convenience" meant that the petitioner had to present sufficient evidence that the proposed use was essential to the community as a whole. *Hearst-Argyle Stations v. Board of Zoning Appeals of the City of Milwaukee*, 2003 WI App 48, 260 Wis. 2d 494, 659 N.W.2d 424, 02-0596.

Spot zoning grants privileges to a single lot or area that are not granted or extended to other land in the same use district. Spot zoning is not per se illegal but, absent any showing that a refusal to rezone will in effect confiscate the property by depriving all beneficial use thereof should only be indulged in when it is in the public interest and not solely for the benefit of the property owner who requests the rezoning. *Step Now Citizens Group v. Town of Utica*, 2003 WI App 109, 264 Wis. 2d 662, 663 N.W.2d 833, 02-2760.

The failure to comply with an ordinance's notice requirements, when all statutory notice requirements were met, did not defeat the purpose of the ordinance's notice provision. *Step Now Citizens Group v. Town of Utica*, 2003 WI App 109, 264 Wis. 2d 662, 663 N.W.2d 833, 02-2760.

Under Goode a landowner may contest whether he or she is in violation of the zoning ordinance and, if so, can further contest on equitable grounds the enforcement of a sanction for the violation. *Town of Delafield v. Winkelman*, 2004 WI 17, 269 Wis. 2d 109, 675 N.W.2d 470, 02-0979.

Area variance applicants need not meet the no reasonable use of the property standard that is applicable to use variance applications. The standard for unnecessary hardship required in area variance cases is whether compliance with the strict letter of the restrictions governing area, set backs, frontage, height, bulk, or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with those restrictions unnecessarily burdensome. *Ziervogel v. Washington County Board of Adjustment*, 2004 WI 23, 269 Wis. 2d 549, 676 N.W.2d 401, 02-1618.

In evaluating whether to grant an area variance to a zoning ordinance, a board of adjustment should focus on the purpose of the zoning law at issue in determining whether an unnecessary hardship exists for the property owner seeking the variance. The facts of the case should be analyzed in light of that purpose, and boards of adjustment must be afforded flexibility so that they may appropriately exercise their discretion. *State v. Waushara County Board of Adjustment*, 2004 WI 56, 271 Wis. 2d 547, 679 N.W.2d 514, 02-2400.

A municipality cannot be estopped from seeking to enforce a zoning ordinance, but a circuit court has authority to exercise its discretion in deciding whether to grant enforcement. Upon the determination of an ordinance violation, the proper procedure for a circuit court is to grant an injunction enforcing the ordinance, except when it is presented with compelling equitable reasons to deny it. *Village of Hobart v. Brown County*, 2005 WI 78, 281 Wis. 2d 628, 698 N.W.2d 83, 03-1907.

A board of appeals may not simply grant or deny an application with conclusory statements that the application does or does not satisfy the statutory criteria, but shall express, on the record, its reasoning why an application does or does not meet the statutory criteria. Even when a board's decision is dictated by a minority, these controlling members of the board ought to be able to articulate why an applicant has not satisfied its burden of proof on unnecessary hardship or why the facts of record cannot be reconciled with some requirement of the ordinance or statute. A written decision is not required as long as a board's reasoning is clear from the transcript of its proceedings. *Lamar Central Outdoor, Inc. v. Board of Zoning Appeals of the City of Milwaukee*, 2005 WI 117, 284 Wis. 2d 1, 700 N.W.2d 87, 01-3105.

Sub. (7) (h) relates to the use to which the building was put, not to the physical structure of the building itself. It limits the repairs and improvements that can be made on a structure that is used in a manner that does not conform to uses permitted by applicable zoning codes. *Hillis v. Village of Fox Point Board of Appeals*, 2005 WI App 106, 281 Wis. 2d 147, 699 N.W.2d 636, 04-1787.

An existing conditional use permit (CUP) is not a vested property right and the revocation of the permit is not an unconstitutional taking. A CUP merely represents a species of zoning designations. Because landowners have no property interest in zoning designations applicable to their properties, a CUP is not property and no taking occurs by virtue of a revocation. *Rainbow Springs Golf Company, Inc. v. Town of Mukwonago*, 2005 WI App 163, 284 Wis. 2d 519, 702 N.W.2d 40, 04-1771.

Neither the desire for a different remedy nor a resort to alternative legal theories was sufficient to insulate a party filing an action under sub. (8) from the impact of claim preclusion when that party had adequate opportunity to litigate its claims before the zoning board. *Barber v. Weber*, 2006 WI App 88, 292 Wis. 2d 426, 715 N.W.2d 683, 05-1196.

In deciding whether to grant a variance under sub. (7) (e) 7., a zoning board of appeals may consider the role municipal officials played in a zoning violation when determining whether a hardship was self-created and whether strict enforcement of the ordinance would result in an unnecessary hardship. *Accent Developers, LLC v. City of Menomonie Board of Zoning Appeals*, 2007 WI App 48, 300 Wis. 2d 561, 730 N.W.2d 194, 06-1268.

The court's opinion that a deck was optimally located in its current position was not the relevant inquiry in regard to the granting of an area variance. The board of adjustment was justified in determining that the property owner's desire for the variance to retain their nonconforming deck was based on a personal inconvenience rather than an unnecessary hardship. *Block v. Waupaca County Board of Zoning Adjustment*, 2007 WI App 199, 305 Wis. 2d 325, 738 N.W.2d 132, 06-3067.

A municipality may not effect a zoning change by simply printing a new map marked "official map." *Village of Hobart v. Brown County*, 2007 WI App 250, 306 Wis. 2d 263, 742 N.W.2d 907, 07-0891.

Zoning that restricts land so that the landowner has no permitted use as of right must bear a substantial relation to the health, safety, morals, or general welfare of the public in order to withstand constitutional scrutiny. *Town of Rhine v. Bizzell*, 2008 WI 76, 311 Wis. 2d 1, 751 N.W.2d 780, 06-0450.

Ziervogel did not state that use cannot be a factor in an area variance analysis. It stated that use cannot overwhelm all other considerations in the analysis, rendering irrelevant any inquiry into the uniqueness of the property, the purpose of the ordinance, and the effect of a variance on the public interest. Here, the board properly considered the purpose of the zoning code, the effect on neighboring properties, and the hardship alleged. *Driehaus v. Walworth County*, 2009 WI App 63, 317 Wis. 2d 734, 767 N.W.2d 343, 08-0947.

Condominiums are not a form of land use. A condominium unit set aside for commercial use runs afoul of a zoning ordinance prohibiting commercial use. When an intended commercial use did not comport with a town's zoning restrictions, approval of the condominium by the town was *de facto* rezoning. A town could not seek to avoid the

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restrictions of applicable extraterritorial zoning by aiming to define its action as something other than a zoning change. *Village of Newburg v. Town of Trenton*, 2009 WI App 139, 321 Wis. 2d 424, 773 N.W.2d 500, 08-2997.

Having a vested interest in the continuance of a use is fundamental to protection of a nonconforming use. There can be no vested interest if the use is not actually and actively occurring at the time the ordinance amendment takes effect. However, it does not follow that any use that is actually occurring on the effective date of the amendment is sufficient to give the owner a vested interest in its continued use. To have a vested interest in the continuation of a use requires that if the continuance of the use were to be prohibited, substantial rights would be adversely affected, which will ordinarily mean that there has been a substantial investment in the use. The longevity of a use and the degree of development of a use are subsumed in an analysis of what investments an owner has made, rather than separate factors to be considered. *Town of Cross Plains v. Kitt's "Field of Dreams" Korner, Inc.* 2009 WI App 142, 321 Wis. 2d 671, 775 N.W.2d 283, 08-0546.

There must be reasonable reliance on the existing law in order to acquire a vested interest in a nonconforming use. Reasonable reliance on the existing law was not present when the owners knew the existing law was soon to change at the time the use was begun. *Town of Cross Plains v. Kitt's "Field of Dreams" Korner, Inc.* 2009 WI App 142, 321 Wis. 2d 671, 775 N.W.2d 283, 08-0546.

The language of this section clearly and unambiguously conveys that the mechanism for an appeal of a board of appeals decision is an action in certiorari for review of the board's decision. The action is against the board of appeals, not against the city. *Acevedo v. City of Kenosha*, 2011 WI App 10, 331 Wis. 2d 218, 793 N.W.2d 500, 10-0070.

When a village eliminated the selling of cars as a conditional use in general business districts a previously granted conditional use permit (CUP) was voided, the property owner was left with a legal nonconforming use to sell cars, and the village could not enforce the strictures of the CUP against the property owner. Therefore, the owner could continue to sell cars in accordance with the historical use of the property, but if the use were to go beyond the historical use of the property, the village could seek to eliminate the property's status as a legal nonconforming use. *Hussein v. Village of Germantown Board of Zoning Appeals*, 2011 WI App 96, 334 Wis. 2d 764, 800 N.W.2d 551, 10-2178.

The line distinguishing general police power regulation from zoning ordinances is far from clear. The question of whether a particular enactment constitutes a zoning ordinance is often a matter of degree. Broad statements of the purposes of zoning and the purposes of an ordinance are not helpful in distinguishing a zoning ordinance from an ordinance enacted pursuant to non-zoning police power. The statutorily enumerated purposes of zoning are not the exclusive domain of zoning regulation. A more specific and analytically helpful formulation of the purpose of zoning, at least in the present case, is to separate incompatible land uses. Multiple factors are considered and discussed. *Zwiefelhofer v. Town of Cooks Valley*, 2012 WI 7, 338 Wis. 2d 488, 809 N.W.2d 362, 10-2398.

Nothing in s. 59.694 (10) prevented an applicant whose conditional use permit (CUP) was denied from filing a second CUP application rather than seeking certiorari review. A municipality may enact a rule prohibiting a party whose application to the zoning board has been denied from filing a new application absent a substantial change in circumstances, but that was not done in this case. *O'Connor v. Buffalo County Board of Adjustment*, 2014 WI App 60, 354 Wis. 2d 231, 847 N.W.2d 881, 13-2097.

Zoning ordinances are in derogation of the common law and are to be construed in favor of the free use of private property. To operate in derogation of the common law, the provisions of a zoning ordinance must be clear and unambiguous. *HEEF Realty and Investments, LLP v. City of Cedarburg Board of Appeals*, 2015 WI App 23, 361 Wis. 2d 185, 861 N.W.2d 797, 14-0062.

Short-term rental was a permitted use for property in a single-family residential district under the City of Cedarburg's zoning code. A zoning board cannot arbitrarily impose time or occupancy restrictions in a residential zone where there are none adopted democratically by the city. There is nothing inherent in the concept of residence or dwelling that includes time. *HEEF Realty and Investments, LLP v. City of Cedarburg Board of Appeals*, 2015 WI App 23, 361 Wis. 2d 185, 861 N.W.2d 797, 14-0062.

Zoning ordinances may be applied to land held by the U.S. for an Indian tribe so long as they do not conflict with a federal treaty, agreement, or statute and so long as the land use proscribed is not a federal governmental function. 58 Atty. Gen. 91.

Zoning ordinances utilizing definitions of "family" to restrict the number of unrelated persons who may live in a single family dwelling are of questionable constitutionality. 63 Atty. Gen. 34.

County shoreland zoning of unincorporated areas adopted under s. 59.971 [now 59.692] is not superseded by municipal extraterritorial zoning under s. 62.23 (7a). Sections 59.971, 62.23 (7), (7a) and 144.26 [now 281.31] discussed. Municipal extraterritorial zoning within shorelands is effective insofar as it is consistent with, or more restrictive than, the county shoreland zoning regulations. 63 Atty. Gen. 69.

Extraterritorial zoning under sub. (7a) is discussed. 67 Atty. Gen. 238.

A city's ban on almost all residential signs violated the right of free speech. *City of LaDue v. Gilleo*, 512 U.S. 43, 129 L. Ed. 2d 22 (1994).

There is no property interest in a position on a zoning board of appeals and none was created by a common council member's assertion that the council would not approve a board member's successor. Generally, the 1st amendment protects a person from being removed from public employment for purely political reasons, but a board member is an exempt policymaker. Pleva v. Norquist, 195 F.3d 905 (1999).

Plaintiffs were not required to exhaust administrative remedies under sub. (7) (e) before bringing a civil rights act suit challenging the definition of "family" as used in that portion of a village zoning ordinance creating single-family residential zones since plaintiffs' claim was based on federal law. Timberlake v. Kenkel, 369 F. Supp. 456.

The denial of a permit for a 2nd residential facility within a 2,500 foot radius pursuant to sub. (7) (i) 1., which had the effect of precluding handicapped individuals, absent evidence of adverse impact on the legislative goals of the statute or of a burden upon the village constituted a failure to make reasonable accommodations in violation of federal law. U.S. v. Village of Marshall, 787 F. Supp. 872 (1992).

Sub. (2) (i) 1. and 2r. are preempted by the Federal Fair Housing Amendment Act and the Americans With Disabilities Act. Sub. (2) (i) 1. and 2r. impermissibly classify people on the basis of disability by imposing a 2,500 foot spacing requirement on community living arrangements for the disabled. Oconomowoc Residential Programs v. City of Greenfield, 23 F. Supp. 2d 941 (1998).

The necessity of a zoning variance or amendments notice to the Wisconsin department of natural resources under the shoreland zoning and navigable waters protection acts. Whipple, 57 MLR 25.

Architectural Appearances Ordinances and the 1st Amendment. Rice. 76 MLR 439 (1992).

Conditional Use Permits: Strategies for Local Zoning Procedures. Peranteau. Wis. Law. Sept. 2015.

CHAPTER 66
GENERAL MUNICIPALITY LAW

SUBCHAPTER IX
PUBLIC WORKS AND PROJECTS

66.0901 Public works, contracts, bids.

66.0901 Public works, contracts, bids.

(1) DEFINITIONS. In this section:

- (a) "Municipality" means the state or a town, city, village, school district, board of school directors, sewer district, drainage district, technical college district or other public or quasi-public corporation, officer, board or other public body charged with the duty of receiving bids for and awarding any public contracts.
- (b) "Person" means an individual, partnership, association, limited liability company, corporation or joint stock company, lessee, trustee or receiver.
- (bm) "Political subdivision" means a city, village, town, or county.
- (c) "Public contract" means a contract for the construction, execution, repair, remodeling or improvement of a public work or building or for the furnishing of supplies or material of any kind, proposals for which are required to be advertised for by law.
- (d) "Subcontractor" means a person whose relationship to the principal contractor is substantially the same as to a part of the work as the latter's relationship is to the proprietor. A "subcontractor" takes a distinct part of the work in a way that the "subcontractor" does not contemplate doing merely personal service.

(1m) METHOD OF BIDDING.

- (a) Except when necessary to secure federal aid, whenever a political subdivision lets a public contract by bidding, the political subdivision shall comply with all of the following:
 - 1. The bidding shall be on the basis of sealed competitive bids.
 - 2. The contract shall be awarded to the lowest responsible bidder.
- (b) Except when necessary to secure federal aid, a political subdivision may not use a bidding method that gives preference based on the geographic location of the bidder or that uses criteria other than the lowest responsible bidder in awarding a contract.

- (2) **BIDDER'S PROOF OF RESPONSIBILITY.** A municipality intending to enter into a public contract may, before delivering any form for bid proposals, plans, and specifications to any person, except suppliers, and others not intending to submit a direct bid, require the person to submit a full and complete statement sworn to before an officer authorized by law to administer oaths. The statement shall consist of information relating to financial ability, equipment, experience in the work prescribed in the public contract, and other matters that the municipality requires for the protection and welfare of the public in the performance of a public contract. The statement shall be in writing on a standard form of a questionnaire that is adopted and furnished by the municipality. The statement shall be filed in the manner and place designated by the municipality. The statement shall not be received less than 5 days prior to the time set for the opening of bids. The contents of the statement shall be confidential and may not be disclosed except upon the written order of the person furnishing the statement, for necessary use by the public body in qualifying the person, or in cases of actions against, or by, the person or municipality. The governing body of the municipality or the committee, board, or employee charged with, or delegated by the governing body with, the duty of receiving bids and awarding contracts shall properly evaluate the statement and shall find the maker of the statement either qualified or unqualified.
- (3) **PROOF OF RESPONSIBILITY, CONDITION PRECEDENT.** No bid shall be received from any person who has not submitted the statement as provided in sub. (2), provided that any prospective bidder who has once qualified to the satisfaction of the municipality, committee, board or employee, and who wishes to become a bidder upon subsequent public contracts under the same jurisdiction, need not separately qualify on each public contract unless required so to do by the municipality, committee, board or employee.
- (4) **REJECTION OF BIDS.** If the municipality, committee, board or employee is not satisfied with the sufficiency of the answer contained in the statement provided under sub. (2), the municipality, committee, board or employee may reject or disregard the bid.
- (5) **CORRECTIONS OF ERRORS IN BIDS.** If a person submits a bid or proposal for the performance of public work under any public contract to be let by a municipality and the bidder claims that a mistake, omission or error has been made in preparing the bid, the bidder shall, before the bids are opened, make known the fact that an error, omission or mistake has been made. If the bidder makes this fact known, the bid shall be returned to the bidder unopened and the bidder may not bid upon the public contract unless it is readvertised and relet upon the readvertisement. If a bidder makes an error, omission or mistake and discovers it after the bids are opened, the bidder shall immediately and without delay give written notice and make known the fact of the mistake, omission or error which has been committed and submit to the municipality clear and satisfactory evidence of the mistake, omission or error and that it

was not caused by any careless act or omission on the bidder's part in the exercise of ordinary care in examining the plans or specifications and in conforming with the provisions of this section. If the discovery and notice of a mistake, omission or error causes a forfeiture, the bidder may not recover the moneys or certified check forfeited as liquidated damages unless it is proven before a court of competent jurisdiction in an action brought for the recovery of the amount forfeited, that in making the mistake, error or omission the bidder was free from carelessness, negligence or inexcusable neglect.

- (6) **SEPARATION OF CONTRACTS; CLASSIFICATION OF CONTRACTORS.** In public contracts for the construction, repair, remodeling or improvement of a public building or structure, other than highway structures and facilities, a municipality may bid projects based on a single or multiple division of the work. Public contracts shall be awarded according to the division of work selected for bidding. The municipality may set out in any public contract reasonable and lawful conditions as to the hours of labor, wages, residence, character and classification of workers to be employed by any contractor, classify contractors as to their financial responsibility, competency and ability to perform work and set up a classified list of contractors. The municipality may reject the bid of any person, if the person has not been classified for the kind or amount of work in the bid.
- (7) **BIDDER'S CERTIFICATE.** When bidding on a public contract, the bidder shall incorporate and make a part of the bidder's proposal for doing any work or labor or furnishing any material in or about any public work or contract of the municipality a sworn statement by the bidder, or if not an individual by one authorized, that the bidder or authorized person has examined and carefully prepared the proposal from the plans and specifications and has checked the same in detail before submitting the proposal or bid to the municipality. As a part of the proposal, the bidder also shall submit a list of the subcontractors the bidder proposes to contract with and the class of work to be performed by each. In order to qualify for inclusion in the bidder's list a subcontractor shall first submit a bid in writing, to the general contractor at least 48 hours prior to the time of the bid closing. The list may not be added to or altered without the written consent of the municipality. A proposal of a bidder is not invalid if any subcontractor and the class of work to be performed by the subcontractor has been omitted from a proposal; the omission shall be considered inadvertent or the bidder will perform the work personally.
- (8) **SETTLEMENT OF DISPUTES; DEFAULTS.** Whenever there is a dispute between a contractor or surety or the municipality as to whether there is compliance with the provisions of a public contract as to the hours of labor, wages, residence, character and classification of workers employed by the contractor, the determination of the municipality is final. If a violation of these provisions occurs, the municipality may declare the contract in default and request the surety to perform or relet upon advertisement the remaining portion of the public contract.
- (9) **ESTIMATES AND RELEASE OF FUNDS.**
- (a) Notwithstanding sub. (1)(a), in this subsection, "municipality" does not include the department of transportation.
 - (b) *Retained percentages.* As the work progresses under a contract involving \$1,000 or more for the construction, execution, repair, remodeling or improvement of a public work or building or for the furnishing of supplies or materials, regardless of whether proposals for the contract are required to be advertised by law, the municipality, from time to time, shall grant to the contractor an estimate of the amount and proportionate value of the work done, which entitles the contractor to receive the amount of the estimate, less the retainage, from the proper fund. The retainage shall be an amount equal to not more than 5 percent of the estimate until 50 percent of the work has been completed. At 50 percent completion, further partial payments shall be made in full to the contractor and no additional amounts may be retained unless the architect or engineer certifies that the job is not proceeding satisfactorily, but amounts previously retained shall not be paid to the contractor. At 50 percent completion or any time after 50 percent completion when the progress of the work is not satisfactory, additional amounts may be retained but the total retainage may not be more than 10 percent of the value of the work completed. Upon substantial completion of the work, an amount retained may be paid to the contractor. When the work has been substantially completed except for work which cannot be completed because of weather conditions, lack of materials or other reasons which in the judgment of the municipality are valid reasons for noncompletion, the municipality may make additional payments, retaining at all times an amount sufficient to cover the estimated cost of the work still to be completed or may pay out the entire amount retained and receive from the contractor guarantees in the form of a bond or other collateral sufficient to ensure completion of the job. For the purposes of this section, estimates may include any fabricated or manufactured materials and components specified, previously paid for by the contractor and delivered to the work or properly stored and suitable for incorporation in the work embraced in the contract.
- (11) **LIMITATION ON PERFORMANCE OF PRIVATE CONSTRUCTION WORK BY POLITICAL SUBDIVISIONS.**
- (a) 66.0901(11)(a) In this subsection, "construction project" means a road, sewer, water, stormwater, wastewater, grading, parking lot, or other infrastructure-related project or the provision of construction-related services for such a project.
 - (b) 66.0901(11)(b) A political subdivision may not use its own workforce to perform a construction project for which a private person is financially responsible.

CHAPTER 66

(12) PUBLIC BUILDING PLAN INFORMATION.

(a) In this subsection:

1. "Public building plan information" means construction plans, designs, specifications, and related materials for construction work undertaken, or proposed to be undertaken, by a municipality pursuant to a public contract.
2. "Public plan room" means a nonprofit organization that gathers and makes available to the public for inspection and copying public building plan information.

(b) Notwithstanding s. 19.35 (3), if a municipality receives a request for public building plan information from a public plan room, the municipality shall provide the requested information by electronic copy, and without charging a fee, if all of the following apply:

1. The public building plan information relates to a structure or building constructed, or proposed to be constructed, by a municipality.
2. The public plan room allows the public to register and inspect or copy the public building plan information that it obtains under this subsection without charging a fee.

(c) A municipality shall provide the requested information under par. (b) even if the municipality contracts with another person to assist the municipality with public contracts, related construction projects, or the management and storage of public building plan information.

History: 1971 c. 154; 1975 c. 390; 1983 a. 27; 1991 a. 316; 1993 a. 112, 399, 490, 491; 1999 a. 150 ss. 257, 258, 328 to 334; Stats. 1999 s. 66.0901; 1999 a. 186 s. 50; 2001 a. 103; 2003 a. 157; 2005 a. 204; 2009 a. 173; 2011 a. 32; 2015 a. 55.

Under sub. (5), a bidder has no right to withdraw its bid or demand that it be amended. Under the terms of the proposal, the commission was entitled to retain the deposit upon the plaintiff's failure to execute the contract within 10 days of the notice of award. Nelson Inc. v. Sewerage Commission of Milwaukee, 72 Wis. 2d 400, 241 N.W.2d 390 (1976).

Acceptance of the bid is a precondition to forfeiture of the bidder's deposit under sub. (5). Gaastra v. Village of Fairwater, 77 Wis. 2d 7, 252 N.W.2d 60 (1977).

When a bid error was discovered after the contract was let, the dispute was governed by the arbitration clause in the contract, not by sub. (5). Turtle Lake v. Orvedahl Const., 135 Wis. 2d 385, 400 N.W.2d 475 (Ct. App. 1986).

Sub. (5) does not contemplate bid amendment after bids are open, and municipalities do not have the authority to permit a bidder to amend its bid. The only relief available to a bidder that acknowledges a mistake, error, or omission in its bid is to request that its bid be withdrawn from consideration. James Cape & Sons Company v. Mulcahy, 2005 WI 128, 285 Wis. 2d 200, 700 N.W.2d 243, 02-2817

Acceptance of a bid by a municipality is a precondition to forfeiture of a bidder's deposit under sub. (5). The 4th sentence of sub. (5) specifically contemplates a court proceeding to determine whether a proposal guaranty should be returned to the bidder when a municipality has retained the proposal guaranty. If the bidder can show by clear and satisfactory evidence that its error, omission, or mistake was not caused by any careless act or omission in the exercise of ordinary care in examining the plans or specifications and was in conformance with the conditions of the statute, but the municipality is able to show how the bidder's withdrawal has prejudiced or will prejudice the municipality, the bidder will have to meet the higher standard that it was free from carelessness, negligence, or inexcusable neglect to avoid forfeiture. James Cape & Sons Company v. Mulcahy, 2005 WI 128, 285 Wis. 2d 200, 700 N.W.2d 243, 02-2817

A municipality has no power to enter into a contract unless the bid proposal complies with sub. (7). When a bidder submitted no statement providing any of the assurances required by sub. (7) the bid proposal did not comply with sub. (7), and the municipality had no authority to enter into a contract with the bidder based on that proposal. If there was a contract, it was void at its inception. Andrews Construction, Inc. v. Town of Levis, 2006 WI App 180, 296 Wis. 2d 89, 722 N.W. 2d 389, 04-3338.

Police cars need not be purchased by competitive bid since they are "equipment" and not "supplies [or] material." 66 Atty. Gen. 284.

Municipalities may require bidders to include a list of subcontractors under sub. (7). Counties may reject a proposal for failure to include a complete list, except when omitted subcontractors themselves submitted timely, written bids to the general contractor. 76 Atty. Gen. 29.

SUBCHAPTER X PLANNING, HOUSING AND TRANSPORTATION

66.1001 Comprehensive planning.

66.1009 Agreement to establish an airport affected area.

66.1001 Comprehensive planning.

(2) **CONTENTS OF A COMPREHENSIVE PLAN.** A comprehensive plan shall contain all of the following elements:

- (c) *Transportation element.* A compilation of objectives, policies, goals, maps and programs to guide the future development of the various modes of transportation, including highways, transit, transportation systems for persons with disabilities, bicycles, electric personal assistive mobility devices, walking, railroads, air transportation, trucking and water transportation. The element shall compare the local governmental unit's objectives, policies, goals and programs to state and regional transportation plans. The element shall also identify highways within the local governmental unit by function and incorporate state, regional and other applicable transportation plans, including transportation corridor plans, county highway functional and jurisdictional studies, urban area and rural area transportation plans, airport master plans and rail plans that apply in the local governmental unit.

66.1009 Agreement to establish an airport affected area. Any county, town, city or village may establish by written agreement with an airport, as defined in s. 62.23 (6) (am) 1. a.:

- (1) The area which will be subject to ss. 59.69 (4g) and (5) (e) 2. and 5m., 60.61 (2) (e) and (4) (c) 1. and 3. and 62.23 (7) (d) 2. and 2m. b. respectively, except that no part of the area may be more than 3 miles from the boundaries of the airport.
- (2) Any requirement related to permitting land use in an airport affected area, as defined in s. 62.23 (6) (am) 1. b., which does not conform to the zoning plan or map under s. 59.69 (4g), 60.61 (2) (e) or 62.23 (6) (am) 2. A city, village, town or county may enact such requirement by ordinance.

History: 1985 a. 136; 1995 a. 201; 1999 a. 150 s. 365; Stats. 1999 s. 66.1009.

NOTE: Section 1 of 85 Act 136 is entitled "Findings and purpose".

SUBCHAPTER XI DEVELOPMENT

66.1103 Industrial development revenue bonding.

66.1103 Industrial development revenue bonding.**(1) FINDINGS.**

- (a) It is found and declared that industries located in this state have been induced to move their operations in whole or in part to, or to expand their operations in, other states to the detriment of state, county and municipal revenue raising through the loss or reduction of income and franchise taxes, real estate and other local taxes causing an increase in unemployment; that such conditions now exist in certain areas of the state and may well arise in other areas; that economic insecurity due to unemployment is a serious menace to the general welfare of not only the people of the affected areas but of the people of the entire state; that unemployment results in obligations to grant public assistance and in the payment of unemployment insurance; that the absence of new economic opportunities has caused workers and their families to migrate elsewhere to find work and establish homes, which has resulted in a reduction of the tax base of counties, cities and other local governmental jurisdictions impairing their financial ability to support education and other local governmental services; that security against unemployment and the preservation and enhancement of the tax base can best be provided by the promotion, attraction, stimulation, rehabilitation and revitalization of commerce, industry and manufacturing; and that there is a need to stimulate a larger flow of private investment funds from banks, investment houses, insurance companies and other financial institutions. It is therefore the policy of this state to promote the right to gainful employment, business opportunities and general welfare of its inhabitants and to preserve and enhance the tax base by authorizing municipalities and counties to acquire industrial buildings and to finance the acquisition through the issuance of revenue bonds for the purpose of fulfilling the aims of this section. These purposes are declared to be public purposes for which public money may be spent and the necessity in the public interest for the provisions of this section is declared a matter of legislative determination.
- (b) It is found and declared that the control of pollution of the environment of this state, the provision of medical, safe employment, telecommunications and telegraph, research, industrial park, dock, wharf, airport, recreational, convention center, trade center, headquarters and mass transit facilities in this state, and the furnishing of electric energy, gas and water in this state, are necessary to retain existing industry in, and attract new industry to, this state, and to protect the health, welfare and safety of the citizens of this state.
- (c) It is found and declared that the revitalization of counties and of the central business districts of the municipalities of this state is necessary to retain existing industry in, and attract new industry to, this state and to protect the health, welfare and safety of residents of this state.

CHAPTER 70
GENERAL PROPERTY TAXES

70.112 Property exempted from taxation because of special tax.

70.112 Property exempted from taxation because of special tax. The property described in this section is exempted from general property taxes:

(6) **AIRCRAFT.** Every aircraft.

History: 1971 c. 221, 289; 1981 c. 20; 1983 a. 27, 243, 342, 368; 1999 a. 80; 1999 a. 150 s. 672; 2001 a. 16; 2007 a. 11.

CHAPTER 77

TAXATION OF FOREST CROPLANDS; REAL ESTATE TRANSFER FEES; SALES AND USE TAXES; COUNTY AND SPECIAL DISTRICT SALES AND USE TAXES; MANAGED FOREST LAND; ECONOMIC DEVELOPMENT SURCHARGE; LOCAL FOOD AND BEVERAGE TAX; LOCAL RENTAL CAR TAX; PREMIER RESORT AREA TAXES; STATE RENTAL VEHICLE FEE; DRY CLEANING FEES

77.53 Imposition of use tax.

77.61 Administrative provisions.

77.53 Imposition of use tax.

- (1) Except as provided in sub. (1m), an excise tax is levied and imposed on the use or consumption in this state of taxable services under s. 77.52 purchased from any retailer, at the rate of 5 percent of the purchase price of those services; on the storage, use or other consumption in this state of tangible personal property and items or property under s. 77.52 (1) (b) or (c) purchased from any retailer, at the rate of 5 percent of the purchase price of the property or items; on the storage, use, or other consumption of goods in this state under s. 77.52 (1) (d) purchased from any retailer, if the purchaser has the right to use the goods on a permanent or less than permanent basis and regardless of whether the purchaser is required to make continued payments for such right, at the rate of 5 percent of the purchase price of the goods; and on the storage, use or other consumption of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) manufactured, processed or otherwise altered, in or outside this state, by the person who stores, uses or consumes it, from material purchased from any retailer, at the rate of 5 percent of the purchase price of that material.
- (18) This section does not apply to the storage, use or other consumption in this state of household goods or items, property, or goods under s. 77.52 (1) (b), (c), or (d) for personal use or to aircraft, motor vehicles, boats, snowmobiles, mobile homes, manufactured homes, as defined in s. 101.91 (2), recreational vehicles, as defined in s. 340.01 (48r), trailers, semitrailers, all-terrain vehicles, and utility terrain vehicles, for personal use, purchased by a nondomiciliary of this state outside this state, as determined under s. 77.522, 90 days or more before bringing the goods, items, or property into this state in connection with a change of domicile to this state.

History: 1971 c. 125, 211; 1977 c. 29, 418; 1979 c. 1, 174; 1981 c. 317; 1983 a. 2; 1985 a. 29; 1987 a. 27, 268, 399; 1991 a. 39, 316; 1993 a. 16, 112; 1995 a. 27, 209; 1997 a. 27, 41, 237; 1999 a. 31; 2001 a. 109; 2003 a. 321; 2005 a. 441; 2007 a. 11, 20; 2009 a. 2, 28, 276, 330; 2011 a. 208; 2013 a. 20; 2015 a. 84.

77.61 Administrative provisions.

- (1)
- (a) No motor vehicle, boat, snowmobile, recreational vehicle, as defined in s. 340.01 (48r), trailer, semitrailer, all-terrain vehicle, utility terrain vehicle, off-highway motorcycle, or aircraft shall be registered or titled in this state unless the registrant presents proof that the sales or use taxes imposed by this subchapter have been paid.
- (b) In the case of motor vehicles, boats, snowmobiles, recreational vehicles, as defined in s. 340.01 (48r), trailers, semitrailers, all-terrain vehicles, utility terrain vehicles, off-highway motorcycles, or aircraft purchased from a retailer, the registrant shall present proof that the tax has been paid to such retailer.
- (c) In the case of motor vehicles, boats, snowmobiles, recreational vehicles, as defined in s. 340.01 (48r), trailers, semitrailers, all-terrain vehicles, utility terrain vehicles, off-highway motorcycles, or aircraft registered or titled, or required to be registered or titled, in this state purchased from persons who are not retailers, the purchaser shall file a sales tax return and pay the tax prior to registering or titling the motor vehicle, boat, snowmobile, recreational vehicle, as defined in s. 340.01 (48r), semitrailer, all-terrain vehicle, utility terrain vehicle, or aircraft in this state.

CHAPTER 78
MOTOR VEHICLE AND GENERAL AVIATION FUEL TAXES

SUBCHAPTER III
GENERAL AVIATION FUEL TAX

78.55 Definitions.

78.555 Tax imposed; rate; collected.

78.56 General aviation fuel license.

78.57 Application; form; investigation; bond; issue.

78.58 Reports to department; computation of tax.

78.59 Notice by general aviation fuel licensee of cessation, sale or transfer of business; final report.

78.60 Theft of general aviation fuel tax moneys.

78.61 Presumption.

78.62 Exemptions.

78.55 Definitions. In this chapter:

- (1) "Air carrier company" has the meaning given in s. 70.11 (42) (a) 1.
- (2) "Aircraft" means any contrivance, except those owned by an air carrier company, invented, used or designed for navigation or flight in the air.
- (2g) "Department" means the department of revenue.
- (2r) "File" means mail or deliver a document that the department prescribes to the department or, if the department prescribes another method of submitting or another destination, use that other method or submit to that other destination.
- (3) "General aviation fuel" means products placed in the fuel supply tank of aircraft, commonly or commercially known as aviation gasoline and jet turbine fuel and other combustible gases and liquids suitable for the generation of power for propulsion of aircraft.
- (4) "General aviation fuel dealer" means any person, including the state and any political subdivision of the state, but not including the United States or its agencies, in the business of handling general aviation fuel who places any part of the fuel into the fuel supply tank of an aircraft not then owned by that person or into the bulk storage facilities of a general aviation fuel user.
- (5) "General aviation fuel user" means the owner or other person, including the state and any political subdivision of the state, but not including the United States or its agencies or air carrier companies, who is responsible for the operation of an aircraft at the time general aviation fuel is placed in the fuel supply tank of the aircraft while the aircraft is within this state.
- (5m) "Pay" means mail or deliver funds to the department or, if the department prescribes another method of payment or another destination, use that other method or submit to that other destination.
- (5p) "Person" includes any individual, sole proprietorship, partnership, limited liability company, corporation, or association. A single-owner entity that is disregarded as a separate entity under ch. 71 is disregarded as a separate entity for purposes of this subchapter.
- (6) "Sign" means write one's signature or, if the department prescribes another method of authenticating, use that other method.

History: 1981 c. 20; 1997 a. 27, 35; 2001 a. 16; 2015 a. 216.

78.555 Tax imposed; rate; collected. An excise tax of 6 cents per gallon is imposed on all general aviation fuel sold, used or distributed in this state except as otherwise provided in this chapter. The general aviation fuel tax is to be computed and paid as provided in this chapter. Except as otherwise provided in this chapter, the general aviation fuel licensee, shall collect from the purchaser and the purchaser shall pay to the licensee the tax imposed by this section on each sale of general aviation fuel by the licensee at the time of the sale, irrespective of whether the sale is for cash or on credit. In each subsequent sale or distribution of general aviation fuel on which the tax has been collected as provided in this subsection, the tax collected shall be added to the selling price so that the tax is paid ultimately by the user of the general aviation fuel.

History: 1981 c. 20.

78.56 General aviation fuel license. No person may act as a general aviation fuel dealer in this state unless the person is the holder of a valid general aviation fuel license issued to the person by the department and is the holder of a valid certificate under s. 73.03 (50).

History: 1981 c. 20; 1997 a. 27.

78.57 Application; form; investigation; bond; issue.

- (1) **APPLICATION.** Application for a general aviation fuel license shall be made on a form prepared and furnished by the department. It shall be subscribed by the applicant and shall contain the information that the department reasonably requires for the administration of this chapter. Only a person who holds a valid certificate under s. 73.03 (50) may apply for a license under this subsection.
- (2) **INVESTIGATION.** The department shall investigate each applicant under sub. (1). No license may be issued if the department determines any of the following:
 - (a) That the application was not filed in good faith.
 - (b) That the applicant is not the real party in interest and the license of the real party in interest has been revoked for cause.
 - (c) That the applicant does not hold a valid certificate under s. 73.03 (50).
 - (d) That other reasonable cause for nonissuance exists.
- (3) **HEARING.** Before refusing to issue a license, the department shall grant the applicant a hearing, of which he or she shall be given at least 5 days' advance written notice.
- (4) **ISSUE.** If the application and the bond under sub. (9), if that bond is required, are approved, the department shall issue a license in as many copies as the licensee has places of business for which a general aviation fuel license is required.
- (6) **TRANSFER FORBIDDEN.** A general aviation fuel license is not transferable to another person or to another place of business.
- (7) **DISPLAY OF LICENSE.** Each license shall be preserved and conspicuously displayed at the place of business for which issued.
- (8) **DISCONTINUANCE.** Upon the discontinuance of the business licensed at any place, the copy of the license issued for that place shall be immediately surrendered to the department.
- (9) **BOND.**
 - (a) To protect the revenues of this state, the department may require any person liable to the department for the tax imposed by this subchapter to place with it, either before or after a general aviation fuel license is issued, security in an amount which the department determines. The amount of security required may be increased or decreased as the department deems necessary, but may not exceed 3 times the licensee's average monthly liability for taxes under this subchapter, as estimated by the department. If an applicant or licensee fails or refuses to place such security, the department may refuse to issue or may revoke the license. If any taxpayer is delinquent in the payment of taxes imposed by this subchapter, the department may, upon 10 days' advance written notice, recover the taxes, interest, penalties, cost and disbursements from the taxpayer's security placed with the department. No interest may be paid or allowed by the state to any person for the deposit of the security.
 - (b) The security required by this subsection may be in the form of a surety bond furnished to the department payable to the state to secure payment of any and all general aviation fuel taxes, interest and penalties accrued under this subchapter, together with costs and disbursements incurred in the collection thereof. The department shall prescribe the form and contents of the bond.
 - (c) Section 78.11 (2) to (4), regarding motor vehicle fuel licensees' bonds, also applies to bonds furnished by general aviation fuel applicants and licensees under this subsection.

History: 1981 c. 20; 1993 a. 16; 1995 a. 27; 1997 a. 27.

Cross-reference: See also ss. Tax 4.54 and 4.55, Wis. adm. code.

78.58 Reports to department; computation of tax.

- (1) **REPORTS OF GENERAL AVIATION FUEL LICENSEES.**
 - (a) For the purpose of determining the amount of the licensee's liability to the state for the tax imposed by this subchapter, except as provided in par. (b), each general aviation fuel licensee shall, not later than the 20th day of each month, file a monthly report for the next preceding month. The licensee or the licensee's duly authorized agent shall sign the report.
 - (b) The department may allow a licensee whose tax liability is less than or equal to \$500 per quarter to file on a quarterly basis. The licensee shall file the quarterly report for the next preceding quarter on or before the 20th day of each quarter.
- (2) **REPORTS OF OTHERS.** Any person, not a general aviation fuel licensee, who places any general aviation fuel in the fuel supply tank of an aircraft in this state upon which the general aviation fuel tax has not been paid or the liability therefor has not been incurred by any general aviation fuel licensee in this state, shall file a report and make payment of the tax on the general aviation fuel and shall be subject to this chapter in the same manner as is provided for general aviation fuel licensees.
- (3) **COMPUTATION OF TAX.** Each general aviation fuel licensee at the time of making the monthly or quarterly report shall compute and pay the full amount of the general aviation fuel tax for the next preceding month or quarter, which shall be computed as follows: the number of gallons of general aviation fuel placed into the fuel supply tanks of an

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aircraft or into bulk storage facilities by the general aviation fuel licensee, multiplied by 0.06 and the resulting figure expressed in dollars.

History: 1981 c. 20; 1993 a. 16; 1997 a. 27, 41.

78.59 Notice by general aviation fuel licensee of cessation, sale or transfer of business; final report.

- (1) **NOTICE REQUIRED.** Whenever any general aviation fuel licensee ceases to perform any of the acts for which a general aviation fuel license is required, the licensee shall notify the department in writing. The notice shall give the date of cessation and, in the event of sale or transfer of the business, the name and address of the purchaser or transferee thereof.
- (2) **FINAL REPORT.** Every general aviation fuel licensee shall, upon such cessation, sale or transfer of the business or upon the cancellation or revocation of a license, make a report as required in s. 78.58 and pay all general aviation fuel taxes and penalties due the state.

History: 1981 c. 20; 1987 a. 399; 1993 a. 16; 1997 a. 27.

78.60 Theft of general aviation fuel tax moneys. All sums paid by a purchaser of general aviation fuel to any general aviation fuel dealer as general aviation fuel taxes, which have not theretofore been paid to the state, are public moneys, the property of this state. Any general aviation fuel dealer who fails or refuses to pay over to the state the tax on general aviation fuel at the time required in this chapter or who fraudulently withholds or appropriates or otherwise uses such moneys or any portion thereof belonging to the state is guilty of theft and shall be punished as provided by law for the crime of theft, irrespective of whether such general aviation fuel dealer has or claims to have any interest in such moneys so received.

History: 1981 c. 20.

78.61 Presumption. For the purpose of enforcing this chapter, it is prima facie presumed that all general aviation fuel received by a general aviation fuel dealer or a general aviation fuel user into storage and dispensing equipment designed to fuel aircraft is to be transferred or delivered by the dealer or user into the supply tanks of aircraft.

History: 1981 c. 20, 314.

78.62 Exemptions. This subchapter does not apply to aviation fuel delivered to or used by the United States or its agencies or to an air carrier company.

History: 1981 c. 20.

SUBCHAPTER IV

PROVISIONS COMMON TO MOTOR VEHICLE FUEL TAX, GENERAL AVIATION FUEL TAX AND ALTERNATE FUEL TAX

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78.77 Registration of transporters; records to be kept.

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78.82 Municipalities not to tax motor vehicle fuel or alternate fuels.

78.64 Definitions. In this subchapter:

- (1) "Alternate fuels" has the meaning given in s. 78.39 (1).
- (2) "Department" means the department of revenue.
- (3) "Motor vehicle fuel" has the meaning given in s. 78.005 (13).
- (4) "Person" includes any individual, sole proprietorship, partnership, limited liability company, corporation, or association. A single-owner entity that is disregarded as a separate entity under ch. 71 is disregarded as a separate entity for purposes of this subchapter.

History: 1993 a. 16; 2015 a. 216.

78.65 Suspension and revocation of licenses.

- (1) If a general aviation fuel licensee or licensee under s. 78.09 or 78.47 violates any provision of this chapter and the department deems good cause exists for suspension or revocation by reason of such violation, it may suspend such person's license, or, after a hearing of the charges is held, it may revoke such license. No license may be suspended unless the holder of the license has been notified of a hearing to be held on the charges and no license may be revoked until after the holder of the license has been notified of a hearing and has been afforded an opportunity to appear and testify. The department shall notify the licensee in writing of the time and place a hearing of the charges shall be held. The notice shall contain a statement of the alleged violation, and shall be served upon the licensee at least 10 days prior to the hearing, either by personal delivery to the licensee, or by mailing by registered mail to the address of the licensee as shown in the application. At the time and place fixed in the notice, the department shall proceed to a hearing of the charges, and the licensee shall be afforded an opportunity to present in person or by counsel statements, testimony, evidence and argument pertinent to the charges or to any defense thereto. The department may continue the hearing from time to time but not more than 60 days. After the hearing, the department shall rescind the order of suspension, if any, and for good cause shown shall either suspend the license for a period of time or revoke the license.
- (3) Upon the suspension or revocation of any license, the department shall request the holder thereof to surrender to it immediately all copies of licenses issued to the holder, and the holder shall surrender promptly all such copies to the department.

History: 1981 c. 20; 1987 a. 399; 1991 a. 316; 1993 a. 16.

78.66 Records to be kept by licensees.

- (1) Every general aviation fuel licensee and licensee under s. 78.09 or 78.47 shall keep a record of all purchases, receipts, sales, distribution and consumption of each kind or trade name of motor vehicle fuel, crude petroleum and general aviation fuel and each alternate fuel.
- (2) Every licensee shall keep true and accurate records of all stocks of motor vehicle fuel, crude petroleum and general aviation fuel and each alternate fuel on hand. Every licensee shall take a physical inventory of those fuels on hand at each licensed location at the close of business on the last day of every month.
- (3) Every licensee shall retain the records of the inventory required by sub. (2) and all other records required by this section available for the inspection by the department, and upon demand of the department, any licensee shall furnish a statement under oath reflecting the contents of any record to be kept under this section.
- (4) The department may require any person who keeps records in machine-readable form for federal fuel tax purposes to keep those records in the same form for purposes of the taxes under this chapter.

History: 1981 c. 20; 1991 a. 39; 1993 a. 16; 1997 a. 27.

78.67 Timely filing. When the final date provided in this chapter for the filing of any report or claim or for the remittance of any tax or penalty falls on a Saturday, Sunday or legal holiday, the next secular or business day shall be the final date. The provisions on timely filing under s. 71.80 (18) apply to the reports, claims and remittances under this chapter.

History: 1985 a. 302; 1987 a. 312 s. 17; 1993 a. 16.

78.68 Returns; failure to pay; refunds.

- (1) Unpaid taxes shall bear interest at the rate of 12 percent per year from the due date of the tax until paid or deposited with the department, and all refunded taxes bear interest at the rate of 3 percent per year from the due date of the return to the date on which the refund is certified on the refund rolls.
- (1m) All payments of additional amounts owed shall be applied in the following order: penalties, interest, tax principal.
- (2) Delinquent tax returns are subject to a \$10 late filing fee. Delinquent motor vehicle fuel, alternate fuels and general aviation fuel taxes bear interest at the rate of 1.5 percent per month until paid. The taxes imposed by this chapter are delinquent if not paid as follows:
 - (a) In the case of a timely filed return, no return or a late return, on or before the due date of the tax; or
 - (b) In the case of a deficiency determination of taxes, within 2 months after the date of demand.
- (3) If an incorrect return is filed, and upon a showing by the department under s. 73.16 (4), the entire tax finally determined is subject to a penalty of 25 percent of the tax exclusive of interest or other penalty.

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- (4) In case of failure to file any return required under ss. 78.12, 78.49, and 78.58 by the due date, and upon a showing by the department under s. 73.16 (4), there shall be added to the amount required to be shown as tax on that return 5 percent of the amount of the tax if the failure is for not more than one month, and an additional 5 percent of the tax for each additional month or fraction thereof during which the failure continues, not exceeding 25 percent of the tax in the aggregate. For purposes of this subsection, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the due date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.
- (5) If a person fails to file a return when due or files a false or fraudulent return with intent in either case to defeat or evade the taxes imposed by this chapter, a penalty of 50 percent of the tax shall be added to the tax required to be paid, exclusive of interest and other penalties.
- (6) Any person who fails to furnish any return required to be made or who fails to furnish any data required by the department may be fined not more than \$500 or imprisoned for not more than 30 days or both.
- (7) Any person, including an officer of a corporation or a manager of a limited liability company, who is required to make, render, sign or verify any report or return required by this chapter and who makes a false or fraudulent report or return or who fails to furnish a report or return when due with the intent, in either case, to defeat or evade the tax imposed by this subchapter may be fined not more than \$500 or imprisoned for not more than 30 days or both.
- (8) No person may aid, abet or assist another in making any false or fraudulent return or false statement in any return required by this chapter with intent to defraud the state or evade payment of the tax, or any part thereof, imposed by this chapter. Any person who violates this subsection may be fined not more than \$500 or imprisoned for not more than 30 days or both.
- (9) Before any tax becomes due, if the department has reason to believe that any licensee intends or is likely to evade or attempt to evade payment of the tax when due, or intends or is likely to convey, dispose of, or conceal his or her property or abscond from the state, or do any other act which would render the state insecure in collecting the tax when due, the department may demand payment forthwith of all taxes upon all motor vehicle fuel received under s. 78.07, general aviation fuel placed in the fuel supply tank of an aircraft or in bulk storage facilities or alternate fuel used, as defined in s. 78.39 (7), by the licensee, which shall immediately become payable and collectible as if delinquent, and the property of the licensee shall be subject to attachment as provided in s. 78.70.
- (10) Except as provided in ss. 78.19, 78.20 (2) and 78.75 (1m) (b), s. 71.75 (2) and (4) to (7) as it applies to the taxes under ch. 71 applies to the taxes under this chapter. Sections 71.74 (13), 71.75 (9) and (10), 71.80 (3), 71.93, 71.935, and 73.03 (52), (52m), and (52n), as they apply to refunds of the taxes under ch. 71 apply to the refund of the taxes under this chapter.

History: 1973 c. 333; 1977 c. 29, 289, 418; 1981 c. 20; 1983 a. 368; 1987 a. 399; 1991 a. 39; 1993 a. 16, 112, 205, 437; 2011 a. 68; 2013 a. 20.

Cross-reference: See also s. Tax 4.51, Wis. adm. code.

78.69 Appeals. Sections 71.88 (1) (a) and (2) (a), 71.89 and 71.90 as they apply to the taxes under ch. 71 apply to the taxes under this chapter.

History: 1977 c. 29 s. 1654 (1); 1977 c. 273; 1991 a. 39.

78.70 Actions to collect tax and penalties.

- (1) **DEPARTMENT AUTHORITY.** The department may collect delinquent motor vehicle fuel, alternate fuel and general aviation fuel taxes in the manner provided for the collection of delinquent income and franchise taxes under ss. 71.80 (12), 71.82 (2), 71.91 (1) (a) and (c) and (2) to (7), 71.92 and 73.0301, including proceeding under the authority incorporated by reference in s. 71.91 (5) (j) and the authority to:
 - (a) Use the warrant procedures under ss. 71.74 (14), 71.80 (12), 71.82 (2), 71.91 (1) (a) and (c) and (2) to (5m) and 71.92.
 - (b) Release real property from the lien of a warrant.
 - (c) Satisfy warrants.
 - (d) Approve installment payment agreements.
 - (e) Compromise on the basis of ability to pay.
 - (f) Compromise delinquent estimated determinations on the basis of fairness and equity.
- (2) **ATTACHMENT.** Delinquent motor vehicle fuel, general aviation fuel or alternate fuel tax shall also be collectible and enforceable by a writ of attachment brought by the attorney general or district attorney in the name of the state against the lands, goods, chattels, credits or other personal property of the licensee, and for the purpose of this section, the licensee shall be deemed to be a nonresident of this state, and such attachment shall be governed in all respects by the provisions of law relating to attachments against nonresidents, but no attachment bond shall be required of the state, nor shall an indemnity bond be required or demanded of any sheriff or constable serving such writ of attachment, and no sheriff or constable shall be liable in damages on account of levying any attachment when acting under the direction of the attorney general or district attorney.

- (3) **GARNISHMENT.** The sheriff or constable shall also summon the persons named in said writ of attachment as garnishees, and all persons within the sheriff's or constable's county whom the attorney general or district attorney shall designate as having any property, effects, choses in action or credits in their possession or power, belonging to the defendant, or who are in anywise indebted to such defendant, the same as if their names had been inserted in such writ.
- (4) **ASSESSMENT CONSTITUTES PRIMA FACIE EVIDENCE.** In any action or proceeding for the collection of the tax from the licensee, or any penalties imposed in connection therewith, an assessment by the department, made pursuant to this chapter, of the amount of the motor vehicle fuel, alternate fuel or general aviation fuel taxes, or any penalties imposed in connection therewith, due from the licensee, shall constitute prima facie evidence of the claim of the state, and the burden of proof shall be upon the licensee to show that the assessment was incorrect and contrary to law.
- (5) **NO WAIVER.** Nothing in this section shall be construed as forfeiting or waiving any right to collect said tax and penalties by an action upon any bond that may be filed with the department under this chapter, or by suit, or otherwise, and in case such suit, action or proceeding has been instituted for the collection of said tax, such suit, action or other proceeding shall not be construed as waiving any other right herein provided.
- (6) **PERSONAL LIABILITY.** Any officer, employee, fiduciary or agent who is responsible for paying taxes, interest, penalties or other charges under this chapter incurred by another person, as defined in s. 77.51 (10), is personally liable for those taxes, interest, penalties or other charges. Sections 71.88 (1) (a) and (2) (a), 71.89 and 71.90, as they apply to appeals of income or franchise tax assessments, apply to appeals of assessments under this subsection.
- (7) **STATUTES OF LIMITATIONS.** Section 71.77 as it applies to the taxes under ch. 71 applies to the taxes under this chapter, except that the period during which notice of an additional assessment shall be given begins on the due date of the report under this chapter.
- History:** 1977 c. 29, 418; 1981 c. 20; 1985 a. 29 ss. 1502, 3202 (46) (d); 1987 a. 312 ss. 8, 17; 1991 a. 39, 316; 1993 a. 16; 1995 a. 233, 408; 1997 a. 237.

78.71 Motor vehicle fuel, general aviation fuel and alternate fuels taxes are preferred claims.

- (1) If the property of any licensee is seized upon any mesne or final process of any court of this state, or when the business of any licensee is suspended by the action of creditors or put into the hands of any assignee, receiver or trustee, all motor vehicle fuel, general aviation fuel or alternate fuels tax moneys and penalties due the state from the licensee shall be considered preferred claims and the state shall be a preferred creditor and shall be paid in full.
- (2) If the property of any consumer of motor vehicle fuel, general aviation fuel or alternate fuel is seized upon any mesne or final process of any court of this state, or when the business of any consumer of motor vehicle fuel, general aviation fuel or alternate fuel is suspended by the action of creditors or put into the hands of any assignee, receiver or trustee, all amounts due any licensee for motor vehicle fuel, general aviation fuel or alternate fuels taxes paid to the state by the licensee on motor vehicle fuel, general aviation fuel or alternate fuel purchased from it by the consumer shall be considered preferred claims and the licensee shall be a preferred creditor to that extent and shall be paid in full for such taxes paid.
- History:** 1981 c. 20; 1993 a. 16.

78.72 Preference given actions to enforce this chapter. All proceedings and hearings, civil or criminal, arising under this chapter shall be given preference.

History: 1983 a. 219.

78.73 Criminal penalties.

- (1) **ACTS FORBIDDEN.** Any person who does any of the following may be fined not more than \$500 or imprisoned not more than 6 months or both:
- (a) Displays, or causes or permits to be displayed, or has possession of, any license knowing the same to be fictitious, or to have been suspended, canceled, revoked or altered;
 - (b) Lends to, or knowingly permits the use by, one not entitled thereto, any license issued to the person lending it or permitting it to be used;
 - (c) Displays or represents as the person's own any license not issued to the person displaying the same;
 - (d) Uses a false or fictitious name or gives a false or fictitious address in any application or form required by this chapter, or otherwise commits a fraud in any application, record, report or claim for refund;
 - (dm) Presents an exemption certificate under s. 78.01 (2) (e) or obtains motor vehicle fuel tax-free under s. 78.01 (2) (f), and uses the fuel obtained tax-free on the basis of the certificate in a manner other than the manner for which the certificate was issued;
 - (dr) Uses motor vehicle fuel purchased tax-free and obtained from the storage tank of a general aviation fuel dealer, as defined in s. 78.55 (4), in a motor vehicle for highway purposes;
 - (e) Uses any false or fictitious name or address when purchasing or obtaining motor vehicle fuel or general aviation fuel or alternate fuels from any source for sale or consumption in this state; or

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- (f) Violates a provision of this chapter, except as provided in pars. (a) to (e) and subs. (2) to (4).
- (2) **SELLING WITHOUT A LICENSE.** Each day in which any person acts as a licensee without a license shall constitute a separate offense, and for each such offense may be fined not more than \$5,000 or imprisoned in the county jail for not more than one year or both.
- (3) **ATTEMPT TO ASSIGN LICENSE.** Any person who assigns or attempts to assign a license issued under this chapter, or who fails to display the license conspicuously at the person's place of business, shall be fined not more than \$25 or imprisoned for not more than 10 days for each such offense.
- (4) **FAILURE TO REPORT OR PAY.** Any person who fails or refuses to make a report or payment as provided in this chapter shall be fined not more than \$5,000 or imprisoned in the county jail for not more than one year or both.
- History:** 1981 c. 20; 1985 a. 153; 1987 a. 27; 1989 a. 31; 1991 a. 316; 1993 a. 16; 1997 a. 27, 237.

78.74 Remedies and penalties are cumulative. All of the remedies, prosecutions and penalties under this chapter shall be cumulative; no action for recovery of one penalty shall be a bar to or affect the recovery of any other penalty or be a bar to any criminal prosecution.

78.75 Refund; procedure; claim unassignable.

(1) In this section, "invoice" means the top copy and not a carbon copy.

(1m)

(a)

1. Except as provided under subs. 2. and 2m., a person who uses motor vehicle fuel or an alternate fuel upon which has been paid the tax required under this chapter, for the purpose of operating a taxicab for the transportation of passengers, for the purpose of operating a motorboat exempt from registration as a motor vehicle under s. 341.05 (20) on privately owned land or for any purpose other than operating a motor vehicle upon the public highways, shall be reimbursed and repaid the amount of the tax paid upon making and filing a claim if the claim is for the tax on 100 gallons or more.
 2. A person who uses motor vehicle fuel or an alternate fuel upon which has been paid the tax required under this chapter for the purpose of operating a snowmobile, as defined under s. 340.01 (58a), an aircraft, as defined under s. 78.55 (2), or a motorboat, as defined under s. 30.50 (6), unless the motorboat is not a recreational motorboat, may not be reimbursed or repaid the amount of tax paid.
 - 2m. A person who uses motor vehicle fuel or an alternate fuel upon which has been paid the tax required under this chapter for the purpose of operating an all-terrain vehicle, as defined under s. 340.01 (2g), or a utility terrain vehicle, as defined under s. 23.33 (1) (ng), may not be reimbursed or repaid the amount of tax paid unless the all-terrain vehicle or utility terrain vehicle is registered for private use under s. 23.33 (2) (d) or (2g). A person who uses motor vehicle fuel or an alternate fuel upon which has been paid the tax required under this chapter for the purposes of operating a limited use off-highway motorcycle, as defined in s. 23.335 (1) (o), that is registered under s. 23.335 (3) may not be reimbursed or repaid the amount of tax paid unless the off-highway motorcycle is registered for private use under s. 23.335 (3) (a).
 3. Claims under subd. 1. shall be made and filed. The forms shall indicate that refunds are not available for motor vehicle fuel or alternate fuels used for motorboats, except motorboats exempt from registration as motor vehicles under s. 341.05 (20) and motorboats that are not recreational motorboats, or motor vehicle fuel or alternate fuels used for snowmobiles and that the estimated snowmobile motor vehicle fuel or alternate fuels tax payments are used for snowmobile trails and areas. The forms shall indicate that refunds are not available for motor vehicle fuel or alternate fuels used for all-terrain vehicles or utility terrain vehicles unless the vehicle is registered for private use under s. 23.33 (2) (d) or (2g) and shall indicate that estimated all-terrain vehicle or utility terrain vehicle motor vehicle fuel or alternate fuels tax payments are used for all-terrain vehicle trails and areas. The forms shall indicate that refunds are not available for motor vehicle fuel or alternate fuels used for limited use off-highway motorcycles unless the motorcycle is registered for private use under s. 23.335 (3) (a) and shall indicate that estimated off-highway motorcycle fuel or alternate fuels tax payments are used for off-highway motorcycle trails and areas. The forms shall also indicate that refunds are not available for the tax on less than 100 gallons. The department shall distribute forms in sufficient quantities to each county clerk.
- (b) Such claim shall be filed not later than 12 months after the date of purchase of the motor vehicle fuel or alternate fuel, or the claim shall not be allowed.
- (c) The seller, upon request, shall furnish each purchaser with an invoice prepared at the time of delivery, and the purchaser shall send that invoice or a list of purchases to the department when making a claim for refund. The invoice shall contain the following information: date of sale; name and address of seller; name of purchaser, which name must be the name of the claimant; number of gallons purchased; the type of fuel; the purchase price; and the amount of Wisconsin motor vehicle fuel or alternate fuels tax as a separate item. If the

purchaser sends invoices to the department, the purchaser shall send a separate invoice for each sale and delivery, and the invoice shall be legibly written and shall comply with the foregoing requirements. If the purchaser sends a list of purchases to the department, the purchaser shall retain for 4 years the invoices that are evidence of those purchases and allow the department to inspect them. The claim shall state whether or not the applicant owns an automobile or truck or any other motor-driven machinery or appliance which consumes motor vehicle fuel or an alternate fuel; the total number of gallons of motor vehicle fuel or alternate fuel purchased; the number of gallons of such motor vehicle fuel or alternate fuel purchased on which refund is claimed; a detailed statement of the consumption of such motor vehicle fuel or alternate fuel on which a refund is claimed, describing the machinery, equipment or appliance in which consumed, giving the serial or manufacturer's number of the motor and the approximate number of gallons consumed in each; or if such fuel were not consumed in any such machinery, equipment or appliance, then a description of the purposes for which the fuel was consumed with the approximate number of gallons consumed for each purpose; a statement whether or not deduction has been made for motor vehicle fuel or alternate fuels consumed in applicant's automobile or truck; and such other information as the department deems necessary.

- (e) On the filing of a claim under par. (a), accompanied by the invoice or list of purchases, the department shall determine the amount of refund due. The department may make such investigation of the correctness of the facts stated in such claim as it deems necessary and may require a claimant to submit records to substantiate the claim. When the department has approved such claim, it shall reimburse the claimant out of the moneys collected under this chapter to be used for carrying out this section. No refund shall be claimed by or allowed to any person on account of any motor vehicle fuel or alternate fuel carried from this state in the ordinary fuel tank of a motor vehicle.
 - (f) The penalty provided in this chapter for presenting a false or fraudulent statement shall be printed in full on the claim form.
- (2) The right of any person to a refund under this section shall not be assignable and the application for a refund shall be made by the same person who purchased the motor vehicle fuel or alternate fuel as shown in the invoice by the person selling the same, and by no other person, and the proceeds or amount of such refund as determined by the department shall be paid to the person whose name appears on the seller's invoice and to no other person.

History: 1973 c. 33; 1977 c. 29; 1979 c. 221; 1981 c. 390 s. 252; 1983 a. 189 s. 329 (33); 1985 a. 29; 1987 a. 27; 1989 a. 31; 1993 a. 16, 437; 1995 a. 113, 408; 1997 a. 27, 291; 2011 a. 208; 2015 a. 170.

Cross-reference: See also ss. Tax 4.01, 4.02, 4.03, and 4.05, Wis. adm. code.

78.77 Registration of transporters; records to be kept.

- (1) No person may transport motor vehicle fuel, general aviation fuel or alternate fuels by truck, trailer, semitrailer or other vehicle on any highway in this state from a point without this state to a point within this state, from a point within this state to a point without this state or for hire, as defined in s. 194.01 (4), unless that person has a valid certificate under s. 73.03 (50) and is registered with the department and unless the registration number furnished by the department for the vehicle preceded by the letters W.D.R. is prominently displayed on the vehicle by painting the registration number on each side and on the rear of the vehicle in characters not less than 5 inches in height with a stroke not less than three-fourths inch in width. The registration is valid until it is suspended, revoked for cause or canceled. A registration is not transferable to another person or place of business. Application for registration shall be upon forms prescribed by the department and shall furnish such information concerning the applicant as the department requires. The application shall show the name and address of the applicant, a description of the truck, trailer, semitrailer or other vehicle, the license number and the state in which issued, the name and address of the licensee, the capacity in gallons of the fuel tank or tanks, the serial number of the trailer, semitrailer or other vehicle, and the serial and motor number of any truck.
- (2) Every person transporting motor vehicle fuel, general aviation fuel or alternate fuels upon the highways of this state who obtains the motor vehicle fuel, general aviation fuel or alternate fuel from a refinery, marine terminal, pipeline terminal, pipeline tank farm or place of manufacture shall, while transporting the motor vehicle fuel, general aviation fuel or alternate fuel, carry a copy of the manifest, which shall be serially numbered and shall show the date of loading, name of refinery, marine terminal, pipeline terminal, pipeline tank farm or place of manufacture where loaded, point of origin, destination state, name of shipper, kind of motor vehicle fuel, general aviation fuel or alternate fuel and number of gallons. The refiner, marine terminal, pipeline terminal, pipeline tank farm or place of manufacture where the fuel is loaded shall prepare and furnish the manifest. Each shipment of motor vehicle fuel, general aviation fuel or alternate fuel by truck, trailer, semitrailer or other vehicle shall have one manifest. Delivery of any shipment may be made to one or more unlicensed places of business at the direction of the licensee under s. 78.09 or 78.47 or general aviation fuel dealer whose name and address appear on the manifest and for whose account the shipment is made if the licensee's or general aviation fuel dealer's copy of the manifest is supported by delivery tickets each showing the manifest number and complete information concerning the delivery and the original or copy of the delivery ticket is at the time of delivery presented to the person to whom any part of the shipment is delivered.

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Every person transporting motor vehicle fuel, general aviation fuel or alternate fuel shall keep complete and accurate records of all such fuel transported.

- (3) Any person who transports motor vehicle fuel, general aviation fuel or an alternate fuel upon the highways of this state by truck, tractor, trailer, semitrailer or any vehicle which is not required to be registered under sub. (1) shall have his or her name and address painted on each side of the vehicle not less than 5 inches in height; if the vehicle is operated by a licensee duly licensed in this state, the trade insignia or trade name regularly used by such licensee for tank vehicle identification together with the name of the city, village or town from which the vehicle is customarily operated may be substituted for the name and address of the licensee. Each such person shall keep complete and accurate records of all motor vehicle fuel, general aviation fuel or alternate fuel purchased, consumed, sold or otherwise distributed.
- (4) No person transporting motor vehicle fuel, general aviation fuel or an alternate fuel upon the highways of this state or any person who has custody of the records of motor vehicle fuel, general aviation fuel or alternate fuels transported upon the highways of this state may refuse at any time to divulge to the department, its agents or employees any information demanded by the department, its agents or employees concerning motor vehicle fuel, general aviation fuel or alternate fuel transported or being transported.
- (5) Book records, sales tickets, invoices, delivery tickets, bills of lading, loading tickets or manifests, and other papers pertaining to the transportation, purchase, sale or distribution of motor vehicle fuel, general aviation fuel and alternate fuels shall be retained and shall be subject to inspection by the department.

History: 1977 c. 29; 1981 c. 20; 1983 a. 189 s. 329 (29); 1991 a. 39; 1993 a. 16, 246; 1997 a. 27.

78.78 Reports by transporters; exceptions.

- (1) Every agent or employee of every railroad company, pipeline company, motor truck or motor tank car company, water transportation company, and every other common carrier transporting motor vehicle fuel, general aviation fuel or alternate fuels, either in interstate or intrastate commerce, which originates at or is destined to a point in this state, and every person transporting motor vehicle fuel, general aviation fuel or alternate fuels interstate, which transportation originates at or is destined to a point in this state, who has the custody of books and records showing the transportation, shall report all the transportation to the department on forms prescribed and furnished by it. A supplier or terminal operator may rely on information about the destination of fuel provided under this subsection by an exporter. Only the exporter is liable for the tax due as a result of diverting the fuel from the represented destination state.
- (2) The reports under sub. (1) shall cover monthly periods, and shall be filed with the department on or before the 30th day after the close of the month covered by the report, and shall contain the following information: the name and address of the transporter, the month and year covered by the report, the date of unloading, the initials and number of the car if shipped by rail, the loading ticket or manifest number and the registration number required by s. 78.77 if shipped by truck transport, the name of the consignor, the point of origin, the name of the consignee, the name of the person to whom delivery has in fact been made if other than the original named consignee, the point of unloading, and the quantity of each shipment in gallons.
- (3) Any transporter who fails to file timely a report required under this section shall pay to the department a late filing fee of \$10. A report that is mailed is timely if it is mailed in a properly addressed envelope with 1st class postage, if the envelope is postmarked on or before the due date and if the report is received by the department or at the destination that the department prescribes within 5 days after the due date. A report that is not mailed is timely if it is received on or before the due date by the department or at the destination that the department prescribes.

History: 1981 c. 20; 1985 a. 187; 1993 a. 16, 437; 1997 a. 27.

78.79 Duty of department to enforce fuel tax provisions; promulgate rules. The department shall enforce this chapter and see that all violations thereof are promptly prosecuted, and that all moneys received by licensees and other persons and in their hands as trust funds and due the state are recovered and collected. The department may promulgate reasonable rules relating to the administration and enforcement of this chapter, and rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings.

History: 1987 a. 27; 1989 a. 31.

78.80 Departmental examinations; information; penalty.

- (1) The department, or any deputy, employee or agent appointed in writing, is authorized at any time during the business day to examine the books, records, papers, receipts, invoices, storage tanks and any equipment of any licensee under s. 78.09 or 78.47, broker, dealer, general aviation fuel licensee or other person, purchaser or common carrier, pertaining to motor vehicle fuel, crude petroleum or general aviation fuel or alternate fuels to verify the truth and accuracy of any statement, report or return, or to ascertain whether or not the taxes imposed by this chapter have been paid or to determine the financial responsibility of any licensee for the payment of motor vehicle fuel or general aviation fuel or alternate fuels taxes. The department may redetermine taxes and may allow credits for overpayments due to error. The department may determine any person's liability for a tax under this chapter on the basis of

sampling, whether or not the person being audited has complete records of transactions and whether or not the person being audited consents.

- (1m) Sections 71.74 (1), (2), (10) and (11) and 71.75 (4) as they apply to the taxes under ch. 71 apply to the taxes under this chapter. Section 71.74 (13) as it applies to the collection of taxes under ch. 71 applies to the collection of taxes under this chapter.
- (2) The department may hold hearings, issue subpoenas, administer oaths to witnesses, take the sworn testimony of any person and cause it to be transcribed into writing and conduct such investigations as it may deem necessary. If any broker, dealer, general aviation fuel licensee, licensee under s. 78.09 or 78.47, purchaser or common carrier, or any other person refuses access to the books, records, papers, receipts, invoices, storage tanks and other equipment, and if any witness fails or refuses to obey any subpoena or fails or refuses to testify before the department, then the department shall certify the names and facts to any court of competent jurisdiction and the court shall enter such order as the enforcement of this chapter and justice shall require.
- (3) Sections 71.78 (1) and (4) to (9) and 71.83 (2) (a) 3., relating to confidentiality of income and franchise tax returns, apply to any information obtained from any person on a motor vehicle fuel, general aviation fuel or alternate fuels tax return, report, schedule, exhibit, or other document or from an audit report pertaining to the same.
- (4) The department of revenue shall inform each requester of the amount paid or payable under ss. 78.01, 78.40 and 78.555 and reported on a return filed by any city, village, town, county, school district, special purpose district or technical college district; whether that amount was paid by the statutory due date; the amount of any tax, fees, penalties or interest assessed by the department; and the total amount due or assessed under ss. 78.01, 78.40 and 78.555 but unpaid by the filer, except that the department may not divulge tax return information that in the department's opinion violates the confidentiality of that information with respect to any person other than the units of government and districts specified in this subsection. The department shall provide to the requester a written explanation if it fails to divulge information on grounds of confidentiality. The department shall collect from the person requesting the information a fee of \$4 for each return.

History: 1977 c. 289 ss. 2, 11m; 1979 c. 110; 1981 c. 20; 1987 a. 246, 312; 1991 a. 39; 1993 a. 16, 399; 1995 a. 428; 2015 a. 216.

78.81 Attorney general and district attorney to prosecute; place of trial.

- (1) Upon request of the department, the attorney general or proper district attorney shall prosecute any action to enforce this chapter.
- (2) Any action brought under this chapter may be brought either in the circuit court for Dane County or in the proper court in the county wherein the defendant resides or has its principal place of business.

78.82 Municipalities not to tax motor vehicle fuel or alternate fuels. No county, city, village, town or other political subdivision shall levy or collect any excise, license, privilege or occupational tax upon motor vehicle fuel or alternate fuels or upon the buying, selling, handling or consuming of motor vehicle fuel or alternate fuels.

History: 1993 a. 16.

CHAPTER 85
DEPARTMENT OF TRANSPORTATION

- 85.02 Planning, promotion and protection.
85.10 Sale of aerial photographic survey products.
85.15 Property management.

85.02 Planning, promotion and protection.

- (1) The department may direct, undertake and expend state and federal aid for planning, promotion and protection activities in the areas of highways, motor vehicles, traffic law enforcement, aeronautics and astronautics, railroads, waterways, specialized transportation services, mass transit systems and for any other transportation mode. All state, regional and municipal agencies and commissions created under authority of law shall to the extent practicable, when dealing with transportation, follow the recommendations made by the secretary.
- (2) The department shall implement the policy specified in s. 1.12 (6) in making all decisions, orders, and rules affecting the siting of new electric transmission facilities.

History: 1973 c. 90; 1979 c. 34; 1981 c. 20; 2003 a. 89; 2005 a. 335.

85.10 Sale of aerial photographic survey products. The department may sell to any person the selection of photographic products from the aerial photographic survey conducted under s. 23.325. The department may retain an amount equal to the costs that it incurs in selling and reproducing the photographic products.

History: 1977 c. 418; 1979 c. 175 s. 53; 1987 a. 27; 1991 a. 39.

85.15 Property management.

- (1) Subject to any prior action under s. 13.48 (14) (am) or 16.848 (1), the department may improve, use, maintain or lease any property acquired for highway, airport or any other transportation purpose until the property is actually needed for any such purpose and may permit use of the property for purposes and upon such terms and conditions as the department deems in the public interest.
- (2) The department shall credit to the appropriation account under s. 20.395 (4) (ew) the amount, if any, by which moneys received in any year from the sale or lease of property acquired by the department exceeds \$2,750,000. The department shall use 50 percent of any proceeds credited to this appropriation account from the sale or lease of any property to supplement the costs of management and operations of the district office of the department that initiated the sale or lease of that property.

History: 1977 c. 29; 1991 a. 269; 1997 a. 27; 2013 a. 20.

Cross-reference: See also chs. Trans 29 and 31, Wis. adm. code.

**CHAPTER 114
AERONAUTICS AND ASTRONAUTICS**

**SUBCHAPTER I
AIR TRANSPORTATION**

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- 114.002 Definitions.
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- 114.37 Advance land acquisition loan program for airport projects.
- 114.375 Advance land acquisition loan program for spaceport projects.
- 114.40 Disclosure of insurance coverage for renter pilots.

114.001 Definitions. In this chapter:

- (1) "Department" means the department of transportation.
- (2) "Division of hearings and appeals" means the division of hearings and appeals in the department of administration.
- (3) "Secretary" means the secretary of transportation.

History: 1977 c. 29; 1993 a. 16.

114.002 Definitions. As used in this chapter, unless the context otherwise requires:

- (1) "Aeronautics" means the science and art of aircraft flight and including but not limited to transportation by aircraft; the operation, construction, repair or maintenance of aircraft, aircraft power plants and accessories, including the repair, packing and maintenance of parachutes; the design, establishment, construction, extension, operation, improvement, repair or maintenance of airports or other air navigation facilities; and instruction in flying or ground subjects pertaining thereto.

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- (2) "Aeronautics instructor" means any individual who for hire or reward engages in giving instruction or offering to give instruction in flying or ground subjects pertaining to aeronautics; but excludes any instructor in a public school, university or institution of higher learning duly accredited and approved for carrying on collegiate work, who instructs in flying or ground subjects pertaining to aeronautics, only in the performance of his or her duties at such school, university or institution.
- (3) "Aircraft" means any contrivance invented, used, or designed for navigation of or flight in the air, but does not include spacecraft.
- (5) "Airman" means any individual who engages, as the person in command, or as pilot, mechanic or member of the crew, in the navigation of aircraft while under way, and any individual who is directly in charge of the inspection, maintenance, overhauling or repair of aircraft engines, propellers or appliances, and any individual who serves in the capacity of aircraft dispatcher, or air-traffic control-tower operator; but does not include any individual employed outside the United States, or any individual employed by a manufacturer of aircraft, aircraft engines, propellers or appliances to perform duties as inspector or mechanic in connection therewith, or any individual performing inspection or mechanical duties in connection with aircraft owned or operated by the individual.
- (6) "Air navigation facility" means any facility, other than one owned or operated by the United States, used in, available for use in, or designed for use in aid of air navigation, including any structures, mechanisms, lights, beacons, markers, communicating systems, or other instrumentalities, or devices used or useful as an aid, or constituting an advantage or convenience to the safe takeoff, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport, and any combination of any or all of such facilities.
- (7) "Airport" means any area of land or water which is used, or intended for use, for the landing and take-off of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon.
- (8) "Airport hazard" means any structure, object of natural growth, or use of land which obstructs the airspace required for the flight of aircraft in landing or taking off at an airport or is otherwise hazardous to such landing or taking off.
- (9) "Air school" means any aeronautics instructor who advertises, represents or holds out as giving or offering to give instruction in flying or ground subjects pertaining to aeronautics; and any person who advertises, represents or holds out as giving or offering to give instruction in flying or ground subjects pertaining to aeronautics whether for or without hire or reward; but excludes any public school, or university, or institution of higher learning duly accredited and approved for carrying on collegiate work.
- (10) "Amateur built aircraft" means an aircraft the major portion of which has been fabricated and assembled by a person who undertook the construction project solely for education or recreation.
- (11) "Antique aircraft" means an aircraft which has a date of manufacture of 1955 or earlier and which is used solely for recreational or display purposes.
- (11m) "Astronautics" means the science and art of spacecraft flight and all activities related thereto.
- (12) "Dealer aircraft" means an aircraft held as business inventory for sale and used only for demonstration purposes.
- (14) "Gross weight" means the gross or maximum takeoff weight for an aircraft make and model as designated by the manufacturer.
- (15) "Municipality" means any county, city, town or village of this state.
- (16) "Museum aircraft" means an aircraft designated under s. [114.20 \(4\)](#) and which is owned or held by a museum owned or operated by an organization qualified as a tax exempt organization under section [501](#) of the internal revenue code.
- (17) "Operation of aircraft" or "operate aircraft" means the use, navigation or piloting of aircraft in the airspace over this state or upon any airport within this state.
- (18) "Person" means any individual, firm, partnership, corporation, company, association, joint stock association or body politic; and includes any trustee, receiver, assignee or other similar representative thereof.
- (18m) "Public-use airport" means any of the following as provided in [49 USC 2202](#):
 - (a) Any public airport.
 - (b) Any privately owned reliever airport.
 - (c) Any privately owned airport used for public purposes and determined by the secretary of the U.S. department of transportation to enplane annually 2,500 or more passengers and receive scheduled passenger service of aircraft.
- (18r) "Spacecraft" means any contrivance invented, used, or designed for navigation or flight beyond the earth's atmosphere, including rockets, missiles, capsules, modules, and other vehicles, whether with or without passengers.
- (18s) "Spacecraft launch or landing area" means any area used, or intended for use, for launching or landing spacecraft or for surface maneuvering, positioning, or preparation of spacecraft for imminent launching or immediately after landing, including any launch pad, landing area, or launch or landing control center.
- (18t) "Spaceport" means any area of land or water that is used, or intended for use, as a spacecraft launch or landing area and any appurtenant areas that are used, or intended for use, for spaceport buildings or other spaceport facilities or rights-of-way, together with all spaceport buildings and facilities located thereon.
- (19) "State airway" means a route in the navigable airspace over and above the lands or waters of this state, designated by the department as a route suitable for air navigation.

(20) "Unairworthy aircraft" means an aircraft that is in a severely damaged condition or in a state of major deterioration as determined under s. 114.20 (5).

History: 1971 c. 164 s. 84; 1977 c. 29 s. 1654 (5); 1981 c. 20; 1983 a. 159; 1993 a. 492; 1995 a. 113; 1999 a. 83; 2005 a. 335.

114.01 State airport system. The department is directed to cooperate with and assist any federal aeronautical agency in the preparation and annual revision of the national airport plan and to lay out a comprehensive state system of airports adequate to provide for the aeronautical needs of the people of all parts of the state. Such state system shall include every airport on the national system and such additional airports as may be deemed necessary. In selecting the general location of the airports on the system and determining their capacity, due regard shall be given to aeronautical necessity as evidenced by the population of the locality to be served, its commerce and industry and such other factors as the department deems pertinent. In selecting the specific sites, due regard shall be given to general suitability for service and economy of development as evidenced by convenience of access, adequacy of available area, character of topography and soils, freedom from hazards and obstructions to flight and other pertinent consideration.

History: 1971 c. 164 s. 84; 1971 c. 192, 228; 1977 c. 29, 98, 272.

114.02 Sky sovereignty. Sovereignty in the space above the lands and waters of this state is declared to rest in the state, except where granted to and assumed by the United States.

114.03 Landowner's rights skyward. The ownership of the space above the lands and waters of this state is declared to be vested in the several owners of the surface beneath, subject to the right of flight described in s. 114.04.

114.04 Flying and landing, limitations. Subject to s. 175.55, and except as provided in ss. 114.045 and 942.10, flight of or in aircraft or spacecraft over the lands and waters of this state is lawful, unless at such a low altitude as to interfere with the then existing use to which the land or water, or the space over the land or water, is put by the owner, or unless so conducted as to be imminently dangerous or damaging to persons or property lawfully on the land or water beneath. The landing of an aircraft or spacecraft on the lands or waters of another, without the person's consent, is unlawful, except in the case of a forced landing. For damages caused by a forced landing, however, the owner or lessee of the aircraft or spacecraft or the aeronaut or astronaut shall be liable, as provided in s. 114.05.

History: 1993 a. 492; 2005 a. 335; 2013 a. 213; 2015 a. 318.

Since federal laws and regulations preempt local control of aircraft flights, s. 114.04 cannot be invoked to make unlawful flights that are in accordance with federal laws and regulations. Luedtke v. County of Milwaukee, 521 F.2d 387.

Luedtke, to the extent it holds that all common law remedies for airport noise and pollution have been preempted by federal law, is overruled. Bieneman v. Chicago 1, 864 F.2d 463 (1988).

114.045 Limitation on the operation of drones.

(1) No person may operate a drone, as defined in s. 114.105 (1) (a) [s. 941.292 (1)], over a correctional institution, as defined in s. 801.02 (7) (a) 1., including any grounds of the institution.

NOTE: The correct cross-reference is shown in brackets. Corrective legislation is pending.

(2) Any person who violates sub. (1) may be required to forfeit not more than \$5,000.

(3) A law enforcement officer investigating an alleged violation of sub. (1) shall seize and transfer to the department of corrections or authority in charge of the correctional institution any photograph, motion picture, other visual representation, or data that represents a visual image that was created or recorded by a drone during an alleged violation of sub. (1).

History: 2015 a. 318.

114.05 Damages by aircraft or spacecraft. The liability of the owner, lessee and pilot of every aircraft or spacecraft operating over the lands or waters of this state for injuries or damage to persons or property on the land or water beneath, caused by the ascent, descent or flight of such aircraft or spacecraft, or the dropping or falling of the aircraft or spacecraft or of any object or material therefrom, shall be determined by the law applicable to torts on land, except that there shall be a presumption of liability on the part of the owner, lessee or pilot, as the case may be, where injury or damage is caused by the dropping or falling of the aircraft or spacecraft or of any object or material therefrom, which presumption may be rebutted by proof that the injury or damage was not caused by negligence on the part of the owner, lessee or pilot and the burden of proof in such case shall be upon such owner, lessee or pilot to show absence of negligence on his or her part.

History: 1993 a. 492; 2005 a. 335.

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114.06 Inter-aircraft liability. The liability of the owner of one aircraft, to the owner of another aircraft, or to aeronauts or passengers on either aircraft, for damage caused by collision on land or in the air shall be determined by the rules of law applicable to torts on land.

This section does not make rules of the road under ch. 346 applicable to airplanes. Air Wisconsin, Inc. v. North Central Airlines, Inc. 98 Wis. 2d 301, 296 N.W.2d 749 (1980).

114.07 Criminal jurisdiction. All crimes, torts and other wrongs committed by or against an aeronaut, astronaut, or passenger while in flight over this state shall be governed by the laws of this state; and the question whether damage occasioned by or to an aircraft or spacecraft while in flight over this state constitutes a tort, crime or other wrong by or against the owner of such aircraft or spacecraft, shall be determined by the laws of this state.

History: 2005 a. 335.

114.08 Contracts made in flight. All contractual and other legal relations entered into by aeronauts or passengers while in flight over this state shall have the same effect as if entered into on the land or water beneath.

114.09 Intoxicated and reckless flying; penalty.

(1)

(a) In this subsection:

1. "Drug" has the meaning specified in s. 450.01 (10).
2. "Prohibited alcohol concentration" means an alcohol concentration of 0.04 or more if there is no passenger in the aircraft, more than 0.00 if there is a passenger in the aircraft.

(b)

1. No person may operate an aircraft in the air or on the ground or water while under the influence of intoxicating liquor or controlled substances or controlled substance analogs under ch. 961 or a combination thereof, under the influence of any other drug to a degree which renders him or her incapable of safely operating an aircraft, or under the combined influence of intoxicating liquor and any other drug to a degree which renders him or her incapable of safely operating an aircraft.
- 1m. No person may operate an aircraft in the air or on the ground if the person has a prohibited alcohol concentration.
2. No person may operate an aircraft in the air or on the ground or water in a careless or reckless manner so as to endanger the life or property of another. In determining whether the operation was careless or reckless the court shall consider the standards for safe operation of aircraft prescribed by federal statutes or regulations governing aeronautics.
3. The court shall make a written report of all convictions, including bail or appearance money forfeitures, obtained under this section to the department, which shall send the report to the proper federal agency.

(2)

(a) Any person violating sub. (1)(b) 1. or 1m.:

1. Shall forfeit not less than \$150 nor more than \$300, except as provided in subds. 6. and 7.
2. Except as provided in subd. 6., shall be fined not less than \$350 nor more than \$1,100 and imprisoned for not less than 5 days nor more than 6 months if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations, and other convictions counted under s. 343.307 (1) within a 10-year period, equals 2, except that suspensions, revocations, or convictions arising out of the same incident or occurrence shall be counted as one.
3. Except as provided in subds. 6. and 7., shall be fined not less than \$600 nor more than \$2,000 and imprisoned for not less than 30 days nor more than one year in the county jail if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations, and other convictions counted under s. 343.307 (1), equals 3, except that suspensions, revocations, or convictions arising out of the same incident or occurrence shall be counted as one.
4. Except as provided in subds. 6. and 7., shall be fined not less than \$600 nor more than \$2,000 and imprisoned for not less than 60 days nor more than one year in the county jail if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations, and other convictions counted under s. 343.307 (1), equals 4, except that suspensions, revocations, or convictions arising out of the same incident or occurrence shall be counted as one.
5. Except as provided in subds. 6. and 7., is guilty of a Class H felony and shall be fined not less than \$600 and imprisoned for not less than 6 months if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations, and other

convictions counted under s. 343.307 (1), equals 5 or more, except that suspensions, revocations, or convictions arising out of the same incident or occurrence shall be counted as one.

6. If there was a minor passenger under 16 years of age in the aircraft at the time of the violation that gave rise to the conviction under sub. (1) (b) 1. or 1m., the applicable minimum and maximum forfeitures, fines, or imprisonment under subd. 1., 2., 3., 4., or 5. for the conviction are doubled. An offense under sub. (1) (b) 1. or 1m., that subjects a person to a penalty under subd. 3., 4., or 5. when there is a minor passenger under 16 years of age in the aircraft is a felony and the place of imprisonment shall be determined under s. 973.02.
 7.
 - a. If a person convicted had an alcohol concentration of 0.17 to 0.199, the applicable minimum and maximum fines under subd. 3. to 5. are doubled.
 - b. If a person convicted had an alcohol concentration of 0.20 to 0.249, the applicable minimum and maximum fines under subd. 3. to 5. are tripled.
 - c. If a person convicted had an alcohol concentration of 0.25 or above, the applicable minimum and maximum fines under subd. 3. to 5. are quadrupled.
- (b) In par. (a) 1. to 5., the time period shall be measured from the dates of the refusals or violations that resulted in the revocation or convictions. If a person has a suspension, revocation, or conviction for any offense under a local ordinance or a state statute of another state that would be counted under s. 343.307 (1), that suspension, revocation or conviction shall count as a prior suspension, revocation, or conviction under par. (a) 1. to 5.
- (bm)**
1. Except as provided in subd. 1. a. or b., the court shall order the person violating sub. (1) (b) 1. or 1m. to submit to and comply with an assessment by an approved public treatment facility as defined in s. 51.45 (2) (c) for examination of the person's use of alcohol, controlled substances, or controlled substance analogs and development of an airman safety plan for the person. The court shall notify the person, the department, and the proper federal agency of the assessment order. The assessment order shall:
 - a. If the person is a resident, refer the person to an approved public treatment facility in the county in which the person resides. The facility named in the order may provide for assessment of the person in another approved public treatment facility. The order shall provide that, if the person is temporarily residing in another state, the facility named in the order may refer the person to an appropriate treatment facility in that state for assessment and development of an airman safety plan for the person satisfying the requirements of that state.
 - b. If the person is a nonresident, refer the person to an approved public treatment facility in this state. The order shall provide that the facility named in the order may refer the person to an appropriate treatment facility in the state in which the person resides for assessment and development of an airman safety plan for the person satisfying the requirements of that state.
 - c. Require a person who is referred to a treatment facility in another state under subd. 1. a. or b. to furnish the department written verification of his or her compliance from the agency that administers the assessment and airman safety plan program. The person shall provide initial verification of compliance within 60 days after the date of his or her conviction. The requirement to furnish verification of compliance may be satisfied by receipt by the department of such verification from the agency that administers the assessment and airman safety plan program.
 2. The department of health services shall establish standards for assessment procedures and the airman safety plan programs by rule. The department of health services shall establish by rule conflict of interest guidelines for providers.
 3. Prior to developing a plan that specifies treatment, the facility shall make a finding that treatment is necessary and appropriate services are available. The facility shall submit a report of the assessment and the airman safety plan within 14 days to the county department under s. 51.42, the plan provider, the department of transportation, the appropriate federal agency, and the person, except that, upon request by the facility and the person, the county department may extend the period for assessment for not more than 20 additional workdays. The county department shall notify the department of transportation regarding any such extension.
 4. The assessment report shall order compliance with an airman safety plan. The report shall inform the person of the fee provisions under s. 46.03 (18) (f). The safety plan may include a component that makes the person aware of the effect of his or her offense on a victim and a victim's family. The safety plan may include treatment for the person's misuse, abuse, or dependence on alcohol, controlled substances, or controlled substance analogs. If the plan requires inpatient treatment, the treatment shall not exceed 30 days. An airman safety plan under this paragraph shall include a termination date consistent with the plan that shall not extend beyond one year. The county

department under s. 51.42 shall assure notification of the department of transportation and the person of the person's compliance or noncompliance with assessment and treatment.

(c) Any person violating sub. (1)(b) 2.:

1. May be required to forfeit not less than \$25 nor more than \$200, except as provided in subd. 2.
2. May be fined not less than \$50 nor more than \$500 or imprisoned for not more than one year in the county jail or both if the total of convictions under sub. (1)(b) 2. equals 2 or more in a 4-year period.

The 4-year period shall be measured from the dates of the violations that resulted in the convictions.

History: 1971 c. 192, 219, 307; 1977 c. 29 s. 1654 (5); 1983 a. 459; 1985 a. 146 s. 8; 1995 a. 448; 2007 a. 20 ss. 2665g to 2665r, 9121 (6) (a).

114.095 Dropping objects prohibited. No operator of an aircraft and no passenger therein shall drop any object therefrom except loose water or loose sand ballast; provided, however, that this section shall not prohibit the dusting or spraying of vegetation with insecticides dropped from airplanes, or the sowing of seeds, or the depositing of fish in lakes or streams, or the delivery of packages or mail by dropping from airplanes, or other similar practices, when such is done in accordance with the federal regulations applicable thereto.

114.10 Killing birds or animals. Any person who, while in flight within this state, intentionally kills or attempts to kill any birds or animals or who shoots at any bird or animal from an aircraft is subject to the penalties provided under s. 29.971 (7).

History: 1981 c. 243; 1997 a. 248.

114.103 Private security personnel; report to a law enforcement authority.

(1) In this section:

- (a) "Controlled substance" has the meaning given in s. 961.01 (4).
- (am) "Controlled substance analog" has the meaning given in s. 961.01 (4m).
- (b) "Law enforcement officer" has the meaning given in s. 165.85 (2) (c).
- (c) "Private security person" has the meaning given in s. 440.26 (1m) (h), but does not include any law enforcement officer.

(2)

(a) If any private security person acting in the course of his or her employment at an airport believes, on the basis of personal observation, that someone possesses a controlled substance or a controlled substance analog, without a prescription or an authorization for that possession, or possesses \$10,000 or more in cash or that a shipment contains a controlled substance or controlled substance analog or \$10,000 or more in cash, the private security person shall report, as soon as practicable and by telephone or in person, to the county sheriff's office or the police department of the municipality in which the airport is located.

(b) A report under par. (a) shall contain all of the following information, unless the information is unobtainable by the person making the report:

1. The name, business address and business telephone number of the person submitting the report.
2. The name, address and telephone number of any person who is the subject of the report.
3. The date, time and location of the conduct or shipment that is the subject of the report.
4. A description of the conduct or shipment being reported, including personal observations and all other factors leading to the reporter's conclusion that the conduct or shipment has occurred.

(3) Any private security person who violates sub. (2) may be fined not more than \$500 or imprisoned for not more than 30 days or both.

History: 1991 a. 269; 1995 a. 448, 461.

114.105 Local regulation. Any county, town, city or village may adopt any ordinance in strict conformity with the provisions of this chapter and impose the same penalty for violation of any of its provisions except that such ordinance shall not provide for the suspension or revocation of pilot or aircraft licenses or certificates and shall not provide for imprisonment except for failure to pay any fine which may be imposed. No local authority shall enact any ordinance governing aircraft or aeronautics or spacecraft or astronautics contrary to or inconsistent with the provisions of this chapter or federal law. Every court in which a violation of such ordinance is prosecuted shall make a written report of any conviction (including bail or appearance money forfeiture) to the federal aviation administration.

History: 1983 a. 151; 2005 a. 335.

114.11 Local airports and spaceports; interstate reciprocity.

(1) The governing body of any county, city, village or town in this state is hereby authorized to acquire, establish, construct, own, control, lease, equip, improve, maintain and operate airports or landing fields or landing and take-off strips for the use of airplanes and other aircraft, or spaceports or spacecraft launch or landing areas, either within or without the limits of such counties, cities, villages and towns, and may use for such purpose or purposes any

property suitable therefor that is now or may at any time hereafter be owned or controlled by such county, city, village or town, and may regulate the same, provided, such regulation shall not be in conflict with such rules and regulations as may be made by the federal government. The governing body of each and every county and municipality owning an airport or landing field or landing and take-off strip, or spaceport or spacecraft launch or landing area, in the state of Wisconsin shall cause the surroundings of such airport, landing field or landing and take-off strip, or spaceport or spacecraft launch or landing area, to be marked for aeronautical or astronautical purposes, and maintain such marking, subject to and in accordance with law and such rules and regulations as may from time to time be made by the federal government and in so doing may cooperate with other states and subdivisions thereof and acquire rights and easements in property outside of the state.

- (2) The governing body of any county, city, village or town of this state is authorized to acquire, establish, construct, own, control, lease, equip, improve, maintain and operate airports or landing fields or landing and take-off strips or other aeronautical facilities, or spaceports or spacecraft launch or landing areas or other astronautical facilities, in an adjoining state whose laws permit, subject to the laws of such state, but subject to the laws of this state in all matters relating to financing such aeronautical or astronautical project.
- (3) The governing body of any municipality or other political subdivision of an adjoining state whose laws permit, is hereby authorized to acquire, establish, construct, own, control, lease, equip, improve, maintain and operate airports, or landing fields, or landing and take-off strips or other aeronautical facilities, or spaceports or spacecraft launch or landing areas or other astronautical facilities, in this state, subject to all laws, rules and regulations of this state applicable to its municipalities or other political subdivisions in such aeronautical or astronautical project, but subject to the laws of its own state in all matters relating to financing such project. Such municipality or other political subdivision of an adjoining state shall have all privileges, rights and duties of like municipalities or other political subdivisions of this state, including the right to exercise the right of eminent domain. This subsection shall not apply unless the laws of such adjoining state shall permit municipalities or other political subdivisions of this state to acquire, establish, construct, own, control, lease, equip, improve, maintain, operate and otherwise control such airport, landing field or landing and take-off strips or other aeronautical facilities, or spaceports or spacecraft launch or landing areas or other astronautical facilities, therein with all privileges, rights and duties applicable to the municipalities or other political subdivisions of such adjoining state in such aeronautical or astronautical projects.
- (4) The governing body of any county, city, village or town is authorized to appropriate money to any town, city, village or other county, for the operation, improvement or acquisition of an airport or spaceport by such town, city, village or other county or any combination of such municipalities.
- (5) The governing body of any county, city, village or town in this state may, together with any municipality or other political subdivision of an adjoining state if, under the laws of that state, such municipality or other political subdivision is similarly authorized, jointly sponsor an airport or spaceport project located in this state or in the adjoining state.
 - (a) If the project is located in this state, the secretary of transportation shall act as agent on behalf of the joint sponsors. If the project is located in the adjoining state, the proper public official or agency of that state shall act as agent on behalf of the joint sponsors.
 - (b) All matters relating to financing of the joint project shall be governed by the laws of the jurisdiction which furnishes the specific moneys. All other matters relating to the joint project shall be governed by the laws of the state in which the project is located.

History: 1973 c. 148; 2005 a. 335.

114.12 Condemnation of lands for airports and spaceports. Any lands acquired, owned, controlled or occupied by such counties, cities, villages and towns for the purposes enumerated in s. 114.11 shall and are hereby declared to be acquired, owned, controlled and occupied for a public purpose, and as a matter of public necessity, and such cities, villages, towns or counties shall have the right to acquire property for such purpose or purposes under the power of eminent domain as and for a public necessity including property owned by other municipal corporations and political subdivisions and including any street, highway, park, parkway or alley, provided that no state trunk highway shall be so acquired without the prior consent of the department. Whenever the county, city, village or town as the case may be shall own all land or access rights on both sides of such street, highway, park, parkway or alley, it may, within the limits where it has ownership or access rights on both sides, notwithstanding any other provisions of law, vacate and close such public way by resolution of the governing body of the county, city, village or town acquiring it and no damages shall be assessed against such county, city, village or town by reason of such closing, except as may be allowed in a particular condemnation action where the lands or rights in lands necessary for such airport or spaceport are so acquired. If such closing shall leave any part of such street, highway, parkway or alley without access to another public street or highway, the county, town, city or village effecting such closing shall immediately provide such access at its expense.

History: 1977 c. 29 s. 1654 (8) (a); 2005 a. 335.

114.13 Purchase of land for airports and spaceports. Private property needed by a county, city, village or town for an airport or landing field or landing and take-off strip, or for a spaceport or spacecraft launch or landing area, or property or rights for the protection of the aerial approaches thereof, shall be acquired by purchase if the city, village, town or county is able to agree with the owners on the terms thereof, and otherwise by condemnation, as provided in s. 32.05. The purchase price or award for real property acquired for an airport or landing field or landing and take-off strip, or for a spaceport or spacecraft launch or landing area, or property or rights for the protection of the aerial approaches thereof, may be paid for the appropriation of moneys available therefor, or wholly or partly from the proceeds of the sale of bonds of the city, village, town or county, as the governing body of such city, village, town or county determines, subject to ch. 67. Such property or rights may be acquired by gift, which the respective governing bodies are authorized to accept.

Cross-reference: See also ch. Trans 54, Wis. adm. code.

History: 2005 a. 335.

114.134 Airport and spaceport standards and approval.

- (1) **PUBLIC AIRPORT AND SPACEPORT INFORMATION.** No person shall operate an airport or spaceport within this state that is open to the general public unless effective runway and landing strip lengths are properly reported, published and marked in accordance with applicable federal aviation regulations and federal obstruction standards.
- (2) **TRAVERSE WAY CLEARANCE.** No person shall operate an airport or spaceport within this state unless all runways and landing strips are so located that approaching and departing aircraft or spacecraft clear all public roads, highways, railroads, waterways or other traverse ways by a height which complies with applicable federal standards.
- (3) **AIRPORT AND SPACEPORT SITE APPROVAL.** No person shall construct or otherwise establish a new airport or spaceport or activate an airport or spaceport within this state unless the secretary of transportation issues a certificate of approval for the location of the proposed airport or spaceport. No charge shall be made for application or approval. The secretary may issue a certificate of approval if the secretary determines that the location of the proposed airport or spaceport is compatible with existing and planned transportation facilities in the area.
- (4) **PUBLIC HEARINGS, NOTICE AND REVIEW.**
 - (a) The secretary may hold a public hearing before the issuance of a certificate of approval.
 - (b) The secretary shall grant a hearing at the request of any applicant after any refusal to issue a certificate. Upon receipt of a request for hearing, the matter shall be referred to the division of hearings and appeals which shall hear and decide the matter.
 - (c) At least 15 days before the date of the hearing a class 1 notice of any public hearing shall be published, under ch. 985, in the official state newspaper and in a paper of general circulation printed and published near the location of the proposed airport or spaceport.
 - (d) Any order or decision of the secretary or division of hearings and appeals is subject to review under ch. 227.
- (5) **PENALTY.** Each day on which any person violates any provision of this section shall be considered a separate violation in determining penalties under s. 114.27.

History: 1973 c. 242; 1977 c. 29; 1981 c. 347 s. 80 (2); 1993 a. 16, 492; 2005 a. 335.

Cross-reference: See also ch. Trans 57, Wis. adm. code.

114.135 Airport and spaceport protection. It is declared to be in the public interest that the navigable airspace over the state and the aerial approaches to any airport or spaceport be maintained in a condition best suited for the safe operation of aircraft or spacecraft and to that end the bulk, height, location and use of any building or structure, or any other object, and the use of land, may be regulated, or any building, structure or other object may be removed. It is the legislative intent that this section shall not supersede s. 59.69 (4), but that it shall be supplemental to such section.

- (1) **PROCEDURE TO OBTAIN PROTECTION PRIVILEGES.** The aerial approaches to any airport or spaceport owned and operated by corporations organized to provide aeronautic or astronautic facilities to the general public may be protected in the following manner: The owner of the airport or spaceport shall prepare and record with the register of deeds plans and specifications showing the land affected, the owner of each parcel or interest therein, whether public or private, the regulations to be imposed on each parcel and the structures, buildings or other objects to be removed. The owner or managing body of the airport or spaceport may negotiate and acquire from the owners of the various parcels or interest therein, whether public or private, by deeds the protection privileges shown by the plans and specifications. Referring in the deed to the plans and specifications, and briefly describing the plans and specifications, shall be considered sufficient legal description to convey the protection privileges set forth in the plans and specifications in the property of the grantor. In case the owner of the airport or spaceport is unable to obtain by negotiation the desired protection privileges, he or she may acquire the protection privileges by eminent domain in the manner set forth in ch. 32, except as to lands and buildings of railway companies that are necessary to, or are used in connection with the operation of the railway. In case the protection privileges sought extend into more than one county the plans and specifications shall be recorded with the register of deeds of each county. In case any parcel of land lies in more than one county, eminent domain proceedings may be instituted in the circuit court of any county in which the parcel is situated, provided a certified copy of the final judgment with a description of the

property involved is recorded with the register of deeds of all counties in which the parcel of land or interest therein lies.

- (2) **NOTICE; CLAIM FOR DAMAGES.** In case of any airport landing field or landing and take-off strip, or spaceport or spacecraft launch or landing area, owned by any city, village, town, or county or any union of them, the commission or other body in charge of the operation and control of the airport, landing field or landing and take-off strip, or spaceport or spacecraft launch or landing area, may prepare and record without charge with the register of deeds plans and specifications showing the protection privileges sought as described in sub. (1). The commission or other body in charge shall send by registered mail with return receipt to each owner at his or her last-known address a notice stating that the plans and specifications have been recorded with the register of deeds' office, stating the county, time of recording, the record number, and a brief description of the parcel of land or interest therein affected. If the address of the owner cannot be ascertained or the registered letter is returned unclaimed, notice shall be sent by registered mail to the person in possession of the premises. If no person is in possession, then the notice shall be posted in a conspicuous place on the land involved and published as a class 3 notice, under ch. 985, in the area affected. The right of the owner to claim for damages for the protection regulations imposed in the plans and specifications, or the removal of obstructions shall be forever barred, unless the owner files a claim for damages with the commission or other body in charge within 6 months from the receipt of the notice from the commission, or other body in charge, or the posting and last publication. The claim shall be verified and shall state the amount of damages claimed. The commission or other body in charge may pay the damages, if it has available funds, and the payment shall operate as a conveyance. If no claims for payment are filed or if payment is made, the commission or other body in charge shall file an affidavit for each parcel involved setting forth the rights acquired which shall be recorded by the register of deeds without charge and when so recorded has the same effect as any recorded instrument. If any owner is a minor or is adjudicated incompetent, the notice may be sent by registered mail to the owner's guardian, if he or she has one, and if there is none the circuit court of the county in which the land, or a larger part, is located shall upon application of the commission or other body in charge appoint a guardian to receive the notice, and to protect the rights of the owner. Any funds payable to the owner shall be cared for in the manner provided in ch. 54. If the commission or other body in charge determines that the damages claimed are excessive, it shall so report to the governing body that established the airport, landing field or landing and take-off strip, or spaceport or spacecraft launch or landing area, in question and with its consent may acquire in the name of the governmental body the protection privilege desired in the manner set forth in sub. (1) or it may deposit with the county clerk an award and notify the owner of the land involved in the method specified in this subsection. The landowner may accept the award without prejudice to his or her right to claim and contest for a greater sum. The landowner may, within a period of 6 months after notice of the award, proceed as provided in ch. 32 to have the damages appraised.
- (3) **EXERCISE OF POWER AND AUTHORITY.** The power and authority to protect airports or spaceports conferred in subs. (1) and (2) may be exercised from time to time; amended plans and specifications may be recorded in the register of deeds' office, and new protection privileges acquired from time to time in the methods provided by this section.
- (4) **ENCROACHMENTS.** The duty to prevent encroachments by growth of trees or other vegetation, or otherwise, upon the protection privileges acquired by any airport, landing field, landing and take-off strip, or spaceport or spacecraft launch or landing area, shall be upon the owner or owners of the parcel of land affected by the protection privilege only in cases where the owner or owners have received compensation for the protection privilege. Any such encroachment is declared to be a private nuisance and may be abated in the manner prescribed in ch. 823. In cases where no compensation has been paid for the protection privilege, encroachments shall be removed by the owner or the authority in charge of the airport, landing field, or landing and take-off strip, or spaceport or spacecraft launch or landing area, and shall be, in case of a publicly owned airport, landing field or landing and take-off strip, or spaceport or spacecraft launch or landing area, a city, village, town or county charge as the case may be. In removing such encroachments, the owner or authority in charge of the airport, landing field or landing and take-off strip, or spaceport or spacecraft launch or landing area, in question, may go upon the land and remove the encroachment without being liable for damages in so doing.
- (5) **ENCROACHMENTS A PRIVATE NUISANCE.** It shall be unlawful for any one to build, create, cause to be built or created, any object, plant, or cause to be planted, any tree or trees or other vegetation, which shall encroach upon any acquired protection privilege. In addition to the penalty set forth in s. 114.27, such encroachment is declared to be a private nuisance and may be removed in the manner prescribed in ch. 823.
- (6) **PERMIT FOR ERECTION OF HIGH STRUCTURES REQUIRED.** No person shall erect anywhere in this state, including within a spaceport or spacecraft launch or landing area, any building, structure, tower or any other object the height of which exceeds the limitations set forth in sub. (7) without first filing an application and procuring a permit from the secretary of transportation.
- (7) **POWER TO CONTROL ERECTION OF HIGH STRUCTURES.** For the purposes of sub. (6) the power and authority to control the erection of buildings, structures, towers and other objects by the secretary of transportation shall be limited to those objects that would either extend to a height of more than 500 feet above the ground or surface of the water within one mile of the location of the object, or above a height determined by the ratio of one foot vertical to

40 feet horizontal measured from the nearest boundary of the nearest public airport or spaceport within the state; however, this power and authority shall not extend to objects of less than 150 feet in height above the ground or water level at the location of the object or to objects located within areas zoned under s. 114.136 or to objects located within areas zoned under s. 62.23 (7) where the zoning ordinance enacted under said subsection controls the height of structures.

Cross-reference: See also ch. Trans 56, Wis. adm. code.

- (8) **RULES, REGULATIONS, STANDARDS AND CRITERIA.** In carrying out sub. (6) the secretary of transportation may perform such acts, issue and amend such orders and make, promulgate and amend and enforce such reasonable rules, regulations and procedures and establish such minimum standards and criteria governing erection of buildings, structures, towers and hazards in the interest of the safe operation of aircraft and spacecraft as it deems necessary in the public interest and safety.
- (9) **CONFLICTING AUTHORITY.** Wherein conflicting jurisdiction arises over the control of the erection of a building, structure, tower or hazard between the secretary of transportation and any political subdivision of the state, the secretary of transportation may overrule rules and regulations adopted by any political subdivision under the laws of this state after a public hearing wherein all parties thereto have been given an opportunity to be heard. The secretary may refer such matters to the division of hearings and appeals which shall hear and decide the matter after notice and hearing.
- (10) **VIOLATIONS AND PENALTIES.** Each day that any person violates any of the provisions of subs. (6), (7), (8) and (9) may be considered as a separate violation in determining penalties under s. 114.27.

History: 1971 c. 41 s. 12; Sup. Ct. Order, 67 Wis. 2d 585, 774 (1975); 1977 c. 29, 449; 1979 c. 32; 1981 c. 347; 1993 a. 16, 301; 1995 a. 201; 2005 a. 335, 387; 2007 a. 97.

The 500 feet in sub. (7) is to be measured from the lowest point within one mile from the base of the tower. The commission [now secretary of transportation] may hold a hearing on whether to issue a permit for a tower even though an application is not made or is withdrawn. State v. Chippewa Cable Co. 48 Wis. 2d 341, 180 N.W.2d 714 (1970).

The jurisdiction of the secretary of transportation with respect to control over the erection of high structures is limited by the provisions contained in sub. (7) to those structures that either extend to a height of more than 500 feet above the ground or surface of the water within one mile of the location of the object, or a height determined by the ratio of one foot vertical to 40 feet horizontal measured from the nearest boundary of the nearest public airport in the state. If a local zoning ordinance, rule or regulation permits the erection of structures, which exceed these heights, a conflict of jurisdiction would arise and the secretary could invoke sub. (9) to resolve the conflict. 62 Atty. Gen. 232.

114.136 Airport and spaceport approach protection.

(1) POWERS OF MUNICIPALITIES.

- (a) Any county, city, village or town that is the owner of a site for an airport or spaceport which has been approved for such purpose by the appropriate agencies of the state and the federal government may protect the aerial approaches to such site by ordinance regulating, restricting and determining the use, location, height, number of stories and size of buildings and structures and objects of natural growth in the vicinity of such site and may divide the territory to be protected into several areas and impose different regulations and restrictions with respect to each area. The provisions of such ordinance shall be effective whether the site and the lands affected by such ordinance are located within or without the limits of such county, city, village or town, and whether or not such buildings, structures and objects of natural growth are in existence on the effective date of the ordinance. Such regulations, restrictions and determinations are declared to be for the purpose of promoting the public safety, welfare and convenience, and may be adopted, enforced and administered without the consent of any other governing body. Any ordinance adopted under this section may be amended from time to time in the same manner as is provided for the adoption of the original ordinance in sub. (2). The authority granted in this section shall be independent and exclusive of any other authority granted in the statutes.
- (b) When an airport or spaceport site is owned jointly by 2 or more units of government, such ordinance may be adopted by joint action of the governing bodies of such units. In such case, such governing bodies shall meet jointly to select a joint commission consisting of one member from each governing body selected by that governing body and, if there be 2, the members so selected shall elect a third member. Such joint commission shall elect a chairperson and a secretary, and shall have authority to formulate a tentative ordinance and hold public hearings as provided in sub. (2). At least 15 days written notice of the meeting to select a joint commission shall be given to each governing body by filing a copy of such written notice with the clerk thereof. Such notice may be given on the initiative of one such governing body or jointly by more than one. The governing bodies that attend such meeting may proceed jointly. If one attends, or if only one favors an ordinance, it may proceed alone without appointing a commission, but no ordinance applicable to a jointly owned airport or spaceport shall be adopted by a governing body acting alone unless it has given notice of

meeting to select a joint commission as provided by this subsection, and such ordinance shall be as effective as if adopted by the joint bodies.

- (c) As an alternative to the procedure for the appointment of members of the joint commission provided in par. (b), the governing bodies of the units of government which jointly own an airport or spaceport site may by separate resolution of each governing body designate an existing subunit of any one of the governing bodies to act as the joint commission. In such case, the designated subunit shall elect a chairperson and secretary, formulate a tentative ordinance and hold public hearings as provided in sub. (2). No tentative ordinance formulated under this paragraph is effective unless it is adopted by all of the governing bodies of the units of government which jointly own the airport or spaceport site.
 - (d) An ordinance adopted under par. (b) or (c) may be amended in the same manner as is provided for the adoption of the original ordinance in par. (b) or (c).
- (2) FORMULATION OF ORDINANCE, PUBLIC HEARING.**
- (a) Except as provided by sub. (1) (b) or (c), a committee of the governing body of the county, city, village, or town that owns the airport or spaceport site shall formulate a tentative ordinance under sub. (1) and hold a public hearing or hearings thereon in some public place within the county, city, village, or town. Notice of the hearings shall be given by publication of a class 3 notice, under ch. 985, in the area affected by the proposed ordinance.
 - (b)
 1. The regulations, restrictions and determinations shall include, among other things, provisions for the limitation of the height of buildings, structures and objects of natural growth located not more than 3 miles from the boundaries of the airport site or located not more than 5 miles from the boundaries of the spaceport site. Such regulations, restrictions and determinations shall specify the maximum permissible height of buildings, structures and objects of natural growth and may specify such maximum permissible height as a ratio between the permissible maximum height of the building, structure or object of natural growth above the level of the airport or spaceport site and its distance from the nearest point on the boundary of the airport or spaceport site.
 2. For the purposes of this section, buildings, structures and objects of natural growth shall not be restricted to a height above the level of the airport site which is less than one-thirtieth of its distance from the boundary of the airport site in the case of class I and II airports as classified by the civil aeronautics administration of the United States department of commerce and one-fiftieth of its distance from the boundary of the airport in the case of class III and larger airports as classified by said administration. Provided, however, that a building, structure, or object of natural growth within 3 miles of the airport site may be restricted to a height of 150 feet above the airport level, which is defined as the lowest point planned on any runway.
 - (c) Should a greater restriction be deemed necessary for the proper protection of any part of the area affected, such greater restriction shall be secured by purchase or by the exercise of the right of eminent domain in the manner provided by ch. 32.
 - (d) The height restrictions shall not apply to legal fences or to farm crops which are cut at least once each year.
- (3) NONCONFORMING USES.** The lawful use of land, buildings and structures existing at the time of the adoption or amendment of any ordinance under the authority of this section may be continued, although such use does not conform with the provisions of the ordinance. The expansion or enlargement of a nonconforming use shall be in conformity with the ordinance. The governing body of the owner of the airport or spaceport site may remove such nonconforming use or acquire the necessary air right over the same by purchase or exercise of the right of eminent domain in the manner provided by ch. 32.
- (4) BOARD OF APPEALS.**
- (a) Any ordinance enacted under this section shall provide for a board of appeals. If the county, city, village or town which is the owner of the airport or spaceport has enacted a zoning ordinance under provision of law other than this section, the board of adjustment or board of appeals set up by that ordinance shall also function as the board of appeals under the ordinance enacted under this section.
 - (b) If there is no such board of appeals or board of adjustment, any regulations adopted under this section shall provide for a board of appeals. Where the airport or spaceport is owned jointly, the ordinance shall provide for a joint board of appeals. Such board shall be constituted and have all the powers, duties and functions as provided in s. 62.23 (7) (e), but not more than 2 members of such board shall be owners or occupants of the area affected by the ordinance.
- (5) ENFORCEMENT.** The governing body of the county, city, village or town owning the airport or spaceport site may provide for the enforcement of any ordinance or regulations enacted pursuant to this section. Such enforcement may be by a system of permits or any other appropriate method. The governing body enacting the ordinance may provide for the punishment of a violation of the ordinance by fine or imprisonment, or both.
- History:** 1979 c. 221; 1985 a. 29; 1993 a. 184, 246; 2005 a. 335; 2013 a. 297.

CHAPTER 114

This section is a limited grant of power to carry out a valid state police power to promote public safety along airport approaches. It does not violate the "one man, one vote" principle. Schmidt v. City of Kenosha, 214 Wis. 2d 527, 571 N.W.2d 892 (Ct. App. 1997), 96-2380.

The authority to regulate use and location of structures within the vicinity of airports is broad enough to encompass a restriction limiting individual residential units to a minimum of one acre. The restriction does not violate equal protection. Northwest Properties v. Outagamie County, 223 Wis. 2d 483, 589 N.W.2d 683 (Ct. App. 1998), 97-3653.

114.14 Equipment, control of airport; expense; regulations.

- (1) The governing body of a city, village, town or county which has established an airport or landing field, or landing and take-off strip, and acquired, leased or set apart real property for such purpose may construct, improve, equip, maintain and operate the same, or may vest jurisdiction for the construction, improvement, equipment, maintenance and operation thereof in any suitable officer, board or body of such city, village, town or county. The expenses of such construction, improvement, equipment, maintenance and operation shall be a city, village, town or county charge as the case may be. The governing body of a city, village, town or county may adopt regulations, and establish fees or charges for the use of such airport or landing field, or may authorize an officer, board or body of such village, city, town or county having jurisdiction to adopt such regulations and establish such fees or charges, subject however to the approval of such governing body before they shall take effect.
- (2)
 - (a) The governing body of a city, village, town or county which has established an airport may vest jurisdiction for the construction, improvement, equipment, maintenance and operation of the airport in an airport commission. The governing body of such a city, village, town or county may determine the number of commissioners on the commission. The commissioners shall be persons especially interested in aeronautics. In the case of a county, the commissioners shall be appointed by the chairperson of the county board, subject to the approval of the county board; in the case of cities, villages and towns by the mayors or city managers, village presidents and town chairpersons, respectively.
 - (b) The terms of the commissioners shall be determined by the governing body.
 - (c) The commissioners' compensation and allowance for expenses shall be fixed by the governing body.
 - (d) The airport commission shall elect one member chairperson and one secretary who shall keep an accurate record of all its proceedings and transactions and report those proceedings and transactions to the governing body.
 - (e) The commission shall have complete and exclusive control and management over the airport for which it has been appointed.
 - (f) All moneys appropriated for the construction, improvement, equipment, maintenance or operation of an airport, managed as provided by this subsection, or earned by the airport or made available for its construction, improvement, equipment, maintenance or operation in any manner whatsoever, shall be deposited with the treasurer of the city, village, town or county where it shall be kept in a special fund and paid out only on order of the airport commission, drawn and signed by the secretary and countersigned by the chairperson.
 - (g) In case of union airports owned by 2 or more governmental units, each governmental unit shall appoint an equal number of commissioners to serve for terms that are determined by each of the governmental units that appoint the respective commissioners. The moneys available for union airports shall be kept in the manner provided in this subsection in the treasury of one of the governmental units selected by the commission, and paid out in like manner.
- (3)
 - (a) Except as provided in par. (b), in carrying out its duties the airport commission may do any of the following:
 1. Employ a manager, who may be a member of the commission, and fix the manager's compensation.
 2. Employ and fix the compensation of employees other than a manager that the commission considers necessary.
 3. Make contracts or other arrangements that the commission considers necessary for the construction, improvement, equipment, maintenance or operation of the airport.
 4. Contract with the United States or any agency.
 5. Contract with private parties for a term not to exceed 10 years for the operation of the airport, including all necessary arrangements for the improvement, equipment and successful operation of the airport.
 - (b) The exercise of authority by the airport commission under par. (a) shall be subject to all of the following conditions:
 1. The public may in no case be deprived of equal and uniform use of the airport.

2. No act, contract, lease or any activity of the airport commission shall be or become a binding contract on any government unit unless expressly authorized, and then only to the extent so expressly authorized.
3. No member of the commission may vote on the question of his or her selection as manager nor on any question as to his or her compensation.

History: 1979 c. 34; 1983 a. 192 s. 303 (1); 1993 a. 184, 492; 1995 a. 225, 405; 1997 a. 35; 1999 a. 83.

Under sub. (3) (b) 1., arbitrarily excluding members of the public, whether private or commercial, from the use of an airport constitutes depriving the public of equal and uniform use of airports. Precluding taxis without airport permits from providing prearranged services, when limousines were not required to have permits to provide the same service, conflicts with sub. (3) (b) 1. and was an invalid exercise of county authority. County of Milwaukee v. Williams, 2007 WI 69, 301 Wis. 2d 134, 732 N.W.2d 770, 05-2686.

This section does not provide a private right of action. Miller Aviation v. Milwaukee County Board of Supervisors, 273 F.3d 722 (2001).

114.15 Appropriation, taxation for airports. The local authorities of a city, village, town or county to which this chapter is applicable having power to appropriate money therein may annually appropriate and cause to be raised by taxation in such city, village, town or county, a sum sufficient to carry out the provisions of this chapter.

114.151 Union airports and spaceports. All powers conferred upon any county, city, village or town by ss. 114.11 to 114.15, relating to the acquisition, establishment, construction, ownership, control, lease, equipment, improvement, maintenance, operation and regulation of airports or landing fields, or spaceports or spacecraft launch or landing areas, may be exercised by any 2 or more municipalities in the establishment, acquisition, equipment and operation of joint airports or landing fields, or spaceports or spacecraft launch or landing areas. The governing body of any county, city, village or town participating in the ownership or operation of a joint airport or spaceport as provided in this section may by resolution withdraw from such joint operation or control and may relinquish its interest in the airport or spaceport.

History: 2005 a. 335.

114.16 Pilots; federal license or permit. It shall be unlawful for any person to pilot within this state any civil aircraft, unless such person is the holder of a currently effective pilot's license or student's permit issued by the government of the United States; but this restriction shall not apply to any person operating any aircraft licensed by a foreign country with which the United States has a reciprocal agreement covering the operation of such licensed aircraft.

114.17 Mechanic's license, issue, presentation. Any person repairing, adjusting, inspecting or overhauling aircraft or aircraft engines within this state shall be in possession of a mechanic's license issued to the person by the federal government, which must be presented for inspection upon demand of any passenger, peace officer of this state, or any official, manager or person in charge of any airport or landing field in this state.

History: 1971 c. 192; 1993 a. 492.

114.18 Aircraft; airworthiness; federal license. It shall be unlawful for any person to operate, pilot or navigate, or cause or authorize to be operated, piloted or navigated within this state any civil aircraft, unless such aircraft has a currently effective license issued by the government of the United States or has been duly identified by the government of the United States but this restriction shall not apply to aircraft licensed by a foreign country with which the United States has a reciprocal agreement covering the operations of such licensed aircraft, or to a nonpassenger-carrying flight solely for inspection or test purposes authorized by the United States to be made without such license.

114.19 Display of licenses. The certificate of the license or permit respectively required of a pilot or a student shall be kept in the personal possession of the licensee or permittee when the licensee or permittee is operating an aircraft within this state. The certificate of the license required for an aircraft shall be carried in the aircraft at all times and shall be conspicuously posted therein in clear view of passengers. Such certificate of pilot's license, student's permit or aircraft license shall be presented for inspection upon the demand of any passenger, any peace officer of this state, any authorized official, or any official, manager or person in charge of any airport in this state upon which it shall land, or upon the reasonable request of any other person. In any criminal prosecution under any of the provisions of this chapter, a defendant who relies upon a license or permit of any kind shall have the burden of proving that he or she is properly licensed or is the possessor of a proper license or permit. The fact of nonissuance of such license or permit may be evidenced by a certificate signed by the official having power of issuance, or the official's deputy, under seal of office, stating that the official or deputy has made diligent search in the records of the official's office and that from the records it appears that no such license or permit was issued.

History: 1993 a. 492.

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114.195 Ultralight identification.

- (1) In this section, "ultralight aircraft" means an aircraft which meets all of the following requirements:
 - (a) Is used or intended to be used for manned operation in the air by a single occupant.
 - (b) Is used or intended to be used for recreation or sport purposes only.
 - (c) Does not have any U.S. or foreign air-worthiness certificate.
 - (d) If unpowered weighs less than 155 pounds or if powered weighs less than 254 pounds empty weight excluding floats and safety devices which are intended for use in catastrophic situation, has a fuel capacity not exceeding 5 gallons, is not capable of more than 55 knots calibrated air speed at full power in level flight and has a power-off stall-speed which does not exceed 24 knots calibrated air speed.
- (2) No person may operate an ultralight aircraft within this state unless the aircraft displays an identification number assigned by an organization, approved by the department, which issues identification numbers for ultralight aircraft. The department shall maintain a list of organizations which qualify under this subsection. Any industry registration program approved by the federal aviation administration shall be approved by the department.
- (3) Any person violating sub. (2) shall be required to forfeit not more than \$500.

History: 1983 a. 151.

114.20 Aircraft registration.

(1) REGISTRATION REQUIRED.

- (a) Except as provided under sub. (2), all aircraft based in this state shall be registered by the owner of the aircraft with the department annually on or before November 1 or, for aircraft with a maximum gross weight of not more than 3,000 pounds that are not subject to sub. (10), biennially on or before the first November 1. Annual registration fees shall be determined in accordance with sub. (9) or (10). Biennial registration fees shall be determined in accordance with sub. (9m).
- (b) Aircraft determined by the department to be based in this state shall be subject to the annual or biennial registration fees under sub. (9) or (9m). Aircraft which are determined to be not based in this state shall be exempt from the annual or biennial registration fees.
- (c) An aircraft is presumed to be based in this state if it is kept in the state for a period of 30 consecutive days or for a cumulative period of 60 days in any calendar year. An aircraft is not based in this state if it is brought into the state solely for the purpose of repair, maintenance or restoration.

(2) EXCEPTIONS TO REGISTRATION REQUIREMENTS. The registration requirements under sub. (1) do not apply to aircraft based in this state that are:

- (a) Aircraft, as defined in s. 76.02 (1);
- (b) Antique aircraft registered under sub. (6);
- (d) Museum aircraft designated under sub. (4);
- (e) Unairworthy aircraft designated under sub. (5);
- (f) Amateur built aircraft registered under sub. (8); or
- (g) Ultralight aircraft as defined in s. 114.195 (1).

(3) FEES IN LIEU OF PROPERTY TAXES. Fees paid on aircraft under this section are in lieu of general property taxes.

(4) MUSEUM AIRCRAFT. Any museum desiring to designate aircraft as museum aircraft shall, on or before November 1 of each year, submit to the department an inventory of all aircraft held by the museum for display or other museum purposes. The inventory shall identify the owner of the aircraft and whether it is being held by the museum under loan or other arrangements. The aircraft designated as museum aircraft are exempt from registration under this section during the time they are owned or held by the museum for display or other museum purposes and are not flown for any purpose except to and from displays. The museum shall promptly notify the department of any additions or deletions to the annual inventory of designated museum aircraft.

(5) UNAIRWORTHY AIRCRAFT. Any person desiring to have an aircraft designated as an unairworthy aircraft may apply to the department in the manner the department prescribes. No application may be acted upon unless all information requested is supplied. Upon receipt of an application and a registration fee to be established by rule and after determining from the facts submitted and investigation that the aircraft qualifies as an unairworthy aircraft, the department shall issue an unairworthy aircraft certificate. The certificate shall expire upon transfer of ownership or restoration. An aircraft is presumed restored if it is capable of operation. The annual or biennial registration fee is due on the date of restoration. Operation of the aircraft is conclusive evidence of restoration. A late payment charge to be established by rule shall be assessed on all applications filed later than 30 days after the date of restoration.

(6) ANTIQUE AIRCRAFT. Any antique aircraft may be registered upon receipt of the proper application and payment of a \$50 registration fee. The registration remains effective without payment of an additional fee while the aircraft is owned by the registrant.

(7) AMATEUR BUILT AIRCRAFT. Any amateur built aircraft may be registered upon receipt of the proper application and payment of a \$50 registration fee. The registration remains effective without payment of an additional fee while the aircraft is owned by the registrant.

(8) ANNUAL REGISTRATION FEES. Except as provided in sub. (10), the owner of an aircraft subject to the annual registration requirements under sub. (1) shall pay an annual registration fee established in accordance with the following gross weight schedule:

[Maximum gross weight in pounds] [Annual fee]

- (d) Not more than 3,500 \$ 70
- (e) Not more than 4,000 95
- (f) Not more than 5,000 135
- (g) Not more than 6,000 190
- (h) Not more than 7,000 240
- (i) Not more than 8,000 300
- (j) Not more than 9,000 375
- (k) Not more than 10,000 525
- (l) Not more than 11,000 690
- (m) Not more than 12,500 940
- (n) Not more than 15,000 1,125
- (o) Not more than 20,000 1,310
- (p) Not more than 25,000 1,500
- (q) Not more than 30,000 1,690
- (r) Not more than 35,000 1,875
- (s) Not more than 40,000 2,190
- (t) Not more than 100,000 2,500
- (u) More than 100,000 3,125

(9m) BIENNIAL REGISTRATION FEES. Except as provided in sub. (10), the owner of an aircraft subject to the biennial registration requirements under sub. (1) shall pay a biennial registration fee established in accordance with the following gross weight schedule:

[Maximum gross weight in pounds] [Biennial fee]

- (a) Not more than 2,000 \$ 60
- (b) Not more than 2,500 78
- (c) Not more than 3,000 100

(10) MUNICIPAL AND CIVIL AIR PATROL AIRCRAFT. Aircraft owned and operated exclusively in the public service by this state, by any county or municipality or by the civil air patrol shall be registered annually on or before November 1, by the department upon receipt of the proper application accompanied by payment of \$5 for each aircraft.

(11) ISSUANCE OF CERTIFICATE OF REGISTRATION; DISPLAY OF CERTIFICATE; REFUNDS. Upon payment of a registration fee or transfer of registration fee, the department shall issue evidence of registration which shall be displayed at all times in the manner prescribed by the department. A refund may be made for aircraft registration fees paid in error as determined by the department.

(12) INITIAL REGISTRATION. For new aircraft, aircraft not previously registered in this state or unregistered aircraft for which annual registration is required under sub. (9), the fee for the initial year of registration shall be computed from the date of purchase, restoration, completed construction or entry of the aircraft into this state on the basis of one-twelfth of the registration fee specified in sub. (9) multiplied by the remaining number of months in the current registration year which are not fully expired. For new aircraft, aircraft not previously registered in this state or unregistered aircraft for which biennial registration is required under sub. (9m), the fee for the initial 2-year period of registration shall be computed from the date of purchase, restoration, completed construction or entry of the aircraft into this state on the basis of one twenty-fourth of the registration fee specified in sub. (9m) multiplied by the remaining number of months in the current 2-year registration period which are not fully expired. Application for registration shall be filed within 30 days from the date of purchase, restoration, completed construction or entry of the aircraft into this state and if filed after that date an additional administrative fee of \$5 shall be charged. If the date of purchase, restoration, completed construction or entry into this state is not provided by the applicant, the full annual or biennial registration fee provided in sub. (9) or (9m) shall be charged for registering the aircraft.

(13) LATE PAYMENT CHARGES.

(b)

1. If an annual or biennial registration fee is not paid by November 1, from November 2 to the following April 30, the department shall add a late payment charge of \$50 or 10 percent of the amount specified for the registration under sub. (9), (9m) or (10), whichever is greater, to the fee.
2. If an annual or biennial registration fee is not paid by the following April 30, from May 1 to October 31 or, for a biennial registration, the end of the biennial period, the department shall add a late payment charge of \$50 or 20 percent of the amount specified for the registration under sub. (9), (9m) or (10), whichever is greater, to the fee.
4. Late payment charges under this paragraph are not cumulative.
5. This paragraph applies after October 31, 1995.

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(14) LOST OR DESTROYED REGISTRATION CERTIFICATES. Upon satisfactory proof of the loss or destruction of the registration certificate, the department shall issue a duplicate to the owner upon payment of a fee of \$1.50.

(15) LIEN ON AIRCRAFT FOR FEES DUE AND OWING.

- (a) In addition to all existing remedies afforded by civil and criminal law, upon complaint of the department the fees, interest and late filing charges specified in this section shall be and will continue to be a lien against the aircraft for which the fees are payable until such time as the fees, along with any accrued charges or interest, are paid.
- (b) The lien against the aircraft for the original registration fee shall attach at the time the fee is first payable, the lien for all renewals of annual registration shall attach on November 1 of each year thereafter and the lien for all renewals of biennial registration shall attach on the first November of the registration period and every 2 years thereafter.

(17) SALE OF REGISTERED AIRCRAFT. An aircraft which is registered in this state and sold within this state shall be transferred to the name of the purchaser upon application by the purchaser and upon payment of a \$5 fee to the department. Application for transfer of registration shall be filed on the date of purchase. An additional administrative fee of \$10 shall be charged on all applications filed later than 30 days after the purchase date.

(18) PENALTIES.

- (a) Any person who fails to register an aircraft in accordance with this section shall be required to forfeit not more than \$500.
- (b) Any person who sells or otherwise transfers an interest in an aircraft for which a certificate of registration is required under this section, or causes or authorizes to be operated an aircraft which that person owns in whole or in part or has a leasehold or equivalent interest and for which a certificate of registration is required by this section, without a certificate having been issued or an application for a certificate having been filed with the department, shall be required to forfeit not more than \$500.
- (c) Any person who knowingly makes a false statement in any application or in any other document required to be filed with the department or who knowingly foregoes the submission of any application, document, or any registration certificate or transfer is guilty of a Class H felony.
- (d) In addition to imposing the penalty under par. (a), (b) or (c), the court shall order the offender to make application for registration or reregistration and to pay the required registration fee and any applicable late payment charges and administrative fees.

(19) COLLECTION OF FEES. In addition to any other remedies of law, the department may collect the fees, interest and late filing charges specified in this section in a proceeding before the division of hearings and appeals. An order of the division of hearings and appeals which specifies the amount to be paid to the department shall be of the same effect as a judgment for purposes of execution under ch. 815. The institution of a proceeding for review under s. 227.52 shall stay enforcement of the division of hearings and appeals order.

History: 1977 c. 29 ss. 1061, 1062, 1654 (5); 1977 c. 273; 1981 c. 20; 1981 c. 347 s. 80 (4); 1981 c. 391; 1983 a. 27, 151; 1985 a. 29 s. 3202 (51); 1985 a. 182 s. 57; 1989 a. 31, 56, 359; 1991 a. 315; 1993 a. 16; 1995 a. 113; 1997 a. 35, 283; 1999 a. 9; 2001 a. 109.

114.27 Penalty. Except as provided in ss. 114.103 and 114.40, any person failing to comply with the requirements or violating any of the provisions of this chapter shall be fined not more than \$500 or imprisoned for not more than 90 days or both.

History: 1987 a. 225; 1991 a. 269.

114.31 Powers and duties of the secretary of transportation.

- (1) **GENERAL.** The secretary shall have general supervision of aeronautics in the state and promote and foster a sound development of aviation in this state, promote aviation education and training programs, assist in the development of aviation and aviation facilities, safeguard the interests of those engaged in all phases of aviation, formulate and recommend and promote reasonable regulations in the interests of safety, and coordinate state aviation activities with those of other states, the federal government, and the Wisconsin Aerospace Authority. The secretary shall have all powers that are necessary to carry out the policies of the department of transportation, including the right to require that statements made to the secretary be under oath. The secretary is especially charged with the duty of informing himself or herself regarding all federal laws that affect aeronautics and astronautics in this state, all regulations pursuant to such laws, and all pending legislation providing for a national airport system, in order that the secretary may recommend to the governor and the legislature such measures as will best enable this state to derive the maximum benefits from such legislation if and when it shall become effective. It shall be the duty of all other state boards, commissions, departments and institutions, especially the appropriate educational institutions and the Wisconsin Aerospace Authority, to cooperate with the secretary.
- (2) **STUDIES, INVESTIGATIONS, AIRPORT DEVELOPMENT PLAN.** The secretary shall conduct studies and investigations with reference to the most effective development and operation of airports and all other aeronautical facilities, and

issue reports of the findings of these studies and investigations. The secretary shall prepare and may modify in recognition of changing conditions an airport development plan.

- (3) **AVIATION EDUCATION AND TRAINING.**
- (a) In cooperation with the appropriate educational institutions of the state, and jointly with them, the secretary shall formulate programs of aviation education and training, and disseminate information regarding such programs.
 - (b) From the appropriation under s. 20.395 (2) (ds), the department shall administer an aviation career education program to provide training and apprenticeship opportunities associated with aviation careers for socially and economically disadvantaged youth.
- (4) **COOPERATION WITH FEDERAL AERONAUTICAL OR ASTRONAUTICAL AGENCY.** The secretary shall cooperate with and assist the federal government, the political subdivisions of this state, and others engaged in aeronautics or astronautics or the promotion of aeronautics or astronautics, and shall seek to coordinate the aeronautical or astronautical activities of these bodies. To this end, the secretary is empowered to confer with or to hold joint hearings with any federal aeronautical or astronautical agency in connection with any matter arising under this chapter, relating to the sound development of aeronautics or astronautics, and to take advantage of the cooperation, services, records and facilities of such federal agencies, as fully as may be practicable, in the administration of said sections. The secretary shall furnish to the federal agencies cooperation, and the services, records and facilities of the department, insofar as may be practicable.
- (5) **AIR MARKING SYSTEM.** The secretary shall cooperate with the federal government in any air marking system and weather information.
- (5m) **PROMOTION OF AIR SERVICES.** In recognition of the importance of effective scheduled air service in the southeastern region of the state and the impact of that service on statewide economic development, the secretary shall, in cooperation with the appropriate airport governing bodies, promote expanded and improved air services, help provide information on available air services for potential users, develop efficient ground access to air services, monitor changes in air services and charges to passengers, and develop other programs as he or she considers advisable for the overall improvement of air services for residents of this state.
- (6) **TECHNICAL SERVICES TO MUNICIPALITIES.** The secretary may, insofar as is reasonably possible, offer the engineering or other technical service of the department, to any municipality desiring them in connection with the construction, maintenance or operation or proposed construction, maintenance or operation of an airport. The secretary may assess reasonable costs for services including services performed while acting as agent for a municipality. Such assessment shall include properly allocated administrative costs. Municipalities are authorized to cooperate with the secretary in the development of aeronautics and aeronautical facilities in this state. The Wisconsin Economic Development Corporation and all agencies are authorized and directed to make available such facilities and services, and to cooperate as far as possible to promote the best interests of aeronautics of the state.
- (7) **STATE AID.** The secretary shall establish, by rule, such conditions as he or she deems necessary to the grant of state aid.
- (8) **PRIORITIES.**
- (a) On July 1 of each even-numbered year the governing body of each county, city, village or town that contemplates an airport development project in the next 6 years for which it proposes to request state or federal aid shall notify the secretary of such intention and submit such information as the secretary requires.
 - (b) The secretary shall establish priorities for the projects proposed under s. 114.33 (2) in relation to the overall airport development plan taking into account such factors as industrial, commercial, recreational and resources development and transportation needs.
 - (c) As part of the secretary's budget report, the secretary shall submit a tentative priority list of projects that the secretary recommends for state aid in the following biennium.
- (9) **MAPS.** With respect to aeronautical maps distributed by the secretary pursuant to this section, the secretary shall ensure that such maps printed on and after July 20, 1985, do not display the picture of the secretary.
- History:** 1971 c. 125; 1973 c. 243 s. 82; 1977 c. 29 ss. 1063, 1654 (5); 1977 c. 273; 1979 c. 361 s. 112; 1981 c. 390 s. 252; 1983 a. 27; 1985 a. 29; 1987 a. 399; 1993 a. 492; 1995 a. 27 s. 9116 (5); 1999 a. 9; 2005 a. 335; 2011 a. 32.

Cross-reference: See also ch. Trans 55, Wis. adm. code.

114.315 Review. Orders of the secretary of transportation shall be subject to review in the manner provided in ch. 227.

114.316 Use of department airplanes for transportation. Acting upon its own discretion, the department may, either in the interest of furthering aeronautics or for other reasons, use airplanes owned or rented by it to transport persons and property of state institutions, departments or officials. In such instance the department may make charges therefor to such institutions or departments.

History: 1971 c. 125; 1977 c. 29 s. 1654 (5).

114.32 Federal aid for airports.

- (1) **SECRETARY MAY ACCEPT.** The secretary may cooperate with the government of the United States, and any agency or department thereof in the acquisition, construction, improvement, maintenance and operation of airports and other air navigation facilities in this state, and comply with the laws of the United States and any regulations made thereunder for the expenditure of federal moneys upon such airports and other air navigation facilities, and may enter into any contracts necessary to accomplish such purpose. The secretary may accept, receive and receipt for federal moneys and other moneys, either public or private, for and in behalf of this state or any municipality thereof, for training and education programs, for the acquisition, construction, improvement, maintenance and operation of airports and other aeronautical facilities, whether such work is to be done by the state or by such municipalities, or jointly, aided by grants of aid from the United States, upon such terms and conditions as are or may be prescribed by laws of the United States and any rules or regulations made thereunder, and the secretary may act as agent of any municipality of this state or the owner of any public-use airport upon the request of such municipality or the owner of the public-use airport, in accepting, receiving and receipting for such moneys in its behalf for airports, and in contracting for the acquisition, improvement, maintenance or operation of airports financed either in whole or in part by federal moneys, and the governing body of any such municipality or the owner of the public-use airport may designate the secretary as its agent for such purposes and enter into an agreement with the secretary prescribing the terms and conditions of such agency in accordance with federal laws, rules and regulations and with this chapter. Such moneys as are paid over by the U.S. government shall be retained by the state or paid over to said municipalities or to the owners of the public-use airports under such terms and conditions as may be imposed by the U.S. government in making such grants.
- (3) **CONTRACTS.** All contracts for the acquisition, construction, improvement, maintenance and operation of airports and other aeronautical facilities, made by the secretary of transportation either as the agent of this state or as the agent of any municipality or as the agent of the owner of a public-use airport, shall be made pursuant to the laws of this state governing the making of like contracts; provided, however, that where the acquisition, construction, improvement, maintenance and operation of any airport or landing strip and other aeronautical facilities is financed or partially financed with federal moneys, the secretary of transportation, as agent of the state or of any municipality thereof or of the owner of a public-use airport, may let contracts in the manner prescribed by the federal authorities, acting under the laws of the United States, and any rules or regulations made thereunder, notwithstanding any other state law to the contrary.
- (4) **DISPOSITION OF FEDERAL FUNDS.** All moneys accepted for disbursement by the secretary of transportation pursuant to this section shall be deposited in the state treasury, and, unless otherwise prescribed by the authority from which the money is received, kept in separate funds, designated according to the purpose for which the moneys were made available, and held by the state in trust for such purposes. All such moneys are appropriated for the purposes for which the same were made available to be expended in accordance with federal laws and regulations and with this chapter. The secretary of transportation, whether acting for this state or as the agent of any of its municipalities or as the agent of the owner of a public-use airport, or when requested by the U.S. government or any agency or department thereof, may disburse such moneys for the designated purposes, but this shall not preclude any other authorized method of disbursement.
- (5) **LOCAL PROJECTS AND FUNDS; SECRETARY'S FUNCTIONS.** No county, city, village or town, whether acting singly or jointly with a county, city, village or town, shall submit to a federal aeronautical agency or department any project application requesting federal assistance, for any airport improvement, aeronautical facility or planning study, unless the project and the project application have been first approved by the secretary. No such county, city, village or town shall directly accept, receive, receipt for or disburse any funds granted by the United States for the project, but it shall designate the secretary as its agent and in its behalf to accept, receive, receipt for and disburse such funds. It shall enter into an agreement with the secretary prescribing the terms and conditions of the secretary's functions under such agency in accordance with federal laws, rules and regulations and applicable laws of this state.

History: 1971 c. 192; 1981 c. 390 s. 252; 1983 a. 159; 1993 a. 492.

The secretary of transportation possesses the requisite implied authority to enter into contracts with the federal government to secure federal funds to enable the department to undertake airport system planning. 60 Atty. Gen. 68. See also 60 Atty. Gen. 225.

114.33 Initiation of airport project; sponsorship; land acquisition.

- (1) Any county, city, village or town, either singly or jointly with one or more counties, cities, villages or towns, or any owner of a public-use airport desiring to sponsor an airport development project to be constructed with federal aid and state aid or with the state aid alone as provided by this chapter, may initiate such project in the manner provided by this section. The department may initiate and sponsor an airport project in the same manner as a local governing body. If the department initiates and sponsors an airport project, it shall hold a hearing in the area affected by the project. Notice of the hearing shall be given as provided in sub. (2). The department may install, operate and maintain air navigation facilities with or without federal aid and may enter into agreements with sponsors to share the maintenance and operation costs of such facilities.

- (2) Such initiation shall be by a petition filed with the secretary by the governing body or bodies of the counties, cities, villages or towns or by the governing body of a public-use airport not owned by a county, city, village or town desiring to sponsor the project, or if the project is initiated and sponsored by the department by a statement by the secretary setting forth among other things that the airport project is necessary and the reason therefor; the class of the airport that it is desired to develop, the location of the project in general, and the proposed site tentatively selected; the character, extent and kind of improvement desired under the project, evidence, in the form of a transcript, that the project has received a public hearing in the area affected before adoption by the petitioners, and any other statements that the petitioners or the department may desire to make. At least 10 days' notice of the public hearing shall be given by publication of a class 1 notice, under ch. 985, in the area affected.
- (3) If the project has been sponsored by a local governing body or bodies or by the governing body of a public-use airport not owned by a county, city, village or town, the secretary shall make a finding within a reasonable time after receipt of the petition. If such finding is generally favorable to the development petitioned for, the secretary shall submit the finding to the governor for approval and no finding favoring an airport development project shall be effective unless the governor's approval is endorsed thereon in writing. If the finding is approved by the governor the secretary shall notify the petitioners to that effect by filing a copy of the finding, which shall include among other things the location of the approved site, the character and extent of the improvements deemed necessary, and an approximate estimate of the costs and the amount to be paid by the sponsor. The finding shall constitute approval of the airport site so specified as a portion of the state airport system. On receipt of the finding the sponsors shall take action at their next meeting toward providing their share of the cost and shall promptly notify the secretary. The sponsors may proceed in accordance with the finding to acquire the site and to make master development plans and project plans, and shall be entitled to receive credit therefor as provided by federal law and by this chapter. On completion and approval of the plans a revised estimate of the project costs shall be made for the purposes of the project application.
- (3m) If the project is initiated and sponsored by the department, the secretary shall submit the statement prepared under sub. (2) to the governor for approval as provided in sub. (3). After approval by the governor, the department may proceed with the project as provided in sub. (3).
- (4) All projects for the development of airports with federal aid shall be in compliance with federal laws. All plans and other arrangements for development of projects with state aid alone shall be subject to the approval of the secretary.
- (5) In the case of projects to be carried out by contract, force account, or by a county highway committee in a manner similar to the applicable provisions of s. 84.06 (3), the sponsor's share of the cost of a project shall be deposited in the state treasury promptly on the request of the secretary, to be held in trust for the purposes of the project. The secretary need not request the entire share at any one time. The secretary may suspend or discontinue proceedings or construction relative to any project at any time if any sponsor fails to pay the amount properly required of it as its contribution to the project. In the case of projects or parts of projects authorized by the secretary to be performed by force account methods, the secretary may permit the sponsor to retain the sponsor's share of the cost of authorized project work provided the sponsor is to do the work. In such case the sponsor will be periodically reimbursed for the state or federal share, or both, on the basis of audited costs incurred by the sponsor.
- (6)
- (a) For the purposes of carrying out this section and ss. 114.35 and 114.37, the secretary may acquire by gift, devise, purchase or condemnation any lands for establishing, protecting, laying out, enlarging, extending, constructing, reconstructing, improving and maintaining airports, or interests in lands in and about airports. After completion of the improvements, subject to any prior action under s. 13.48 (14) (am) or 16.848 (1), the secretary may convey as provided in this subsection lands that were acquired under this subsection, but were not necessary for the airport improvements. The conveyances may be made with reservations concerning the future use and occupation of those lands so as to protect the airports and improvements and their environs and to preserve the view, appearance, light, air and usefulness of the airports.
- (b) Whenever the secretary considers it necessary to acquire any lands or interests in lands for any of the purposes described in par. (a), the secretary shall so order and in the order, or on a map or plat, show the lands and interests required. The secretary shall file a copy of the order and map with the county clerk of each county in which the lands or interests are required or, in lieu of filing a copy of the order and map, may file or record a plat in accordance with s. 84.095. For the purposes of this section the secretary may acquire private or public lands or interests therein. When so provided in the secretary's order, the land shall be acquired in fee simple. Unless the secretary elects to proceed under sub. (3), the secretary shall attempt to obtain easements or title in fee simple by conveyance of the lands or interests required at a price, including any damages, considered reasonable by the secretary. The instrument of conveyance shall name the state as grantee and shall be recorded in the office of the register of deeds. The purchase or acquisition of lands or interests in lands under this section is excepted and exempt from s. 20.914 (1).
- (c) The secretary may purchase or accept donations of remnants of tracts or parcels of land existing at the time or after the secretary has acquired portions of tracts or parcels, by purchase or condemnation for airport purposes, where in the judgment of the secretary the acquisition of the tracts or parcels would assist in making

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whole the landowner, a part of whose lands have been taken for airport purposes and would serve to minimize the overall cost of the taking by the public.

- (7) If any of the needed lands or interests in lands cannot be purchased expeditiously for a price deemed reasonable by the secretary, the secretary may acquire those lands or interests as provided in s. 32.05.
- (8)
 - (a) The secretary, upon the petition of a sponsoring municipality, may provide that all or certain parts of the required land or interests in land may be acquired by the municipality named by the secretary. When so provided, the municipality and the secretary shall appraise and set the maximum price, including damages, considered reasonable for the lands or interests to be so acquired. The municipality shall endeavor to obtain easements or title in fee simple by conveyance of the lands or interests required, as directed in the secretary's order. The instrument of conveyance shall name the municipality or municipalities as grantee and shall be subject to approval by the secretary, and shall be recorded in the office of the register of deeds and filed with the secretary. If the needed lands or interests in lands cannot be purchased expeditiously within the appraised price, the municipality may acquire them by condemnation, as provided in s. 32.05.
 - (b) Any property of whatever nature acquired in the name of a city, village or town pursuant to this section or any predecessor shall be conveyed to the state without charge by the city, village or town when so ordered by the secretary.
 - (c) The municipality when so ordered by the secretary shall sell at public or private sale, subject to the conditions and terms authorized by the secretary, any and all buildings, structures, or parts thereof, and any other fixtures or personalty acquired in the name of the municipality under this section or any predecessor. The proceeds from the sale shall be deposited with the state in the appropriate airport fund and the expense incurred in connection with the sale shall be paid from that fund.
- (9) The cost of the lands and interests acquired and damages allowed pursuant to this section, incidental expenses and the customary per diem and expenses of the municipality incurred in performing duties pursuant to this section, shall be paid out of the available airport improvement funds.
- (10) Subject to the approval of the governor under this subsection and subject to any prior action under s. 13.48 (14) (am) or 16.848 (1), the secretary may sell at public or private sale property of whatever nature owned by the state and under the jurisdiction of the secretary when the secretary determines that the property is no longer necessary for the state's use for airport purposes and, if real property, the real property is not the subject of a petition under s. 16.310. The secretary shall present to the governor a full and complete report of the property to be sold, the reason for the sale, and the minimum price for which the property should be sold, together with an application for the governor's approval of the sale. The governor shall investigate the proposed sale as he or she deems necessary and approve or disapprove the application. Upon approval and receipt of the full purchase price, the secretary shall by appropriate deed or other instrument transfer the property to the purchaser. The funds derived from the sale shall be deposited in the appropriate airport fund, and the expense incurred by the secretary in connection with the sale shall be paid from that fund.
- (11) Subject to the approval of the governor, the secretary may convey lands or interests in lands acquired under this section and improvements installed on those lands to municipalities named in the secretary's order. The conveyance of the lands or interests in lands and improvements shall restrict the use of the premises by the municipality to the uses for which they were acquired, except that the lands or interests in lands declared by the secretary to be excess may be conveyed without restrictions as to use.
- (12) Lands held by any department, board, commission, other agency of the state, or the Wisconsin Aerospace Authority may, with the approval of the governor, be conveyed to the secretary in the manner prescribed by statute and, if none is prescribed, then by a conveyance authorized by appropriate resolution of the controlling department, board or commission of the agency concerned or by the Wisconsin Aerospace Authority.
- (13) Subsections (6) to (12) do not apply to lands or interests in lands associated with projects for public-use airports which are not owned by a county, city, village or town.

History: 1971 c. 192; 1973 c. 241; 1977 c. 29; 1979 c. 221; 1981 c. 20 s. 2202 (51) (d); 1987 a. 27; 1991 a. 39; 1997 a. 253, 282; 1999 a. 32; 2003 a. 33; 2005 a. 335; 2007 a. 20; 2011 a. 32; 2013 a. 20.

Cross-reference: See also ch. Trans 54, Wis. adm. code.

114.34 State and sponsor's share of cost.

- (1) The costs of airport improvement projects involving federal aid, in excess of the federal government's share, shall be borne by the sponsor and the state, except that the state shall pay not more than one-half of the excess costs, nor more than \$1,250,000 for the cost of a building project or building improvement project and no part of the cost of hangars. The secretary, upon agreement with the sponsor, may advance up to 10 percent of the amount of any federal aid grant agreement for the payment of project costs of a federal aid project from unallocated state airport funds, subject to reimbursement upon final liquidation and settlement of the project with the sponsor and federal government.

- (2) The costs of projects not involving federal aid shall be borne by the sponsor and the state. The state shall pay not more than 80 percent of the costs, which may include the cost of the land, the cost of lands or interest in lands deemed necessary for the protection of the aerial approaches, the cost of formulating the project application and preparing the plans and specifications, and the cost of construction and of all facilities deemed necessary for the operation of the airport. The state shall not contribute more than \$1,250,000 for the cost of a building project or building improvement project and no part of the cost of hangars.
- (3) The percentage of the costs borne by the state shall be determined by the department on the basis of the relative importance of the specific project to the state airport development program as a whole.

History: 1971 c. 164 s. 84; 1971 c. 192; 1977 c. 29 s. 1654 (5); 1977 c. 348; 1983 a. 27; 1985 a. 283; 1987 a. 27; 1993 a. 16; 2011 a. 248.

114.35 Federal aid; state and local funds.

- (1) It is declared to be the policy of the state to promote the development of an airport system in this state and to promote the development of joint airports in this state and in adjoining states which mutually benefit citizens of this state and those of adjoining states. The secretary may use the funds provided by the state to assist sponsors in matching the federal aid that may become available to the state or available for specific projects or joint projects within this state or in an adjoining state.
- (2) The secretary may also use the funds provided by the state independent of the availability of federal funds to aid sponsors in the development of approved projects on the state system or joint projects; for air marking and air navigation facilities; and for the purposes of 1991 Wisconsin Act 269, section 9155 (1x).

History: 1971 c. 125, 192, 228; 1973 c. 148; 1977 c. 418; 1983 a. 27; 1989 a. 31; 1991 a. 39, 269.

114.37 Advance land acquisition loan program for airport projects.

- (1) **PURPOSE.** The purpose of this section is to promote the state's interest in preserving and improving a safe and efficient air transportation system by means of a program to provide loans for advance land acquisition for airport projects planned under s. 114.33.
- (2) **ADMINISTRATION.** The department shall administer an advance land acquisition loan program to assist a county, city, village, town or an owner of a public-use airport in acquiring land necessary for airport projects under s. 114.33. The department shall have all powers necessary and convenient to implement this section, including the following powers:
- To specify conditions of eligibility for loans under this section. Such conditions shall include the requirement that the land to be acquired must be part of a planned airport improvement project or a land acquisition project that is essential to future airport development or to the safety of aircraft using the airport.
 - To receive applications for loans under this section and to prescribe the form, nature and extent of the information which shall be contained in applications.
 - To establish standards for the approval of loans under this section. No loan may be made for an amount greater than 80 percent of the department's assessment of the value of the property.
 - To enter into loan agreements with applicants to ensure the proper use and prompt repayment of loans under this section. The loan agreement shall include the requirements that the loan be repaid within a period not to exceed 5 years and that the proceeds of any state or federal land acquisition funding received under s. 114.33 be fully pledged to repayment of the loan. The department may not make a loan for more than 80 percent of the estimated land acquisition costs, including the costs of any necessary project plans and environmental studies. The loan agreement shall require that the department be designated to act as the loan recipient's agent in the acquisition of the land. Title to the land acquired shall be held by the loan recipient, but the department may retain a security interest in the land until the loan is repaid. The loan agreement shall require the payment of interest and reasonable costs incurred by the department.
 - To acquire lands under s. 114.33 (6) and (7) as the designated agent of a loan recipient.
 - To audit and inspect the records of loan recipients.

- (3) **FUNDS.** The department may make loans under this section from the appropriation under s. 20.395 (2) (dv). The total outstanding balance of loans under this subsection may not exceed \$6,500,000.

- (4) **RULES.** The department may adopt rules as necessary to implement this section.

History: 1981 c. 20; 1985 a. 29; 1991 a. 39; 1993 a. 16; 2005 a. 335.

Cross-reference: See also ch. Trans 54, Wis. adm. code.

114.375 Advance land acquisition loan program for spaceport projects.

- (1) **PURPOSE.** The purpose of this section is to promote the state's interest in aerospace programs by providing loans for advance land acquisition for spaceport projects.
- (2) **ADMINISTRATION.** The department shall administer an advance land acquisition loan program to assist a county, city, village, town, or an owner of a spaceport in acquiring land necessary for spaceport projects. The department shall have all powers necessary and convenient to implement this section, including the following powers:

- (a) To specify conditions of eligibility for loans under this section. Such conditions shall include the requirement that the land to be acquired must be part of a planned spaceport improvement project or a land acquisition project that is essential to future spaceport development or to the safety of spacecraft using the spaceport.
 - (b) To receive applications for loans under this section and to prescribe the form, nature, and extent of the information which shall be contained in applications.
 - (c) To establish standards for the approval of loans under this section. No loan may be made for an amount greater than 80 percent of the department's assessment of the value of the property.
 - (d) To enter into loan agreements with applicants to ensure the proper use and prompt repayment of loans under this section. The loan agreement shall include the requirements that the loan be repaid within a period not to exceed 10 years and that the proceeds of any state or federal land acquisition funding received be fully pledged to repayment of the loan. The department may not make a loan for more than 80 percent of the estimated land acquisition costs, including the costs of any necessary project plans and environmental studies. The loan agreement shall require that the department be designated to act as the loan recipient's agent in the acquisition of the land. Title to the land acquired shall be held by the loan recipient, but the department may retain a security interest in the land until the loan is repaid. The loan agreement shall require the payment of interest and reasonable costs incurred by the department.
 - (e) To acquire lands as the designated agent of a loan recipient.
 - (f) To audit and inspect the records of loan recipients.
- (3) **FUNDS.** The department may make loans under this section from the appropriation under s. 20.395 (2) (mv). The total outstanding balance of loans under this subsection may not exceed \$10,000,000.
- (4) **RULES.** The department may adopt rules as necessary to implement this section.
- History:** 2005 a. 335.

114.40 Disclosure of insurance coverage for renter pilots.

- (1) **DEFINITION.** In this section, "rental agent" means a person who, on a regular basis and in the ordinary course of business, rents or leases an aircraft to another person.
- (2) **REQUIRED DISCLOSURES.** Except as provided in sub. (2m), before entering into an agreement to rent or lease an aircraft to another person, the rental agent shall deliver to the person who seeks to rent or lease the aircraft a written notice of insurance coverage which contains all of the following information and is in substantially the following form:

NOTICE OF INSURANCE COVERAGE

1. If you rent or lease an aircraft from ... (name of rental agent), you (are) (are not) insured under an insurance policy held by (name of rental agent) for liability arising from the use or maintenance of the aircraft. If liability coverage is provided, it is in the (amount) (amounts) of \$...., and is subject to a deductible in the (amount) (amounts) of \$....
2. If you rent or lease an aircraft from (name of rental agent), you (are) (are not) insured under an insurance policy held by (name of rental agent) for damage to the hull of the aircraft. If hull insurance is provided, it is in the (amount) (amounts) of \$...., and is subject to a deductible in the (amount) (amounts) of \$....
3. If you are insured under an insurance policy held by (name of rental agent), you may ask the rental agent for a copy of the certificate of coverage for further information about any limitations of coverage or other terms of coverage.
4. If you are not insured under an insurance policy held by (name of rental agent), it is recommended that you obtain insurance for liability and damage to the hull of the aircraft which may arise from your use of the aircraft.

....(Signature of rental agent or representative of rental agent)

The undersigned acknowledges receipt of an exact copy of this notice on (date).

.... (Signature)

- (2m) **EFFECTIVE PERIOD OF NOTICE.** If a rental agent delivers a notice under sub. (2), the rental agent is not required to deliver another notice to the person who received the notice for 12 months after the date of the notice if the notice states the period of its effectiveness.
- (3) **INSPECTION OF CERTIFICATE.** If an insurance policy held by a rental agent provides insurance coverage for a person who rents or leases an aircraft from the rental agent, the rental agent shall, upon request by a person who receives the notice under sub. (2), deliver to that person a copy of the certificate of coverage which was issued to the rental agent.
- (4) **RETENTION AND MATERIALITY OF NOTICE.**
 - (a) The rental agent shall maintain a copy of the notice delivered under sub. (2) for at least 3 years from the date of the notice.
 - (b) The notice required under sub. (2) is a material part of an agreement between a rental agent and another person for the rental or lease of an aircraft.

- (5) **CIVIL PENALTY.** Notwithstanding s. 114.27, whoever violates sub. (2) may be required to forfeit not more than \$1,000.

History: 1987 a. 225.

SUBCHAPTER II WISCONSIN AEROSPACE AUTHORITY

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114.60 Definitions. In this subchapter:

- (1) "Aerospace facilities" means facilities and infrastructure in this state used primarily to provide aerospace services, including: laboratories and research facilities; office, storage, and manufacturing facilities; instructional and other educational facilities; space museums; and other buildings, equipment, and instruments related to the operations of the aerospace industry or to providing aerospace services.
- (2) "Aerospace services" means services that promote, advance, and facilitate space exploration and space-related commercial, technological, and educational development in this state, including: space-related research, experimentation, and development of technology and other intellectual property; space-related business incubator services or services for start-up aerospace companies; programs, projects, operations, and activities to develop, enhance, or provide commercial and noncommercial space-related opportunities for business, industry, education, and government; services or activities that promote the commercialization of the space and aerospace industry and space-related economic growth; services or activities that promote and facilitate space-related educational opportunities and tourism, including educational initiatives and operation or sponsorship of space museums and tourist attractions; consulting services; and administrative services.
- (3) "Authority" means the Wisconsin Aerospace Authority.
- (4) "Board" means the board of directors of the authority.
- (5) "Bond" means a bond, note, or other obligation of the authority issued under this chapter, including a refunding bond.
- (6) "Bond resolution" means a resolution of the board authorizing the issuance of, or providing terms and conditions related to, bonds and includes, when appropriate, any trust agreement, trust indenture, indenture of mortgage, or deed of trust providing terms and conditions for the bonds.
- (7) "Payload" means any property, cargo, or persons transported by spacecraft.
- (8) "Recovery" means the recovery of any spacecraft or payload, or any part of any spacecraft or payload, including any appurtenance, instrument, or equipment, that has detached from a spacecraft in flight or upon launch or landing.
- (9) "Spaceport facilities" means facilities and infrastructure that are located within a spaceport and related to the operation or purpose of the spaceport, including: spaceport launch or landing areas; launch or landing control centers or other facilities; structures, mechanisms, or devices for communicating with or navigating or tracking spacecraft; buildings, structures, equipment, or other facilities associated with spacecraft construction, development, assembly, processing, testing, or evaluation; buildings, structures, equipment, or other facilities associated with payload loading, assembly, processing, testing, or evaluation; space flight hardware, software, or instrumentation; facilities appropriate to meet the transportation, electric, gas, water and sewer, flood control, waste disposal, and other infrastructure needs within the spaceport; facilities to meet public safety needs within the spaceport, including any facility related to spaceport security and emergency services such as fire and ambulance; administrative facilities; and other buildings, equipment, and instruments related to spaceport operations or the providing of spaceport services.

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- (10) "Spaceport services" means any services provided in connection with the operation, management, or control of a spaceport or spaceport facilities, including: the launching or landing of spacecraft; communicating with or navigating or tracking spacecraft; construction, development, assembly, processing, testing, or evaluation of spacecraft or payload; loading spacecraft payload; spaceport security and emergency services; and administrative services.
- (11) "Spaceport territory" means a spaceport of the authority in this state and any additional aerospace facilities associated with the spaceport that are in the immediate vicinity of the spaceport.
- (12) "Wisconsin Space Grant Consortium" means the statewide regional consortium designated as such by the federal administrator of the National Aeronautics and Space Administration under 42 USC 2486f (a) (1) (B).

History: 2005 a. 335.

114.61 Creation and organization.

- (1) There is created a public body corporate and politic to be known as the "Wisconsin Aerospace Authority." The board of the authority shall consist of the following members:
- (a) Six members nominated by the governor, and with the advice and consent of the senate appointed, for 3-year terms.
 - (b) One member of the senate, appointed by the president of the senate, and one member of the assembly, appointed by the speaker of the assembly, each for a 3-year term.
 - (c) The director of the Wisconsin Space Grant Consortium or the director's designee. If the Wisconsin Space Grant Consortium ceases to exist or does not appoint a director, an additional member of the board shall be appointed under par. (a) in lieu of the member under this paragraph.
- (2) Except for the member specified under sub. (1) (c), each member of the board shall be a resident of the state and shall have experience in the aerospace or commercial space industry, in education, or in finance or shall have other significant experience related to the functions of the authority as specified in this subchapter.
- (3)
- (a) The terms of the members appointed under sub. (1) (a) and (b) expire on June 30. Each member's appointment remains in effect until a successor is appointed unless the member vacates or is removed from his or her office. A member who serves as a result of holding another office or position vacates his or her office as a member when he or she vacates the other office or position. A member who ceases to qualify for office vacates his or her office.
 - (b) A vacancy on the board shall be filled in the same manner as the original appointment to the board for the remainder of the unexpired term, if any.
 - (c) A member appointed under sub. (1) (a) may be removed by the governor for cause. A member appointed under sub. (1) (b) shall be removed, as applicable, by the president of the senate or the speaker of the assembly if the member is absent at 2 consecutive board meetings without the prior written approval of the chairperson of the board. A vacancy on the board created by removal under this paragraph is subject to par. (b).
 - (d) A member of the board appointed under sub. (1) (a) or (b) may not serve more than 3 consecutive 3-year terms, but may be reappointed to additional terms after a one-year absence from the board.
 - (e) A member of the board may hold public office or otherwise be publicly or privately employed.
- (4)
- (a) A member of the board may not be compensated for his or her services but shall be reimbursed for actual and necessary expenses, including travel expenses, incurred in the performance of his or her duties.
 - (b) The amount of reimbursement under par. (a) shall be limited to the uniform travel schedule amounts approved under s. 20.916 (8).
- (5) No cause of action of any nature may arise against and no civil liability may be imposed upon a member of the board for any act or omission in the performance of his or her powers and duties under this subchapter, unless the person asserting liability proves that the act or omission constitutes willful misconduct.
- (6) The members of the board shall annually elect a chairperson and may elect other officers as they consider appropriate. Five members of the board constitute a quorum for the purpose of conducting the business and exercising the powers of the authority, notwithstanding the existence of any vacancy. The board may take action upon a vote of a majority of the members present, unless the bylaws of the authority require a larger number. The board shall meet at least once every 6 months, but may meet more frequently. Except as provided in s. 114.65 (4), meetings of the board are subject to the open meetings requirements specified in subch. V of ch. 19.
- (7) The board shall appoint an executive director who may not be a member of the board and who shall serve at the pleasure of the board. The authority may delegate by resolution to one or more of its members or its executive director any powers and duties that it considers proper. The board shall determine the compensation of the executive director. The executive director or another person designated by resolution of the board shall keep a record of the proceedings of the authority and shall be custodian of all books, documents, and papers filed with the authority, the minute book or journal of the authority, and its official seal. The executive director or other person may cause copies to be made of all minutes and other records and documents of the authority and may give certificates under the

official seal of the authority to the effect that the copies are true copies, and all persons dealing with the authority may rely upon the certificates. The executive director may call meetings of the board more frequently than the meetings required under sub. (6).

History: 2005 a. 335; 2009 a. 124.

114.62 Powers of authority. The authority has all of the powers necessary or convenient to carry out the purposes and provisions of this chapter. In addition to all other powers granted by this chapter, the authority may do any of the following:

- (1) Adopt bylaws and policies and procedures for the regulation of its affairs and the conduct of its business.
- (2) Sue and be sued. The authority has a direct right of action against any 3rd party to enforce any provision of this subchapter or to carry out any power provided to it under this subchapter or to protect its interests as authorized under this subchapter.
- (3) Have a seal and alter the seal at pleasure; have perpetual existence; and maintain an office.
- (4) Hire employees, define their duties, and fix their rate of compensation and benefits. The authority may also employ any agent or special advisor that the authority finds necessary and fix his or her compensation. The amount of reimbursement to any employee, agent, or special advisor shall be limited to the uniform travel schedule amounts approved under s. 20.916 (8).
- (5) Appoint any technical or professional advisory committee that the authority finds necessary to assist the authority in exercising its duties and powers; define the duties of any committee; and provide reimbursement for the expenses of any committee. The amount of reimbursement under this subsection shall be limited to the uniform travel schedule amounts approved under s. 20.916 (8).
- (6) Buy, sell, lease as lessor or lessee, or otherwise acquire any interest in or dispose of any interest in property, including real property, personal property, and intangible property rights.
- (7) Make and execute contracts and other legal instruments necessary or convenient for the conduct of its business or to the exercise of its powers, including: procurement contracts; lease or rental agreements; lease-purchase, purchase and sale, and option to purchase agreements; consulting agreements; loan agreements; financing agreements; security agreements; contractual services agreements; affiliation agreements; and cooperative agreements with any governmental unit or other person, including agreements for any jointly provided service or jointly developed or operated facility.
- (8) Accept gifts, bequests, contributions, and other financial assistance, in the form of money, property, or services, from any person, for the conduct of its business or for any other authorized purpose.
- (9) Apply for and accept loans, grants, advances, aid, and other forms of financial assistance or funding, in the form of money, property, or services, from any person, including federal aid, for the conduct of its business or for any other authorized purpose.
- (10) Acquire, own, lease, construct, develop, plan, design, establish, create, improve, enlarge, reconstruct, equip, finance, operate, manage, and maintain:
 - (a) Any spaceport, spaceport territory, spaceport facility, aerospace facility, or other facility or site within this state related to conducting the business or exercising the powers of the authority, including establishing a spaceport in the city of Sheboygan in Sheboygan County.
 - (b) Any spacecraft or other vehicle or aircraft related to conducting the business or exercising the powers of the authority.
 - (c) Any program or project related to conducting the business or exercising the powers of the authority.
 - (d) Any intangible property right, including any patent, trademark, service mark, copyright, trade secret, certification mark, or other right acquired under federal or state law, common law, or the law of any foreign country. The authority may utilize such rights for any permissible purpose under law, including licensing such rights in exchange for payment of royalties.
- (11) Offer, provide, furnish, or manage, and enter into contracts related to, any service or facility of the authority.
- (12) Establish and collect fees, rents, rates, tolls, and other charges and revenues in connection with any service provided by the authority or the use of any facility of the authority.
- (13) Issue bonds in accordance with ss. 114.70 to 114.76 and fund any spaceport, facility, or service of the authority with bond proceeds.
- (14) Borrow money or incur debt other than through bond issuance, and pledge property or revenues or provide other security for such debt.
- (15) Invest funds held by the authority, including investments under s. 25.50.
- (16) Procure liability insurance covering its officers, employees and agents, insurance against any loss in connection with its operations, property, and assets, and insurance on its debt obligations.
- (17) Exercise the right of eminent domain in the manner provided by ch. 32.
- (18) Provide for and maintain wildlife conservation areas, and prohibit or control the pollution of air and water, in any spaceport or spaceport territory, beyond what is required under state or federal law.
- (19) Specify the location of any utility facilities in any spaceport or spaceport territory.

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- (20) Divide any spaceport or spaceport territory into zones or districts of any number or shape.
- (21) Prohibit any person from using the words "WISCONSIN SPACEPORT" or "SPACEPORT WISCONSIN" in any corporate or business-related name without prior written approval of the authority.
- (22) Subject to any requirement of federal law and to any duty of the department specified under this chapter, maintain exclusive jurisdiction over spaceports of the authority.

History: 2005 a. 335.

114.63 Duties of authority. The authority shall do all of the following:

- (2) Promote this state's aerospace industry; analyze trends in the aerospace industry and recommend actions to be taken by this state to compete in the global aerospace industry; and coordinate access to commercial, technical, and general aerospace information and services.
- (3) Advertise and promote to the public the development and utilization of spaceport facilities, spaceport services, aerospace facilities, and aerospace services of the authority.
- (4) Develop, promote, attract, and maintain space-related businesses in this state, which may include expenditures for travel, entertainment, and hospitality for business clients or guests or other authorized persons, but such expenditures shall be limited to the uniform travel schedule amounts approved under s. 20.916 (8).
- (5) Provide aerospace services to the aerospace industry and general public of this state, provide commercial and noncommercial aerospace business opportunities for industry, education, and government, and develop projects within this state to foster and improve aerospace economic growth.
- (6) Advise, cooperate, and coordinate with federal, state, and local governmental units, the aerospace industry, educational organizations, businesses, and the Wisconsin Space Grant Consortium, and any other person interested in the promotion of space-related industry.
- (7) Furnish leadership in securing adequate funding for spaceports, spaceport facilities, spaceport services, aerospace facilities, and aerospace services in this state.
- (8) Act as a central clearinghouse and source of information in this state for spaceports, spaceport facilities, spaceport services, aerospace facilities, and aerospace services, including furnishing such information to legislators, offices of government, educational institutions, and the general public.
- (9) Develop a business plan to promote and facilitate spaceport-related educational and commercial development in this state, and to stimulate and improve aerospace science, design, technology, and research in this state, which plan shall include information about the authority and information and analysis about space-related industry, technology, design, manufacturing, marketing, and management. The business plan shall also include proposed funding sources for capital expenditures by the authority, based upon a feasibility study of potential funding sources conducted by the authority. The business plan shall be developed in cooperation with the Wisconsin Space Grant Consortium.
- (10) Assist any state agency, municipality, or other governmental unit, upon its request, in the development of any spaceport or spaceport facility.
- (11) Use the building commission as a financial consultant to assist and coordinate the issuance of bonds under this subchapter.
- (12) Comply with all applicable state and federal laws, including all environmental and aeronautics laws, in the exercise of the powers specified under this subchapter.
- (13) Comply with all requirements under federal law related to the use or expenditure of federal aid, and comply with all lawful restrictions or conditions imposed by state law or by the terms of any gift, bequest, grant, loan, aid, contribution, or financial assistance relating to the use or expenditure of such funds.
- (14) To the extent permitted by applicable state and federal law, attempt to involve and utilize, with respect to any facility or service provided by the authority, disadvantaged individuals, disadvantaged businesses, and minority businesses, as those terms are defined in s. 84.076 (1) (a) to (c).
- (15) Establish a safety program that includes the development and implementation of a loss prevention program, safety policies, and regular and periodic facility and equipment inspections.
- (16) Attempt to procure adequate liability and property insurance.
- (17) Subject to s. 114.64, establish the authority's annual budget and monitor the fiscal management of the authority.

History: 2005 a. 335.

114.64 Annual reports.

- (1) The authority shall keep an accurate account of all of its activities and of all of its receipts and expenditures, and shall annually in January make a report of its activities, receipts, expenditures, and financial condition to the governor and the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (2). The reports shall be in a form approved by the state auditor.
- (2)
 - (a) Within 180 days after April 29, 2006, or within 60 days after the authority receives from any public or private source money sufficient to fund the cost of preparing a business plan, whichever is later, the authority shall

submit to the department of administration the business plan specified under s. 114.63 (9) and an estimate of the costs of and funding for any planned projects of the authority described in s. 114.62 (10).

- (b) The authority shall update and resubmit the plan under par. (a) upon the request of the department of administration.
- (3) For each fiscal year in which the authority receives operating revenues, the authority shall submit to the department of administration an audited financial statement, which shall include notes that explain in detail the specific sources of funding contained in the financial statement.

History: 2005 a. 335.

114.65 Maintenance of records.

- (1)
 - (a) Subject to rules promulgated by the department of administration under s. 16.611, the authority may transfer to or maintain in optical disc or electronic format any record in its custody and retain the record in that format only.
 - (b) Subject to rules promulgated by the department of administration under s. 16.611, the authority shall maintain procedures to ensure the authenticity, accuracy, reliability, and accessibility of records transferred to or maintained in optical disc or electronic format under par. (a).
 - (c) Subject to rules promulgated by the department of administration under s. 16.611, if the authority transfers to or maintains in optical disc or electronic format any records in its custody, the authority shall ensure that the records stored in that format are protected from unauthorized destruction.
- (2)
 - (a) Any microfilm reproduction of an original record of the authority, or a copy generated from an original record stored in optical disk or electronic format, is considered an original record if all of the following conditions are met:
 1. Any device used to reproduce the record on film or to transfer the record to optical disc or electronic format and generate a copy of the record from optical disc or electronic format accurately reproduces the content of the original.
 2. The reproduction is on film which complies with the minimum standards of quality for microfilm reproductions, as established by rule of the public records board, or the copy generated from optical disc or electronic format comply with the minimum standards of quality for such copies, as established by rule of the department of administration under s. 16.611.
 3. The film is processed and developed in accordance with the minimum standards established by the public records board. This subdivision does not apply to a copy generated from an electronic record.
 4. The record is arranged, identified, and indexed so that any individual document or component of the record can be located with the use of proper equipment.
 5. The custodian of the record designated by the authority executes a statement of intent and purpose describing the record to be reproduced or transferred to optical disc or electronic format and the disposition of the original record, and executes a certificate verifying that the record was received or created and microfilmed or transferred to optical disc or electronic format in the normal course of business and files the statement in the offices of the authority.
 - (b) The statement of intent and purpose executed under par. (a) 5. is presumptive evidence of compliance with all conditions and standards prescribed by this subsection.
- (3)
 - (a) Any microfilm reproduction of a record of the authority meeting the requirements of sub. (2) or copy of a record of the authority generated from an original record stored in optical disc or electronic format in compliance with this section shall be taken as, stand in lieu of, and have all the effect of the original document and shall be admissible in evidence in all courts and all other tribunals or agencies, administrative or otherwise, in all cases where the original document is admissible.
 - (b) Any enlarged copy of a microfilm reproduction of a record of the authority made as provided by this section or any enlarged copy of a record of the authority generated from an original record stored in optical disk or electronic format in compliance with this section that is certified by the custodian as provided in s. 889.08 shall have the same force as an actual-size copy.
- (4) Notwithstanding any other provision of this subchapter, the authority shall maintain the confidentiality of records or portions of records held by the authority containing any trade secret, as specified under s. 19.36 (5). Notwithstanding subch. V of ch. 19, any portion of any meeting of the authority concerning trade secrets shall be conducted in closed session and shall in all respects, including in any written record or audio or visual recording of the meeting, remain confidential.

History: 2005 a. 335; 2015 a. 196.

CHAPTER 114

114.67 Cooperation with governmental units. To enhance the efficiency and effectiveness of the authority, the state, any political subdivision of the state, municipality, or other governmental unit may enter into cooperative agreements with the authority for furnishing any facility or service of the state, political subdivision, body politic, or other governmental unit to the authority, including fire and police protection, and may otherwise provide, to the extent permitted by law, any funds, property, or services to the authority.

History: 2005 a. 335.

114.68 Political activities.

- (1) No employee of the authority may directly or indirectly solicit or receive subscriptions or contributions for any partisan political party or any political purpose while engaged in his or her official duties as an employee. No employee of the authority may engage in any form of political activity calculated to favor or improve the chances of any political party or any person seeking or attempting to hold partisan political office while engaged in his or her official duties as an employee or engage in any political activity while not engaged in his or her official duties as an employee to such an extent that the person's efficiency during working hours will be impaired or that he or she will be tardy or absent from work. Any violation of this section is adequate grounds for dismissal.
- (2) If an employee of the authority declares an intention to run for partisan political office, the employee shall be placed on a leave of absence for the duration of the election campaign and if elected shall no longer be employed by the authority on assuming the duties and responsibilities of such office.
- (3) An employee of the authority may be granted, by the executive director, a leave of absence to participate in partisan political campaigning.
- (4) Persons on leave of absence under sub. (2) or (3) shall not be subject to the restrictions of sub. (1), except as they apply to the solicitation of assistance, subscription, or support from any other employee in the authority.

History: 2005 a. 335.

114.69 Liability limited.

- (1) Neither the state nor any political subdivision of the state nor any officer, employee, or agent of the state or of a political subdivision who is acting within the scope of employment or agency is liable for any debt, obligation, act, or omission of the authority.
- (2) All of the expenses incurred by the authority in exercising its duties and powers under this chapter shall be payable only from funds of the authority.

History: 2005 a. 335.

114.70 Issuance of bonds.

- (1) The authority may issue bonds for any corporate purpose. All bonds are negotiable for all purposes, notwithstanding their payment from a limited source.
- (2) The bonds of each issue shall be payable from sources specified in the bond resolution under which the bonds are issued.
- (3) The authority may not issue bonds unless the issuance is first authorized by a bond resolution. Bonds shall bear the dates, mature at the times not exceeding 30 years from their dates of issue, bear interest at the rates, be payable at the times, be in the denominations, be in the form, carry the registration and conversion privileges, be executed in the manner, be payable in lawful money of the United States at the places, and be subject to the terms of redemption, that the bond resolution provides. The bonds shall be executed by the manual or facsimile signatures of the officers of the authority designated by the board. The bonds may be sold at public or private sale at the price, in the manner, and at the time determined by the board. Pending preparation of definitive bonds, the authority may issue interim receipts or certificates that the authority shall exchange for the definitive bonds.
- (4) Any bond resolution may contain provisions, which shall be a part of the contract with the holders of the bonds that are authorized by the bond resolution, regarding any of the following:
 - (a) Pledging or assigning specified assets or revenues of the authority.
 - (b) Setting aside reserves or sinking funds, and the regulation, investment, and disposition of these funds.
 - (c) Limitations on the purpose to which or the investments in which the proceeds of the sale of any issue of bonds may be applied.
 - (d) Limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the terms upon which additional bonds may rank on a parity with, or be subordinate or superior to, the bonds authorized by the bond resolution.
 - (e) Funding, refunding, advance refunding, or purchasing outstanding bonds.
 - (f) Procedures, if any, by which the terms of any contract with bondholders may be amended, the amount of bonds the holders of which must consent to the amendment, and the manner in which this consent may be given.
 - (g) Defining the acts or omissions to act that constitute a default in the duties of the authority to the bondholders, and providing the rights and remedies of the bondholders in the event of a default.

- (h) Other matters relating to the bonds that the board considers desirable.
- (5) Neither the members of the board nor any person executing the bonds is liable personally on the bonds or subject to any personal liability or accountability by reason of the issuance of the bonds, unless the personal liability or accountability is the result of willful misconduct.
- (6) No less than 14 days prior to any commitment by the authority for the issuance of bonds under this section, the authority shall submit the bond resolution to the governor, to the chief clerk of each house of the legislature for distribution to the legislature under s. 13.172 (2), and to the cochairpersons of the joint committee on finance. If, within 14 days after the date on which the bond resolution is submitted to the joint committee on finance, the cochairpersons of the committee do not notify the authority that the committee has scheduled a meeting for the purpose of reviewing the bond resolution, the authority may proceed with any commitment for the issuance of bonds under the bond resolution. If, within 14 days after the date on which the bond resolution is submitted to the committee, the cochairpersons of the committee notify the authority that the committee has scheduled a meeting to review the bond resolution, the authority may proceed with any commitment for the issuance of bonds under the bond resolution only upon approval by the committee.

History: 2005 a. 335.

114.71 Bond security. The authority may secure any bonds issued under this chapter by a trust agreement, trust indenture, indenture of mortgage, or deed of trust by and between the authority and one or more corporate trustees. The bond resolution providing for the issuance of bonds so secured shall pledge some or all of the revenues to be received by the authority, including to the extent permitted by law any grant, aid, loan, or other contribution, or shall mortgage, assign, or grant security interests in some or all of the property of the authority, or both, and may contain provisions for protecting and enforcing the rights and remedies of the bondholders that are reasonable and proper and not in violation of law. A bond resolution may contain any other provisions that are determined by the board to be reasonable and proper for the security of the bondholders.

History: 2005 a. 335.

114.72 Bonds not public debt.

- (1) The state is not liable on bonds of the authority and the bonds are not a debt of the state. Each bond of the authority shall contain a statement to this effect on the face of the bond. The issuance of bonds under this chapter does not, directly, indirectly, or contingently, obligate the state or any political subdivision of the state to levy any tax or to make any appropriation for payment of the bonds. Nothing in this section prevents the authority from pledging its full faith and credit to the payment of bonds issued under this chapter.
- (2) Nothing in this chapter authorizes the authority to create a debt of the state, and all bonds issued by the authority under this chapter are payable, and shall state that they are payable, solely from the funds pledged for their payment in accordance with the bond resolution authorizing their issuance or in any trust indenture or mortgage or deed of trust executed as security for the bonds. The state is not liable for the payment of the principal of or interest on any bonds of the authority or for the performance of any pledge, mortgage, obligation, or agreement which may be undertaken by the authority. The breach of any pledge, mortgage, obligation, or agreement undertaken by the authority does not impose any pecuniary liability upon the state or any charge upon its general credit or against its taxing power.

History: 2005 a. 335.

114.73 State pledge. The state pledges to and agrees with the holders of bonds, and persons that enter into contracts with the authority under this chapter, that the state will not limit or alter the rights vested in the authority by this chapter before the authority has fully met and discharged the bonds, and any interest due on the bonds, and has fully performed its contracts, unless adequate provision is made by law for the protection of the bondholders or those entering into contracts with the authority.

History: 2005 a. 335.

114.74 Refunding bonds.

- (1) The authority may issue bonds to fund or refund any outstanding bond, including the payment of any redemption premium on the outstanding bond and any interest accrued or to accrue to the earliest or any subsequent date of redemption, purchase, or maturity.
- (2) The authority may apply the proceeds of any bond issued to fund or refund any outstanding bond to purchase, retire at maturity, or redeem any outstanding bond. The authority may, pending application, place the proceeds in escrow to be applied to the purchase, retirement at maturity, or redemption of any outstanding bond at any time.

History: 2005 a. 335.

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114.75 Limit on amount of outstanding bonds. The authority may not have outstanding at any one time bonds in an aggregate principal amount exceeding \$100,000,000, excluding bonds issued to refund outstanding bonds.

History: 2005 a. 335.

114.76 Bonds exempt from taxation. The state covenants with the purchasers and all subsequent holders and transferees of bonds issued by the authority, in consideration of the acceptance of any payment for the bonds, that its fees, charges, gifts, grants, revenues, receipts, and other moneys received or to be received, pledged to pay or secure the payment of such bonds shall at all times be free and exempt from all state, city, county, or other taxation provided by the laws of the state.

History: 2005 a. 335.

114.77 Funding of certain project costs.

- (1) In this section, "spaceport improvement project" means any project to acquire, construct, develop, plan, design, establish, create, improve, enlarge, reconstruct, or equip any spaceport or spaceport facility.
- (2) The costs of spaceport improvement projects involving federal aid, in excess of the federal government's share, shall be borne by the authority and the state, except that the state shall pay not more than 50 percent of such excess costs, nor more than \$10,000,000 for the cost of a building project or building improvement project and no part of the cost of hangars. The secretary, upon agreement with the authority, may advance up to 10 percent of the amount of any federal aid grant agreement for the payment of project costs of a federal aid project, subject to reimbursement upon final liquidation and settlement of the project with the authority and federal government.
- (3) The costs of spaceport improvement projects not involving federal aid shall be borne by the authority and the state. The state shall pay not more than 80 percent of such costs, which may include the cost of the land, the cost of lands or interest in lands deemed necessary for the protection of the aerial approaches, the cost of formulating the project application and preparing the plans and specifications, and the cost of construction and of all facilities deemed necessary for the operation of the spaceport. The state shall contribute not more than \$10,000,000 for the cost of a building project or building improvement project and no part of the cost of hangars.
- (4) The percentage of the costs borne by the state shall be determined by the department on the basis of the relative importance of the specific project to any state spaceport development program as a whole.
- (5) The state shall promote the development of a spaceport system in this state and promote the development of joint spaceports in this state and in adjoining states which mutually benefit citizens of this state and those of adjoining states. The secretary may use the funds provided by the state to assist the authority in matching the federal aid that may become available to the state or available for specific projects or joint projects within this state or in an adjoining state.
- (6) All funds provided by the state under this section shall be paid from the appropriation accounts under s. 20.395 (2) (mq), (mv), and (mx).

History: 2005 a. 335.

114.78 Tax exemption. The exercise of the powers granted by this subchapter will be in all respects for the benefit of the people of this state and for the increase of their commerce, welfare, and prosperity, and, as the undertaking of the authority's powers and duties under this subchapter will constitute the performance of an essential public function, the authority shall not be required to pay any taxes or assessments upon or in respect to any property acquired or used by the authority under this subchapter and the authority's income therefrom shall at all times be free from taxation of every kind by the state and by political subdivisions of the state.

History: 2005 a. 335.

CHAPTER 120
SCHOOL DISTRICT GOVERNMENT

120.21 School board contracts for courses.

120.21 School board contracts for courses.

(1)

(a) The school board of a union high school district or a common school district operating elementary and high school grades may contract:

1. With the University of Wisconsin-Extension for extension courses for pupils enrolled in high school.
2. With flight operator schools, approved by the U.S. civil aeronautics administration, for courses in flight instruction approved by the state superintendent.

(b) The cost of contracts under this subsection shall be paid out of the school district general fund.

(3) Any contract entered into by a school board that relates to providing online courses is open to public inspection and copying.

History: 1985 a. 29; 1995 a. 27 s. 9145 (1); 1997 a. 27; 2001 a. 103; 2007 a. 222.

CHAPTER 125
ALCOHOL BEVERAGES

125.06 License and permit exceptions.

125.06 License and permit exceptions. No license or permit is required under this chapter for:

- (5) **RAILROADS, AIRCRAFT.** The sale of alcohol beverages on any railroad dining, buffet or cafe car or aircraft, while in transit. Except as authorized under s. 125.26 (3m) or 125.51 (3) (dm), alcohol beverages may be consumed in a railroad dining, buffet or cafe car or aircraft only while it is in transit.

History: 1981 c. 79, 202; 1983 a. 222, 360, 538; 1985 a. 337; 1987 a. 399; 1989 a. 253; 1991 a. 269; 1993 a. 226; 1995 a. 225; 2001 a. 16; 2007 a. 9, 85, 216; 2011 a. 179, 200; 2013 a. 20; 2015 a. 55.

CHAPTER 167
SAFEGUARDS OF PERSONS AND PROPERTY

167.31 Safe use and transportation of firearms and bows.

167.31 Safe use and transportation of firearms and bows.

(1) DEFINITIONS. In this section:

- (a) "Aircraft" has the meaning given under s. 114.002 (3).
- (b) "Encased" means enclosed in a case that is completely zipped, snapped, buckled, tied or otherwise fastened with no part of the firearm exposed.
- (bg) "Family member of the landowner" means a person who is related to the landowner as a parent, child, spouse, or sibling.
- (bn) "Farm tractor" has the meaning given in s. 340.01 (16).
- (c) "Firearm" means a weapon that acts by force of gunpowder.
- (cm) "Handgun" has the meaning given in s. 175.60 (1) (bm).
- (d) "Highway" has the meaning given under s. 340.01 (22).
- (dm) "Implement of husbandry" has the meaning given in s. 340.01 (24).
- (e) "Motorboat" has the meaning given under s. 30.50 (6).
- (em) "Peace officer" has the meaning given in s. 939.22 (22).
- (et) "Private security person" has the meaning given in s. 440.26 (1m) (h).
- (f) "Roadway" has the meaning given under s. 340.01 (54).
- (fg) "Stationary" means not moving, regardless of whether the motor is running.
- (fm) "Street" means a highway that is within the corporate limits of a city or village.
- (fr) "Transmission facility" means any pipe, pipeline, duct, wire, cable, line, conduit, pole, tower, equipment, or other structure used to transmit or distribute electricity to or for the public or to transmit or distribute communications or data to or from the public.
- (g) "Unloaded" means any of the following:
 1. Having no shell or cartridge in the chamber of a firearm or in the magazine attached to a firearm.
 2. In the case of a cap lock muzzle-loading firearm, having the cap removed.
 3. In the case of a flint lock muzzle-loading firearm, having the flashpan cleaned of powder.
 4. In the case of an electronic ignition muzzle-loading firearm, having the battery removed and disconnected from the firearm.
- (h) "Vehicle" has the meaning given in s. 340.01 (74), but includes a snowmobile, as defined in s. 340.01 (58a), an all-terrain vehicle, as defined in s. 340.01 (2g), and an electric personal assistive mobility device, as defined in s. 340.01 (15pm), except that for purposes of subs. (4) (c) and (cg) and (4m) "vehicle" has the meaning given for "motor vehicle" in s. 29.001 (57).

(2) PROHIBITIONS; MOTORBOATS AND VEHICLES; HIGHWAYS AND ROADWAYS.

- (a) Except as provided in sub. (4), no person may place, possess, or transport a firearm, bow, or crossbow in or on a motorboat with the motor running, unless one of the following applies:
 1. The firearm is unloaded or is a handgun.
 2. The bow does not have an arrow nocked.
 3. The crossbow is not cocked or is unloaded and enclosed in a carrying case.
- (b) Except as provided in sub. (4), no person may place, possess, or transport a firearm, bow, or crossbow in or on a vehicle, unless one of the following applies:
 1. The firearm is unloaded or is a handgun.
 2. The bow does not have an arrow nocked.
 3. The crossbow is not cocked or is unloaded and enclosed in a carrying case.
- (c) Except as provided in sub. (4), no person may load a firearm, other than a handgun, in a vehicle or discharge a firearm or shoot a bolt or an arrow from a bow or crossbow in or from a vehicle.
- (d) Except as provided in sub. (4) (a), (bg), (cg), (e), and (g), no person may discharge a firearm or shoot a bolt or an arrow from a bow or crossbow from or across a highway or within 50 feet of the center of a roadway.
- (e) A person who violates pars. (a) to (d) is subject to a forfeiture of not more than \$100.

(3) PROHIBITIONS; AIRCRAFT.

- (a) Except as provided in sub. (4), no person may do any of the following:
 1. Place, possess, or transport a firearm, bow, or crossbow in or on a commercial aircraft, unless the firearm is unloaded and encased or unless the bow or crossbow is unstrung or is enclosed in a carrying case.
 2. Place, possess, or transport a firearm, bow, or crossbow in or on a noncommercial aircraft, unless the firearm is unloaded and encased or the firearm is a handgun or unless the bow or crossbow is unstrung or is enclosed in a carrying case.

CHAPTER 167

- (b) Except as provided in sub. (4), no person may load or discharge a firearm or shoot a bolt or an arrow from a bow or crossbow in or from an aircraft.
- (c) A person who violates par. (a) or (b) shall be fined not more than \$1,000 or imprisoned not more than 90 days or both.

(3m) PROHIBITIONS; TRANSMISSION FACILITIES.

- (a) Except as provided in sub. (4) (b) and (h), no person may intentionally discharge a firearm in the direction of a transmission facility.
- (b) A person who violates par. (a) and causes damage to a transmission facility is subject to a forfeiture of not more than \$100.
- (c) In addition to any forfeiture imposed under par. (b), the court shall revoke any hunting license under ch. 29 that is issued to the person found in violation for a period of one year.
- (d) In addition to any forfeiture imposed under par. (b) and the revocation required under par. (c), the court shall enter a restitution order that requires the defendant to pay to the owner of the transmission facility the reasonable cost of the repair or replacement of the transmission facility.

(4) EXCEPTIONS.

- (a) Subsections (2) and (3) do not apply to any of the following who, in the line of duty, place, possess, transport, load or discharge a firearm in, on or from a vehicle, motorboat or aircraft or discharge a firearm from or across a highway or within 50 feet of the center of a roadway:

- 2. A member of the U.S. armed forces.
- 3. A member of the national guard.
- 4. A private security person who meets all of the following requirements:
 - a. He or she holds either a private detective license issued under s. 440.26 (2) (a) 2. or a private security permit issued under s. 440.26 (5).
 - b. He or she holds a certificate of proficiency to carry a firearm issued by the department of safety and professional services.
 - c. He or she is performing his or her assigned duties or responsibilities.
 - d. He or she is wearing a uniform that clearly identifies him or her as a private security person.
 - e. His or her firearm is in plain view, as defined by rule by the department of safety and professional services.

- (ag) Subsection (2) (b) 1. does not apply to a firearm that is placed or possessed on a vehicle that is stationary.

(am)

- 5. Subsections (2) (a), (c) and (d) and (3) (a) and (b) do not apply to a peace officer who, in the line of duty, loads or discharges a firearm in, on or from a vehicle, motorboat or aircraft or discharges a firearm from or across a highway or within 50 feet of the center of a roadway.
- 6. Subsection (2) (b) does not apply to a peace officer who places, possesses or transports a firearm in or on a vehicle, motorboat or aircraft while in the line of duty.
- 7. Subsection (2) (b) does not apply to a person employed as a peace officer who places, possesses or transports a firearm in or on a vehicle while traveling in the vehicle from his or her residence to his or her place of employment as a peace officer.

- (at) Subsections (2) (c) and (d) and (3) (b) do not apply to the discharge of a firearm if the actor's conduct is justified or, had it been subject to a criminal penalty, would have been subject to a defense described in s. 939.45.

- (b) Subsections (2) (a), (b) and (c), (3) (a) and (b), and (3m) do not apply to the holder of a scientific research license under s. 169.25 or a scientific collector permit under s. 29.614 who is using a net gun or tranquilizer gun in an activity related to the purpose for which the license or permit was issued.

(bg)

- 1. Subsection (2) (a), (b), (c), and (d) does not apply to a state employee or agent, or to a federal employee or agent, who is acting within the scope of his or her employment or agency, who is authorized by the department of natural resources to take animals in the wild for the purpose of controlling the spread of disease in animals and who is hunting in an area designated by the department of natural resources as a chronic wasting disease eradication zone, except that this subdivision does not authorize the discharge of a firearm or the shooting of a bolt or arrow from a bow or crossbow across a state trunk highway, county trunk highway, or paved town highway.
- 1g. Subsection (2) (b) and (c) does not apply to a landowner, a family member of the landowner, or an employee of the landowner who is using a firearm, bow, or crossbow to shoot wild animals from a farm tractor or an implement of husbandry on the landowner's land that is located in an area designated by the department of natural resources as a chronic wasting disease eradication zone.
- 2. This paragraph does not apply after June 30, 2010.

- (bn) Subsection (2) (a) does not apply to a person using a bow or a crossbow for fishing from a motorboat.

- (bt) Subsection (2) (b) does not apply to the placement, possession, or transportation of an unloaded firearm in or on a vehicle if all of the following apply:
3. 1. The vehicle is a self-propelled motor vehicle with 4 rubber-tired wheels.
 4. 2. The vehicle is not certified by the manufacturer for on-road use.
 5. 3. The vehicle is not an all-terrain vehicle, as defined in s. 340.01 (2g).
 6. 4. The vehicle is being used to transport individuals involved in sport shooting activities at sport shooting ranges, as defined in s. 895.527 (1), and is not being used to transport individuals involved in hunting.
 7. 5. The vehicle is being operated entirely on private property and is not being operated in the right-of-way of any highway.
- (c) Subsection (2) (b) and (c) does not apply to the holder of a Class A or Class B permit under s. 29.193 (2) who is hunting from a stationary vehicle.
- (cg) A holder of a Class A or Class B permit under s. 29.193 (2) who is hunting from a stationary vehicle may load and discharge a firearm or shoot a bolt or an arrow within 50 feet of the center of a roadway if all of the following apply:
1. The roadway is part of a county highway, a town highway or any other highway that is not part of a street or of a state trunk or federal highway.
 2. The vehicle is located off the roadway and is not in violation of any prohibition or restriction that applies to the parking, stopping or standing of the vehicle under ss. 346.51 to 346.55 or under a regulation enacted under s. 349.06 or 349.13.
 3. The holder of the permit is not hunting game to fill the tag of another person.
 4. The holder of the permit has obtained permission from any person who is the owner or lessee of private property across or on to which the holder of the permit intends to discharge a firearm or shoot a bolt or an arrow.
 5. The vehicle bears special registration plates issued under s. 341.14 (1), (1a), (1e), or (1m) or displays a sign that is at least 11 inches square on which is conspicuously written "disabled hunter".
 6. The holder of the permit discharges the firearm or shoots the bolt or arrow away from and not across or parallel to the roadway.
- (cm) For purposes of pars. (c) and (cg), the exemption from sub. (2) (b) under these paragraphs only applies to the firearm, bow or crossbow being used for hunting by the holder of the Class A or Class B permit under s. 29.193 (2).
- (co) For purposes of par. (cg), a person may stop a vehicle off the roadway on the left side of the highway.
- (cr) For purposes of par. (cg) 4., "private property" does not include property leased for hunting by the public, land that is subject to a contract under subch. I of ch. 77, or land that is subject to an order designating it as managed forest land under subch. VI of ch. 77 and that is not designated as closed to the public under s. 77.83 (1).
- (d) Subsection (2) (b) does not prohibit a person from leaning an unloaded firearm against a vehicle.
- (e) Subsection (2) (d) does not apply to a person who is legally hunting small game with a muzzle-loading firearm or with a shotgun loaded with shotshell or chilled shot number BB or smaller, if the surface of the highway or roadway is anything other than concrete or blacktop.
- (f) Subsection (2) (d) does not prohibit a person from possessing a loaded firearm within 50 feet of the center of a roadway if the person does not violate sub. (2) (b) or (c).
- (g) A person who is fishing with a bow and arrow may shoot an arrow from a bow, and a person who is fishing with a crossbow may shoot a bolt from a crossbow, within 50 feet of the center of a roadway if the person does not shoot the arrow or bolt from the roadway or across a highway.
- (h) Subsection (3m) does not apply to any of the following who discharge a firearm in the direction of a transmission facility:
1. A member of the armed forces in the line of duty.
 2. A member of the national guard in the line of duty.
 3. A peace officer in the line of duty.
 4. A private security person who meets all of the requirements under par. (a) 4.
- (i) Subsection (2) (b) and (c) does not apply to a person legally hunting from a stationary nonmotorized vehicle that is not attached to a motor vehicle.
- (4m) RULES. The department of natural resources may further restrict hunting from stationary vehicles on county or town highways by promulgating rules designating certain county and town highways, or portions thereof, upon which a holder of a Class A or Class B permit issued under s. 29.193 (2) may not discharge a firearm or shoot a bolt or an arrow from a bow or crossbow under sub. (4) (cg). For each restriction of hunting from a county or town highway contained in a rule to be promulgated under this subsection, the department shall submit a specific justification for the restriction with the rule submitted to legislative council staff for review under s. 227.15 (1).

CHAPTER 167

(5) WEAPONS SURCHARGE.

- (a) If a court imposes a fine or forfeiture for a violation of this section, the court shall also impose a weapons surcharge under ch. 814 equal to 75 percent of the amount of the fine or forfeiture.
- (b) If a fine or forfeiture is suspended in whole or in part, the weapons surcharge shall be reduced in proportion to the suspension.
- (c) If any deposit is made for an offense to which this subsection applies, the person making the deposit shall also deposit a sufficient amount to include the weapons surcharge under this subsection. If the deposit is forfeited, the amount of the weapons surcharge shall be transmitted to the secretary of administration under par. (d). If the deposit is returned, the amount of the weapons surcharge shall also be returned.
- (d) The clerk of the circuit court shall collect and transmit to the county treasurer the weapons surcharge as required under s. 59.40 (2) (m). The county treasurer shall then pay the secretary of administration as provided in s. 59.25 (3) (f) 2. The secretary of administration shall deposit all amounts received under this paragraph in the conservation fund to be appropriated under s. 20.370 (3) (mu).

History: 1985 a. 36; 1987 a. 27, 353; 1991 a. 77; 1993 a. 147; 1995 a. 122, 201; 1997 a. 248, 249; 1999 a. 32, 158; 2001 a. 8, 56, 90, 108; 2003 a. 33, 139, 326; 2005 a. 169, 253, 286, 345; 2007 a. 97; 2009 a. 246; 2011 a. 32, 35, 51, 180, 265.

Cross-reference: See also ss. NR 10.001, 10.05, and 10.07, Wis. adm. code.

CHAPTER 175
MISCELLANEOUS POLICE PROVISIONS

175.55 Use of drones restricted.

175.55 Use of drones restricted.

(1) In this section:

- (a) "Drone" means a powered, aerial vehicle that carries or is equipped with a device that, in analog, digital, or other form, gathers, records, or transmits a sound or image, that does not carry a human operator, uses aerodynamic forces to provide vehicle lift, and can fly autonomously or be piloted remotely. A drone may be expendable or recoverable.
- (b) "Wisconsin law enforcement agency" has the meaning given in s. 165.77 (1) (c) and includes the department of justice and a tribal law enforcement agency.

(2) No Wisconsin law enforcement agency may use a drone to gather evidence or other information in a criminal investigation from or at a place or location where an individual has a reasonable expectation of privacy without first obtaining a search warrant under s. 968.12. This subsection does not apply to the use of a drone in a public place or to assist in an active search and rescue operation, to locate an escaped prisoner, to surveil a place or location for the purpose of executing an arrest warrant, or if a law enforcement officer has reasonable suspicion to believe that the use of a drone is necessary to prevent imminent danger to an individual or to prevent imminent destruction of evidence.

History: 2013 a. 213.

CHAPTER 287
SOLID WASTE REDUCTION, RECOVERY AND RECYCLING

SUBCHAPTER IV
LITTERING

287.81 Littering.

287.81 Littering.

- (1) In this section:
 - (a) "Aircraft" means any structure invented, used or designed for navigation or flight in the air.
 - (am) "Highway" has the meaning given in s. 340.01 (22).
 - (as) "Large item" means an appliance, an item of furniture, a tire, a vehicle, a boat, an aircraft, building materials, or demolition waste.
 - (b) "Vehicle" has the meaning given in s. 340.01 (74), but includes an electric personal assistive mobility device, as defined in s. 340.01 (15pm), and an all-terrain vehicle, as defined in s. 340.01 (2g).
 - (c) "Waters of the state" has the meaning given in s. 281.01 (18).
- (2) Except as provided in sub. (3), a person who does any of the following may be required to forfeit not more than \$500:
 - (a) Deposits or discharges any solid waste on or along any highway, in any waters of the state, on the ice of any waters of the state or on any other public or private property.
 - (b) Permits any solid waste to be thrown from a vehicle operated by the person.
 - (c) Fails to remove within 30 days or otherwise abandons any automobile, boat or other vehicle in the waters of the state.
 - (d) Owns an aircraft that has crashed in the waters of the state and fails to remove the aircraft from those waters within 30 days after the crash, within 30 days after June 15, 1991, or within 30 days after the national transportation safety board pursuant to an investigation under 49 CFR Part 831 authorizes its removal, whichever is latest.

History: 1989 a. 335; 1991 a. 19; 1995 a. 227 s. 917; Stats. 1995 s. 287.81; 2001 a. 90; 2009 a. 368; 2011 a. 265.

**CHAPTER 350
SNOWMOBILES**

350.10 Miscellaneous provisions for snowmobile operation.

350.10 Miscellaneous provisions for snowmobile operation.

- (1) No person shall operate a snowmobile in the following manner:
- (a) At a rate of speed that is unreasonable or improper under the circumstances.
 - (b) In any careless way so as to endanger the person or property of another.
 - (c) Without complying with all stop signs, yield signs or other regulatory signs established by rule under s. 350.13 that are located along snowmobile routes, snowmobile trails or other established snowmobile corridors that are open to the public.
 - (d) In such a way that the exhaust and engine noise exceeds the applicable noise level standard specified in s. 350.095 (2) (c) or (d).
 - (f) On the private property of another without the consent of the owner or lessee. Failure to post private property does not imply consent for snowmobile use.
 - (fm) On public property that is posted as closed to snowmobile operation or on which the operation of a snowmobile is prohibited by law.
 - (g) Between the hours of 10:30 p.m. and 7 a.m. when within 150 feet of a dwelling at a rate of speed exceeding 10 miles per hour.
 - (gm) During the hours of darkness at a rate of speed exceeding 55 miles per hour.
 - (h) In any forest nursery, planting area or on public lands posted or reasonably identified as an area of forest or plant reproduction when growing stock may be damaged.
 - (i) On the frozen surface of public waters within 100 feet of a person not in or upon a vehicle or within 100 feet of a fishing shanty unless operated at a speed of 10 miles per hour or less.
 - (j) On a slide, ski or skating area except for the purpose of serving the area, crossing at places where marked or after stopping and yielding the right-of-way.
 - (k) On or across a cemetery, burial ground, school or church property without consent of the owner.
 - (l) On the lands of an operating airport or landing facility except for personnel in performance of their duties or with consent.
 - (m) On Indian lands without the consent of the tribal governing body or Indian owner. For purposes of this paragraph, "Indian lands" means lands owned by the United States and held for the use or benefit of Indian tribes, bands, or individual Indians and lands owned by Indian tribes, bands, or individual Indians which are subject to restrictions on alienation. Failure to post Indian lands does not imply consent for snowmobile use. Any other motor-driven craft or vehicle principally manufactured for off-highway use shall at all times have the consent of the owner before operation of such craft or vehicle on private lands.
- (2) Subsection (1) (c) does not apply to a person operating a snowmobile on land under the management and control of the person's immediate family.
- (3) Subsection (1) (gm) does not apply to a person operating a snowmobile while competing in a sanctioned race or derby.

History: 1971 c. 219, 277; 1981 c. 79 s. 17; 1983 a. 459; 1987 a. 399; 1997 a. 34; 2005 a. 209, 210; 2007 a. 29; 2009 a. 252, 389.

CHAPTER 632
INSURANCE CONTRACTS IN SPECIFIC LINES

SUBCHAPTER III
LIABILITY INSURANCE IN GENERAL

632.23 Prohibited exclusions in aircraft insurance policies.

632.23 Prohibited exclusions in aircraft insurance policies. No policy covering any liability arising out of the ownership, maintenance or use of an aircraft, may exclude or deny coverage because the aircraft is operated in violation of air regulation, whether derived from federal or state law or local ordinance.

History: 1975 c. 375.

CHAPTER 779
LIENS

SUBCHAPTER I
CONSTRUCTION LIENS

779.14 Public works, form of contract, bond, remedy.

779.15 Public improvements; lien on money, bonds, or warrants due the prime contractor; duty of officials.

779.14 Public works, form of contract, bond, remedy.

(1) DEFINITION. In this section, "subcontractor, supplier, or service provider" means the following:

- (a)** Any person who has a direct contractual relationship, expressed or implied, with the prime contractor or with any subcontractor of the prime contractor to perform, furnish, or procure labor, services, materials, plans, or specifications, except as provided in par. **(b)**.
- (b)** With respect to contracts entered into under s. 84.06 (2) for highway improvements, any person who has a direct contractual relationship, expressed or implied, with the prime contractor to perform, furnish, or procure labor, services, materials, plans, or specifications.

(1e) CONTRACT REQUIREMENTS REGARDING DUTIES OF PRIME CONTRACTOR.

- (c)** All contracts involving \$10,000 or more for performing, furnishing, or procuring labor, services, materials, plans, or specifications, when the same pertains to any public improvement or public work shall contain a provision for the payment by the prime contractor of all claims for labor, services, materials, plans, or specifications performed, furnished, procured, used, or consumed that pertain to the public improvement or public work.
- (d)** All contracts that are in excess of \$30,000, as indexed under sub. (1s), and that are for performing, furnishing, or procuring labor, services, materials, plans, or specifications for a public improvement or public work shall contain a provision under which the prime contractor agrees, to the extent practicable, to maintain a list of all subcontractors, suppliers, and service providers performing, furnishing, or procuring labor, services, materials, plans, or specifications under the contract.

(1m) PAYMENT AND PERFORMANCE ASSURANCE REQUIREMENTS.

- (e) State contracts.** The following requirements apply to contracts with the state for performing, furnishing, or procuring labor, services, materials, plans, or specifications for a public improvement or public work:
 1. In the case of a contract with a contract price exceeding \$10,000, as indexed under sub. (1s), but not exceeding \$100,000, as indexed under sub. (1s):
 - a. The contract shall include a provision which allows the state to make direct payment to subcontractors or to pay the prime contractor with checks that are made payable to the prime contractor and to one or more subcontractors. This subd. 1. a. does not apply to any contract entered into by the state under authority granted under chs. 84, 85 and 86. This subd. 1. a. also does not apply to any contract with a town, city, village, county or school district for the construction, improvement, extension, repair, replacement or removal of a transportation facility, as defined under s. 84.185 (1) (d); bikeway, as defined under s. 84.60 (1) (a); bridge; parking lot or airport facility.
 - b. The contract shall comply with written standards established by the department of administration. Written standards established under this subd. 1. b. shall include criteria for determining whether the contract requires payment or performance assurances and, if so, what payment or performance assurances are required.
 2. In the case of a contract with a contract price exceeding \$100,000, as indexed under sub. (1s), but not exceeding \$250,000, as indexed under sub. (1s):
 - a. The contract shall include a provision which allows the state to make direct payment to subcontractors or to pay the prime contractor with checks that are made payable to the prime contractor and to one or more subcontractors. This subd. 2. a. does not apply to any contract entered into by the state under authority granted under chs. 84, 85 and 86. This subd. 2. a. also does not apply to any contract with a town, city, village, county or school district for the construction, improvement, extension, repair, replacement or removal of a transportation facility, as defined under s. 84.185 (1) (d); bikeway, as defined under s. 84.60 (1) (a); bridge; parking lot or airport facility.
 - b. The contract shall require the prime contractor to provide a payment and performance bond meeting the requirements of par. (e), unless the department of administration allows the prime contractor to substitute a different payment assurance for the payment and performance bond. The department of administration may allow a prime contractor to substitute a different payment and performance assurance for the payment and performance bond only after the contract has

been awarded and only if the substituted payment and performance assurance is for an amount at least equal to the contract price and is in the form of a bond, an irrevocable letter of credit or an escrow account acceptable to the department of administration. The department of administration shall establish written standards under this subd. 2. b. governing when a different payment and performance assurance may be substituted for a payment and performance bond under par. (e).

3. In the case of a contract with a contract price exceeding \$250,000, as indexed under sub. (1s), the contract shall require the prime contractor to obtain a payment and performance bond meeting the requirements under par. (e).
- (f) *Local government contracts.* The following requirements apply to contracts, other than contracts with the state, for performing, furnishing, or procuring labor, services, materials, plans, or specifications for a public improvement or public work:
1. In the case of a contract with a contract price exceeding \$10,000, as indexed under sub. (1s), but not exceeding \$50,000, as indexed under sub. (1s):
 - a. The contract shall include a provision which allows the governmental body that is authorized to enter into the contract to make direct payment to subcontractors or to pay the prime contractor with checks that are made payable to the prime contractor and to one or more subcontractors. This subd. 1. a. does not apply to any contract with a town, city, village, county or school district for the construction, improvement, extension, repair, replacement or removal of a transportation facility, as defined under s. 84.185 (1) (d); bikeway, as defined under s. 84.60 (1) (a); bridge; parking lot or airport facility.
 - b. The contract shall comply with written standards established by the public body authorized to enter into the contract. Written standards established under this subd. 1. b. shall include criteria for determining whether the contract requires payment or performance assurances and, if so, what payment or performance assurances are required.
 2. In the case of a contract with a contract price exceeding \$50,000, as indexed under sub. (1s), but not exceeding \$100,000, as indexed under sub. (1s):
 - a. The contract shall include a provision which allows the governmental body that is authorized to enter into the contract to make direct payment to subcontractors or to pay the prime contractor with checks that are made payable to the prime contractor and to one or more subcontractors. This subd. 2. a. does not apply to any contract with a town, city, village, county or school district for the construction, improvement, extension, repair, replacement or removal of a transportation facility, as defined under s. 84.185 (1) (d); bikeway, as defined under s. 84.60 (1) (a); bridge; parking lot or airport facility.
 - b. Except as provided in sub. (4), the contract shall require the prime contractor to provide a payment and performance bond meeting the requirements of par. (e), unless the public body authorized to enter into the contract allows the prime contractor to substitute a different payment assurance for the payment and performance bond. The public body may allow a prime contractor to substitute a different payment and performance assurance for the payment and performance bond only if the substituted payment and performance assurance is for an amount at least equal to the contract price and is in the form of a bond, an irrevocable letter of credit or an escrow account acceptable to the public body. The public body shall establish written standards under this subd. 2. b. governing when a different payment and performance assurance may be substituted for a payment and performance bond under par. (e).
 3. Except as provided in sub. (4), in the case of a contract with a contract price exceeding \$100,000, as indexed under sub. (1s), the contract shall require the prime contractor to obtain a payment and performance bond meeting the requirements under par. (e).
- (g) *Bonding requirements.*
2. A bond required under par. (c) or (d) shall carry a penalty of not less than the contract price, and shall be conditioned for all of the following:
 - a. The faithful performance of the contract.
 - b. The payment to every person, including every subcontractor, supplier, or service provider, of all claims that are entitled to payment for labor, services, materials, plans, or specifications performed, furnished, or procured for the purpose of making the public improvement or performing the public work as provided in the contract and sub. (1e) (a).
 3. A bond required under par. (c) shall be approved for the state by the state official authorized to enter the contract. A bond required under par. (d) shall be approved for a county by its corporation counsel, for a city by its mayor, for a village by its president, for a town by its chairperson, for a school district by its president and for any other public board or body by the presiding officer thereof.

4. No assignment, modification or change of the contract, change in the work covered thereby or extension of time for the completion of the contract may release the sureties on a bond required under par. (c) or (d).
 5. Neither the invitation for bids nor the person having power to approve the prime contractor's bond may require that a bond required under par. (c) or (d) be furnished by a specified surety company or through a specified agent or broker.
- (h) *Direct purchase contracts.* Paragraphs (c) and (d) do not apply to a contract for the direct purchase of materials by the state or by a local unit of government.
- (1s) **INDEXING OF CONTRACT THRESHOLDS.** If a dollar amount is to be indexed under this subsection, the department of workforce development shall adjust the dollar amount biennially, the first adjustment to be made not sooner than December 1, 1998. The adjustment shall be in proportion to any change in construction costs since June 17, 1998, under this subsection, or the last adjustment whichever is later. No adjustment shall be made for a biennium, if the adjustment to be made would be less than 5 percent.
- (2) **ACTIONS ON A PERFORMANCE AND PAYMENT BOND.**
- (a) Except as provided in par. (am), no later than one year after the completion of work under the contract, any party in interest, including any subcontractor, supplier, or service provider, may maintain an action in that party's name against the prime contractor and the sureties upon the bond for the recovery of any damages sustained by reason of any of the following:
 1. Failure of the prime contractor to comply with the contract.
 2. Except as provided in subd. 3., failure of the prime contractor or a subcontractor of the prime contractor to comply with a contract, whether express or implied, with a subcontractor, supplier, or service provider for performing, furnishing, or procuring labor, services, materials, plans, or specifications for the purpose of making the public improvement or performing the public work that is the subject of the contract with the governmental entity.
 3. With respect to contracts entered into under s. 84.06 (2) for highway improvements, failure of the prime contractor to comply with a contract, whether express or implied, with a subcontractor, supplier, or service provider of the prime contractor for performing, furnishing, or procuring labor, services, materials, plans, or specifications for the purpose of making the highway improvement that is the subject of the contract with the governmental entity.
 - (am)
 4. Except as provided in subd. 2., a subcontractor, supplier, or service provider may maintain an action under par. (a) only if the subcontractor, supplier, or service provider has served a written notice on the prime contractor that the subcontractor, supplier, or service provider has performed, furnished, or procured, or will perform, furnish, or procure labor, services, materials, plans, or specifications to the public work or improvement. The notice must be served no later than 60 days after the date on which the subcontractor, supplier, or service provider first performed, furnished, or procured the labor, services, materials, plans, or specifications.
 5. A notice under subd. 1. is not required if any of the following applies:
 - a. The contract for performing, furnishing, or procuring the labor, services, materials, plans, or specifications does not exceed \$5,000.
 - b. The action is brought by an employee of the prime contractor, subcontractor, supplier, or service provider.
 - c. The subcontractor, supplier, or service provider is listed in the list required to be maintained under sub. (1e) (b) or in a written contract, or in a document appended to a written contract, between a subcontractor, supplier, or service provider and the prime contractor.
 - (b) If the amount realized on the bond is insufficient to satisfy all claims of the parties in full, it shall be distributed among the parties proportionally.
- (3) **ACTIONS BY A COUNTY.** In an action by a county upon the bond all persons for whose protection it was given and who make claim thereunder may be joined in the action. The county highway commissioner may take assignments of all demands and claims for labor, services, materials, plans, or specifications and enforce the same in the action for the benefit of the assignors, and the judgment may provide the manner in which the assignors shall be paid.
- (4) **BONDING EXEMPTION.** A contract with a local professional football stadium district under subch. IV of ch. 229 is not required under sub. (1m) (d) 2. b. or 3. to include a provision requiring the prime contractor to provide or obtain a payment and performance bond or other payment assurance.

History: 1973 c. 90; 1975 c. 147 s. 54; 1975 c. 224; 1977 c. 418; 1979 c. 32 s. 57; 1979 c. 110 s. 60 (12); 1979 c. 176; Stats. 1979 s. 779.14; 1985 a. 225; 1987 a. 399; 1989 a. 31, 290; 1995 a. 395, 432; 1997 a. 27, 39, 237; 1999 a. 167; 2005 a. 204; 2013 a. 173 s. 33.

Cross-reference: See also ch. DWD 293, Wis. adm. code.

A subcontractor can maintain an action against the prime contractor and the prime contractor's surety if the claim is brought within one year after completion of work on the principal contract. Honeywell, Inc. v. Aetna Casualty & Surety Co. 52 Wis. 2d 425, 190 N.W.2d 499 (1971).

In a complaint seeking to foreclose a construction lien on a municipal arena, an allegation that the lessee of the arena was acting as the city's agent in contracting for improvements to the arena was sufficient to withstand a demurrer. James W. Thomas Const. Co., Inc. v. Madison, 79 Wis. 2d 345, 255 N.W.2d 551 (1977).

The liability of a prime contractor for damages to employees of a subcontractor under s. 779.14 (2) did not include wage penalties under s. 66.293 (3) [now 66.0903 (3)]. Consent to be a named party under s. 66.293 (3) may occur after one year when the action is for damages under s. 66.293 in the name of the plaintiffs and other similarly situated employees and was filed within the one-year time period. Strong v. C.I.R., Inc. 184 Wis. 2d 619, 516 N.W.2d 719 (1994).

A prime contractor is responsible for and must provide a bond in the amount of its own contract, not in the amount of the total of all prime contractors together. Golden Valley Supply Company v. American Insurance Company, 195 Wis. 2d 866, 537 N.W.2d 58 (Ct. App. 1995), 95-0357.

Completion of work under a contract under sub. (2) occurs when a contractor has completed the work, not when the work is accepted. Arbor Vitae-Woodruff Joint School District No. 1 v. Gulf Insurance Co. 2002 WI App 24, 250 Wis. 2d 637, 639 N.W.2d 788, 01-0993.

The deletion of sub. (1m) (b) 1., 1995 stats., which specifically required a municipality to require a prime contractor to furnish a bond did not eliminate municipal liability in the event the municipality fails to ensure the existence of a contractor's bond. Holmen Concrete Products v. Hardy Construction Co. 2004 WI App 165, 276 Wis. 2d 126, 686 N.W.2d 705, 03-3335.

779.15 Public improvements; lien on money, bonds, or warrants due the prime contractor; duty of officials.

- (1) Any person who performs, furnishes, procures, manages, supervises, or administers any labor, services, materials, plans, or specifications used or consumed in making public improvements or performing public work, to any prime contractor, except in cities of the 1st class, shall have a lien on the money or bonds or warrants due or to become due the prime contractor therefor, if the lienor, before payment is made to the prime contractor, serves a written notice of the claim on the debtor state, county, town, or municipality. The debtor shall withhold a sufficient amount to pay the claim and, when it is admitted by the prime contractor or established under sub. (3), shall pay the claim and charge it to the prime contractor. Any officer violating the duty hereby imposed shall be liable on his or her official bond to the claimant for the damages resulting from the violation. There shall be no preference between the lienors serving the notices.
- (2) Service of the notice under sub. (1) shall be made upon the clerk of the municipality or in the clerk's absence upon the treasurer. If any of the money due the prime contractor is payable by the state, service of the notice under sub. (1) shall be served upon the state department, board, or commission having jurisdiction over the work. A copy of the notice shall be served concurrently upon the prime contractor.
- (3) If a valid lien exists under sub. (1) and the prime contractor does not dispute the claim within 30 days after service on the prime contractor of the notice provided in sub. (2), by serving written notice on the debtor state, county, town, or municipality and the lien claimant, the amount claimed shall be paid over to the claimant on demand and charged to the prime contractor pursuant to sub. (1). If the prime contractor disputes the claim, the right to a lien and to the moneys in question shall be determined in an action brought by the claimant or the prime contractor. If the action is not brought within 3 months from the time the notice required by sub. (1) is served, and notice of bringing the action filed with the officer with whom the claim is filed, the lien rights are barred.
- (4)
 - (a) When the total of the lien claims exceeds the sum due the prime contractor and where the prime contractor has not disputed the amounts of the claims filed, the debtor state, county, town or municipality, through the officer, board, department or commission with whom the claims are filed, shall determine on a proportional basis who is entitled to the money and shall notify all claimants and the prime contractor in writing of the determination. Unless an action is commenced by a claimant or by the prime contractor within 20 days after the mailing of the notice, the money shall be paid out in accordance with the determination and the liability of the state, county, town or municipality to any lien claimant shall cease.
 - (b) If an action is commenced, all claimants shall be made parties and the action shall be commenced within 3 months after acceptance of the work by the proper public authority except as otherwise herein provided.
 - (c) Within 10 days after the filing of a certified copy of judgment in any such action with the officers with whom the notice authorized by sub. (1) is filed, the money due the prime contractor shall be paid to the clerk of court to be distributed in accordance with the judgment.

History: 1975 c. 147 s. 54; 1975 c. 199, 224, 422; 1979 c. 32 s. 57; 1979 c. 176; Stats. 1979 s. 779.15; 1997 a. 39; 2005 a. 204.

A public improvement lien under this section is subject to the waiver provision of s. 289.05 (1) [now s. 779.05 (1)]. Since waiver of a public improvement lien disposes of the lien itself, the refiling of a claim for a lien after a

waiver was a nullity and the fact that the claim was not disputed following the refiling did not revive the lien. *Druml Co., Inc. v. New Berlin*, 78 Wis. 2d 305, 254 N.W.2d 265 (1977).

In a complaint seeking to foreclose a construction lien on a municipal arena, an allegation that the lessee of the arena was acting as the city's agent in contracting for improvements to the arena was sufficient to withstand a demurrer. James W. Thomas Const. Co., Inc. v. Madison, 79 Wis. 2d 345, 255 N.W.2d 551 (1977).

SUBCHAPTER IV MECHANIC'S LIENS, ETC.

779.43 Liens of keepers of hotels, livery stables, garages, marinas and pastures.

779.43 Liens of keepers of hotels, livery stables, garages, marinas and pastures.

- (1) As used in this section:
 - (a) "Boarding house" includes a house or other building where regular meals are generally furnished or served to 3 or more persons at a stipulated amount for definite periods of one month or less.
 - (b) "Lodging house" includes any house or other building where rooms or lodgings are generally rented to 3 or more persons received or lodged for hire, or any part of a house or other building that is let for sleep at stipulated rentals for definite periods of one month or less, whether any or all of the rooms or lodgings are let or used for light housekeeping or not, except that duplex flats or apartment houses actually divided into residential units shall not be considered lodging houses.
 - (c) "Marina" includes any property used for the storage, repair or mooring of boats, whether on land or in water.
- (2)
 - (a) Except as provided in par. (b), every keeper of an inn, hotel, boarding house or lodging house shall have a lien upon and may retain possession of all baggage and other effects brought into the place by any guest, boarder or lodger, whether the baggage and effects are the property of or under the control of the guest, boarder or lodger, or are the property of any other person liable for the board and lodging for the proper charges owing the keeper for board, lodging and other accommodation furnished to or for a guest, boarder or lodger, and for all moneys loaned, not exceeding \$50, and for extras furnished at the written request signed by the guest, boarder or lodger, until the charges are paid. Any execution or attachment levied upon the baggage or effects shall be subject to the lien given by this section and the costs of satisfying it.
 - (b) The lien given by this section does not cover charges for alcohol beverages nor the papers of any soldier, sailor or marine that are derived from and evidence of military or naval service or adjusted compensation, compensation, pension, citation medal or badge.
- (3) Subject to sub. (4), every keeper of a garage, marina, livery or boarding stable, and every person pasturing or keeping any carriages, automobiles, boats, harness or animals, and every person or corporation, municipal or private, owning any airport, hangar or aircraft service station and leasing hangar space for aircraft, shall have a lien thereon and may retain the possession thereof for the amount due for the keep, support, storage or repair and care thereof until paid. But no garage or marina keeper shall exercise the lien upon any automobile or boat unless the keeper gives notice of the charges for storing automobiles or boats on a signed service order or by posting in some conspicuous place in the garage or marina a card that is easily readable at a distance of 15 feet.
- (4)
 - (a) The lien of a marina keeper under this section is subject to the lien of any security interest in the boat that is perfected as provided by law prior to the commencement of the services for which the lien is claimed unless the services were done with the express consent of the holder of the security interest, but only for charges in excess of \$1,200.
 - (b) Within 30 days after the charges for the services of a marina keeper become past due, the marina keeper shall send written notice to the owner of the boat and the holder of the senior lien on the boat informing them that they must take steps to obtain the release of the boat. To reclaim the boat, the owner or the senior lienholder must pay all charges that have a priority over other security interests under par. (a) and all reasonable storage charges on the boat that have accrued after 60 days from the date that the charges for the services became past due. A reasonable effort to notify the owner and the holder of the senior lien satisfies the notice requirement under this paragraph. Failure to make a reasonable effort to notify the owner and the senior lienholder renders void any lien to which the marina keeper may be entitled under this section.
 - (c) A lien of a marina keeper under this section is in addition to any remedy available under ch. 780.

History: 1979 c. 32 s. 57; 1979 c. 176; Stats. 1979 s. 779.43; 1981 c. 79 s. 17; 1995 a. 331; 1997 a. 254.

No garage keeper's lien is imposed under sub. (3) when storage occurs without an owner's consent. Bob Ryan Leasing v. Sampair, 125 Wis. 2d 266, 371 N.W.2d 405 (Ct. App. 1985).

A lien under sub. (3) is contingent on possession and is a possessory lien under s. 409.333 (1) with priority over a security interest. Premier Community Bank v. Schuh, 2010 WI App 111, 329 Wis. 2d 146, 789 N.W.2d 388, 09-1722.

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*Following transfer of ownership of a vehicle in possession of a garage keeper, for the garage keeper to have a lien on the vehicle under sub. (3) enforceable against the new owner, two criteria must have been met: 1) the garage keeper must have satisfied the notice requirements of sub. (3); and 2) the bailment of the vehicle must have been with the new owner's consent. The consent required by Bob Ryan is necessarily limited. While a party might consent expressly, for example by signing a work order, a party might also consent impliedly. *Toyota Motor Credit Corporation v. North Shore Collision, LLC*, 2011 WI App 38, 332 Wis. 2d 201, 796 N.W.2d 832, 10-0761.*

CHAPTER 941
CRIMES AGAINST PUBLIC HEALTH AND SAFETY

SUBCHAPTER III
WEAPONS

941.292 Possession of a weaponized drone.

941.292 Possession of a weaponized drone.

- (1) In this section, "drone" means a powered, aerial vehicle that does not carry a human operator, uses aerodynamic forces to provide vehicle lift, and can fly autonomously or be piloted remotely. A drone may be expendable or recoverable.
- (2) Whoever operates any weaponized drone is guilty of a Class H felony. This subsection does not apply to a member of the U.S. armed forces or national guard acting in his or her official capacity.

History: 2013 a. 213.

CHAPTER 942
CRIMES AGAINST REPUTATION, PRIVACY AND CIVIL LIBERTIES

942.10 Use of a drone.

942.10 Use of a drone. Whoever uses a drone, as defined in s. 175.55 (1) (a), with the intent to photograph, record, or otherwise observe another individual in a place or location where the individual has a reasonable expectation of privacy is guilty of Class A misdemeanor. This section does not apply to a law enforcement officer authorized to use a drone pursuant to s. 175.55 (2).

History: 2013 a. 213.

CHAPTER 945
GAMBLING

945.05 Dealing in gambling devices.

945.05 Dealing in gambling devices.

- (3) Any motor vehicle or aircraft, used or employed to aid in or to facilitate the unlawful manufacture or commercial transfer of those gambling devices enumerated in sub. (1), may be seized by any peace officer and shall be forfeited to the state in an action brought by the attorney general or the district attorney of the county where the vehicle or aircraft is subject to forfeiture and such action shall be in the name of and on behalf of the state in accordance with ch. 778. Lienholders and owners shall have the same rights as provided in s. 139.40.

History: 1977 c. 173, 297; 1979 c. 32 s. 92 (8); 1993 a. 486; 1999 a. 9, 134; 2001 a. 16, 109.

Dissemination of out-of-state lottery tickets by business establishments in Wisconsin, with or without a purchase, violates sub. (1) (a). 75 Atty. Gen. 47.

CHAPTER 961
UNIFORM CONTROLLED SUBSTANCES ACT

SUBCHAPTER IV
OFFENSES AND PENALTIES

961.42 Prohibited acts B — penalties.

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- (1) It is unlawful for any person knowingly to keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft or other structure or place, which is resorted to by persons using controlled substances in violation of this chapter for the purpose of using these substances, or which is used for manufacturing, keeping or delivering them in violation of this chapter.
- (2) Any person who violates this section is guilty of a Class I felony.

History: 1971 c. 219; 1995 a. 448 s. 267; Stats. 1995 s. 961.42; 1997 a. 283; 2001 a. 109.

“Keeping” a substance under sub. (1) means more than simple possession; it means keeping for the purpose of warehousing or storage for ultimate manufacture or delivery. State v. Brooks, 124 Wis. 2d 349, 369 N.W.2d 183 (Ct. App. 1985).

Warehousing or storage under Brooks does not encompass merely possessing an item while transporting it. Cocaine was not warehoused or stored when the cocaine was carried in the defendant's truck while moving from one location to another. State v. Slagle, 2007 WI App 117, 300 Wis. 2d 662, 731 N.W.2d 284, 06-0775.

CHAPTER 985
PUBLICATION OF LEGAL NOTICES; PUBLIC NEWSPAPERS; FEES

985.07 Classes and frequency of legal notices.

985.07 Classes and frequency of legal notices. There shall be 3 classes of legal notices under this chapter. The designated number of insertions is the minimum required by law, and the frequency may be increased at the discretion of the requisitioning agency.

- (1) CLASS 1 NOTICES. All notices designated as class 1 notices require one insertion.
- (2) CLASS 2 NOTICES. All notices designated as class 2 notices require 2 insertions.
- (3) CLASS 3 NOTICES.
 - (a) All notices designated as class 3 notices require 3 insertions.
 - (b) Any legal notice not otherwise designated shall be a class 3 notice unless the time permitted by law necessitates a class 2 or class 1 notice, except that any notice required by law on January 2, 1966, which is not otherwise designated, shall be a class 1 notice.
- (4) The classification provided herein does not apply to notices of public election or referenda or to notices governed by s. 815.31 but such notices shall be governed by the specific statutes relating thereto.
History: Sup. Ct. Order, 67 Wis. 2d 585, 784 (1975).