



2005 ASSEMBLY BILL 1045

February 20, 2006 - Introduced by Representatives FREESE, RICHARDS, VOS, HAHN, MURSAU, BERCEAU, ALBERS, HINES and MOLEPSKE, cosponsored by Senator RISSER. Referred to Committee on Tourism.

1 **AN ACT** *to renumber* 66.0413 (3) (a) 1. and 101.121 (4) (a); *to consolidate,*
2 *renumber and amend* 66.0413 (4) (a) and (b); *to amend* 59.69 (4m), 60.64,
3 62.23 (7) (em), 66.0413 (1) (b) 1., 66.0413 (1) (d), 66.0413 (1) (h), 66.0413 (1) (k),
4 101.121 (4) (b), 101.122 (4) (b) 1., 101.132 (2) (b) 1., 101.132 (2) (b) 2., 101.132
5 (2) (b) 3., 254.61 (1) (f) 2. and 823.21; *to repeal and recreate* 66.0413 (3) (c);
6 and *to create* 66.0413 (3) (a) 1c., 66.0413 (3) (a) 1r., 66.0413 (3) (a) 3., 66.0413
7 (3) (e), 66.0413 (3) (f), 101.121 (3) (c), 101.121 (4) (a) 2., 101.121 (6), 101.132 (2)
8 (b) 3m., 101.132 (2) (e) 3. and 101.975 (4) of the statutes; **relating to:** the
9 regulation of historic buildings, the State Historic Building Code, and requiring
10 local regulations applicable to historic buildings and structures to facilitate
11 their preservation and restoration.

Analysis by the Legislative Reference Bureau

This bill makes numerous changes relating to historic buildings. Significant provisions include all of the following:

ASSEMBLY BILL 1045***Razing of historic buildings***

Under this bill, if a local governmental unit (city, village, town, county, housing authority, redevelopment authority, or housing and community development authority) issues a raze order, issues written notification of nuisance, or intends to authorize the razing of a historic building or a building that is at least 50 years old, the local governmental unit must first publish a class 1 notice that describes its action or intended action, and must notify any landmarks commission or local historical society in the municipality in which the historic building is located. If the building in question is a historic building, the local governmental unit must also hold a public hearing on its action or intended action. If the building is at least 50 years old, the local governmental unit must hold a public hearing on its action or intended action if requested to do so by the local landmarks commission or historical society or by at least 25, or 1 percent, of the electors of the municipality. Upon request of a local governmental unit, the bill authorizes the State Historical Society to waive these notice and hearing requirements to avoid an emergency condition that threatens public health or safety.

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

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

State Historic Building Code

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

With certain exceptions, the owner of a qualified historic building may elect to be subject to the State Historic Building Code. With limited exceptions, an owner who makes this election is exempt from any provision of any other building code, including a local building code, that concerns a matter that is dealt with in the State

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Historic Building Code. Although current law does not contain an administrative procedure designed specifically to determine whether an owner is entitled to this exemption, current law does contain a procedure that an owner may follow to resolve any conflicts between a local order and any order of the department that relates to the safety of places of employment or certain buildings that are open to the public (public buildings).

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

Historic buildings used as multifamily dwellings

Current law requires the department to promulgate a multifamily dwelling code that provides uniform standards for the construction of multifamily dwellings and their components. With certain exceptions, a multifamily dwelling is an apartment building, row house, town house, condominium, or manufactured building that does not exceed 60 feet in height or six stories and that consists of three or more attached dwelling units. The Multifamily Dwelling Code currently applies to any building or portion of a building that is converted to a multifamily dwelling after April 1, 1995, unless the building is a qualified historic building and the owner elects to be subject to the State Historic Building Code. Rules promulgated by the department also permit a local governmental unit to exercise jurisdiction over the construction and inspection of multifamily dwellings by adopting ordinances that are consistent with the multifamily dwelling code. Currently, the multifamily dwelling code contains specific requirements relating to the type, height, and design of handrails and guardrails that are required to be used in multifamily dwellings.

This bill permits a local governmental unit to adopt an ordinance that requires the local governmental unit to grant a variance from these handrail and guardrail requirements, as they apply to a qualified historic building that is converted from a single-family dwelling to a multifamily dwelling, if the owner of the qualified historic building shows that the type, height, and design of the handrail or guardrail proposed for installation is historically appropriate.

Current law requires certain multifamily dwellings to meet design and construction standards that ensure accessibility for individuals with physical

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

Historic preservation in local governmental units

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

Study of rural historic preservation

The bill requests the Joint Legislative Council to study methods of promoting rural historic preservation.

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

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

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

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

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1 of the district, and shall interpret the county's regulations to facilitate the
2 preservation and restoration of historic buildings and structures.

3 **SECTION 2.** 60.64 of the statutes is amended to read:

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

15 **SECTION 3.** 62.23 (7) (em) of the statutes is amended to read:

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

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

7 **SECTION 4.** 66.0413 (1) (b) 1. of the statutes is amended to read:

8 66.0413 (1) (b) 1. If a building is old, dilapidated or out of repair and
9 consequently dangerous, unsafe, unsanitary or otherwise unfit for human
10 habitation and unreasonable to repair, order the owner of the building to raze the
11 building or, if the building can be made safe by reasonable repairs, order the owner
12 to either make the building safe and sanitary or to raze the building, at the owner's
13 option.

14 **SECTION 5.** 66.0413 (1) (d) of the statutes is amended to read:

15 66.0413 (1) (d) *Service of order.* ~~An~~ Subject to sub. (3) (c) 3., an order under par.
16 (b) shall be served on the owner of record of the building that is subject to the order
17 or on the owner's agent if the agent is in charge of the building in the same manner
18 as a summons is served in circuit court. An order under par. (b) shall be served on
19 the holder of an encumbrance of record by 1st class mail at the holder's last-known
20 address and by publication as a class 1 notice under ch. 985. If the owner and the
21 owner's agent cannot be found or if the owner is deceased and an estate has not been
22 opened, the order may be served by posting it on the main entrance of the building
23 and by publishing it as a class 1 notice under ch. 985 before the time limited in the
24 order begins to run. The time limited in the order begins to run from the date of

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1 service on the owner or owner's agent or, if the owner and agent cannot be found, from
2 the date that the order was posted on the building.

3 **SECTION 6.** 66.0413 (1) (h) of the statutes is amended to read:

4 66.0413 (1) (h) *Restraining order.* A person affected by an order issued under
5 par. (b) may within the time provided by s. 893.76 apply to the circuit court for an
6 order restraining the building inspector or other designated officer from razing the
7 building or forever be barred. The hearing shall be held within 20 days and shall be
8 given preference. The court shall determine whether the raze order is reasonable.
9 If the order is found reasonable the court shall dissolve the restraining order. If the
10 order is found not reasonable the court shall continue the restraining order or modify
11 it as the circumstances require. Costs are in the discretion of the court. If the court
12 finds that the order is unreasonable, the building inspector or other designated
13 officer shall issue no other order under this subsection in regard to the same building
14 until its condition is substantially changed. The remedies provided in this
15 paragraph are exclusive remedies and anyone affected by an order issued under par.
16 (b) is not entitled to recover any damages for the razing of the building. For the
17 purposes of this paragraph, if the order requires the razing of a historic building, as
18 defined in sub. (3) (a) 1m., persons affected by the order include a representative of
19 a landmarks commission created in the political subdivision in which the historic
20 building is located, a representative of a local historical society organized in the
21 political subdivision in which the historic building is located, an elector of the city,
22 village, or town in which the historic building is located, and the owner of a historic
23 building, as defined in sub. (3) (a) 1m., that is located within 200 yards of the historic
24 building that is subject to the order.

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

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

5 **SECTION 8.** 66.0413 (3) (a) 1. of the statutes is renumbered 66.0413 (3) (a) 1f.

6 **SECTION 9.** 66.0413 (3) (a) 1c. of the statutes is created to read:

7 66.0413 (3) (a) 1c. “Authority” means a housing authority under subch. XII, a
8 redevelopment authority under s. 66.1333, or a housing and community
9 development authority under s. 66.1335.

10 **SECTION 10.** 66.0413 (3) (a) 1r. of the statutes is created to read:

11 66.0413 (3) (a) 1r. “Local governmental unit” means a city, village, town, or
12 county, and includes an authority acting on behalf of or at the direction of a city,
13 village, or town.

14 **SECTION 11.** 66.0413 (3) (a) 3. of the statutes is created to read:

15 66.0413 (3) (a) 3. “Resident” means an elector of a municipality or, in the case
16 of a local governmental unit that is an authority, means an elector of the city, village,
17 or town on whose behalf or at whose direction the authority is acting.

18 **SECTION 12.** 66.0413 (3) (c) of the statutes is repealed and recreated to read:

19 66.0413 (3) (c) 1. With regard to a historic building, if a local governmental unit
20 issues a raze order under sub. (1) (b), issues a written notification of nuisance under
21 sub. (2) (b), intends to issue a permit or other authorization to raze a historic
22 building, or intends to raze a historic building owned by the local governmental unit,
23 the local governmental unit shall publish a class 1 notice under ch. 985 that describes
24 its action or intended action, shall notify any landmarks commission created, or local
25 historical society organized, in the municipality in which the historic building is

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1 located of its action or intended action, and shall hold a public hearing on its action
2 or intended action.

3 2. With regard to a building that is at least 50 years old, if a local governmental
4 unit issues a raze order under sub. (1) (b), issues a written notification of nuisance
5 under sub. (2) (b), intends to issue a permit or other authorization to raze a building
6 that is at least 50 years old, or intends to raze a building that is at least 50 years old
7 and owned by the local governmental unit, the local governmental unit shall publish
8 a class 1 notice under ch. 985 and give notice to any landmarks commission or local
9 historical society in the municipality in which the historic building is located that
10 describes its action or intended action and provides notice of the opportunity for a
11 public hearing on its action or intended action. A local governmental unit shall
12 conduct a public hearing if it is requested to do so by the landmarks commission or
13 local historical society which received notice under this subdivision, or upon the
14 request of at least 25 residents, or 1 percent of the residents, of the municipality,
15 whichever is less.

16 3. The local governmental unit shall issue the class 1 notice required under
17 subds. 1. and 2., and hold the hearing that is required under subd. 1. or that may be
18 required under subd. 2., before serving the order or issuing the written notification,
19 issuing the permit or other authorization, or razing the historic building or building
20 owned by the local governmental unit.

21 4. At a hearing that is held under this paragraph, the local governmental unit
22 shall accept testimony from any person on whether the order, written notification,
23 other authorization, permit, or razing by the municipality is reasonable and whether
24 there are other reasonable options available to repair the historic building or
25 building rather than raze it.

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1 5. The State Historical Society may waive the requirements for notice and a
2 hearing under this paragraph, upon the request of a local governmental unit, to
3 prevent or mitigate an emergency condition that presents an imminent and
4 substantial threat to public health or safety.

5 **SECTION 13.** 66.0413 (3) (e) of the statutes is created to read:

6 66.0413 (3) (e) This subsection does not apply to part of a building that is not
7 a historic building if that part of the building is 50 years old or less.

8 **SECTION 14.** 66.0413 (3) (f) of the statutes is created to read:

9 66.0413 (3) (f) The owner of the building that is razed shall reuse the building
10 materials or contract with a demolition contractor who will reuse the building
11 materials, to the maximum extent feasible. The governing body, building inspector,
12 or other designated officer of a local governmental unit may order the owner of a
13 historic building, or building, that is razed to reuse the building materials or contract
14 with a demolition contractor who will reuse the building materials to the maximum
15 extent feasible.

16 **SECTION 15.** 66.0413 (4) (a) and (b) of the statutes are consolidated,
17 renumbered 66.0413 (4) and amended to read:

18 66.0413 (4) FIRST CLASS CITIES; OTHER PROVISIONS. First class cities may adopt,
19 by ordinance, alternate or additional provisions governing the placarding, closing,
20 razing and removal of a building and the restoration of the site to a dust-free and
21 erosion-free condition. ~~(b)~~ This subsection shall be liberally construed to provide 1st
22 class cities with the largest possible power and leeway of action, except that any
23 alternate or additional provision adopted shall be no less stringent than the
24 corresponding provision in sub. (3).

25 **SECTION 16.** 101.121 (3) (c) of the statutes is created to read:

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1 101.121 (3) (c) The department shall interpret the Historic Building Code to
2 facilitate the preservation and restoration of qualified historic buildings.

3 **SECTION 17.** 101.121 (4) (a) of the statutes is renumbered 101.121 (4) (a) 1.

4 **SECTION 18.** 101.121 (4) (a) 2. of the statutes is created to read:

5 101.121 (4) (a) 2. Upon the request of the owner of a qualified historic building
6 who elects under subd. 1. to be subject to the Historic Building Code, the department
7 shall review any decision of a city, village, town, or county that requires the owner
8 to comply with a provision of a county or municipal building code, or of any other local
9 ordinance or regulation, to determine if the provision concerns a matter dealt with
10 in the Historic Building Code. The procedures in s. 101.02 (7) apply to any review
11 conducted by the department under this subdivision.

12 **SECTION 19.** 101.121 (4) (b) of the statutes is amended to read:

13 101.121 (4) (b) Paragraph (a) 1. does not apply to any owner of a nursing home,
14 as defined in s. 50.01 (3), a hospital, as defined in s. 50.33 (2) (a) and (c), or an
15 approved public or private treatment facility for alcoholics, as defined in s. 51.45 (2)
16 (b) and (c).

17 **SECTION 20.** 101.121 (6) of the statutes is created to read:

18 101.121 (6) INFORMATION REGARDING THE HISTORIC BUILDING CODE. In
19 cooperation with the state historical society, the department shall develop and
20 distribute information that is designed to increase awareness and use of the Historic
21 Building Code. The department, in cooperation with the state historical society, shall
22 update the information as needed to reflect current statutes and rules related to the
23 Historic Building Code and current interpretations of the Historic Building Code.
24 The information shall include all of the following:

25 (a) A description of the Historic Building Code.

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1 (b) A description of the types and qualities of buildings that are subject to the
2 Historic Building Code.

3 (c) An explanation of how the owner of a qualified historic building may elect
4 to be subject to the Historic Building Code and a description of the consequences of
5 that election.

6 (d) Examples of the successful application of the Historic Building Code to
7 various types and uses of buildings.

8 (e) A description of the building codes that would apply if the owner of a historic
9 building does not elect to use the Historic Building Code.

10 (f) A description of where a person may obtain further information regarding
11 historic buildings and the Historic Building Code.

12 **SECTION 21.** 101.122 (4) (b) 1. of the statutes is amended to read:

13 101.122 (4) (b) 1. ~~Order~~ Subject to s. 66.0413 (3), order demolition of the rental
14 unit no sooner than 90 days after the order.

15 **SECTION 22.** 101.132 (2) (b) 1. of the statutes is amended to read:

16 101.132 (2) (b) 1. ~~If~~ Except as provided in subd. 3m., if more than 50% ~~50~~
17 percent of the interior square footage of any housing with 3 or more dwelling units
18 is to be remodeled, the entire housing shall conform to the standards in par. (a),
19 regardless of when the housing was first intended for occupancy.

20 **SECTION 23.** 101.132 (2) (b) 2. of the statutes is amended to read:

21 101.132 (2) (b) 2. ~~If 25% to 50%~~ Except as provided in subd. 3m., if 25 percent
22 to 50 percent of the interior square footage of any housing with 3 or more dwelling
23 units is to be remodeled, that part of the housing that is to be remodeled shall conform
24 to the standards in par. (a), regardless of when the housing was first intended for
25 occupancy.

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1 **SECTION 24.** 101.132 (2) (b) 3. of the statutes is amended to read:

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

8 **SECTION 25.** 101.132 (2) (b) 3m. of the statutes is created to read:

9 101.132 (2) (b) 3m. The requirements under this paragraph do not apply to
10 qualified historic buildings, as defined in s. 101.121 (2) (c).

11 **SECTION 26.** 101.132 (2) (e) 3. of the statutes is created to read:

12 101.132 (2) (e) 3. All rules promulgated by the department under this section
13 relating to qualified historic buildings, as defined in s. 101.121 (2) (c), shall comply
14 with and not exceed the requirements of the Fair Housing Act under 42 USC 3601
15 to 3619 and the Americans with Disabilities Act under 42 USC 12181 to 12189 and
16 regulations adopted under those acts.

17 **SECTION 27.** 101.975 (4) of the statutes is created to read:

18 101.975 (4) (a) A political subdivision may adopt an ordinance that permits the
19 political subdivision to grant a variance to the uniform multifamily dwelling code if
20 all of the following apply:

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

24 2. The ordinance requires the owner of a qualified historic building who seeks
25 a variance to provide the political subdivision with evidence that the type, height,

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1 and design of the handrail or guardrail proposed for installation is historically
2 appropriate for the owner's building.

3 (b) A political subdivision shall grant a variance under an ordinance adopted
4 under par. (a) if the owner seeking the variance provides the evidence required under
5 par. (a) 2.

6 **SECTION 28.** 254.61 (1) (f) 2. of the statutes is amended to read:

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

13 **SECTION 29.** 823.21 of the statutes is amended to read:

14 **823.21 Dilapidated buildings declared nuisances.** Any building which,
15 under s. 66.0413 (1) (b) 1., has been declared so ~~old~~, dilapidated or out of repair as
16 to be dangerous, unsafe, unsanitary or otherwise unfit for human habitation or has
17 been determined to be unreasonable to repair under s. 66.0413 (1) (b) 1. is a public
18 nuisance and may be proceeded against under this chapter.

19 **SECTION 30. Nonstatutory provisions.**

20 (1) STUDY OF RURAL HISTORIC PRESERVATION. The joint legislative council is
21 requested to study methods to promote rural historic preservation. If the council
22 undertakes such a study, the council shall report its findings, conclusions, and
23 recommendations to the 2007 legislature when it convenes.

24

(END)