

TITLE IV.

Public Domain and the Trust Funds.

CHAPTER 23

PUBLIC LANDS AND CONSERVATION

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23.01 Constitutional board. The board created by section 7 of article X of the Wisconsin constitution may be styled in any law or any action or proceeding in court as "The Board of Commissioners of Public Lands".

Cross Reference: See definitions in 24.01.

23.02 Jurisdiction. Together with the power and duty of selling the school and university lands and investing the funds arising therefrom, prescribed for the board by the aforesaid section

of the constitution, it is invested with power to dispose of all other public lands and all interests in lands held by the state for sale, and with such further powers as may be necessary or convenient to enable it to exercise the functions and perform the duties imposed upon it by law.

23.03 Investigate land claims. The board of commissioners of public lands shall investigate the rights of the state to school and normal lands. The expenses incurred in making such

investigations and taking necessary steps to protect common school fund and normal fund lands and timber, as well as the expense of necessary surveys, records, appraisals and sales, shall, upon the approval of the board, be paid out of the gross receipts to the funds to which the proceeds from the sale of such land and timber will be added.

23.04 Office in capitol; records; copies as evidence.

(1) The board shall keep its office in the capitol. It shall conveniently arrange and preserve therein all records, books, reports, surveys, maps, field notes, plats and other papers pertaining to the public lands heretofore, now, or hereafter owned by the state, including all such as have been or shall be received from the United States or any officer thereof. It may perfect such records, books, reports, surveys, maps, field notes, plats and other papers when incomplete, and cause fair copies thereof to be made when from injury, loss, use or accident it shall become necessary; and any such copy when certified by the chief clerk of the land office under his hand and the official seal of said office to have been made for any of the causes herein specified, and to be a correct copy thereof, shall have the same force and effect in all courts and places as the original; and any copy from said original records, books, reports, surveys, maps, field notes, plats or other papers, or from any record or paper required by law to be kept in its office, or any copy from said certified copy thereof, when certified by the chief clerk of the state land office or any one of the board of commissioners of public lands under the official seal of the board, shall be received in evidence with the same effect as the original.

(2) All records, books and files kept by the board shall at all business hours be open, under proper regulations made by it, to the inspection of any person, free of charge. The board also may in like manner make, perfect, and complete proper records, books, reports and other papers pertaining to the lands of which the state has been or is trustee for the United States.

23.05 Chief clerk; clerks; appointments; duties; oath.

The board shall appoint under the classified service a chief clerk and an assistant chief clerk who shall, during the absence of the chief clerk, have all the authority given by law to the chief clerk, and such other clerks as provided in s. 20.922. Such appointments shall be filed in the office of the secretary of state. Every such clerk shall take and file the official oath.

23.06 Not to buy lands. The board, and all clerks and other persons employed by it or about any of its respective offices, are prohibited from purchasing any of the public lands, directly or indirectly, either in their own name or in the name of any other person in trust for them or either of them; and for every tract or parcel of land purchased in violation hereof each such person offending shall forfeit not more than \$250.

History: 1975 c. 365.

23.07 Report of board. The board shall include, in its report under s. 15.07 (6) a report of its official proceedings, showing the quantity of land sold or leased and the amount received therefor, the amount of interest moneys accrued or received and a specific account of the several investments made by them, stating in all cases of loans, the name of each borrower, the sum borrowed and a description of the property mortgaged. The report also shall include such other matters as it thinks proper to communicate or as the legislature requires.

23.08 Appraisers. The board may select employes of the department to appraise lands or perform other services in field and forest.

History: 1975 c. 94.

23.09 Conservation act. (1) PURPOSES.

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

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

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

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

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

(d) *Lands, acquisition.* Acquire by purchase, lease or agreement, and receive by gifts or devise, lands or waters suitable for the purposes enumerated in this paragraph, and maintain such lands and waters for such purposes; and may condemn lands or waters suitable for such purposes after obtaining approval of the appropriate standing committees of each house of the legislature as determined by the presiding officer thereof:

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

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

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

4. For fish hatcheries and game farms.

5. For forest nurseries and experimental stations.

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

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

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

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

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

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

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

(j) *Burnings.* Regulate the burning of rubbish, slashings and marshes or other areas as it

may find reasonably necessary to reduce the danger of destructive fires.

(k) *Research.* Conduct research in improved conservation methods, and disseminate information to the residents of Wisconsin in conservation matters.

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

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

(o) *Gifts and grants.* The department may accept and administer any gifts, grants, bequests and devises, including funds made available to it by the federal government under any act of congress relating to any of the functions of the department; but all funds included in such gifts, grants, bequests and devises received or expected to be received by the department in a biennium shall be included in the statement of its actual and estimated receipts and disbursements for such biennium required to be contained in the biennial state budget report under s. 16.46, and shall be deemed to be and treated the same as other actual and estimated receipts and disbursements of the department.

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

(4) RESCUES, EMERGENCIES AND DISASTERS. The department may on its own motion and shall, when so directed by the governor, assist

other state, county, and local governmental agencies or do all things reasonably necessary in the rescue of persons lost in the forests of the state, or who may be otherwise in danger of loss of life, in the recovery of the bodies of drowned persons, and in cases of emergency or disaster, by assigning equipment and employes of the department to such rescue, recovery, emergency, and disaster relief missions.

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

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

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

(9) PUBLIC ACCESS TO WATERS. The governing body of any county, town, city, village or federally recognized tribe or band of Indians which, by resolution, indicates its desire to acquire or improve lands for the purpose of providing public access to any navigable lake or stream wholly or partially in the county, town, city, village or Indian reservation may make application to the department for the apportionment of funds for state aid to counties, towns, cities, villages or federally recognized tribes or bands of Indians for the purpose. The application shall state the name of the lake or stream and the location of the lake or stream and shall include an estimate of the total cost of the project. The department shall, upon receipt of the application, investigate the proposed project and it shall consider the distance the lake or stream lies from the nearest public highway, the existing access to the highway, the terrain of the proposed project and whether it is of a practical nature from the standpoint of labor, development and cost, and whether it will best serve the public interest and need. If the department finds that the proposed public access project will best serve the public interest and need of the

state as a whole, it may give preliminary approval to the project. After preliminary approval the county, town, city, village or federally recognized tribe or band of Indians shall prepare and submit plans and specifications and cost analysis of the project to the department for final approval. Upon final approval, the department shall encumber a sum equal to one-half of the approved cost estimate of the project. When the project is completed, the department shall pay to the county, town, city, village or federally recognized tribe or band of Indians the encumbered sum or an amount not greater than one-half of the actual cost of the project, whichever is less. The actual cost of the project shall be determined by the department by audit of the applicant's cost records before the payment is made to the county, town, city, village or federally recognized tribe or band of Indians.

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

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

(b) For the purposes of this subsection outdoor recreational facilities shall mean the development of picnic and camping grounds, nature trails, snowmobile trails and areas, beaches and bath houses, toilets, shelters, wells and pumps, and fireplaces. Costs associated with the operation and maintenance of recreational facilities shall not be eligible for aids under this section.

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

(d) Applications shall be made in the manner and on forms prescribed by the department.

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

(e) The department in making its deliberations shall give careful consideration to whether or not the proposal is an integral part of an official comprehensive land and water use plan for the area as well as the relationship of the project to similar projects on other public lands. If requests for state aids exceed the funds allotted to the department for this program, those requests which form an integral part of a comprehensive plan shall be given first priority.

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

(12) COUNTY FISH AND GAME PROJECTS. (a) The county board of any county which, by resolution, indicates its desire to plan and carry out a program of coordinated fish management projects or game management projects may make application to the department for the allocation and apportionment of funds for state aids appropriated for such purposes by s. 20.370 (1) (vm).

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

(c) State aid under this subsection to any county shall not exceed the percentage of the total appropriation made by s. 20.370 (1) (vm) in the ratio of the area of the county to the total area of the state excluding outlying waters and interstate boundary waters of the Mississippi

River and Lake Pepin. Such state aid granted to any county shall be matched by the county and the state's share shall not exceed one-half of the actual cost of the project. Personnel, equipment and materials furnished by the county may be included in computing the county share contribution.

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

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

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

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

(17m) GRANTS TO COUNTIES FOR THE DEVELOPMENT OF HABITAT ON COUNTY FORESTS.

(a) The county board of any county, which by resolution indicates its desire to improve the natural environment for game and nongame species on county lands entered under s. 28.11, may make application to the department for the allocation of funds appropriated for such purposes by s. 20.370 (1) (do).

(b) The annual appropriation for each county shall not exceed 5 cents for each acre entered under s. 28.11, but any funds remaining from the appropriation made by s. 20.370 (1) (do) and unallocated to the counties on March 31 of each year may be allotted to any county in an amount not to exceed an additional 5 cents

per acre under the procedure established in this subsection. These aids shall be used to undertake management activities provided in the comprehensive county forest land use plan and included in the annual work plan and budget.

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

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

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

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

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

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

(i) Expenditures under this section on any land withdrawn from s. 28.11 and the title to which is transferred by the county to other than a public agency shall become a charge against the county and the secretary of state shall include such unpaid sums in the state tax levy of the respective counties in subsequent years.

(20) LOCAL PARK AIDS. The department shall receive applications for state aid in such manner and subject to such limitations as the department prescribes for park and other outdoor recreational facilities development submitted under s. 66.36 and allocate funds therefor within the limits of the appropriation established in s. 20.370 (1) (f) in accordance with

priorities based on comprehensive plans submitted with the application and consistent with the state comprehensive outdoor recreation plan of the department.

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

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

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

(24) RECREATIONAL SITE PLANNING. (a) The governing body of any county, town, city or village which by resolution indicates its desire to develop site plans for outdoor recreational facilities may make application to the department for state aid for such purpose in accordance with the procedures in and subject to sub. (11) (c), (d) and (e).

(25) MOTORCYCLE RECREATIONAL PROGRAM. (a) The department shall administer an off-the-road motorcycle and motor driven cycle recreational aid program from moneys appropriated under s. 20.370 (1) (wm) and (wn). The department shall distribute these funds to towns, villages, cities and counties for the acquisition, development, operation and maintenance of off-the-road motorcycle and motor driven cycle trails and facilities.

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

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

(d) The motorcycle recreation council shall carry out studies and make recommendations to the department concerning the implementation of this section.

(26) AIDS TO COUNTIES FOR SNOWMOBILE PURPOSES. The procedures in sub. (11) (a), (d), (e) and (f) shall apply to this subsection except that the department shall consult with the snowmobile recreational council before adopting snowmobile trail construction standards, the restriction in sub. (11) (a) as to county lands is not applicable, the restriction in sub. (11) (d) as to encumbrance of funds is not

applicable and the restriction in sub. (11) (e) as to requests for state aids exceeding available funds is not applicable.

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

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

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

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

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

5. Purchase liability insurance for snowmobile trails developed or maintained under subd. 3.

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

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

1. Maintenance of existing approved trails.
2. Purchase of land rights.
3. Liability insurance.
4. Club signing program.
5. Route signing program.

6. Development of new trails.

(d) Maintenance funds shall be allocated to class I and class II trails in each county first. No county may receive funds for maintaining more than 250 miles of class I and class II trails at the initial allocation of funds. If sufficient funds are available, consideration will be given to maintaining additional county miles (over 250 miles) provided adequate justification is shown. Factors to be considered in providing maintenance funds for trail mileage above the 250-mile limit include: population, registration, snowfall, amount of public land and its importance to regional or statewide trail systems. No class III trails may be funded for maintenance until all necessary funds have been allocated for maintaining class I and class II trails. For purposes of this section, "class I" trail means a trail which provides a primary access route through the county and connects with another county's trail. "Class II" trail means a trail which provides access from the population centers of the county or access points to the regional or state trail system. "Class III" trail means any other trail in the county which is available to the public.

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

1. Main trail systems as designated in the county and state snowmobile plan as class I and class II.

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

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

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

(f) The maximum amount allowed for general trail development shall be \$300 per mile. The maximum amount allowed for trails that require the construction of permanent bridges shall be \$500 per mile with the additional \$200 per mile expended only for the bridges.

History: 1971 c. 40 s. 93; 1971 c. 125 s. 522 (1); 1971 c. 215, 277, 326; 1973 c. 251, 298, 333; 1975 c. 39 ss. 249, 249a, 250m, 734; 1975 c. 91, 200, 224, 365; 1977 c. 29, 402, 406.

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

23.091 Recreation areas. (1) DESIGNATION. The department may acquire, develop, operate and maintain state recreation areas. State lands and waters may be designated as state recreation areas that are environmentally adaptable to intensive recreational uses or are so

located to provide regional recreational opportunities for urban areas.

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

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

History: 1977 c. 29.

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

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

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

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

History: 1975 c. 365.

23.10 Conservation wardens. (1) The department of natural resources shall secure the enforcement of all laws which it is required to administer and bring, or cause to be brought, actions and proceedings in the name of the state for that purpose. The persons appointed by said department to exercise and perform the powers and duties heretofore conferred and imposed upon deputy fish and game wardens, shall be known as conservation wardens and shall be subject to ch. 230.

(2) Whenever the county board of any county by resolution authorizes the appointment of county conservation wardens, and fixes the number of the same, the chairman of the county board, district attorney and county clerk, acting as a board of appointment, shall select the persons for such positions and certify

their names to the department of natural resources which shall, if in its judgment such persons are competent and efficient, issue to them commissions as county conservation wardens. Such wardens have, within their county, all the powers and duties of conservation wardens. Their compensation shall be fixed by the county board in the resolution authorizing their appointment and be paid out of the county treasury.

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

STATE OF WISCONSIN

DEPARTMENT OF NATURAL RESOURCES.

To all to whom these presents shall come, greeting:

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

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

(Seal)

STATE OF WISCONSIN

DEPARTMENT OF NATURAL RESOURCES.

By

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

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

History: 1971 c. 164; 1977 c. 196 s. 131.

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

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

(3) Said department shall consider the natural resources of the state and report to the governor from time to time the results of its investigations with recommendations of such measures as it deems necessary or suitable to conserve such resources and preserve them, so far as practicable, unimpaired.

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

make and execute a complaint charging such person with the offense committed. The district attorney of the county wherein such offense has been committed shall appear and prosecute all actions arising under this subsection.

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

History: 1971 c. 273.

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

23.13 Governor to be informed. The board of commissioners of public lands and the department of natural resources shall furnish to the governor upon his request a copy of any paper, document or record in their respective offices and give him orally such information as he may call for.

History: 1971 c. 164.

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

History: 1977 c. 29.

23.25 Geographic powers and duties. (1)

The department shall:

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

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

(c) In cooperation with county boards and with their approval, change the names of lakes, streams, places and other geographic features

with the end in view of eliminating, as far as possible, duplication of names within the state;

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

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

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

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

23.27 Scientific areas preservation council. The scientific areas preservation council shall:

(1) Determine the acceptance or rejection of areas of special scientific interest offered as donations by individuals or organizations for preservation.

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

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

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

(5) Cooperate with federal agencies, other states, counties or organizations concerned with similar purposes.

(6) Take such other action as is deemed advisable to facilitate the administration, development, maintenance or protection of the scientific area system or any part thereof.

23.30 Outdoor recreation program. (1)

PURPOSE. The purpose of this section is to promote, encourage, coordinate and implement a comprehensive long-range plan to acquire, maintain and develop for public use those areas of the state best adapted to the development of a comprehensive system of state and local outdoor recreation facilities and services in all fields, including, without limitation because of enumeration, parks, forests, camping grounds, fishing and hunting grounds, related historical sites, highway scenic easements and local recreation programs, except spectator sports, and to facilitate and encourage the fullest public use thereof.

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

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

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

(b) Coordinate the development of a comprehensive long-range plan for the acquisition and development of areas necessary for a state-wide system of recreational facilities. The comprehensive plan shall be based upon the outdoor recreation plans of the several state agencies and local governmental agencies, and shall be coordinated and modified as the board deems necessary to comply with its policies and standards.

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

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

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

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

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

History: 1971 c 125.

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

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

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

23.31 Recreation resources facilities. To provide and develop recreation facilities within this state, the natural resources board, with the approval of the governor and subject to the limits provided in s. 20.866 (2) (tp), may direct that state debt be contracted for providing recreation resources facilities or making additions to existing recreation resources facilities. By January 1 of each year, the board shall submit to the governor an expenditure plan for recreation projects for which public debt will be contracted in the following fiscal year. The plan shall specify the functional areas on which the department will place fiscal emphasis in the succeeding fiscal year as well as delineating specific

acquisition and development objectives. Performance toward meeting these objectives will determine acquisition and development objectives for the succeeding fiscal year. No contract in anticipation of public debt may be entered into by the board until the governor has approved the plan and no deviation from the plan may be made without the approval of the governor. Beginning with its 1973-75 budget request and biennially thereafter, the board shall include in its request for recreational acquisition and development funding under s. 23.30 and this section an expenditure plan. Such plan shall contain the policies regarding the priority types of land to be acquired and the nature and categories of the developments to be undertaken. Changes in priority types of land to be acquired and in categories of developments may not be made without approval of the governor. Any deviation which the governor approves shall be reviewed by the joint committee on finance. The debt shall be contracted for in the manner and form as the legislature hereafter prescribes. It is the intent of the legislature that state debt not to exceed \$56,055,000 in the 12-year period from 1969 to 1981 may be incurred for the comprehensive provision of outdoor recreation facilities as provided by s. 23.30.

History: 1971 c 125; 1971 c 211 s. 126; 1973 c 90; 1977 c 418.

23.32 Wetlands mapping. (1) In this section, "wetlands" include areas commonly called marshes, swamps, thickets, bogs or wet meadows; areas where water stands at, above or within approximately 18 inches below soil surface for significant portions of years with normal precipitation; areas with soils of the type identified on soils maps as histosols (peat and muck) or as mineral soils that are "somewhat poorly drained", "poorly drained", or "very poorly drained", or as "wet alluvial lands", "marsh", or "water"; and areas where aquatic or semiaquatic vegetation is dominant.

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

(b) Mapping priorities, technical methods and standards to be used in delineating wetlands and a long-term schedule which will result in completion of the mapping effort at the earliest possible date, but not later than July 1, 1983, shall be developed by the department in cooperation with those other state agencies having mapping, aerial photography and comprehensive planning responsibilities.

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

History: 1977 c. 374.

23.35 Olympic ice rink. The department shall manage and supervise all activities in connection with the Olympic ice rink. Operating costs of the Olympic ice rink shall be paid from the appropriation under s. 20.370 (1) (c), (fp) and (u).

History: 1975 c. 224 s. 105d; 1977 c. 29.

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

(2) If the department is required to prepare an environmental impact statement, it shall so notify the person by certified mail and shall indicate the estimated full cost of the preparation of the environmental impact statement. The department shall charge a fee equal to the full cost of the preparation of the environmental impact statement. The department shall determine the manner in which the fee is to be paid and shall deposit the fee in the general fund.

(3) The department shall charge the fee required under this section for the preparation of an environmental impact statement which the department has not completed prior to July 31, 1975.

(4) This section shall not apply to applications of municipalities, as defined under s. 345.05 (1) (a), or to environmental impact statements related thereto.

History: 1975 c. 39, 199; 1977 c. 29, 418.

23.41 Conservation work projects program. The conservation work projects program shall develop human resources and at the same time provide for balanced conservation and utilization of natural resources.

History: 1977 c. 9.

23.42 Definitions. In ss. 23.41 to 23.47:

(1) "Board" means the conservation work projects board.

(2) "Conservation work project" means a project designed for the protection, development and use of forests, fish and game, lakes, streams, plant life, flowers and other outdoor resources in this state.

History: 1977 c. 9.

23.43 Conservation work projects board; powers and duties. (1) The board shall:

(a) Hire an executive secretary and any necessary staff in the classified service.

(b) Promulgate rules necessary for the implementation of ss. 23.41 to 23.47.

(c) Establish and define the scope of a conservation work projects program.

(d) Establish priorities for conservation work projects.

(e) Seek appropriate sources of federal funding for conservation works projects.

(f) Establish appropriate qualifications for age, residence and term of employment for conservation work project employees.

(2) The board may:

(a) Establish conservation work camps under s. 23.45 at or near the site of any conservation work project.

(b) Enter into agreements with the federal government or with municipalities to accomplish conservation work projects.

(c) Acquire by purchase, lease or agreement, and receive by gift or devise, lands or waters suitable for conservation work camps.

(d) Employ persons, outside the civil service, eligible under s. 23.44 to work on conservation work projects and determine their compensation.

History: 1977 c. 9.

23.44 Conservation work project employees. All persons who meet the qualifications for age, residence and term of employment set by the board may apply for employment on any conservation work project. Applicants shall pass a physical examination as prescribed by the board before being considered for employment on a conservation work project.

History: 1977 c. 9.

23.45 Conservation work camps. (1) The board may establish residential facilities known as conservation work camps for persons employed on any conservation work project. The facilities may be located either on or off the site of a work project. No person who is not employed on a conservation work project may reside in a conservation work camp.

(2) The executive office shall provide personnel and services necessary to aid in the acqui-

sition of conservation work camp sites and facilities under this section.

History: 1977 c. 9.

23.47 Cooperation from agencies. All departments and agencies of state government shall make available to the board such information and assistance as the board may require in order to carry out its functions under ss. 23.41 to 23.47.

History: 1977 c. 9.

23.50 Procedure in forfeiture actions. (1)

The procedure in ss. 23.50 to 23.85 shall apply to all actions in circuit court to recover forfeitures and penalty assessments for violations of s. 134.60 and chs. 23, 26, 27, 28, 29, 30, 31 and 350, and any administrative rules promulgated thereunder and violations of local ordinances enacted by any local authority in accordance with s. 30.77.

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

(3) All actions in municipal court to recover forfeitures and penalty assessments for violations of local ordinances enacted by any local authority in accordance with s. 30.77 shall utilize the procedure in ch. 300. Such actions shall be brought before the municipal court having jurisdiction. Provisions relating to citations, arrests, questioning, releases, searches, deposits and stipulations of no contest in ss. 23.51 (1), (3) and (5), 23.53, 23.54, 23.56 to 23.64, 23.66 and 23.67 shall apply to violations of such ordinances.

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

History: 1975 c. 365; 1977 c. 29, 305; 1977 c. 449 ss. 44, 497.

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

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

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

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

(3m) "Penalty assessment" means the penalty assessment imposed by s. 165.87.

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

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

History: 1975 c. 365; 1977 c. 29.

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

History: 1975 c. 365.

23.53 Use of citation. (1) The citation created under this section shall, in all actions to recover forfeitures and penalty assessments for violations of those statutes enumerated in s. 23.50 (1) and any administrative rules promulgated thereunder, be used by any law enforcement officer with authority to enforce such laws. In accordance with s. 345.11 (1m), the citation shall not be used for violations of ch. 350 relating to highway use. The citation may be used for violations of local ordinances enacted by any local authority in accordance with s. 30.77.

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

History: 1975 c. 365; 1977 c. 29.

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

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

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

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

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

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

(d) The violation alleged, the time and place of occurrence, a statement that the defendant

committed the violation, the statute, administrative rule or ordinance violated and a designation of the violation in language which can be readily understood by a person making a reasonable effort to do so.

(e) The maximum forfeiture and penalty assessment for which the defendant might be found liable.

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

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

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

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

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

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

(l) Any other pertinent information.

History: 1975 c. 365; 1977 c. 29.

23.55 Complaint and summons forms.

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

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

(b) A plain and concise statement of the violation identifying the event or occurrence from which the violation arose and showing that the plaintiff is entitled to relief, the statute upon which the cause of action is based and a demand

for a forfeiture, the amount of which shall not exceed the maximum set by the statute involved, and a penalty assessment and such other relief that is sought by the plaintiff.

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

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

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

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

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

History: 1975 c. 365; 1977 c. 29.

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

(2) In actions to collect forfeitures and penalty assessments, the judge who issues a warrant under sub. (1) may indorse upon the warrant the amount of the deposit. If no indorsement is made, the deposit schedule under s. 23.66 shall apply, unless the court directs that the person be brought before the court.

History: 1975 c. 365; 1977 c. 29.

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

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

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

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

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

History: 1975 c. 365

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

History: 1975 c. 365

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

History: 1975 c. 365

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

History: 1975 c. 365

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

- (1) Incident to a lawful arrest;
- (2) With consent;
- (3) Pursuant to a valid search warrant;
- (4) With the authority and within the scope of a right of lawful inspection;
- (5) Incident to the issuance of a lawfully issued citation under s. 23.60;
- (6) During an authorized temporary questioning under s. 23.59; or
- (7) As otherwise authorized by law.

History: 1975 c. 365

23.62 Issuance of a citation. Whenever an enforcing officer has probable cause to believe that a person subject to his or her authority is committing or has committed a violation of those statutes enumerated in s. 23.50 (1), any administrative rules promulgated thereunder, or any local ordinances enacted by any local authority in accordance with s. 30.77, the officer may proceed in the following manner:

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

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

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

History: 1975 c. 365.

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

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

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

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

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

History: 1975 c. 365.

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

History: 1975 c. 365.

23.65 Issuance of complaint and summons. (1) When it appears to the district attorney that a violation of s. 134.60 or ch. 23, 26, 27, 28, 29, 30, 31 or 350, or any administrative rule promulgated pursuant thereto, has been committed the district attorney may proceed by complaint and summons.

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

(3) If a district attorney refuses or is unavailable to issue a complaint, a county judge, after conducting a hearing, may permit the filing of a complaint if he or she finds there is probable cause to believe that the person charged has committed a violation of a chapter enumerated in sub. (1). The district attorney shall be informed of the hearing and may attend.

History: 1975 c. 365.

23.66 Deposit. (1) If pursuant to the procedure of s. 23.62 a person is cited or arrested, such person may deposit the amount of money the enforcing officer directs by mailing such deposit and a copy of the citation to the office of the clerk of courts in the county where the offense occurred or to the office of the municipal court having jurisdiction, or by going to the office of the clerk of courts or municipal court, the

office of the sheriff, or any city, village or town police headquarters.

(2) The person receiving the deposit shall prepare a receipt in triplicate showing the purpose for which the deposit is made, stating that the defendant may inquire at the office of the clerk of court or municipal court regarding the disposition of the deposit, and notifying the defendant that if he or she fails to appear in court at the time fixed in the citation he or she will be deemed to have tendered a plea of no contest and submitted to a forfeiture and a penalty assessment plus costs not to exceed the amount of the deposit which the court may accept. The original of the receipt shall be delivered to the defendant in person or by mail. If the defendant pays by check, the check shall be considered a receipt.

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

(4) The basic amount of the deposit shall be determined in accordance with a deposit schedule which the judicial conference shall establish. Annually, the judicial conference shall review and may revise the schedule. In addition to the basic amount determined according to the schedule, the deposit shall include court costs, suit tax and a penalty assessment if applicable.

History: 1975 c. 365; 1977 c. 29, 449.

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

(2) The deposit and stipulation of no contest may be made at any time prior to the court appearance date. By signing the stipulation, the defendant is deemed to have tendered a plea of no contest and submitted to a forfeiture and a penalty assessment plus costs not to exceed the amount of the deposit.

(3) The person receiving the deposit and stipulation of no contest shall prepare a receipt in triplicate showing the purpose for which the deposit is made, stating that the defendant may inquire at the office of the clerk of court or municipal court regarding the disposition of the deposit, and notifying the defendant that if the stipulation of no contest is accepted by the court the defendant will be deemed to have submitted to a forfeiture and a penalty assessment plus costs not to exceed the amount of the deposit. Delivery of the receipt shall be made in the same manner as in s. 23.66.

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

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

History: 1975 c. 365; 1977 c. 29

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

History: 1975 c. 365.

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

History: 1975 c. 365.

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

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

History: 1975 c. 365.

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

History: 1975 c. 365.

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

History: 1975 c. 365.

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

History: 1975 c. 365.

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

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

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

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

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

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

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

(b) If the defendant has made a deposit, the citation may serve as the initial pleading and the defendant shall be deemed to have tendered a plea of no contest and submitted to a forfeiture and a penalty assessment plus the fees and suit tax set forth in s. 23.82, not exceeding the amount of the deposit. The court may either accept the plea of no contest and enter judgment accordingly, or reject the plea and issue a summons. If the defendant fails to appear in response to the summons, the court shall issue an arrest warrant. If the court accepts the plea of no contest, the defendant may move within 90 days after the date set for appearance to withdraw the plea of no contest, open the judgment and enter a plea of not guilty if the defendant shows to the satisfaction of the court that failure to appear was due to mistake, inadvertence, surprise or excusable neglect. If a party is relieved from the plea of no contest, the court or judge may order a written complaint to be filed and

set the matter for trial. After trial the costs and fees shall be taxed as provided by law. If on reopening the defendant is found not guilty, the court shall delete the record of conviction and shall order the defendant's deposit returned.

(c) If the defendant has made a deposit and stipulation of no contest, the citation may serve as the initial pleading and the defendant shall be deemed to have tendered a plea of no contest and submitted to a forfeiture and a penalty assessment plus the fees and suit tax set forth in s. 23.82, not exceeding the amount of the deposit. The court may either accept the plea of no contest and enter judgment accordingly, or reject the plea and issue a summons. If the defendant fails to appear in response to the summons, the court shall issue an arrest warrant. After signing a stipulation of no contest, the defendant may, at any time prior to or at the time of the court appearance date, move the court for relief from the effect of the stipulation. The court may act on such motion, with or without notice, for cause shown by affidavit and upon just terms, and relieve the defendant from the stipulation and the effects thereof. If the defendant is relieved from the stipulation of no contest, the court may order a citation or complaint to be filed and set the matter for trial. After trial the costs and fees shall be taxed as provided by law.

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

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

History: 1975 c. 365; 1977 c. 29.

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

History: 1975 c. 365.

23.77 Jury trial. (1) (a) If in circuit court either party files a written demand for a jury trial within 20 days after the court appearance

date and immediately pays the suit tax and jury and clerk's fees specified in s. 23.82, the court shall place the case on the jury calendar. The number of jurors shall be determined under s. 255.096 (3) (b). If no party demands a jury of 12, the right to trial by jury of 12 is waived forever.

(b) Any jury fee paid under this section shall be refunded if:

1. The case is dismissed by the court prior to the commencement of the trial;

2. The defendant pleads guilty to the charge or a lesser charge more than 24 hours before the jury is required to report to the court;

3. The defendant paid suit tax and jury and clerk's fees prior to the judgment, and the judgment is for the defendant.

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

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

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

History: 1975 c. 365; 1977 c. 305, 318, 447; 1977 c. 449 s. 497.

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

History: 1975 c. 365.

23.79 Judgment. (1) If the defendant is found guilty, the court may enter judgment against the defendant for a monetary amount not to exceed the maximum forfeiture provided by the statute for the violation, the penalty assessment and for costs.

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

(3) In addition to any monetary penalties, the court may order the defendant to perform or refrain from performing such acts as may be necessary to fully protect and effectuate the public interest. The court may order abatement of a nuisance, restoration of a natural resource,

or other appropriate action designed to eliminate or minimize any environmental damage caused by the defendant.

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

(5) All civil remedies are available in order to enforce the judgment of the court, including the power of contempt under ch. 295.

History: 1975 c. 365; 1977 c. 29.

23.80 Judgment against a corporation or municipality.

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

(2) Upon default of the defendant corporation or municipality, or upon conviction, judgment for the amount of the forfeiture and the penalty assessment shall be entered.

History: 1975 c. 365; 1977 c. 29.

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

History: 1975 c. 365.

23.82 Suit tax and fees. (1) The following fees shall be paid by the defendant when judgment is entered against the defendant:

- (a) Suit tax, \$3; and
- (b) Clerk's fee, \$2.

(2) The following fees shall be paid when a written demand is made for a jury pursuant to s. 23.77:

- (a) Jury fees, \$2 per person on the jury;
- (b) Suit tax, \$8; and
- (c) Clerk's fee, \$6.

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

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

(2) STAY OF EXECUTION. The amount of undertaking required to stay execution on appeal shall not exceed the amount of the maximum forfeiture plus court costs.

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

History: 1975 c. 365, 421; 1977 c. 187, 305, 449.

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

History: 1975 c. 365; 1977 c. 29, 305.

23.85 Statement to county board; payment to state. Every county treasurer shall, on the first day of the annual meeting of the county board of supervisors, submit to it a verified statement of all forfeitures and penalty assessments money received during the year next preceding. The county clerk shall deduct all expenses incurred by the county in recovering such forfeitures and penalty assessments from the aggregate amount so received, and shall immediately certify to the county treasurer the amount of clear proceeds of such forfeitures and penalty assessments, so ascertained, who shall pay such proceeds to the state treasurer as provided in s. 59.20.

History: 1975 c. 365; 1977 c. 29.

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

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

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

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

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

History: 1975 c. 365.

23.99 Parties to a violation. (1) Whoever is concerned in the commission of a violation of this chapter for which a forfeiture is imposed is

a principal and may be charged with and convicted of the violation although he or she did not directly commit it and although the person who directly committed it has not been convicted of the violation.

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

- (a) Directly commits the violation;
- (b) Aids and abets the commission of it; or
- (c) Is a party to a conspiracy with another to commit it or advises, hires or counsels or otherwise procures another to commit it.

History: 1975 c. 365.