

## CHAPTER 23

## CONSERVATION

23 09	Conservation	23 41	Construction and service contracts.
23 091	Recreation areas	23 42	Environmental consulting costs for federal licensing of power projects.
23 091.5	Stewardship program	23 49	Credit card use charges
23 092	Habitat restoration areas	23 50	Procedure in forfeiture actions.
23 093	Carp control research	23 51	Words and phrases defined.
23 094	Stream bank protection program.	23 52	Two forms of action.
23 095	Malicious waste of natural resources	23 53	Use of citation.
23 096	Grants to nonprofit conservation organizations	23 54	Citation form.
23 097	Urban forestry grants	23 55	Complaint and summons forms
23 098	Grants for state park development	23 56	Arrest with a warrant
23 10	Conservation wardens	23 57	Arrest without a warrant.
23 11	General powers.	23 58	Temporary questioning without arrest.
23 115	Designation of trails, etc.	23 59	Search during temporary questioning.
23 117	Use of trails by bicycles.	23 60	Search incident to the issuance of a lawfully issued citation.
23 12	Bylaws.	23 61	Search and seizure; when authorized
23 13	Governor to be informed.	23 62	Issuance of a citation.
23 14	Approval required before new lands acquired.	23 63	Officer's action after issuance of citation
23 15	Sale of state-owned lands under the jurisdiction of the department of natural resources.	23 64	Deposit after release
23 16	Periodicals	23 65	Issuance of complaint and summons.
23 165	Promotional activities; other publications	23 66	Deposit.
23 17	Ice age trail.	23 67	Deposit and stipulation of no contest.
23 175	State trails	23 68	Pleading.
23 18	Milwaukee river revitalization council.	23 69	Motions
23 19	Menomonee river conservation project.	23 70	Arraignment; plea.
23 195	Monona terrace project in Madison	23 71	Not guilty plea; immediate trial.
23 20	Use of department gravel pits	23 72	Not guilty plea.
23 23	Purple loosestrife.	23 73	Discovery
23 25	Geographic powers and duties.	23 74	Mode of trial.
23 26	Natural areas preservation council.	23 75	Proceedings in court.
23 27	Natural areas; definitions; importance; inventory; acquisition; sales.	23 76	Burden of proof.
23 28	State natural areas; designated state natural areas	23 77	Jury trial.
23 29	Wisconsin natural areas heritage program.	23 78	Verdict
23 293	State ice age trail area dedication.	23 79	Judgment
23 30	Outdoor recreation program.	23 80	Judgment against a corporation or municipality.
23 305	Leasing of department land for recreational purposes.	23 81	Effect of plea of no contest.
23 31	Recreation resources facilities.	23 82	Fees
23 32	Wetlands mapping	23 83	Appeal
23 325	Aerial photographic survey	23 84	Forfeitures and assessments collected; to whom paid
23 33	All-terrain vehicles	23 85	Statement to county board; payment to state.
23 37	Corporations operating ice rinks; financial information	23 90	Place of trial
23 40	Environmental impact statement.	23 99	Parties to a violation
23 405	Environmental education		

**Cross Reference:** See definitions in s. 24 01.

**23.09 Conservation. (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 promulgate 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.

8. For state natural areas as authorized under s. 23.27 (4) and for state natural areas as authorized under s. 23.27 (5) except that land may not be acquired through condemnation under the authority of s. 23.27 (5).

9. For any other purpose for which gift lands are suitable, as determined by the department.

10. For the ice age trail as designated under s. 23.17 (2).

11. For the purposes provided in ss. 30.40 to 30.49 in the lower Wisconsin state riverway as defined in s. 30.40 (15).

12. For state trails.

13. For the stream bank protection program.

(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 section, 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 to improve management of natural resources, disseminate information to the residents of Wisconsin on natural resources matters and receive funds from any public or private source for research projects.

(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.* Accept and administer any gifts, grants, bequests and devises, including funds made available to the department by the federal government under any act of congress relating to any of the functions of the department. 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. The department may acknowledge the re-

ceipt of any funding from a particular person or group in any department pamphlet, bulletin or other publication.

**(2dm) LAND ACQUISITION; PRIORITIES.** (a) In expending moneys from the appropriation under s. 20.866 (2) (tz) to acquire lands under sub. (2) (d), the department shall establish a higher priority for the acquisition of lands within the boundaries of projects established on or before January 1, 1988.

(b) The department shall allocate at least \$1,720,000 of the moneys appropriated under s. 20.866 (2) (tz) in each fiscal year for the acquisition of lands within the boundaries of projects established after January 1, 1988.

**(2p) DONATIONS OF LAND.** (a) The department shall determine the value of land donated to the department that is within the project boundaries of a state park, a state forest or a state recreation area. If the donation involves the transfer of the title in fee simple absolute or other arrangement for the transfer of all interest in the land to the state, the valuation shall be based on the fair market value of the land before the transfer. If the donation is a dedication transferring a partial interest in land to the state, the valuation shall be based on the extent to which the fair market value of the land is diminished by that transfer and the associated articles of dedication. If the donation involves a sale of land to the department at less than the fair market value, the valuation of the donation shall be based on the difference between the purchase price and the fair market value.

(b) Beginning July 1, 1990, and except as provided in par. (c), an amount of money equal to the value of the donation shall be released from the appropriation under s. 20.866 (2) (tz) to be used for land acquisition activities for the same project for which any donation was made on or after August 9, 1989. This paragraph does not apply to transfers of land from agencies other than the department.

(c) If the moneys to be released to match a donation under par. (b) will exceed the expenditure limit under sub. (2r) for a given fiscal year, as adjusted under s. 23.0915 (2), the department shall release from the moneys appropriated under s. 20.866 (2) (tz) the remaining amount available under the expenditure limit under sub. (2r), as adjusted under s. 23.0915 (2) and after deducting the allocation under sub. (2dm) (b), for the given fiscal year and shall release in each following fiscal year from the moneys appropriated under s. 20.866 (2) (tz) an amount equal to the expenditure limit under sub. (2r), as adjusted under s. 23.0915 (2) and after deducting the allocation under sub. (2dm) (b), or equal to the amount still needed to match the donation, whichever is less, until the entire amount necessary to match the donation is released.

(d) This subsection does not apply to an easement or land donated to the department under s. 23.092 or 23.094.

**(2q) STEWARDSHIP PROGRAM; LOWER WISCONSIN STATE RIVERWAY; ICE AGE TRAIL.** Except as provided in s. 23.0915 (2), the department in each fiscal year may not expend from the appropriation under s. 20.866 (2) (tz):

(b) More than \$2,000,000 under sub. (2) (d) 11.

(c) More than \$500,000 for the ice age trail under ss. 23.17 and 23.293 and for grants for the ice age trail under s. 23.096.

**(2r) STEWARDSHIP PROGRAM; LAND ACQUISITION.** Except as provided in s. 23.0915 (2), the department in each fiscal year may not expend from the appropriation under s. 20.866 (2) (tz) more than \$8,600,000.

**(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.

**23.09 CONSERVATION**

(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.

(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) In this subsection, "outdoor recreational facilities" includes picnic and camping grounds, hiking trails, trail-side campsites and shelters, cross-country ski trails, bridle trails, 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 are not eligible for aids under this section. Costs associated with the development of facilities for spectator sports are not 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 depart-

ment 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 section shall not be converted to uses which are inconsistent with the purposes of this section 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 section shall be used to further the objectives of this section.

(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 (4) (as).

(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 be distributed by the department according to the procedures adopted by the natural resources board. State aid granted to any county under this subsection shall be matched by the county and the state's share may 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, improve-

ments 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 promulgate 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 (4) (bq).

(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 (4) (bq) 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 this 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 subsection 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 be reimbursed to the department in an amount not to exceed the prorated value of the remaining useful lifetime of the habitat development.

**(18) FOREST CROPLANDS AND MANAGED FOREST LANDS AIDS.**

(a) In each fiscal year, the department shall make payments to each county that has more than 40,000 acres within its boundaries that are entered on the tax roll under s. 77.04 (1) or 77.84 (1) of that fiscal year.

(b) The amount of the payment made in a fiscal year to an eligible county shall equal the county's proportionate share

of the moneys appropriated under s. 20.370 (4) (au) for the fiscal year. An eligible county's proportionate share shall equal the number of acres within its boundaries that are entered on the tax roll under s. 77.04 (1) or 77.84 (1) on July 1 of the fiscal year divided by the total number of acres that are entered on the tax roll under s. 77.04 (1) or 77.84 (1) on that same date and that are within the boundaries of counties that are eligible for payments under this section, multiplied by the amount appropriated under s. 20.370 (4) (au) for the fiscal year.

(c) The department shall calculate and issue the payment for each eligible county by October 1 following each fiscal year.

**(19) AIDS FOR THE ACQUISITION OF URBAN GREEN SPACE.** (a) In this subsection, "local governmental unit" means a city, village, town, county or public inland lake protection and rehabilitation district.

(b) Any local governmental unit may apply for state aid for the acquisition of lands and rights in lands for urban green space. Each application shall include a comprehensive description of the proposal for urban green space acquisition, plans for development and management of the land and any other information required by the department.

(c) The department may approve grants for the acquisition of land or rights in land for urban green space under this subsection for the following purposes:

1. To provide an open natural space within or in proximity to urban development.

2. To protect from urban development an area or naturally formed feature that is within or in proximity to an urban area and that has scenic, ecological or other natural value.

5. To provide land for noncommercial gardening to be used by inhabitants of an urbanized area.

(d) Grants under this subsection shall be for 50% of the cost of acquiring the land or the rights in land for the urban green space. The local governmental unit is responsible for the remainder of the acquisition cost.

(e) As part of its approval of a grant, the department shall specify for which of the purposes listed in par. (c) the local governmental unit may use the land or the rights in the land acquired with the grant. The local governmental unit may not convert the land or the rights in the land acquired under this subsection to a use that is inconsistent with the uses as approved by the department.

(f) Title to land or to rights in land acquired under this subsection shall vest in the local governmental unit.

(g) The department may not approve a grant for costs associated with development, operation and maintenance of urban green space acquired under this subsection or for administrative costs of acquiring lands or rights in lands.

(h) The department may not approve a grant under this subsection unless the urban green space is identified in any master plan that the local governmental unit may have.

(j) Any local governmental unit that acquires an area for gardening with a grant under this subsection may charge fees for use of the garden that are sufficient to recover the costs of maintaining the area. The local governmental unit may reduce or waive any fee charged based on the user's inability to pay.

(k) Except as provided in s. 23.0915 (2), the department may not expend more than \$750,000 in each fiscal year for urban green space under this subsection and for grants for urban green space under s. 23.096.

**(20) AID FOR THE ACQUISITION AND DEVELOPMENT OF LOCAL PARKS.** (a) Any city, village, town or county may apply for state aids for the acquisition and development of recreational lands and rights in lands for the development of its park

**23.09 CONSERVATION**

system in accordance with priorities based on comprehensive plans submitted with the application and consistent with the outdoor recreation program under s. 23.30. The application shall be made in the manner the department prescribes.

(b) State aid under this subsection is limited to no more than 50% of the cost of acquiring and developing recreation lands and other outdoor recreation facilities. Costs associated with operation and maintenance of parks and other outdoor recreational facilities established under this subsection are not eligible for state aid. Administrative costs of acquiring lands or land rights are not included in the "cost of land" eligible for state aid under this subsection. Title to lands or rights in lands acquired under this subsection shall vest in the local unit of government, but such land shall not be converted to uses inconsistent with this subsection without prior approval of the state and proceeds from the sale or other disposal of such lands shall be used to promote the objectives of this subsection.

(d) Except as provided in s. 23.0915 (2), the department may not expend under s. 20.866 (2) (tz) more than \$2,250,000 each fiscal year for local park aids under this subsection and for grants for this purpose under s. 23.096.

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

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

(b) 1. The department shall develop and conduct a program of summer conservation work projects for American Indian youth who are members of Wisconsin Chippewa tribes or bands and who are 15 years of age or older but under 19 years of age.

2. Under the program, the department shall allocate 50% of the total amount appropriated under ss. 20.370 (4) (hc) and (hr) for conservation work projects for water resource management activities.

**(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.

**(25) MOTORCYCLE RECREATIONAL PROGRAM.** (a) The department shall administer an off-the-road Type 1 motorcycle recreational aid program from moneys appropriated under s. 20.370 (4) (bv). The department shall distribute these funds to towns, villages, cities, counties and federal agencies for the acquisition, development, operation and maintenance of off-the-road Type 1 motorcycle trails and facilities. The department may distribute these funds before July 1, 1989, to towns, villages, cities, counties and federal agencies for the acquisition, development, operation and maintenance of all-terrain vehicle areas and trails if these areas and trails are also available for use by off-the-road Type 1 motorcycles. In addition, the department may expend moneys appropriated under s. 20.370 (4) (bv) for the development and maintenance of existing off-the-road Type 1 motorcycle trails at the Black River state forest and the Bong state recreation area.

(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 by a town, village, city or county.

(d) The off-the-road vehicle council shall carry out studies and make recommendations to the department concerning the implementation of the program authorized under par. (a).

**(26) AIDS TO COUNTIES FOR SNOWMOBILE PURPOSES.** (a) 1. In this subsection, "maintain" or "maintenance" includes the purchase of liability insurance.

2. 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.

(am) 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. Undertake major reconstruction or rehabilitation projects to improve bridges on existing approved trails.

(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. Club signing program.
4. Major bridge reconstruction or rehabilitation.
5. Route signing program.
6. Development of new trails.

(d) Distribution of snowmobile trail development funds shall be limited to trails which provide a primary access route through one county and connect with another county's trails, provide access from population centers to main access trails or support a high volume of use. Counties applying for aid for

snowmobile trail development shall identify the type of trail for which aid is being sought on the forms under par. (b).

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

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

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

(f) 1. Except as provided under subd. 2, the maximum amount allowed for general trail development including bridge construction is \$500 per mile.

2. The maximum amount allowed for general trail development including bridge construction may exceed \$500 per mile if the amount is recommended by the snowmobile recreation council and approved by the department.

**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; 1979 c. 34 ss. 699m to 701g, 2102 (39) (a); 1979 c. 89; 1981 c. 20 ss. 598 to 599s, 2202 (38) (c); 1981 c. 295; 1981 c. 390 s. 252; 1983 a. 27, 243; 1985 a. 29, 65, 322; 1985 a. 332 ss. 34, 251 (1); 1987 a. 27, 98, 295, 403; 1989 a. 31, 336, 359; 1991 a. 39, 269, 309.

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.

Property acquisition by department where there is bona fide intent not to condemn discussed 68 Atty. Gen. 3.

**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 multiple recreational uses, or are so located to provide regional or urban recreational opportunities or for preservation.

**(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 promulgate 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; 1985 a. 332 s. 251 (1); 1987 a. 298.

**23.0915 Stewardship program. (1) DESIGNATED AMOUNTS.** The legislature intends that the department will expend the following designated amounts under the stewardship program from the appropriation under s. 20.866 (2) (tz) for the following purposes in each fiscal year, the expenditures beginning with fiscal year 1990-91 and ending in fiscal year 1999-2000, except as provided in pars. (L) and (m):

- (a) General land acquisition, \$8,600,000.
- (b) General property development, \$3,500,000.
- (c) Local park aids, \$2,250,000.
- (d) Lower Wisconsin state riverway acquisition, \$2,000,000.
- (e) Wildlife habitat restoration and fisheries, \$1,500,000.
- (f) Stream bank protection, \$1,000,000.
- (g) Trails, \$1,000,000.
- (h) Natural areas acquisition, \$1,500,000.
- (i) Urban green spaces, \$750,000.

(j) Natural areas heritage program, \$500,000.

(k) Ice age trail, \$500,000.

(L) Henry Aaron state park, a total of \$400,000 to be expended during a period beginning on August 15, 1991, and ending on June 30, 2000.

(m) Horicon marsh interpretative center, a total of \$250,000, to be expended beginning in fiscal year 1991-92 and ending in fiscal year 1999-2000.

**(1g) LAND ACQUISITION; URBAN RIVER GRANTS.** Beginning in fiscal year 1992-93 and ending in fiscal year 1999-2000, the department for each fiscal year shall designate for expenditure \$1,900,000 of the moneys appropriated under s. 20.866 (2) (tz) for land acquisition for urban river grants under s. 30.277.

**(1r) AMOUNTS FOR CERTAIN FISCAL YEARS; LAND ACQUISITION; URBAN RIVER GRANTS.** Notwithstanding sub. (1g), for fiscal years 1993-94, 1994-95 and 1995-96, the department shall designate for expenditure for each fiscal year \$1,900,000 of the moneys appropriated under s. 20.866 (2) (tz) by making the following calculations:

(a) The department shall set aside \$1,000,000 in each fiscal year to be used only for the Frank Lloyd Wright Monona terrace project as provided in s. 23.195.

(c) For land acquisition, the department shall designate for expenditure \$900,000 for urban river grants under s. 30.277.

**(2) ADJUSTED EXPENDITURE LIMITS.** (a) Beginning with fiscal year 1990-91, if the department expends in a given fiscal year an amount from the moneys appropriated under s. 20.866 (2) (tz) for a purpose under sub. (1) (a) or (c) to (k) that is less than the amount designated for that purpose for that given fiscal year under sub. (1) (a) or (c) to (k), the department may adjust the expenditure limit under the stewardship program for that purpose by raising the expenditure limit, as it may have been previously adjusted under this paragraph and par. (b), for the next fiscal year by the amount that equals the difference between the amount designated for that purpose and the amount expended for that purpose in that given fiscal year.

(b) Beginning with fiscal year 1990-91, if the department expends in a given fiscal year an amount from the moneys appropriated under s. 20.866 (2) (tz) for a purpose under sub. (1) (a) or (c) to (k) that is more than the amount designated for that purpose for that given fiscal year under sub. (1) (a) or (c) to (k), the department shall adjust the expenditure limit under the stewardship program for that purpose by lowering the expenditure limit, as it may have been previously adjusted under this paragraph and par. (a), for the next fiscal year by an amount equal to the remainder calculated by subtracting the amount designated for that purpose from the amount expended, as it may be affected under par. (c) or (d), for that purpose in that given fiscal year.

(c) The department may not expend in a fiscal year an amount from the moneys appropriated under s. 20.866 (2) (tz) for a purpose under sub. (1) (a) or (c) to (k) that exceeds the amount equal to the expenditure limit for that purpose as it may have been previously adjusted under pars. (a) and (b), except as provided in par. (d).

(d) In a given fiscal year, in addition to expending the amount designated for a purpose under sub. (1) (a) or (c) to (k), or the amount equal to the expenditure limit for that purpose, as adjusted under pars. (a) and (b), whichever amount is applicable, the department may also expend for that purpose up to 50% of the designated amount for that purpose for the given fiscal year for a project or activity if the natural resources board determines all of the following:

1. That moneys appropriated for that purpose to the department under s. 20.370 and the moneys appropriated



**23.0915 CONSERVATION**

under s. 20.866 (2) (tp) to (tw), (ty) and (tz) do not provide sufficient funding for the project or activity.

2. That the property involved in the project or activity covers a large area or the property is uniquely valuable in conserving the natural resources of the state.

3. That delaying or deferring all or part of the cost to a subsequent fiscal year is not reasonably possible.

**(2g) FUNDS FOR MONONA TERRACE PROJECT.** If all of the money set aside under s. 23.195 for the Frank Lloyd Wright Monona terrace project is not expended before July 1, 1996, the department shall make the unexpended moneys available for expenditure for land acquisition and for urban river grants under s. 30.277. The moneys expended for the Frank Lloyd Wright Monona terrace project is expended as an amount for land acquisition.

**(2m) MONEYS FOR HENRY AARON STATE PARK.** (a) From the moneys appropriated under s. 20.866 (2) (tz), the department shall set aside for the period of time specified in sub. (1) (L) \$400,000 to be used only for the development of a state park to be located in the Menomonee valley in the city of Milwaukee and to be designated as the Henry Aaron State Park.

(b) Before spending any of the moneys set aside under par. (a), the department, in consultation with the city of Milwaukee and other interested parties, shall develop a plan to finance the state park.

(c) None of the moneys set aside under par. (a) may be expended for stadium parking or for any other purpose not directly related to the development of the state park.

(d) For purposes of adjusting expenditure limits under sub. (2) (a) to (c), the amount set aside under par. (a) shall be treated as moneys that were expended in fiscal year 1990-91 for wildlife habitat restoration under s. 23.092.

**(3) HORICON MARSH INTERPRETATIVE CENTER.** (a) From the moneys appropriated under s. 20.866 (2) (tz), the department shall set aside during fiscal year 1991-92 for the period of time specified in par. (1) (m) \$250,000 for a project to develop a vacant building to be used as an interpretative and administrative center for the Horicon marsh area. Expenditures under this paragraph shall be made in a manner that, for every \$3 received by the department from private grants, gifts or bequests for the project, \$1 will be expended from the moneys under this paragraph.

(b) The department shall expedite the planning, design and development of the interpretative and administrative center.

History: 1989 a. 31; 1991 a. 39, 269, 309.

**23.092 Habitat restoration areas. (1)** The department shall designate habitat restoration areas in order to enhance wildlife-based recreation in this state, including hunting, fishing, nature appreciation and the viewing of game and nongame species. The department may not designate an area a habitat restoration area under this subsection if the area is located within the boundaries of a project established by the department before August 9, 1989.

**(2)** For each area designated under sub. (1), the department shall prepare a plan, based upon the specific qualities of the area designated, that is designed to enhance the features of that area by the restoration of wildlife habitat. After preparation of a plan for a designated area, the department shall encourage landowners to use specific management practices that are designed to implement the plan.

**(3)** The department may acquire easements for habitat restoration areas by gift or devise or beginning July 1, 1990, by purchase.

**(4)** The department may share the costs of implementing land management practices with landowners, or with nonprofit organizations that are qualified to enhance wildlife-

based recreation if such organizations have the landowner's permission to implement the practices. The department may share the costs of acquiring easements for habitat restoration areas with landowners or with these nonprofit organizations. This subsection does not apply before July 1, 1990.

**(5) (a)** The department shall determine the value of an easement donated to the department that is within a habitat restoration area and is dedicated for purposes of habitat restoration. The valuation shall be based on the extent to which the fair market value of the land is diminished by that transfer. Beginning July 1, 1990, and except as provided in par. (b), an amount of money equal to the value of the donation shall be released from the appropriation under s. 20.866 (2) (tz) to be used for habitat restoration activities for the same habitat restoration area in which any donation was made on or after August 9, 1989.

(b) If the moneys to be released to match a donation under par. (a) will exceed the expenditure limit under sub. (6) for a given fiscal year, as adjusted under s. 23.0915 (2), the department shall release from the moneys appropriated under s. 20.866 (2) (tz) the remaining amount available under the expenditure limit under sub. (6), as adjusted under s. 23.0915 (2), for the given fiscal year and shall release in each following fiscal year from the moneys appropriated under s. 20.866 (2) (tz) an amount equal to the expenditure limit under sub. (6) or to the amount still needed to match the donation, whichever is less, until the entire amount necessary to match the donation is released.

**(6)** Except as provided in s. 23.0915 (2), the department may not expend more than \$1,500,000 under this section for fisheries, for habitat restoration areas and for grants for this purpose under s. 23.096 in each fiscal year. Of this amount the department may not expend more than \$75,000 for fisheries in each fiscal year.

History: 1989 a. 31; 1991 a. 39.

**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.

**23.094 Stream bank protection program. (1) CREATION.** In order to protect the water quality and the fish habitat of the streams in this state, there is created a stream bank protection program to be administered by the department.

**(2) IDENTIFICATION OF PRIORITY STREAMS. (a)** The department shall identify as priority streams those streams in this state that are in most need of protection from degradation of water quality caused by agricultural or urban runoff.

(b) In identifying priority streams under par. (a), the department shall give higher priority to those streams that are affected by a federal or state program or plan that protects water quality or fish habitat.

(c) The federal or state programs or plans under par. (b) include:

1. The conservation reserve program under 16 USC 3831 to 3836.
2. The erosion control planning program under s. 92.10.
3. A soil and water conservation plan under s. 92.104.
4. The soil and water resource management program under s. 92.14.
5. The nonpoint source pollution abatement grant program under s. 144.25.

**(2m) ACQUISITION OF LAND.** For a stream identified as a priority stream under sub. (2), the department may acquire land adjacent to the stream by gift or devise or by purchase.

Whenever possible, the land acquired shall include the area within at least 66 feet from either side of the stream.

**(3) ACQUISITION OF EASEMENTS.** For a stream identified as a priority stream under sub. (2), the department may acquire a permanent stream bank easement from the owner of land adjacent to the priority stream by gift or devise or beginning July 1, 1990, by purchase. Whenever possible, the easement shall include the land within at least 66 feet from either side of the stream. A stream bank easement shall prohibit all of the following:

(a) Alteration of vegetative cover or other natural features unless the department specifically approves the alteration.

(b) Planting or production of agricultural crops unless the department specifically approves the planting or production for wildlife management purposes.

(c) Mowing, grazing or spraying the land with chemicals, except as necessary to comply with noxious weed control laws or to control pests on an emergency basis when such control is necessary to protect public health or unless the department specifically approves the mowing, grazing or spraying.

**(4) DONATIONS.** (a) The department shall determine the value of land or an easement donated to the department for purposes of this section. For an easement, the valuation shall be based on the extent to which the fair market value of the land is diminished by the transfer. Beginning July 1, 1990, and except as provided in par. (b), an amount of money equal to the value of the donation shall be released from the appropriation under s. 20.866 (2) (tz) to be used for stream protection activities under this section for the same stream for which any donation was made on or after August 9, 1989.

(b) If the moneys to be released to match a donation under par. (a) will exceed the expenditure limit under sub. (8) for a given fiscal year, as adjusted under s. 23.0915 (2), the department shall release from the moneys appropriated under s. 20.866 (2) (tz) the remaining amount available under the expenditure limit under sub. (8), as adjusted under s. 23.0915 (2), for the given fiscal year and shall release in each following fiscal year from the moneys appropriated under s. 20.866 (2) (tz) an amount equal to the expenditure limit under sub. (8) or to the amount still needed to match the donation, whichever is less, until the entire amount necessary to match the donation is released.

**(5) OTHER REQUIREMENTS.** An easement under this section may require the landowner to seed the land subject to the easement at seeding rates determined by the department in order to establish and maintain perennial cover of either a grass-legume mixture or native grass for the term of the easement, or to plant trees on the land subject to the easement.

**(6) FENCING.** Beginning July 1, 1990, the department shall pay the cost of purchasing and installing any fencing the department determines to be necessary to protect a stream for which land or an easement has been acquired on or after August 9, 1989, under this section.

**(7) STREAM WATCH PROGRAM.** The department shall establish a stream watch program to encourage the volunteer activities of community and youth organizations to monitor and improve stream quality and to remove debris, including dead fish, from land adjacent to streams and other bodies of water.

**(8) APPROPRIATION.** The costs of acquiring easements and land under this section shall be paid from the appropriation under s. 20.866 (2) (tz). Except as provided in s. 23.0915 (2), the department may not expend more than \$1,000,000 for fisheries, for stream bank easements under this section, and for grants for this purpose under s. 23.096 in each fiscal year.

History: 1989 a. 31; 1991 a. 39, 309

**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

**23.096 Grants to nonprofit conservation organizations.**

(1) In this section:

(a) "Nonprofit conservation organization" means a nonprofit corporation, a charitable trust or other nonprofit association whose purposes include the acquisition of property for conservation purposes and that is described in section 501 (c) (3) of the internal revenue code as being exempt from federal income tax under section 501 (a) of that code.

(b) "Property" means land or an interest in land.

(2) The department may award grants to nonprofit conservation organizations to acquire property for the purposes described in ss. 23.09 (19), 23.092, 23.094, 23.17, 23.175, 23.27, 23.29 and 23.293.

(3) In order to receive a grant under this section, the nonprofit conservation organization shall enter into a contract with the department that contains all of the following provisions:

(a) Standards for the management of the property to be acquired.

(b) A prohibition against using the property to be acquired as security for any debt unless the department approves the incurring of the debt.

(bn) A prohibition against property acquired in fee simple being closed to the public unless the department determines it is necessary to protect wild animals, plants or other natural features.

(c) A clause that any subsequent sale or transfer of the property to be acquired is subject to subs. (4) and (5).

(4) (a) The nonprofit conservation organization may subsequently sell or transfer the acquired property to a 3rd party other than a creditor of the organization if all of the following apply:

1. The department approves the subsequent sale or transfer.

2. The party to whom the property is sold or transferred enters into a new contract with the department that contains the provisions under sub. (3).

(b) The nonprofit conservation organization may subsequently sell or transfer the acquired property to satisfy a debt or other obligation if the department approves the sale or transfer.

(5) If the nonprofit conservation organization violates any essential provision of the contract, title to the acquired property shall vest in the state.

(6) The instrument conveying the property to the nonprofit conservation organization shall state the interest of the state under sub. (5). The contract entered into under sub. (3) and the instrument of conveyance shall be recorded in the office of the register of deeds of each county in which the property is located.

History: 1989 a. 31; 1991 a. 309

**23.097 Urban forestry grants.** (1) The department shall award grants to cities, [and] villages for up to 50% of the cost of tree management plans, tree inventories, brush residue projects, the development of tree management ordinances,



**23.097 CONSERVATION**

91-92 Wis. Stats. 576

tree disease evaluations, public education concerning trees in urban areas and other tree projects.

**NOTE:** The bracketed "and" is inserted to correct grammar after the partial veto of 1991 Wis. Act 269, sec. 160f.

(2) The department shall promulgate rules establishing criteria for awarding grants under this section.

History: 1991 a 39, 269.

**23.098 Grants for state park development.** (1) In this section, "friends group" means a nonstock, nonprofit corporation described under section 501 (c) (3) or (4) of the internal revenue code and exempt from taxation under section 501 (a) of the internal revenue code organized to raise funds for state parks.

(2) The department shall establish a program to expend in each fiscal year up to \$100,000 from the appropriation under s. 20.866 (2) (tz) for grants to friends groups for projects for property development activities in state parks.

(3) The department shall promulgate rules to establish criteria to be used in determining which property development activities are eligible for these grants.

(4) (a) The department shall periodically prepare a list of projects in state parks that are eligible for grants under this section and shall include in the list the estimated cost of each project.

(b) The department may not expend more than \$10,000 as grants under this section for a state park in each fiscal year.

(5) Each friends group receiving a grant under this section shall provide matching funds that are equal to 50% of the estimated cost of the project for which a grant is being provided.

(6) For purposes of s. 23.0915 (1), moneys expended as grants under this section shall be treated as moneys expended for general property development.

History: 1991 a 39.

**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 chairperson 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 \_\_\_\_\_ a conservation warden (or county,

or special conservation warden) for the (county of \_\_\_\_\_), state of Wisconsin, and do authorize and empower \_\_\_\_\_ to execute and fulfill the duties of that office according to law, during good behavior and the faithful performance of the duties of that office.

In testimony whereof, the secretary has hereunto affixed the secretary's 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 the warden's 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 the appointee, 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 the appointee's 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. The appointee shall carry the identification folder on his or her person at all times that the appointee is on official duty, and the appointee shall on demand exhibit the same to any person to whom the appointee may represent himself or herself 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; 1983 a. 192 s. 303 (2); 1991 a. 316

**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.

(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; 1983 a. 524.

Under (4), DNR wardens have general law enforcement authority on state-owned lands and property under DNR's supervision, management and control 68 Atty. Gen. 326.

**23.115 Designation of trails, etc.** (1) The department shall designate trails, campgrounds, picnic areas and other special use areas for property under its control. These trails, campgrounds, picnic areas and other special use areas shall be designated on maps available at the department's district office, on a sign outside the office on the property or on signs placed by the trails, campgrounds, picnic areas or other use areas at the option of the department.

(2) The department shall inspect trail signs and designated features twice a year, once before July 1 and once after July 1.

History: 1977 c. 418; 1983 a. 418 s. 3; Stats. 1983 s. 23.115.

**23.117 Use of trails by bicycles.** (1) No person may operate a bicycle on a trail in a state park or in the Kettle Moraine state forest unless the department has determined that the trail will be opened for use by bicycles and has posted the trail open for such use.

(3) The department shall patrol on a regular basis the trails in state parks and in the Kettle Moraine state forest that are open to use by bicycles.

(4) Any council that is created by the natural resources board under s. 15.04 (1) (c) to advise the department on the opening of trails in state parks and in the Kettle Moraine state forest for use by bicycles shall have its recommendations regarding such use reviewed and approved by the natural resources board before they are implemented.

History: 1991 a. 269.

**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 the governor's request a copy of any paper, document or record in their respective offices and give the governor orally such information as the governor may call for.

History: 1971 c. 164; 1991 a. 316.

**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, hiking trails, cross-country ski trails, bridle trails, nature trails, bicycle trails, snowmobile trails, youth camps, land in the lower Wisconsin state riverway as defined in s. 30.40 (15), natural areas and wild rivers.

History: 1977 c. 29; 1985 a. 29; 1987 a. 98; 1989 a. 31.

**23.15 Sale of state-owned lands under the jurisdiction of the department of natural resources.** (1) The natural resources board may sell, at public or private sale, lands and structures owned by the state under the jurisdiction of the department of natural resources when the natural resources board determines that said lands are no longer necessary for the state's use for conservation purposes and, if real property, the real property is not the subject of a petition under s. 16.375 (2).

(2) Said natural resources board shall present to the governor a full and complete report of the lands to be sold, the reason for the sale, the price for which said lands should be sold together with an application for the sale of the same. The governor shall thereupon make such investigation as the governor deems necessary respecting said lands to be sold and approve or disapprove such application. If the governor shall approve the same, a permit shall be issued by the governor for such sale on the terms set forth in the application.

(2m) (a) Notwithstanding sub. (1), the natural resources board shall sell, at fair market value, land in the lower Wisconsin state riverway, as defined in s. 30.40 (15), that is not exempt under s. 30.48 (2) and that is acquired by the department after August 9, 1989, if all of the following conditions are met:

1. The land was acquired for its scenic value to the lower Wisconsin state riverway and not for any other purpose.

2. The land was not donated to the state.

3. The sale of the land does not impair the scenic value of the lower Wisconsin state riverway.

4. The department retains an easement and all other rights that are necessary to preserve the scenic value of the lower Wisconsin state riverway.

(b) Notwithstanding sub. (1), the natural resources board is not required to make a finding that land to be sold under par. (a) is no longer necessary for the state's use for conservation purposes.

(c) The procedure in sub. (2) does not apply to sales of land under this subsection.

(3) Upon completion of such sale, the chairman and secretary of the natural resources board, or the secretary of natural resources, if the secretary is duly authorized by the natural resources board, shall execute such instruments as are necessary to transfer title and the natural resources board or its duly authorized agents shall deliver the same to the purchaser upon payment of the amount set forth in the application.

(4) Said natural resources board effecting the sale of any such lands and structures shall, upon receiving payment therefor, deposit the funds in the conservation fund to be used exclusively for the purpose of purchasing other areas of land for the creating and establishing of public hunting and fishing grounds, wildlife and fish refuges and state parks and for land in the lower Wisconsin state riverway as defined in s. 30.40 (15).

(5) (a) In this subsection, "surplus land" means land under the jurisdiction of the department which is unused and not needed for department operations or included in the department's plan for construction or development.

**23.15 CONSERVATION**

(b) Biennially, beginning on January 1, 1984, the department shall submit to the state building commission and the joint committee on finance an inventory of surplus land containing the description, location and fair market value of each parcel.

**History:** 1983 a. 27; 1983 a. 423 s. 3; Stats. 1983 s. 23.15; 1989 a. 31; 1991 a. 39, 316

**23.16 Periodicals. (1) PUBLICATION.** The department may produce, issue or reprint magazines or other periodicals on a periodic basis as it determines, pertaining to fish and game, forests, parks, environmental quality and other similar subjects of general information. The department may distribute its magazines and periodicals by subscription. The department shall charge a fee for any of its magazines or periodicals, except that no fee may be charged to a person who is provided a subscription to the Wisconsin natural resources magazine under s. 29.1475.

(2) **ADVERTISING.** The department may advertise and sell advertising space in its magazines and other periodicals. The department may advertise or otherwise publicize its magazines and other periodicals. The advertising and publicizing shall be consistent with the goals, purposes and functions of the department.

(3) **SUBSCRIBER LISTS.** The department may refuse to reveal names and addresses of persons on any magazine or periodical subscriber list. The department may charge a fee to recover the actual costs for providing or for the use of any magazine or periodical subscriber list. No person who obtains or uses any magazine or periodical subscriber list from the department may refer to the department, the magazine or the periodical as the source of names or addresses unless the person clearly indicates that the provision of or permission to use the subscriber list in no way indicates the department's knowledge, involvement, approval, authorization or connection with the person or the person's activities.

(4) **COSTS.** Notwithstanding ss. 20.908 and 35.78 (2) the fee charged by the department in selling each of its magazines and periodicals shall be at least equal to the amount necessary to cover the production, storage, handling and distribution costs of each magazine and periodical.

(5) **USE OF MONEYS.** The department shall use the moneys collected under this section for the costs specified in sub. (4). If the moneys collected under this section exceed the amount necessary for the costs specified in sub. (4), the department shall use the excess for educational and informational activities concerning conservation and the environment.

**History:** 1975 c. 224; 1977 c. 418; 1979 c. 221; 1981 c. 335 s. 26; 1983 a. 27; 1989 a. 31 ss. 650km, 650L, 684c, 684e, 684i; Stats. 1989 s. 23.16; 1991 a. 39.

**23.165 Promotional activities; other publications. (1) PUBLICATIONS.** The department may produce, issue, reprint and sell publications not published on a periodic basis that pertain to fish and game, forests, parks, environmental quality and other similar subjects of general information.

(1m) **PHOTOGRAPHS, SLIDES, VIDEOTAPES, ARTWORK.** The department may produce, issue, reprint and sell photographs, slides, videotapes and artwork if they pertain to fish and game, forests, parks, environmental quality and other similar subjects of general information.

(2) **ADVERTISING SPACE.** The department may advertise and sell advertising space in its publications. Any advertising shall be consistent with the goals, purposes and functions of the department.

(3) **PROMOTIONAL ACTIVITIES.** The department may promote, through the sale of merchandise or otherwise, advertise or otherwise publicize department programs, department publications, and all properties, lands, facilities, waterways,

projects and other areas subject to the jurisdiction or control of the department. The promotion, advertising and publicizing shall be consistent with the goals, purposes and functions of the department.

(4) **SUBSCRIBER LISTS.** Notwithstanding s. 19.35, the department may refuse to reveal names and addresses of persons on any publication subscriber list. The department may charge a fee to recover the actual costs for providing or for the use of a publication subscriber list. No person who obtains or uses a publication subscriber list from the department may refer to the department or the publication as the source of names or addresses unless the person clearly indicates that the provision of or permission to use the subscriber list in no way indicates the department's knowledge, involvement, approval, authorization or connection with the person or the person's activities.

(5) **COSTS.** Notwithstanding ss. 20.908 and 35.78 (2), any price set or fee charged by the department in selling a publication, photograph, slide, videotape, artwork or promotional merchandise shall be at least equal to the amount necessary to cover the production, promotional, storage, handling and distribution costs of the publication, photograph, slide, videotape, artwork or promotional merchandise.

(5m) **USE OF MONEYS.** The department shall use the moneys collected under this section for the costs specified in sub. (5). If the moneys collected under this section exceed the amount necessary for the costs specified in sub. (5), the department shall use the excess for educational and informational activities concerning conservation and the environment.

(6) **REPORT TO LEGISLATURE.** The department shall annually submit a report concerning the activities, receipts and disbursements under this section for the preceding fiscal year to the chief clerk of each house of the legislature for distribution to the appropriate standing committees under s. 13.172 (3).

**History:** 1989 a. 31; 1991 a. 39

**23.17 Ice age trail. (1) DEFINITION.** In this section:

(a) "Municipality" means a city, village, town, county or special purpose district.

(b) "State agency" has the meaning designated under s. 16.01 (1).

(2) **DESIGNATION.** The ice age national scenic trail, as provided for in 16 USC 1244 (a) (10), plus the lands adjacent to each side of that trail designated by the department, is designated a state scenic trail, to be known as the "Ice Age Trail".

(3) **DUTIES OF THE DEPARTMENT.** The department shall:

(a) Encourage other state agencies, municipalities, organizations and individuals to participate in planning, establishing, developing and maintaining the ice age trail.

(b) Provide information to any person involved in planning, establishing, developing or maintaining the ice age trail regarding trail design, signs, interpretive markers and any other aspects of the ice age trail in which uniformity is desirable.

(c) Encourage municipalities to develop land use plans which preserve rights-of-way for future establishment of the ice age trail.

(d) Prepare a trail management plan and plan for interpretive markers for the ice age trail, in cooperation with the national park service, federal department of the interior.

(e) Coordinate the activities of all state agencies which own property that includes any existing or planned portion of the ice age trail and maintain regular contact with such agencies.

(f) Identify portions of the ice age trail which are proposed to be located on state-owned property, especially highway rights-of-way, and contact state agencies which own such property as soon as possible so that adequate plans for the location of the trail on state property may be developed and the trail location may be altered if the use of state property proves to be impossible.

(g) Coordinate its planning efforts relating to the location, development and maintenance of the ice age trail with the efforts of the national park service, federal department of the interior and any statewide nonprofit organization established for the purpose of planning, developing and maintaining the ice age trail.

**(4) POWERS OF THE DEPARTMENT.** The department may acquire land for the ice age trail under s. 23.09 (2) (d) 10, and may develop the ice age trail on lands under its ownership along the trail route.

**(5) STATE LAND.** (a) A state agency may not refuse to permit construction of a portion of the ice age trail on property owned by the state agency if the state agency determines that the trail does not conflict with other existing or proposed uses of the property.

(b) Each state agency shall consider the ice age trail in the long-range plans for property owned by the state agency.

**(5g) PERMITTED USES.** The construction on or use of land designated by the department as part of the ice age trail under this section and s. 23.293 is a permitted use under any zoning ordinance enacted by a municipality.

**(5r) MUNICIPAL LAND.** A municipality may not refuse to permit construction of a portion of the ice age trail on property owned by the municipality if the municipality determines that the trail does not conflict with other existing or proposed uses of the property.

**(6) OTHER TRAILS.** (a) This section does not limit the authority of the department to designate other trails under s. 23.115.

(b) This section does not preclude any portion of the ice age trail from being designated as a part of the national trails system.

History: 1987 a. 98, 399; 1991 a. 39

**23.175 State trails. (1) DEFINITIONS.** In this section:

(a) "Political subdivision" means a city, village, town or county.

(b) "State agency" means any office, department, agency, institution of higher education, association, society or other body in state government created or authorized to be created by the constitution or any law which is entitled to expend moneys appropriated by law, including any authority created under ch. 231 or 234 but not including the legislature or the courts.

**(2) DUTIES OF THE DEPARTMENT.** The department shall:

(a) Designate a system of state trails as part of the state park system for use by equestrians, bicyclists, cross-country skiers or hikers.

(b) Encourage other state agencies, political subdivisions, organizations and individuals to participate in planning, establishing, developing and maintaining state trails.

(c) Seek the advice of and consult with the state trails council regarding the planning, acquisition, development and management of state trails.

(d) Provide information to any person involved in planning, establishing, developing or maintaining state trails regarding trail design, signs and any other aspects of the trails in which uniformity is desirable.

(e) Encourage political subdivisions to develop land use plans that preserve rights-of-way for the future establishment of trails.

(f) Prepare a trail management plan.

(g) Coordinate the activities of all state agencies that own property that includes any existing or planned portion of a state trail and maintain regular contact with those state agencies.

(h) Identify portions of state trails that are proposed to be located on property owned by state agencies.

(i) Coordinate its planning efforts relating to the location, establishment, development and maintenance of state trails with the efforts of statewide, nonprofit organizations established for the purpose of planning, establishing, developing and maintaining trails.

(j) Establish priorities for trail acquisition and development with a higher priority for trails that establish connections between existing trails.

**(3) POWERS OF THE DEPARTMENT.** The department may:

(a) Develop and construct state trails on lands under its ownership.

(b) Beginning July 1, 1990, expend an amount from the appropriation under s. 20.866 (2) (tz) that equals any of the following:

1. The amount of a gift, grant or bequest received for a state trail under this section.

2. The fair market value of land donated for a state trail under this section.

**(4) LIMITS ON SPENDING.** Except as provided in s. 23.0915 (2), the department may not expend more than \$1,000,000 under this section for trails and for grants for this purpose under s. 23.096 in each fiscal year. Of this amount, the department may not expend more than \$500,000 under sub. (3) (b) in each fiscal year.

**(5) STATE LAND.** (a) A state agency may not refuse to permit the department to construct a portion of a state trail designated under sub. (2) on property owned by the state agency if the state agency determines that the trail does not conflict with other existing or planned uses of the property.

(b) Each state agency shall consider state trails in the long-range plans for property owned by the state agency.

**(6) OTHER TRAILS.** This section does not limit the authority of the department to designate other trails under s. 23.115.

History: 1989 a. 31; 1991 a. 39

**23.18 Milwaukee river revitalization council. (1) DUTIES.** The Milwaukee river revitalization council shall do all of the following:

(a) Advise the department, the governor and the legislature on matters relating to the environmental, recreational and economic revitalization of the Milwaukee river basin.

(b) Assist the department to:

1. Develop, provide and disseminate information on the environmental, recreational, economic and developmental interests of the Milwaukee river basin.

2. Assist local governmental agencies during the planning and implementation of specific programs and activities.

3. Develop proposals to maximize the use of available local, state, federal and private resources to further the revitalization of the Milwaukee river basin.

4. Develop a Milwaukee river riverway plan that allows and encourages multiple recreational entrepreneurial and cultural activities to take place near the Milwaukee river.

5. Establish a mechanism that allows the plan under subd. 4 to be implemented in an aggressive and deliberate fashion.

**(2) POWERS.** In addition to its duties under sub. (1), the Milwaukee river revitalization council may:

**23.18 CONSERVATION**

(a) Coordinate the planning and implementation of local recreational or environmental projects in the Milwaukee river basin to encourage consistency with other local projects or activities of the department or other state agencies in the Milwaukee river basin.

(b) Work directly with municipalities located in the Milwaukee river basin to develop a single comprehensive land use plan for the Milwaukee river basin.

(e) Directly advise and make recommendations to municipalities that have jurisdiction over land in the Milwaukee river basin to adopt ordinances or regulations to preserve the environmental, recreational and scenic values of the Milwaukee river basin.

(g) Directly develop, provide and disseminate information to the public to increase local awareness of recreational and environmental issues affecting the Milwaukee river basin.

(j) Directly inform or advise municipalities that have jurisdiction over land located outside the Milwaukee river basin as to the impact the development of the land may have on the Milwaukee river basin.

(k) Submit a report on activities affecting land and water use in the Milwaukee river basin to the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under s. 13.172 (3).

History: 1987 a 399; 1989 a 31

**23.19 Menomonee river conservation project.** (1) The department shall provide in state aid to the city of Milwaukee up to \$500,000 from the appropriation under s. 20.370 (4) (kb) for a conservation project for the Menomonee river if the city appropriates funds by June 30, 1991. Both the funds appropriated by the city and the state aid provided by the department shall be for any of the following stages of the project that may be undertaken by the city:

(a) A feasibility study on the acquisition or development, or both, of land adjacent to the Menomonee river for the uses specified in sub. (2).

(b) The acquisition of land adjacent to the Menomonee river for the uses specified in sub. (2).

(c) The development of land adjacent to the Menomonee river for the uses specified in sub. (2).

(2) The uses of the land acquired or developed with the state aid provided under sub. (1) shall be for any of the following:

(a) Recreational and community facilities.

(b) Improved river access.

(c) Nonpoint source pollution abatement.

(d) Restoration of wetland.

(3) (a) The amount of state aid provided under sub. (1) shall equal the actual amount, up to \$500,000, that is expended by the city of Milwaukee for the stages of the project specified in sub. (1) (a) to (c).

(b) The department may not provide state aid under sub. (1) for the performance of a feasibility study unless the department has granted prior approval for its performance.

(c) Each time the city of Milwaukee completes a stage of the project as specified under sub. (1) (a) to (c) and has expended the total amount of its contribution for that stage, the city is entitled to receive the amount of state aid under par. (a) that equals the total amount of the contribution.

History: 1989 a 350

**23.195 Monona terrace project in Madison.** (1) Beginning in fiscal year 1993-94 and ending in fiscal year 1995-96, from the appropriation under s. 20.866 (2) (tz), the department shall set aside \$1,000,000 in each fiscal year to be expended for the Frank Lloyd Wright Monona terrace project in the city of Madison to be expended as follows:

(a) The amount of \$370,000 for a bicycle path that is part of the project.

(b) The amount of \$2,630,000 for the following purposes:

1. Construction of a pedestrian bridge improving access to Lake Monona from the downtown area of the city.

2. Construction and development of a terrace and park in conjunction with the parking facility at the state office building located at 1 West Wilson street authorized under 1991 Wisconsin Act 269, section 9108 (1) (a).

3. Other park or recreational construction and development associated with the project.

(2) The moneys expended from the appropriation under s. 20.866 (2) (tz) for the purposes specified in sub. (1) (b) 1 to 3 shall be limited to no more than 50% of the cost of the project that is for these purposes.

(4) If all of the money set aside under this section is not expended before July 1, 1996, the moneys set aside but not expended shall be treated by the department in the manner provided in s. 23.0915 (2g).

History: 1991 a 269.

**23.20 Use of department gravel pits.** The department may permit any town, county or state agency to obtain gravel, sand, fill dirt or other fill material needed for road purposes from any department-owned gravel pit or similar facility if this material is unavailable from private vendors within a reasonable distance of the worksite. The department may require environmental safeguards before permitting a town, county or state agency to obtain this material. The department shall charge a fee for this material commensurate with the fee charged by private vendors.

History: 1981 c 131; 1985 a 202.

**23.23 Purple loosestrife.** (1) In this section, "purple loosestrife" means any nonnative member of the genus *Lythrum*.

(2) The department shall make a reasonable effort to conduct research to determine alternative methods to contain and control purple loosestrife in the most environmentally sound manner.

(3) (a) The department shall make a reasonable effort to develop a statewide program to control purple loosestrife on both public and private lands, as provided in this subsection.

(b) The department shall make a reasonable effort to implement control and quarantine methods on public lands as soon as practicable. The department shall make a reasonable effort to employ the least environmentally harmful methods available that are effective, based on research conducted under sub. (2).

(c) The department may conduct a pilot project using employes or other persons to engage in labor intensive efforts to control purple loosestrife on all public lands.

(d) The department shall request permission from private landowners to enter onto the land to control stands of purple loosestrife which significantly threaten environmental resources or which threaten to invade a nearby watershed or subwatershed. If the landowner denies the department permission to enter onto the land, the department may not enter the land but shall inform the landowner of the seminars available under sub. (4) (c).

(e) The department may provide grants to other public agencies to allow the public agencies to control purple loosestrife on lands under their control.

(4) (a) The department shall make a reasonable effort to develop a statewide education program on the effects of purple loosestrife, as provided in this subsection.

(b) The department shall make a reasonable effort to educate the authorities in charge of the maintenance of all federal, state and county trunk highways and all forest and

park land in this state on methods to identify and control purple loosestrife and multiflora rose. The department of transportation and all other authorities in charge of the maintenance of highways, forests and parks may cooperate with the department in efforts under this paragraph.

(c) The department shall make a reasonable effort to educate private landowners on methods to identify and control purple loosestrife. The department shall make a reasonable effort to conduct seminars periodically, at times determined by the department, to train private landowners in environmentally sound methods to identify and control purple loosestrife.

History: 1987 a 41.

**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) Except as provided under sub. (2m), 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 on all maps and in all reports and other publications thereafter issued by the state or any of its political subdivisions, and it shall be the official name of the geographic feature.

(2m) Notwithstanding subs. (1) and (2), the portion of the Galena river located within the state is renamed the Fever river. That name shall be used on all maps and in all reports and other publications issued by the state or any of its political subdivisions on and after May 14, 1992, and it shall be the official name of this river.

(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.

History: 1991 a 284.

**23.26 Natural areas preservation council.** The natural areas preservation council shall:

(1) Make recommendations to the department concerning the suitability of natural areas offered as donations by individuals or organizations for inclusion in the state natural areas system, make recommendations to the department concerning the purchase of natural areas to be included in the state natural areas system and make recommendations concerning the suitability of natural areas offered as dedications by individuals or organizations for inclusion in the state natural areas system.

(2) Make recommendations to appropriate federal agencies or national scientific organizations of natural areas in the

state that are considered worthy to be listed as natural areas or scientific areas of national importance.

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

(4) Prepare and publish an official list of research natural and other natural areas in the state natural area system 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 preservation of natural areas.

(6) Take such other action as is deemed advisable to facilitate the administration, development, maintenance or protection of natural areas and the state natural areas system.

History: 1985 a 29; Stats. 1985 s 23.26.

**23.27 Natural areas; definitions; importance; inventory; acquisition; sales.** (1) DEFINITIONS. As used in this section and ss. 23.28 and 23.29:

(a) "Council" means the natural areas preservation council.

(b) "Dedicated state natural areas" means land accepted and recorded for dedication under the Wisconsin natural areas heritage program as provided under s. 23.29 (16).

(c) "Dedication" means the transfer of land or a permanent interest in land to the state of Wisconsin to be held in trust for the people of Wisconsin by the department in a manner which ensures the protection and stewardship of the area and natural values associated with the area. "Dedication" also means the binding unilateral declaration by the state that land under the ownership of the state is to be held in trust for the people of Wisconsin by the department in a manner which ensures the protection and stewardship of the area and natural values associated with the area.

(d) "Designated state natural area" means a natural area designated as a state natural area under s. 23.28 (1).

(e) "Natural area" means an area of land or water which has educational or scientific value or is important as a reservoir of the state's genetic or biologic diversity and includes any buffer area necessary to protect the area's natural values. Frequently, "natural areas" are important as a reserve for native biotic communities. Frequently, "natural areas" provide habitat for endangered, threatened or critical species or for species of special concern to scientists. In some cases, "natural areas" include areas with highly significant geological or archaeological features. Generally, "natural areas" are areas which largely escaped unnatural environmental disturbance or which exhibit little evidence of recent environmental disturbance so that recovery of natural conditions has occurred.

(f) "Natural values" includes any important values and characteristics listed under sub. (2) (a) to (i) which enable an area to be considered a natural area.

(g) "Research natural area" means all or part of a state natural area identified by the department, with the advice of the council, as a natural area especially suitable or important for scientific research.

(h) "State natural area", unless otherwise limited, means any designated state natural area or dedicated state natural area.



**23.27 CONSERVATION**

(i) "Stewardship" means the continuing obligation to provide the necessary maintenance, management, protection, husbandry and support for a natural area and natural values associated with that area.

(2) **IMPORTANCE.** The department, with the advice of the council, shall maintain a system to evaluate the importance of natural areas. The system shall include standards for determining low, high and critical levels of importance for natural areas. This system shall consider the following natural values:

(a) The value of the area as a preserve or reservoir which exhibits an outstanding or high quality example of a native plant or animal community.

(b) The value of the area as a preserve or reservoir for any endangered, threatened or critical species or for a species of special concern to scientists.

(c) The value of the area as a preserve or reservoir of genetic or biological diversity.

(d) The degree to which the area was subject to unnatural environmental disturbance and the degree of recovery.

(e) The value of the area for educational or scientific research purposes and as a reference site for comparison with areas subjected to environmental disturbance.

(f) The value of the area for educational or scientific research purposes because of important or unusual characteristics.

(g) The significance or uniqueness of the area in the locality, region and state.

(h) The existence of highly significant geological or archaeological features.

(i) The value of the area for public educational purposes, including the value of the area in promoting public awareness, appreciation, understanding and respect for the state's natural heritage.

(3) **NATURAL HERITAGE INVENTORY PROGRAM.** (a) *Duties.* The department, with the advice of the council, shall conduct a natural heritage inventory program. The department shall cooperate with the land information board under s. 16.967 in conducting this program. This program shall establish a system for determining the existence and location of natural areas, the degree of endangerment of natural areas, an evaluation of the importance of natural areas, information related to the associated natural values of natural areas and other information and data related to natural areas. This program shall establish a system for determining the existence and location of native plant and animal communities and endangered, threatened and critical species, the degree of endangerment of these communities and species, the existence and location of habitat areas associated with these communities and species and other information and data related to these communities and species. This program shall establish and coordinate standards for the collection, storage, recall and display of data related to the natural heritage inventory.

(b) *Access to information; fees.* The department shall make information from the natural heritage inventory program available to any individual or public or private agency for research, educational, environmental, land management or similar authorized purposes. The department may establish a fee to be charged to recover the actual cost of compiling and providing this information. The department may reduce or waive the fee established under this paragraph if the department determines that a waiver or reduction of the fee is in the public interest. The natural heritage inventory and related data are not subject to s. 19.35 and the department may refuse to release information for any purpose which is not authorized.

(4) **NATURAL AREAS LAND ACQUISITION; CONTINUING COMMITMENT.** It is the intent of the legislature to continue natural areas land acquisition activities from moneys available from the appropriation under ss. 20.370 (1) (kb) and 20.866 (2) (ts) and (tz). This commitment is separate from and in addition to the commitment to acquire natural areas under the Wisconsin natural areas heritage program. Except as provided in s. 23.0915 (2), the department may not expend under s. 20.866 (2) (tz) more than \$1,500,000 in each fiscal year for natural areas land acquisition activities under this subsection and for grants for this purpose under s. 23.096.

(5) **NATURAL AREAS LAND ACQUISITION; COMMITMENT UNDER THE WISCONSIN NATURAL AREAS HERITAGE PROGRAM.** It is the intent of the legislature to initiate additional natural areas land acquisition activities with moneys available from the appropriations under ss. 20.370 (1) (mg) and 20.866 (2) (tt) and (tz) under the Wisconsin natural areas heritage program. This commitment is separate from and in addition to the continuing commitment under sub. (4). Moneys available from the appropriations under ss. 20.370 (1) (mg) and 20.866 (2) (tt) and (tz) under the Wisconsin natural areas heritage program may not be used to acquire land through condemnation. The department may not acquire land under this subsection unless the land is suitable for dedication under the Wisconsin natural areas heritage program and upon purchase or as soon after purchase as practicable the department shall take all necessary action to dedicate the land under the Wisconsin natural areas heritage program. Except as provided in s. 23.0915 (2), the department may not expend under s. 20.866 (2) (tz) more than \$500,000 in each fiscal year for natural areas land acquisition activities under this subsection and for grants for this purpose under s. 23.096.

(6) **SALE; CREDIT.** Moneys received by the state from the sale of any area on state-owned land under the department's management or control which is withdrawn from the state natural areas system shall be credited to the appropriation under s. 20.370 (1) (mg). An amount equal to the value of any area on state-owned land under the department's management or control which is withdrawn from the state natural areas system but remains in state ownership shall be credited to the appropriation under s. 20.370 (1) (mg).

History: 1985 a. 29; 1987 a. 27; 1989 a. 31; 1991 a. 39, 269.

**23.28 State natural areas; designated state natural areas.**

(1) **DESIGNATION.** The department, with the advice of the council, may designate any natural area with a high or critical level of importance on state-owned land under the department's management or control as a state natural area. The department, with the advice of the council, may designate any natural area with a high or critical level of importance on land other than state-owned land but under the department's management or control as a state natural area. The department, with the advice of the council, may designate a natural area with a high or critical level of importance on land under the management or control of another state agency, a federal, county, city, village, town or other public agency or a nonprofit organization as a state natural area if that area is protected by a voluntary, written stewardship agreement between the owner or manager and the department.

(2) **STEWARDSHIP.** The department is responsible for the stewardship of designated state natural areas unless a written stewardship agreement specifies otherwise.

(3) **PROTECTION OF NATURAL VALUES; RESEARCH NATURAL AREAS.** The department shall not permit any use of a designated state natural area which is inconsistent with or injurious to its natural values. The department may establish use zones, may control uses within a zone and may limit the

number of persons using a zone in a designated state natural area. The department, with the advice of the council, may classify certain designated state natural areas as research natural areas and may establish special use regulations for these areas.

History: 1985 a. 29; 1987 a. 399

**23.29 Wisconsin natural areas heritage program. (1) INTENT.** It is the intent of the legislature to encourage private contributions and land dedications under the Wisconsin natural areas heritage program. It is the intent of the legislature to match private contributions and the value of land dedications with state funds in addition to funds normally appropriated for natural areas land acquisition activities.

**(2) CONTRIBUTIONS; STATE MATCH.** The department may accept contributions and gifts for the Wisconsin natural areas heritage program. The department shall convert donations of land which it determines, with the advice of the council, are not appropriate for the Wisconsin natural areas heritage program into cash. The department shall convert other noncash contributions into cash. These moneys shall be deposited in the general fund and credited to the appropriation under s. 20.370 (1) (mg). These moneys shall be matched by an equal amount released from the appropriation under s. 20.866 (2) (tt) or (tz) or both to be used for natural areas land acquisition activities under s. 23.27 (5). The department shall determine how the moneys being released are to be allocated from these appropriations. No moneys may be released under s. 20.866 (2) (tz) before July 1, 1990.

**(3) LAND DEDICATIONS; VALUATION; STATE MATCH.** The department shall determine the value of land accepted for dedication under the Wisconsin natural areas heritage program. If the land dedication involves the transfer of the title in fee simple absolute or other arrangement for the transfer of all interest in the land to the state, the valuation shall be based on the fair market value of the land prior to the transfer. If the land dedication involves the transfer of a partial interest in land to the state, the valuation shall be based on the extent to which the fair market value of the land is diminished by that transfer and the associated articles of dedication. If the land dedication involves a sale of land to the department at less than the fair market value, the valuation of the dedication shall be based on the difference between the purchase price and the fair market value. An amount equal to the value of land accepted for dedication under the Wisconsin natural areas heritage program shall be released from the appropriation under s. 20.866 (2) (tt) or (tz) or both to be used for natural areas land acquisition activities under s. 23.27 (5). This subsection does not apply to dedications of land under the ownership of the state. The department shall determine how the moneys being released are to be allocated from these appropriations. No moneys may be released under s. 20.866 (2) (tz) before July 1, 1990.

**(4) LAND DEDICATIONS; ELIGIBLE LAND.** The department may not accept land for dedication under the Wisconsin natural areas heritage program unless the land is a natural area with a high or critical level of importance as determined by the department with the advice of the council.

**(5) LAND DEDICATIONS; TRANSFER OF INTEREST.** The department may not accept land for dedication under the Wisconsin natural areas heritage program unless all interest in the land or a partial interest in the land is transferred to the state to be held in trust for the people by the department. This subsection does not apply to land under the ownership of the state.

**(6) LAND DEDICATIONS; STATE LAND.** Land under the ownership of the state and under the control or management of the department may be accepted for dedication under the

Wisconsin natural areas heritage program. Land under the ownership of the state but under the management or control of another agency may be accepted for dedication under the Wisconsin natural areas heritage program if the appropriate agency transfers sufficient permanent and irrevocable authority over the management and control of that land to the department.

**(7) LAND DEDICATIONS; PERMANENT AND IRREVOCABLE.** Except as permitted under this subsection, the department may not accept land for dedication under the Wisconsin natural areas heritage program unless the land dedication is permanent and irrevocable. The department may not accept land for dedication under the Wisconsin natural areas heritage program if the dedication or any provision in the articles of dedication include any reversionary right or any provision which extinguishes the dedication at a certain time or upon the development of certain conditions, except that the department may authorize a revision or extinction if the land is withdrawn from the Wisconsin natural areas heritage program as provided under subs. (19) and (20). The department may not accept land for dedication under the Wisconsin natural areas heritage program if the articles of dedication allow for amendment or revision except as provided under subs. (17) and (18).

**(8) LAND DEDICATIONS; PUBLIC TRUST.** The department may not accept land for dedication under the Wisconsin natural areas heritage program unless the land dedication provides that the interest in land which is transferred to or held by the state is to be held in trust for the people by the department.

**(9) LAND DEDICATIONS; STEWARDSHIP.** The department may not accept land for dedication under the Wisconsin natural areas heritage program unless adequate provisions for the stewardship are provided. If the land dedication involves the transfer of title in fee simple absolute or other arrangement for the transfer of all interest in the land to the state, the department has stewardship responsibility. If the land dedication involves the transfer of a partial interest in the land to the state, stewardship responsibility shall be assigned to the person retaining an interest in the land and his or her successors or to the department. Even if stewardship responsibility is assigned to a person retaining an interest in the land and his or her successors, the department has ultimate responsibility to ensure that stewardship is provided and, if it is not, the department shall assume stewardship responsibility and shall recover the costs involved from the party originally responsible. If the land dedication involves state-owned land under the management or control of the department, the department has stewardship responsibility. The department may enter into contracts or agreements with other agencies or persons to act as its agent and to ensure that stewardship is provided for a dedicated state natural area or to assume stewardship responsibility for a dedicated state natural area. In no case may the department abrogate its ultimate stewardship responsibility or its obligation as a trustee of the land.

**(10) PROTECTION OF NATURAL VALUES; RESEARCH NATURAL AREAS.** The department may not accept land for dedication under the Wisconsin natural areas heritage program unless adequate authorization is given to the department to protect natural values and to restrict any use of the natural area which is inconsistent with or injurious to its natural values. If authorized by the articles of dedication, the department may establish use zones, may control uses within a zone and may limit the number of persons using a zone in a dedicated state natural area. If authorized in the articles of dedication, the department, with the advice of the council, may classify

**23.29 CONSERVATION**

91-92 Wis. Stats. 584

certain dedicated state natural areas as research natural areas and may establish special use regulations for these areas.

**(11) LAND DEDICATIONS; PARTIAL INTEREST; LAND OF OTHER STATE AGENCIES; ACCESS.** The department may not accept land for dedication under the Wisconsin natural areas heritage program if the land dedication involves the transfer of a partial interest in the land to the state unless adequate provisions for access are provided. Land under the ownership of the state but under the management and control of another state agency may not be accepted for dedication under the Wisconsin natural areas heritage program unless adequate provisions for access are provided. Adequate provisions for access are required to include provisions which guarantee access to the land by the department and its agents at reasonable times to inspect the land and to determine if the articles of dedication are being violated. Adequate provisions for access are required to include provisions which guarantee to the department and its agents access and rights to the land necessary to exercise stewardship responsibilities. Adequate provisions for access may not be required to include any provision permitting public access to the land although the department shall encourage public access provisions wherever possible and consistent with preservation of natural values associated with the land. If public access is permitted, the department shall consider this as a factor when making its valuation under sub. (3). Even if public access is permitted, the department may limit access at its discretion to protect natural values associated with the land or to facilitate stewardship or administration.

**(12) LAND DEDICATION; PARTIAL INTEREST; LAND OF OTHER STATE AGENCIES; NOTICE PRIOR TO SALE OR TRANSFER.** The department may not accept land for dedication under the Wisconsin natural areas heritage program if the land dedication involves the transfer of a partial interest in the land to the state unless adequate provisions for notice are provided. Land under the ownership of the state but under the management and control of another state agency may not be accepted for dedication under the Wisconsin natural areas heritage program unless adequate provisions for notice are provided. At a minimum, adequate provisions for notice shall require 30 days' notice to the department before any sale, transfer or conveyance of the land or an interest in the land. The department may not regulate or prohibit the sale, transfer or conveyance of a dedicated state natural area or an interest in a dedicated state natural area but the department may ensure that the grantee, lessee or other party is informed of the dedication and understands that restrictions, conditions, obligations, covenants and other provisions in the dedication and articles of dedication run with the land and are binding on subsequent grantees, lessees and similar parties. No sale, transfer or conveyance of a dedicated state natural area may violate the dedication or the articles of dedication. The register of deeds shall notify the department if a dedicated state natural area is transferred by will or as part of an estate.

**(13) ARTICLES OF DEDICATION; REQUIREMENT; APPROVAL.** The department may not accept land for dedication under the Wisconsin natural areas heritage program unless articles of dedication in the proper form and with the required contents are prepared and approved. The department and the person making the land dedication are required to approve articles of dedication if the land dedication involves the transfer of all or a partial interest in the land. The department and the appropriate state agency are required to approve articles of dedication if the land dedication involves land under the ownership of the state but under the control or management of a state agency other than the department. The department is re-

quired to approve articles of dedication if the land dedication involves only land under the ownership and control of the state and under the management or control of the department. The department shall seek the advice of the council in making approvals under this subsection.

**(14) ARTICLES OF DEDICATION; FORM.** Articles of dedication are not in proper form unless they are prepared as a conservation easement under s. 700.40 or in another form acceptable to the department. Articles of dedication are not in proper form unless they run with the land and are binding on all subsequent purchasers or any other successor to an interest in the land. Articles of dedication are not in proper form unless the articles qualify as an instrument which is valid and meets the requirements for recording under s. 706.04.

**(15) ARTICLES OF DEDICATION; CONTENTS.** The department may not approve articles of dedication unless they contain:

(a) *Public purpose.* A statement of public purposes served by the dedication.

(b) *Identification of natural values.* An identification of natural values associated with the land.

(c) *Conveyance.* A conveyance or other instrument if necessary to transfer interest in the land as required under sub. (5).

(d) *Permanent protection.* Restrictions, conditions, covenants and other provisions governing the use of the land so that natural values associated with the land are ensured of permanent protection.

(e) *Stewardship.* Restrictions, conditions, obligations, covenants or other provisions governing the obligation to provide stewardship as required under sub. (9).

(f) *Authorization.* Authorization to the department to ensure protection of natural values as required under sub. (10).

(g) *Access.* Adequate provisions for access if required under sub. (11).

(h) *Notification of sales and transfers.* Adequate provisions for notice if required under sub. (12).

(i) *Amendment.* A provision specifying that no amendment or revision to the articles of dedication may occur except as provided under subs. (17) and (18).

(j) *Withdrawal.* A provision specifying that no withdrawal of the land from the dedicated state natural areas system may occur except as provided under subs. (19) and (20).

**(16) ACCEPTANCE; RECORDING.** The department may not accept land for dedication under the Wisconsin natural areas heritage program unless the governor approves the dedication in writing. If the department and the governor approve, a land dedication under the Wisconsin natural areas heritage program is final with the recording of the dedication and articles of dedication in the office of the register of deeds. At the time of recording, the land is a dedicated state natural area and shall remain so unless withdrawn under subs. (19) and (20).

**(17) ARTICLES OF DEDICATION; AMENDMENT; JUSTIFICATION.** The articles of dedication may not be amended or revised unless the amendment or revision serves a valid public purpose, no prudent alternative exists and the amendment or revision would not significantly injure or damage the natural values which enabled the area to be considered a state natural area.

**(18) ARTICLES OF DEDICATION; AMENDMENT; PROCEDURE.** The articles of dedication may not be amended or revised until and unless:

(a) *Agreement.* The department and any other party with a property interest in the dedicated state natural area agree to the proposed amendment or revision.

(b) *Findings*. The department issues written findings justifying the proposed amendment or revision under sub. (17).

(c) *Notice and hearing*. A public hearing is conducted in the county where the dedicated state natural area is located following publication of a class 1 notice, under ch. 985, which announces the hearing and summarizes the department's findings.

(d) *Standing committee approval*. The appropriate standing committee in each house of the legislature, as determined by each presiding officer, approves the proposed amendment or revision.

(e) *Approval by governor*. The governor approves the proposed amendment or revision.

(f) *Recording*. The amendment or revision is recorded in the office of the register of deeds.

**(19) WITHDRAWAL; JUSTIFICATION.** The department may not withdraw a dedicated state natural area from the dedicated state natural areas system unless:

(a) *Extinction of natural values*. The natural values which enabled the area to be considered a dedicated state natural area no longer exist or were destroyed or damaged to such an extent that the area has no importance or has a low level of importance as determined by the department with the advice of the council.

(b) *Superseding public purpose*. The withdrawal serves a superseding and imperative public purpose and no prudent alternative exists.

**(20) WITHDRAWAL; PROCEDURE.** The department may not withdraw a dedicated state natural area from the state natural areas system until and unless:

(a) *Findings*. The department issues written findings justifying the proposed withdrawal under sub. (19) (a) or (b).

(b) *Notice and hearing*. A public hearing is conducted in the county where the dedicated state natural area is located following publication of a class 1 notice, under ch. 985, which announces the hearing and summarizes the department's findings.

(c) *Standing committee approval*. The appropriate standing committee in each house of the legislature, as determined by each presiding officer, approves the proposed withdrawal.

(d) *Approval by governor*. The governor approves the proposed withdrawal.

(e) *Recording*. The withdrawal is recorded with the register of deeds.

**(21) RESTRICTIONS.** A dedicated state natural area is not subject to condemnation for use for any purpose unless the area is withdrawn from the state natural areas system under subs. (19) and (20). The department may not impose restrictions on a person who retains a property interest in a dedicated state natural area unless the department has authority under the dedication or articles of dedication or unless the person who retains the property interest agrees.

**(22) DEPARTMENT AUTHORITY.** The department shall administer this section and shall encourage and facilitate the voluntary dedication of lands under the Wisconsin natural areas heritage program. The department may promulgate rules and establish procedures to aid in the administration and enforcement of this section. The department may provide legal advice and may prepare model articles of dedication to facilitate the dedication of lands under the Wisconsin natural areas heritage program.

**(23) ENFORCEMENT.** The department and its agents, the department of justice and peace officers, as defined under s. 939.22 (22), have jurisdiction on dedicated state natural areas in the geographic jurisdiction to enforce articles of dedication and restrictions authorized under sub. (21).

**(24) INJUNCTIVE RELIEF; RECOVERY OF COSTS; PUNITIVE DAMAGES.** The department, or the department of justice on its own initiative or at the request of the department, may initiate an action seeking injunctive relief against any person violating the articles of dedication of a dedicated state natural area or restrictions authorized under sub. (21). Any citizen may initiate an action seeking injunctive relief against any person violating the articles of dedication of a dedicated state natural area as a beneficiary of the interest in that land held in the public trust. The department, or the department of justice at the department's request, may initiate an action to recover costs for stewardship expenses from the party originally responsible under sub. (9). The department, or the department of justice at the department's request, may initiate an action for punitive damages against any person violating the articles of dedication of a dedicated state natural area. Punitive damages are in addition to any penalty imposed under sub. (25).

**(25) PENALTY.** Any person who violates this section, a rule promulgated under this section, the articles of dedication of a dedicated state natural area or any restrictions authorized under sub. (21) shall forfeit not more than \$10,000. Each violation and each day of violation constitutes a separate offense.

*History:* 1985 a 29; 1987 a 403; 1989 a 31

**23.293 State ice age trail area dedication. (1) DEFINITIONS.** In this section:

(a) "Dedicated ice age trail area" means land accepted and recorded for dedication under the ice age trail program under this section.

(b) "Dedication" means all of the following:

1. The transfer of land or a permanent interest in land to this state to be held in trust for the people of this state by the department in a manner which ensures the stewardship of the area.

2. The binding unilateral declaration by the state that land under the ownership of the state is to be held in trust for the people of this state by the department in a manner which ensures the stewardship of the area.

(c) "State ice age trail area" means the trail designated under s. 23.17 (2).

(d) "Stewardship" means the continuing obligation to provide the necessary maintenance, management, protection, husbandry and support.

**(2) MAP.** The department shall develop a map which designates the state ice age trail areas.

**(3) STEWARDSHIP.** The department is responsible for the stewardship of state ice age trail area lands.

**(4) CONTRIBUTIONS AND GIFTS; STATE MATCH.** The department may accept contributions and gifts for the ice age trail program. The department may convert gifts of land which it determines are not appropriate for the ice age trail program into cash. The department may convert other noncash contributions and gifts into cash. These moneys shall be deposited in the general fund and credited to the appropriation under s. 20.370 (1) (gg). An amount equal to the value of all contributions and gifts shall be released from the appropriation under s. 20.866 (2) (tw) or (tz) or both to be used for land acquisition and development activities under s. 23.17. The department shall determine how the moneys being released are to be allocated from these appropriations. No moneys may be released under s. 20.866 (2) (tz) before July 1, 1990.

**(5) LAND DEDICATIONS; VALUATION; STATE MATCH.** The department shall determine the value of land accepted for dedication under the ice age trail program. If the land dedication involves the transfer of the title in fee simple

absolute or other arrangement for the transfer of all interest in the land to the state, the valuation of the land shall be based on the fair market value of the land before the transfer. If the land dedication involves the transfer of a partial interest in land to the state, the valuation of the land shall be based on the extent to which the fair market value of the land is diminished by that transfer and the associated articles of dedication. If the land dedication involves a sale of land to the department at less than the fair market value, the valuation of the land shall be based on the difference between the purchase price and the fair market value. An amount equal to the valuation of the land accepted for dedication under the ice age trail program shall be released from the appropriation under s. 20.866 (2) (tw) or (tz) or both to be used for ice age trail acquisition activities under s. 23.17. The department shall determine how the moneys being released are to be allocated from these appropriations. No moneys may be released under s. 20.866 (2) (tz) before July 1, 1990. This subsection does not apply to dedications of land under the ownership of the state.

**(6) LAND DEDICATIONS; ELIGIBILITY AND ACCEPTANCE.** The department shall accept land except as provided by sub. (7), (8), (9), (10) or (12), within the state ice age trail area for dedication unless the long-term stewardship of the dedicated land cannot reasonably be assured.

**(7) LAND DEDICATIONS; TRANSFER OF INTEREST.** The department may not accept land for dedication under the ice age trail program unless all interest in the land or a partial interest in the land is transferred to the state to be held in trust for the people of this state by the department. This subsection does not apply to land under the ownership of the state.

**(8) LAND DEDICATIONS; STATE LAND.** Land under the ownership of the state and under the control or management of the department may be accepted for dedication under the ice age trail program. Land under the ownership of the state but under the management or control of another agency may be accepted for dedication under the ice age trail program if the appropriate agency transfers sufficient permanent and irrevocable authority over the management and control of that land to the department.

**(9) LAND DEDICATIONS; PERMANENT AND IRREVOCABLE.** Except as permitted under this subsection, the department may not accept land for dedication under the ice age trail program unless the land dedication is permanent and irrevocable. The department may not accept land for dedication under the ice age trail program if the dedication or any provision in the articles of dedication include any reversionary right or any provision which extinguishes the dedication at a certain time or upon the development of certain conditions, except that the department may authorize a reversion or extinction if the land is withdrawn from the ice age trail program as provided under subs. (16) and (17). The department may not accept land for dedication under the ice age trail program if the articles of dedication allow for amendment or revision except as provided under subs. (14) and (15).

**(10) LAND DEDICATIONS; PUBLIC TRUST.** The department may not accept land for dedication under the ice age trail program unless the land dedication provides that the interest in land which is transferred to or held by the state is to be held in trust for the people of this state by the department.

**(11) LAND DEDICATIONS; STEWARDSHIP.** The department may enter into contracts or agreements with other agencies or persons to act as its agent and to ensure that stewardship is provided for a dedicated ice age trail area or to assume stewardship responsibility for a dedicated ice age trail area. In no case may the department abrogate its ultimate stewardship responsibility or its obligation as a trustee of the land.

**(12) LAND DEDICATION; PARTIAL INTEREST; LAND OF OTHER STATE AGENCIES; NOTICE PRIOR TO SALE OR TRANSFER.** The department may not accept land for dedication under the ice age trail program if the land dedication involves the transfer of a partial interest in the land to the state unless adequate provisions for notice are provided. Land under the ownership of the state but under the management and control of another state agency may not be accepted for dedication under the ice age trail program unless adequate provisions for notice are provided. At a minimum, adequate provisions for notice shall require 30 days' notice to the department before any sale, transfer or conveyance of the land or an interest in the land. The department may not regulate or prohibit the sale, transfer or conveyance of a dedicated ice age trail area or an interest in a dedicated ice age trail area but the department may ensure that the grantee, lessee or other party is informed of the dedication and understands that restrictions, conditions, obligations, covenants and other provisions in the dedication and articles of dedication run with the land and are binding on subsequent grantees, lessees and similar parties. No sale, transfer or conveyance of a dedicated ice age trail area may violate the dedication or the articles of dedication. The register of deeds shall notify the department if a dedicated ice age trail area is transferred by will or as part of an estate.

**(13) ARTICLES OF DEDICATION; FORM.** Articles of dedication are not in proper form unless they are prepared as a conservation easement under s. 700.40 or in another form acceptable to the department. Articles of dedication are not in proper form unless they run with the land and are binding on all subsequent purchasers or any other successor to an interest in the land. Articles of dedication are not in proper form unless the articles qualify as an instrument which is valid and meets the requirements for recording under s. 706.04.

**(14) ARTICLES OF DEDICATION; AMENDMENT; JUSTIFICATION.** The articles of dedication may not be amended or revised unless the amendment or revision serves a valid public purpose, no prudent alternative exists and the amendment or revision would not significantly injure or damage the ice age trail.

**(15) ARTICLES OF DEDICATION; AMENDMENT; PROCEDURE.** The articles of dedication may not be amended or revised until and unless:

(a) *Agreement.* The department and any other party with a property interest in the dedicated ice age trail area agree to the proposed amendment or revision.

(b) *Findings.* The department issues written findings justifying the proposed amendment or revision under sub. (14).

(c) *Notice and hearing.* A public hearing is conducted in the county where the dedicated ice age trail area is located following publication of a class 1 notice, under ch. 985, which announces the hearing and summarizes the department's findings.

(d) *Standing committee approval.* The appropriate standing committee in each house of the legislature, as determined by each presiding officer, approves the proposed amendment or revision.

(e) *Approval by governor.* The governor approves the proposed amendment or revision.

(f) *Recording.* The amendment or revision is recorded in the office of the register of deeds.

**(16) WITHDRAWAL; JUSTIFICATION.** The department may not withdraw a state ice age trail area from the state ice age trail areas system unless:

(a) *Extinction of value.* The value which enabled the area to be considered a dedicated ice age trail area no longer exists or was destroyed or damaged to such an extent that the area has



no importance or has a low level of importance as determined by the department.

(b) *Superseding public purpose.* The withdrawal serves a superseding and imperative public purpose and no prudent alternative exists.

(17) **WITHDRAWAL; PROCEDURE.** The department may not withdraw a dedicated ice age trail area from the state ice age trail areas system until and unless:

(a) *Findings.* The department issues written findings justifying the proposed withdrawal under sub. (16) (a) or (b).

(b) *Notice and hearing.* A public hearing is conducted in the county where the dedicated ice age trail area is located following publication of a class 1 notice, under ch. 985, which announces the hearing and summarizes the department's findings.

(c) *Standing committee approval.* The appropriate standing committee in each house of the legislature, as determined by each presiding officer, approves the proposed withdrawal.

(d) *Approval by governor.* The governor approves the proposed withdrawal.

(e) *Recording.* The withdrawal is recorded with the register of deeds.

(18) **DEPARTMENT AUTHORITY.** The department shall administer this section and shall encourage and facilitate the voluntary dedication of lands under the ice age trail program. The department may promulgate rules and establish procedures to aid in the administration and enforcement of this section. The department may provide legal advice and may prepare model articles of dedication to facilitate the dedication of lands under the ice age trail program.

(19) **ENFORCEMENT.** The department and its agents, the department of justice and peace officers, as defined under s. 939.22 (22), have jurisdiction on dedicated ice age trail areas.

(20) **INJUNCTIVE RELIEF; RECOVERY OF COSTS.** The department, or the department of justice on its own initiative or at the request of the department, may initiate an action seeking injunctive relief against any person violating the articles of dedication of a dedicated ice age trail area.

History: 1987 a. 399; 1989 a. 31; 1991 a. 39.

**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, trails, trail-side campsites and shelters, cross-country ski trails, bridle trails, related historical sites, highway scenic easements, the lower Wisconsin state riverway as defined in s. 30.40 (15), natural areas and local recreation programs, except spectator sports, and to facilitate and encourage the fullest beneficial public use of these areas.

(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, the lower Wisconsin state riverway as defined in s. 30.40 (15), highway scenic easements, natural areas, 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; 1985 a. 29; 1987 a. 98; 1989 a. 31

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 milldams provided a public use is evident. 63 Atty. Gen. 245.

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

**23.305 Leasing of department land for recreational purposes. (1)** In this section, "spectator sports" means events or contests in which the general public spectates but does not participate, including without limitation because of enumeration:

- (a) Water ski shows.
- (b) Baseball games.
- (c) Volleyball games.
- (d) Snowmobile derbies.
- (e) Motorboat races.
- (f) Snowshoe races.



**23.305 CONSERVATION**

91-92 Wis. Stats. 588

(g) Cross-country ski races.

(h) Dogsled races.

(i) Canoe or kayak races.

(2) Notwithstanding ss. 23.30 and 28.04, the department may lease state park land or state forest land to towns, villages or counties for outdoor recreational purposes associated with spectator sports.

(3) The lease shall be for a term not to exceed 15 years. The lease shall contain covenants to protect the department from all liability and costs associated with use of the land and to guard against trespass and waste. The rents arising from the lease shall be paid into the state treasury and credited to the proper fund.

History: 1985 a. 29.

**23.31 Recreation resources facilities.** (1) (a) To provide and develop recreation resources facilities within this state, the natural resources board, subject to the limits provided in s. 20.866 (2) (tp), (ts) and (tt), may direct that state debt be contracted for providing recreation resources facilities or making additions to existing recreation resources facilities.

(b) With their biennial budget request to the department of administration, the natural resources board shall include its request and plan for recreational acquisition and development funding under s. 23.30. This plan shall be approved by the governor and 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.

(2) (a) The debt shall be contracted for in the manner and form the legislature prescribes.

(b) 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 under s. 23.30 but any unappropriated or uncommitted portion of this debt shall be continued beyond 1981.

(c) It is the intent of the legislature that state debt not to exceed \$60,000,000 in the 10-year period from July 1, 1981 to July 1, 1991, may be incurred to support outdoor recreation land acquisition activities.

History: 1971 c. 125; 1971 c. 211 s. 126; 1973 c. 90; 1977 c. 418; 1979 c. 34, 221; 1981 c. 20; 1985 a. 29.

**23.32 Wetlands mapping.** (1) In this section "wetland" means an area where water is at, near, or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which has soils indicative of wet conditions.

(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, 1984, 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 on-site surveys and other studies.

(d) The department shall cooperate with the land information board under s. 16.967 in conducting wetland mapping activities or any related land information collection activities.

History: 1977 c. 374; 1979 c. 221; 1983 a. 27; 1985 a. 29; 1989 a. 31.

**23.325 Aerial photographic survey.** (1) The department shall make, on a periodic basis, an aerial photographic survey of the state to provide the basis for state planning and resource and forestry management. In performing this duty, the department:

(a) Shall consult with the land information board, the department of transportation and the state cartographer, and may consult with other potential users of the photographic products resulting from the survey, to determine the scope and character of the survey.

(b) May contract with other state agencies or nongovernmental entities to carry out the photographic imagery acquisition phases of the survey and to prepare specific photographic products for use by federal, state and local agencies and the general public.

(2) (a) After consultation with the department of transportation and the state cartographer, the department of natural resources shall select the photographic products to be sold.

(b) The department of administration shall establish sale prices for the photographic products. The department of administration shall establish sale prices annually at a level that at least equals the amount necessary to cover the costs of photographic imagery acquisition and the production of photographic products and the costs of selling and reproducing the productions.

(3) The department of natural resources may sell and may enter into contracts to sell the photographic products.

(4) All income received by the department of natural resources and the department of transportation from the sale of the photographic products, less the amount retained by the department of transportation under s. 85.10, shall be deposited in the conservation fund.

History: 1991 a. 39.

**23.33 All-terrain vehicles.** (1) **DEFINITIONS.** As used in this section:

(a) "Accompanied" means being subject to continuous verbal direction or control.

(ag) "Agricultural purpose" means a purpose related to beekeeping, operating commercial feedlots, dairying, egg production, floriculture, fish or fur farming, forest and game management, grazing, livestock raising, operating orchards, plant greenhouses or nurseries, poultry raising, raising grain, grass, mint or seed crops, sod farming or raising fruits, nuts, berries or vegetables.

(am) "Alcohol beverages" has the meaning specified under s. 125.02 (1).

(b) "All-terrain vehicle" has the meaning specified under s. 340.01 (2g).

(bd) "All-terrain vehicle dealer" means a person engaged in the sale of all-terrain vehicles for a profit at wholesale or retail.

(bh) "All-terrain vehicle distributor" means a person who sells or distributes all-terrain vehicles to all-terrain vehicle dealers or who maintains distributor representatives.

(bp) "All-terrain vehicle manufacturer" means a person engaged in the manufacture of all-terrain vehicles for sale to the public.

(bt) "All-terrain vehicle renter" means a person engaged in the rental or leasing of all-terrain vehicles to the public.

(c) "All-terrain vehicle route" means a highway or sidewalk designated for use by all-terrain vehicle operators by the governmental agency having jurisdiction as authorized under this section.

(d) "All-terrain vehicle trail" means a marked corridor on public property or on private lands subject to public easement or lease, designated for use by all-terrain vehicle operators by the governmental agency having jurisdiction, but excluding roadways of highways except those roadways that are seasonally not maintained for motor vehicle traffic.

(dm) "Approved public treatment facility" has the meaning specified under s. 51.45 (2) (c).

(e) "Controlled substance" has the meaning specified under s. 161.01 (4).

(h) "Immediate family" means persons who are related as spouses, as siblings or as parent and child.

(i) "Intoxicant" means any alcohol beverage, controlled substance or other drug or any combination thereof.

(ic) "Intoxicated operation of an all-terrain vehicle law" means sub. (4c) or a local ordinance in conformity therewith or, if the operation of an all-terrain vehicle is involved, s. 940.09 or 940.25.

(if) "Land under the management and control of a person's immediate family" means land owned or leased by the person or a member of the person's immediate family over which the owner or lessee has management and control. This term excludes land owned or leased by an organization of which the person or a member of the person's immediate family is a member.

(ig) "Law enforcement officer" has the meaning specified under s. 165.85 (2) (c) and includes a person appointed as a conservation warden by the department under s. 23.10 (1).

(ir) "Operate" means to exercise physical control over the speed or direction of an all-terrain vehicle or to physically manipulate or activate any of the controls of an all-terrain vehicle necessary to put it in motion.

(it) "Operation" means the exercise of physical control over the speed or direction of an all-terrain vehicle or the physical manipulation or activation of any of the controls of an all-terrain vehicle necessary to put it in motion.

(iw) "Operator" means a person who operates an all-terrain vehicle, who is responsible for the operation of an all-terrain vehicle or who is supervising the operation of an all-terrain vehicle.

(j) "Owner" means a person who has lawful possession of an all-terrain vehicle by virtue of legal title or equitable interest in the all-terrain vehicle which entitles the person to possession of the all-terrain vehicle.

(je) "Purpose of authorized analysis" means for the purpose of determining or obtaining evidence of the presence, quantity or concentration of any intoxicant in a person's blood, breath or urine.

(jm) "Refusal law" means sub. (4p) (e) or a local ordinance in conformity therewith.

(jp) "Small all-terrain vehicle" means an all-terrain vehicle that has 4 wheels and that has either an engine certified by the manufacturer at not more than 90 cubic centimeters or an equivalent power unit.

(js) "Test facility" means a test facility or agency prepared to administer tests under s. 343.305 (2).

(n) "Used exclusively on private property" means use of an all-terrain vehicle by the owner of the all-terrain vehicle or a member of his or her immediate family only on land owned or leased by the all-terrain vehicle owner or a member of his or her immediate family.

(2) REGISTRATION. (a) *Requirement.* No person may operate and no owner may give permission for the operation of an

all-terrain vehicle within this state unless the all-terrain vehicle is registered for public use or for private use with the department under this section, is exempt from registration or is operated with a reflectorized plate attached in the manner specified under par. (dm) 3. No person may operate and no owner may give permission for the operation of an all-terrain vehicle on a public all-terrain vehicle route or trail unless the all-terrain vehicle is registered for public use with the department under this section, is exempt from registration or is operated with a reflectorized plate attached in the manner specified under par. (dm) 3.

(b) *Exemptions.* An all-terrain vehicle is exempt from registration if it is:

1. Owned by the United States, another state or a political subdivision thereof, but the exterior of the all-terrain vehicle shall display in a visible manner the name of the owner.

2. Covered by a valid registration in another state, province or country if there is some identification of registration displayed on the all-terrain vehicle and it has not been in this state for more than 15 consecutive days.

3. Used exclusively for racing on a raceway facility.

4. Owned by a political subdivision of the state and used for enforcement or emergency purposes.

5. Specified as exempt from registration by department rule.

(c) *Registration, public use, fee.* Any all-terrain vehicle may be registered for public use. The fee for the issuance or renewal of a registration certificate for public use is \$12.

(d) *Registration, private use, fee.* An all-terrain vehicle used exclusively for agricultural purposes or used exclusively on private property may be registered for private use. The fee for the issuance or renewal of a registration certificate for private use is \$6.

(dm) *Registration, commercial owner, fee.* 1 Every person who is an all-terrain vehicle manufacturer, all-terrain vehicle dealer, all-terrain vehicle distributor or all-terrain vehicle renter or any combination thereof engaged in business in this state shall register with the department and obtain from the department a commercial all-terrain vehicle certificate.

2 The fee for the issuance or renewal of a commercial all-terrain vehicle certificate is \$36. Upon receipt of the application form required by the department and the fee required under this subdivision, the department shall issue to the applicant a commercial all-terrain vehicle certificate and 3 reflectorized plates. The fee for additional reflectorized plates is \$12 per plate.

3 A person who is required to obtain a commercial all-terrain vehicle certificate under subd. 1 shall attach in a clearly visible place a reflectorized plate to any all-terrain vehicle that the person leases, rents, offers for sale or otherwise allows to be used whenever the all-terrain vehicle is being operated.

(e) *Other fees.* The fee for the transfer of an all-terrain vehicle registration certificate is \$2. The fee for the issuance of a duplicate all-terrain vehicle registration certificate, duplicate commercial all-terrain vehicle certificate or duplicate registration decals is \$2. The fee for the issuance of registration decals to a county or municipality is \$2. There is no fee for the issuance of registration decals to the state.

(f) *Effective periods, public use.* 1 Except as provided under subd. 2, an all-terrain vehicle public-use registration certificate is valid for a 2-year period.

2 The department may specify by rule an annual expiration date for all-terrain vehicle registrations and may reduce the effective period of a registration so it expires on that date.

(g) *Effective period, private use.* An all-terrain vehicle private-use registration certificate is valid from the date of

**23.33 CONSERVATION**

issuance until ownership of the all-terrain vehicle is transferred.

(gm) *Effective period; commercial owners.* 1. Except as provided under subd. 2, a commercial all-terrain vehicle certificate is valid for a 2-year period.

2. The department may specify by rule an annual expiration date for commercial all-terrain vehicle certificates and may reduce the effective period of a commercial all-terrain vehicle certificate so it expires on that date.

(h) *Procedures; requirements.* The department shall establish by rule procedures and requirements for all-terrain vehicle registration.

(2m) **RENTAL OF ALL-TERRAIN VEHICLES.** (a) No person who is engaged in the rental or leasing of all-terrain vehicles to the public may do any of the following:

1. Rent or lease an all-terrain vehicle for operation by a person who will be operating an all-terrain vehicle for the first time unless the person engaged in the rental or leasing gives the person instruction on how to operate an all-terrain vehicle.

2. Rent or lease an all-terrain vehicle to a person under 16 years of age.

3. Rent or lease an all-terrain vehicle without first ascertaining that any person under the age of 18 who will be on the all-terrain vehicle has protective headgear of the type required under s. 347.485 (1) (a).

(b) A person who is engaged in the rental or leasing of all-terrain vehicles to the public shall have clean, usable protective headgear available for rent in sufficient quantity to provide headgear to all persons under the age of 18 who will be on all-terrain vehicles that the person rents or leases.

(c) The department may promulgate rules to establish minimum standards for the instruction given under par. (a) 1.

(3) **RULES OF OPERATION.** No person may operate an all-terrain vehicle:

(a) In any careless way so as to endanger the person or property of another.

(c) On the private property of another without the consent of the owner or lessee. Failure to post private property does not imply consent for all-terrain vehicle use.

(d) On Indian lands without the consent of the tribal governing body or Indian owner. Failure to post Indian lands does not imply consent for all-terrain vehicle use.

(e) With any firearm in his or her possession unless it is unloaded and enclosed in a carrying case, or any bow unless it is unstrung or enclosed in a carrying case.

(f) To drive or pursue any animal except as a part of normal farming operations involving the driving of livestock.

(g) When within 150 feet of a dwelling at a speed exceeding 10 miles per hour.

(h) On the frozen surface of public waters within 100 feet of a person not in or on an all-terrain vehicle or motor vehicle or within 100 feet of a fishing shanty at a speed exceeding 10 miles per hour.

(i) In a manner which violates rules promulgated by the department.

(3g) **USE OF HEADGEAR.** No person may operate or be a passenger on an all-terrain vehicle without wearing protective headgear of the type required under s. 347.485 (1) (a) and with the chin strap properly fastened, unless one of the following applies:

(a) The person is at least 18 years of age.

(b) The person is traveling for the purposes of hunting or fishing and is at least 12 years of age.

(c) The all-terrain vehicle is being operated for an agricultural purpose.

(d) The all-terrain vehicle is being operated by a person on land under the management and control of the person's immediate family.

(4) **OPERATION ON OR NEAR HIGHWAYS.** (a) *Freeways.* No person may operate an all-terrain vehicle upon any part of any freeway which is a part of the federal system of interstate and defense highways. No person may operate an all-terrain vehicle upon any part of any other freeway unless the department of transportation authorizes all-terrain vehicle use on that freeway.

(b) *Other highways, operation restricted.* No person may operate an all-terrain vehicle on a highway except as authorized under pars. (d) and (e) or as authorized by rules promulgated by the department and approved by the department of transportation.

(c) *Exceptions; municipal, state and utility operations; races and derbies.* 1. Paragraphs (a) and (b) do not apply to the operator of an all-terrain vehicle owned by a municipality, state agency or public utility while the operator is engaged in an emergency or in the operation of an all-terrain vehicle directly related to the functions of the municipality, state agency or public utility if safety does not require strict adherence to these restrictions.

2. Paragraph (b) does not apply to a highway blocked off for special all-terrain vehicle events. A county, town, city or village may block off highways under its jurisdiction for the purpose of allowing special all-terrain vehicle events. No state trunk highway or connecting highway, or part thereof, may be blocked off by any county, town, city or village for any all-terrain vehicle race or derby. A county, town, city or village shall notify the local police department and the county sheriff's office at least one week in advance of the time and place of any all-terrain vehicle race or derby which may result in any street, or part thereof, of the county, town, city or village being blocked off.

(d) *Operation on roadway.* A person may operate an all-terrain vehicle on the roadway portion of any highway only in the following situations:

1. To cross a roadway. The crossing of a roadway is authorized only if the crossing is done in the most direct manner practical, if the crossing is made at a place where no obstruction prevents a quick and safe crossing and if the operator stops the all-terrain vehicle prior to the crossing and yields the right-of-way to other vehicles and pedestrians using the roadway.

2. On any roadway which is seasonally not maintained for motor vehicle traffic. Operation of an all-terrain vehicle on this type of roadway is authorized only during the seasons when no maintenance occurs and only if the roadway is not officially closed to all-terrain vehicle traffic.

3. To cross a bridge, culvert or railroad right-of-way. The crossing of a bridge, culvert or railroad right-of-way is not authorized if the roadway is officially closed to all-terrain vehicle traffic. The crossing is authorized only if the crossing is done in the most direct manner practical, if the crossing is made at a place where no obstruction prevents a quick and safe crossing and if the operator stops the all-terrain vehicle prior to the crossing and yields the right-of-way to other vehicles and pedestrians using the roadway.

4. On roadways which are designated as all-terrain vehicle routes. Operation of all-terrain vehicles on a roadway which is an all-terrain vehicle route is authorized only for the extreme right side of the roadway except that left turns may be made from any part of the roadway which is safe given prevailing conditions.

5. On roadways if the all-terrain vehicle is an implement of husbandry, if the all-terrain vehicle is used exclusively for

agricultural purposes and if the all-terrain vehicle is registered for private use under sub. (2) (d). Operation of an all-terrain vehicle which is an implement of husbandry on a roadway is authorized only for the extreme right side of the roadway except that left turns may be made from any part of the roadway which is safe given prevailing conditions.

6. On roadways if the operator of the all-terrain vehicle is a person who holds a Class A permit or a Class B permit under s. 29.09 (9) and who is traveling for the purposes of hunting or is otherwise engaging in an activity authorized by the permit.

7. On roadways of highways that are all-terrain vehicle trails.

(e) *Operation adjacent to roadway.* A person may operate an all-terrain vehicle adjacent to a roadway on an all-terrain vehicle route or trail if the person operates the all-terrain vehicle in the following manner:

1. At a distance of 10 or more feet from the roadway along U.S. numbered highways and state and county highways. Travel on the median of a divided highway is prohibited except to cross.

2. Outside of the roadway along town highways.

3. During hours of darkness in the same direction as motor vehicle traffic in the nearest lane, although during daylight hours travel may be in either direction regardless of the flow of motor vehicle traffic.

4. Not in excess of the speed limits of the adjacent roadway.

5. With due regard to safety and in compliance with rules promulgated by the department and approved by the department of transportation.

**(4c) INTOXICATED OPERATION OF AN ALL-TERRAIN VEHICLE.**

(a) *Operation.* 1. Operating while under the influence of an intoxicant. No person may operate an all-terrain vehicle while under the influence of an intoxicant to a degree which renders him or her incapable of safe operation of an all-terrain vehicle.

2. Operating with alcohol concentrations at or above specified levels. No person may engage in the operation of an all-terrain vehicle while the person has a blood alcohol concentration of 0.1% or more by weight of alcohol in his or her blood. No person may engage in the operation of an all-terrain vehicle while the person has 0.1 grams or more of alcohol in 210 liters of his or her breath.

3. Operating with alcohol concentrations at specified levels; below age 19. If a person has not attained the age of 19, the person may not engage in the operation of an all-terrain vehicle while he or she has a blood alcohol concentration of more than 0.0% but not more than 0.1% by weight of alcohol in his or her blood or more than 0.0 grams but not more than 0.1 grams of alcohol in 210 liters of his or her breath.

4. Related charges. A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of subd. 1 or 2 or both for acts arising out of the same incident or occurrence. If the person is charged with violating both subds. 1 and 2, the offenses shall be joined. If the person is found guilty of both subds. 1 and 2 for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions under sub. (13) (b) 2 and 3. Subdivisions 1 and 2 each require proof of a fact for conviction which the other does not require.

(b) *Causing injury.* 1. Causing injury while under the influence of an intoxicant. No person while under the influence of an intoxicant to a degree which renders him or her incapable of safe operation of an all-terrain vehicle may cause injury to another person by the operation of an all-terrain vehicle.

2. Causing injury with alcohol concentrations at or above specified levels. No person who has a blood alcohol concentration of 0.1% or more by weight of alcohol in his or her blood may cause injury to another person by the operation of an all-terrain vehicle. No person who has 0.1 grams or more of alcohol in 210 liters of his or her breath may cause injury to another person by the operation of an all-terrain vehicle.

3. Related charges. A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of subd. 1 or 2 or both for acts arising out of the same incident or occurrence. If the person is charged with violating both subds. 1 and 2 in the complaint, the crimes shall be joined under s. 971.12. If the person is found guilty of both subds. 1 and 2 for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions under sub. (13) (b) 2 and 3. Subdivisions 1 and 2 each require proof of a fact for conviction which the other does not require.

4. Defenses. In an action under this paragraph, the defendant has a defense if he or she proves by a preponderance of the evidence that the injury would have occurred even if he or she had been exercising due care and he or she had not been under the influence of an intoxicant or did not have a blood alcohol concentration of 0.1% or more by weight of alcohol in his or her blood or 0.1 grams or more of alcohol in 210 liters of his or her breath.

**(4g) PRELIMINARY BREATH SCREENING TEST.** (a) *Requirement.* A person shall provide a sample of his or her breath for a preliminary breath screening test if a law enforcement officer has probable cause to believe that the person is violating or has violated the intoxicated operation of an all-terrain vehicle law and if, prior to an arrest, the law enforcement officer requested the person to provide this sample.

(b) *Use of test results.* A law enforcement officer may use the results of a preliminary breath screening test for the purpose of deciding whether or not to arrest a person for a violation of the intoxicated operation of an all-terrain vehicle law or for the purpose of deciding whether or not to request a chemical test under sub. (4p). Following the preliminary breath screening test, chemical tests may be required of the person under sub. (4p).

(c) *Admissibility.* The result of a preliminary breath screening test is not admissible in any action or proceeding except to show probable cause for an arrest, if the arrest is challenged, or to show that a chemical test was properly required of a person under sub. (4p).

(d) *Refusal.* There is no penalty for a violation of par. (a). Subsection (13) (a) and the general penalty provision under s. 939.61 do not apply to that violation.

**(4j) APPLICABILITY OF THE INTOXICATED OPERATION OF AN ALL-TERRAIN VEHICLE LAW.** In addition to being applicable upon highways, the intoxicated operation of an all-terrain vehicle law is applicable upon all premises held out to the public for use of their all-terrain vehicles, whether such premises are publicly or privately owned and whether or not a fee is charged for the use thereof.

**(4l) IMPLIED CONSENT.** Any person who engages in the operation of an all-terrain vehicle upon the public highways of this state, or in those areas enumerated in sub. (4j), is deemed to have given consent to provide one or more samples of his or her breath, blood or urine for the purpose of authorized analysis as required under sub. (4p). Any person who engages in the operation of an all-terrain vehicle within this state is deemed to have given consent to submit to one or more chemical tests of his or her breath, blood or urine for the purpose of authorized analysis as required under sub. (4p).

**23.33 CONSERVATION**

**(4p) CHEMICAL TESTS.** (a) *Requirement.* 1. Samples; submission to tests. A person shall provide one or more samples of his or her breath, blood or urine for the purpose of authorized analysis if he or she is arrested for a violation of the intoxicated operation of an all-terrain vehicle law and if he or she is requested to provide the sample by a law enforcement officer. A person shall submit to one or more chemical tests of his or her breath, blood or urine for the purpose of authorized analysis if he or she is arrested for a violation of the intoxicated operation of an all-terrain vehicle law and if he or she is requested to submit to the test by a law enforcement officer.

2. Information. A law enforcement officer requesting a person to provide a sample or to submit to a chemical test under subd. 1 shall inform the person of all of the following at the time of the request and prior to obtaining the sample or administering the test:

a. That he or she is deemed to have consented to tests under sub. (4L).

b. That a refusal to provide a sample or to submit to a chemical test constitutes a violation under par. (e) and is subject to the same penalties and procedures as a violation of sub. (4c) (a) 1.

c. That in addition to the designated chemical test under par. (b) 2, he or she may have an additional chemical test under par. (c) 1.

3. Unconscious person. A person who is unconscious or otherwise not capable of withdrawing consent is presumed not to have withdrawn consent under this paragraph, and if a law enforcement officer has probable cause to believe that the person violated the intoxicated operation of an all-terrain vehicle law, one or more chemical tests may be administered to the person without a request under subd. 1 and without providing information under subd. 2.

(b) *Chemical tests.* 1. Test facility. Upon the request of a law enforcement officer, a test facility shall administer a chemical test of breath, blood or urine for the purpose of authorized analysis. A test facility shall be prepared to administer 2 of the 3 chemical tests of breath, blood or urine for the purpose of authorized analysis. The department may enter into agreements for the cooperative use of test facilities.

2. Designated chemical test. A test facility shall designate one chemical test of breath, blood or urine which it is prepared to administer first for the purpose of authorized analysis.

3. Additional chemical test. A test facility shall specify one chemical test of breath, blood or urine, other than the test designated under subd. 2, which it is prepared to administer for the purpose of authorized analysis as an additional chemical test.

4. Validity; procedure. A chemical test of blood or urine conducted for the purpose of authorized analysis is valid as provided under s. 343.305 (6). The duties and responsibilities of the laboratory of hygiene, department of health and social services and department of transportation under s. 343.305 (6) apply to a chemical test of blood or urine conducted for the purpose of authorized analysis under this subsection. Blood may be withdrawn from a person arrested for a violation of the intoxicated operation of an all-terrain vehicle law only by a physician, registered nurse, medical technologist, physician's assistant or person acting under the direction of a physician and the person who withdraws the blood, the employer of that person and any hospital where blood is withdrawn have immunity from civil or criminal liability as provided under s. 895.53.

5. Report. A test facility which administers a chemical test of breath, blood or urine for the purpose of authorized

analysis under this subsection shall prepare a written report which shall include the findings of the chemical test, the identification of the law enforcement officer or the person who requested a chemical test and the identification of the person who provided the sample or submitted to the chemical test. The test facility shall transmit a copy of the report to the law enforcement officer and the person who provided the sample or submitted to the chemical test.

(c) *Additional and optional chemical tests.* 1. Additional chemical test. If a person is arrested for a violation of the intoxicated operation of an all-terrain vehicle law or is the operator of an all-terrain vehicle involved in an accident resulting in great bodily harm to or the death of someone and if the person is requested to provide a sample or to submit to a test under par. (a) 1, the person may request the test facility to administer the additional chemical test specified under par. (b) 3 or, at his or her own expense, reasonable opportunity to have any qualified person administer a chemical test of his or her breath, blood or urine for the purpose of authorized analysis.

2. Optional test. If a person is arrested for a violation of the intoxicated operation of an all-terrain vehicle law and if the person is not requested to provide a sample or to submit to a test under par. (a) 1, the person may request the test facility to administer a chemical test of his or her breath or, at his or her own expense, reasonable opportunity to have any qualified person administer a chemical test of his or her breath, blood or urine for the purpose of authorized analysis. If a test facility is unable to perform a chemical test of breath, the person may request the test facility to administer the designated chemical test under par. (b) 2 or the additional chemical test under par. (b) 3.

3. Compliance with request. A test facility shall comply with a request under this paragraph to administer any chemical test it is able to perform.

4. Inability to obtain chemical test. The failure or inability of a person to obtain a chemical test at his or her own expense does not preclude the admission of evidence of the results of a chemical test required and administered under pars. (a) and (b).

(d) *Admissibility; effect of test results; other evidence.* The results of a chemical test required or administered under par. (a), (b) or (c) are admissible in any civil or criminal action or proceeding arising out of the acts committed by a person alleged to have violated the intoxicated operation of an all-terrain vehicle law on the issue of whether the person was under the influence of an intoxicant or the issue of whether the person had alcohol concentrations at or above specified levels. Results of these chemical tests shall be given the effect required under s. 885.235. This subsection does not limit the right of a law enforcement officer to obtain evidence by any other lawful means.

(e) *Refusal.* No person may refuse a lawful request to provide one or more samples of his or her breath, blood or urine or to submit to one or more chemical tests under par. (a). A person shall not be deemed to refuse to provide a sample or to submit to a chemical test if it is shown by a preponderance of the evidence that the refusal was due to a physical inability to provide the sample or to submit to the test due to a physical disability or disease unrelated to the use of an intoxicant. Issues in any action concerning violation of par. (a) or this paragraph are limited to:

1. Whether the law enforcement officer had probable cause to believe the person was violating or had violated the intoxicated operation of an all-terrain vehicle law.

2. Whether the person was lawfully placed under arrest for violating the intoxicated operation of an all-terrain vehicle law.

3. Whether the law enforcement officer requested the person to provide a sample or to submit to a chemical test and provided the information required under par. (a) 2 or whether the request and information was unnecessary under par. (a) 3.

4. Whether the person refused to provide a sample or to submit to a chemical test.

**(4t) REPORT ARREST TO DEPARTMENT.** If a law enforcement officer arrests a person for a violation of the intoxicated operation of an all-terrain vehicle law or the refusal law, the law enforcement officer shall notify the department of the arrest as soon as practicable.

**(4x) OFFICER'S ACTION AFTER ARREST FOR OPERATING AN ALL-TERRAIN VEHICLE WHILE UNDER INFLUENCE OF INTOXICANT.** A person arrested for a violation of sub. (4c) (a) 1 or 2 or a local ordinance in conformity therewith or sub. (4c) (b) 1 or 2 may not be released until 12 hours have elapsed from the time of his or her arrest or unless a chemical test administered under sub. (4p) (a) 1 shows that there is 0.05% or less by weight of alcohol in the person's blood or 0.05 grams or less of alcohol in 210 liters of the person's breath, but the person may be released to his or her attorney, spouse, relative or other responsible adult at any time after arrest.

**(4z) PUBLIC EDUCATION PROGRAM.** (a) The department shall promulgate rules to provide for a public education program to:

1. Inform all-terrain vehicle operators of the prohibitions and penalties included in the intoxicated operation of an all-terrain vehicle law.

2. Provide for the development of signs briefly explaining the intoxicated operation of an all-terrain vehicle law.

(b) The department shall develop and issue an educational pamphlet on the intoxicated operation of an all-terrain vehicle law to be distributed, beginning in 1989, to persons issued all-terrain vehicle registration certificates.

**(5) AGE RESTRICTIONS; SAFETY CERTIFICATION PROGRAM.** (a) *Age restriction.* No person under 12 years of age may operate an all-terrain vehicle unless he or she is operating the all-terrain vehicle for an agricultural purpose and he or she is under the supervision of a person over 18 years of age or unless he or she is operating a small all-terrain vehicle on an all-terrain vehicle trail designated by the department and he or she is accompanied by his or her parent. No person who is under 12 years of age may operate an all-terrain vehicle which is an implement of husbandry on a roadway under any circumstances. No person who is under 12 years of age may operate an all-terrain vehicle on a roadway under the authorization provided under sub. (4) (d) 6 under any circumstances. No person who is under 12 years of age may rent or lease an all-terrain vehicle. For purposes of this paragraph, supervision does not require that the person under 12 years of age be subject to continuous direction or control by the person over 18 years of age.

(b) *All-terrain vehicle safety certificate.* A person who is at least 12 years of age but under 16 years of age may not operate an all-terrain vehicle unless he or she holds a valid all-terrain vehicle safety certificate or is accompanied by a person over 18 years of age. A person who is at least 12 years of age but under 16 years of age may not operate an all-terrain vehicle on a roadway under the authorization provided under sub. (4) (d) 6 unless he or she holds a valid all-terrain vehicle safety certificate regardless if he or she is accompanied by a person over 18 years of age. A person who is at least 12 years of age but under 16 years of age may not operate an all-terrain vehicle which is an implement of

husbandry on a roadway under the authorization provided under sub. (4) (d) 5 unless he or she holds a valid all-terrain vehicle safety certificate regardless if he or she is accompanied by a person over 18 years of age. A person who is at least 12 years of age but under 16 years of age may not rent or lease an all-terrain vehicle. A person who is at least 12 years of age but under 16 years of age who holds an all-terrain vehicle safety certificate shall carry it while he or she operates an all-terrain vehicle and shall display it to a law enforcement officer on request. Persons enrolled in a safety certification program approved by the department may operate an all-terrain vehicle in an area designated by the instructor.

(c) *Exceptions.* Paragraphs (a) and (b) do not apply to a person who operates an all-terrain vehicle exclusively on land under the management and control of the person's immediate family. Paragraphs (a) and (b) do not apply to a person at least 12 years of age but under 16 years of age who holds a valid certificate issued by another state or a province of Canada.

(d) *Safety certification program established.* The department shall establish or supervise the establishment of programs of instruction on all-terrain vehicle laws, including the intoxicated operation of an all-terrain vehicle law, regulations, safety and related subjects. The department may charge or authorize an instruction fee.

**(6) EQUIPMENT REQUIREMENTS.** (a) A person who operates an all-terrain vehicle during hours of darkness or during daylight hours on any highway right-of-way is required to display a lighted headlamp and tail lamp on the all-terrain vehicle.

(b) The headlamp on an all-terrain vehicle is required to display a white light of sufficient illuminating power to reveal any person, vehicle or substantial object at a distance of at least 200 feet ahead of the all-terrain vehicle.

(c) The tail lamp on an all-terrain vehicle is required to display a red light plainly visible during hours of darkness from a distance of 500 feet to the rear.

(d) Every all-terrain vehicle is required to be equipped with at least one brake operated either by hand or by foot.

(e) Every all-terrain vehicle is required to be equipped with a functioning muffler to prevent excessive or unusual noise and with a functioning spark arrester of a type approved by the U.S. forest service.

**(7) ACCIDENTS.** (a) If an accident results in the death of any person or in the injury of any person which requires the treatment of the person by a physician, the operator of each all-terrain vehicle involved in the accident shall give notice of the accident to a conservation warden or local law enforcement officer as soon as possible and shall file a written report of the accident with the department on the form provided by it within 10 days after the accident.

(b) If the operator of an all-terrain vehicle is physically incapable of making the report required by this subsection and there was another witness to the accident capable of making the report, the witness may make the report.

**(8) ROUTES AND TRAILS.** (a) *Department authority.* The department shall encourage and supervise a system of all-terrain vehicle routes and trails. The department may establish standards and procedures for certifying the designation of all-terrain vehicle routes and trails.

(b) *Routes.* A town, village, city or county may designate highways as all-terrain vehicle routes. No state trunk highway or connecting highway may be designated as an all-terrain vehicle route unless the department of transportation approves the designation.

(c) *Trails.* A town, village, city, county or the department may designate corridors through land which it owns or



**23.33 CONSERVATION**

controls, or for which it obtains leases, easements or permission, for use as all-terrain vehicle trails.

(d) *Restrictions*. The designating authority may specify effective periods for the use of all-terrain vehicle routes and trails and may restrict or prohibit the operation of an all-terrain vehicle during certain periods of the year.

(e) *Signs*. The department, in cooperation with the department of transportation, shall establish uniform all-terrain vehicle route and trail signs and standards.

(9) **ADMINISTRATION; ENFORCEMENT; AIDS.** (a) *Administration and enforcement*. The department may utilize up to 50% of the moneys received under sub. (2) for the purposes specified under s. 20.370 (3) (as), (4) (fu) and (iq) and (8) (ds) including costs associated with registration, enforcement, safety education, accident reports and analysis, law enforcement aids to counties, aids administration and other similar costs in administering and enforcing this section.

(b) *All-terrain vehicle projects*. 1. The department shall utilize at least 50% of the moneys received under sub. (2) for state all-terrain vehicle projects and for aid to towns, villages, cities, counties or federal agencies for nonstate all-terrain vehicle projects. The department shall utilize all the moneys credited to the appropriation under s. 20.370 (4) (bz) for aid to towns, villages, cities, counties or federal agencies for nonstate all-terrain vehicle projects.

2. Any of the following all-terrain vehicle projects are eligible for funding under this paragraph as a state all-terrain vehicle project or for aid under this paragraph as a nonstate all-terrain vehicle project:

- a. Acquisition of an easement or land in fee simple.
- b. An all-terrain vehicle facility such as a parking area, riding area, shelter, toilets or other improvement.
- c. Development of all-terrain vehicle routes or all-terrain vehicle trails.
- d. Development or maintenance of a snowmobile route or trail or an off-the-road motorcycle trail or facility if the route, trail or facility is open for use by all-terrain vehicles.
- e. Maintenance of all-terrain vehicle routes or all-terrain vehicle trails.
- f. Purchase of liability insurance.

3. In addition to the projects listed in subd. 2, the department may provide aid under this paragraph to a town, village, city or county for up to 100% of the cost of placing signs developed under sub. (4z) (a) 2.

(10) **LIABILITY OF LANDOWNERS.** Section 895.52 applies to this section.

(11) **LOCAL ORDINANCES.** (a) Counties, towns, cities and villages may enact ordinances regulating all-terrain vehicles on all-terrain vehicle trails maintained by or on all-terrain vehicle routes designated by the county, city, town or village.

(am) Any county, town, city or village may enact an ordinance which is in strict conformity with this section and rules promulgated by the department under this section, if the ordinance encompasses all aspects encompassed by this section.

(b) If a county, town, city or village adopts an ordinance regulating all-terrain vehicles, its clerk shall immediately send a copy of the ordinance to the department and to the office of any law enforcement agency of the municipality or county having jurisdiction over any highway designated as an all-terrain vehicle route.

(12) **ENFORCEMENT.** (a) An officer of the state traffic patrol under s. 110.07 (1), inspector under s. 110.07 (3), conservation warden appointed by the department under s. 23.10, county sheriff or municipal peace officer has authority and jurisdiction to enforce this section and ordinances enacted in conformity with this section.

(b) No operator of an all-terrain vehicle may refuse to stop after being requested or signaled to do so by a law enforcement officer.

(13) **PENALTIES.** (a) *Generally*. Except as provided in pars. (b) to (e), any person who violates this section shall forfeit not more than \$250.

(b) *Penalties related to prohibited operation of an all-terrain vehicle; intoxicants; refusal*. 1. Except as provided under subds. 2 and 3, a person who violates sub. (4c) (a) 1 or 2 or (4p) (e) shall forfeit not less than \$150 nor more than \$300.

2. Except as provided under subd. 3, a person who violates sub. (4c) (a) 1 or 2 or (4p) (e) and who, within 5 years prior to the arrest for the current violation, was convicted previously under the intoxicated operation of an all-terrain vehicle law or the refusal law shall be fined not less than \$300 nor more than \$1,000 and shall be imprisoned not less than 5 days nor more than 6 months.

3. A person who violates sub. (4c) (a) 1 or 2 or (4p) (e) and who, within 5 years prior to the arrest for the current violation, was convicted 2 or more times previously under the intoxicated operation of an all-terrain vehicle law or refusal law shall be fined not less than \$600 nor more than \$2,000 and shall be imprisoned not less than 30 days nor more than one year in the county jail.

4. A person who violates sub. (4c) (a) 3 or (4p) (e) and who has not attained the age of 19 shall forfeit not more than \$50.

(c) *Penalties related to causing injury; intoxicants*. A person who violates sub. (4c) (b) shall be fined not less than \$300 nor more than \$2,000 and may be imprisoned not less than 30 days nor more than one year in the county jail.

(cm) *Sentence of detention*. The legislature intends that courts use the sentencing option under s. 973.03 (4) whenever appropriate for persons subject to par. (b) 2 or 3 or (c). The use of this option can result in significant cost savings for the state and local governments.

(d) *Calculation of previous convictions*. In determining the number of previous convictions under par. (b) 2 and 3, convictions arising out of the same incident or occurrence shall be counted as one previous conviction.

(dm) *Reporting convictions to the department*. Whenever a person is convicted of a violation of the intoxicated operation of an all-terrain vehicle law, the clerk of the court in which the conviction occurred, or the justice, judge or magistrate of a court not having a clerk, shall forward to the department the record of such conviction. The record of conviction forwarded to the department shall state whether the offender was involved in an accident at the time of the offense.

(e) *Alcohol or controlled substances; assessment*. In addition to any other penalty or order, a person who violates sub. (4c) (a) or (b) or (4p) (e) or who violates s. 940.09 or 940.25 if the violation involves the operation of an all-terrain vehicle, shall be ordered by the court to submit to and comply with an assessment by an approved public treatment facility for an examination of the person's use of alcohol or controlled substances. The assessment order shall comply with s. 343.30 (1q) (c) 1. a. to c. Intentional failure to comply with an assessment ordered under this paragraph constitutes contempt of court, punishable under ch. 785.

*History:* 1985 a. 29; 1987 a. 200, 353, 399, 403; 1989 a. 31, 275, 359; 1991 a. 39, 303, 315.

County forest roads open to vehicular traffic are highways which can be designated as routes under (8) (b). 77 Atty. Gen. 52

**23.37 Corporations operating ice rinks; financial information.** (1) In this section, "authority" has the meaning given under s. 19.32 (1).

(2) An authority which is a nonprofit corporation operating an ice rink which is owned by the state may withhold from

examination and copying under s. 19.35 (1) any of the following:

(a) Information relating to the identification of a person other than an authority who provides, offers to provide or is solicited to provide financial assistance to the corporation.

(b) Information relating to an agreement with a person other than an authority to provide financial assistance to the corporation.

(c) Information relating to a will, bequest or trust made by a person other than an authority for the purpose of providing financial assistance to the corporation.

(d) Information used or intended to be used in connection with the solicitation of gifts or grants to the corporation from persons other than authorities.

History: 1987 a 305

**23.40 Environmental impact statement. (1) DETERMINATION IF ENVIRONMENTAL IMPACT STATEMENT IS REQUIRED.** 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) NOTIFICATION; ESTIMATE OF FEE.** (a) If the department is required to prepare an environmental impact statement, it shall notify the person by certified mail.

(b) The department shall indicate the estimated environmental impact statement fee.

**(3) ENVIRONMENTAL IMPACT STATEMENT FEE.** (a) The department shall charge an environmental impact statement fee if it is required to prepare an environmental impact statement or if it enters into a preapplication service agreement.

(b) The amount of the environmental impact statement fee shall equal the full cost of the preparation of the environmental impact statement and the full cost of any preapplication services if the department enters into a preapplication service agreement. These costs shall include the cost of authorized consultant services and the costs of printing and postage.

(c) The department shall determine the manner in which the environmental impact statement fee is to be paid. The department may require periodic payments if preapplication services are provided.

(d) The department shall deposit any environmental impact statement fee in the general fund and shall designate clearly the amount of the fee related to the cost of authorized environmental consultant services and the amount of the fee related to the cost of printing and postage.

**(4) PREAPPLICATION SERVICE AGREEMENT.** The department may enter into an agreement to provide preapplication services necessary to evaluate the environmental impact of a project or proposed activity, monitor major developments and expedite the anticipated preparation of an environmental impact statement if the project or proposed activity is large, complex or environmentally sensitive and if the person planning the project or proposed activity agrees in writing even though that person has not filed an application for any permit, license or approval granted or issued by the department and no environmental impact statement has been prepared. Preapplication services include preliminary environmental reviews, field studies and investigations, laboratory studies and investigations and advisory services.

**(5) AUTHORIZED ENVIRONMENTAL CONSULTANT SERVICES.** The department may enter into contracts for environmental

consultant services under s. 23.41 to assist in the preparation of an environmental impact statement or to provide preapplication services.

**(6) EXEMPTION FROM FEE FOR MUNICIPALITIES.** Subsections (2) (b) and (3) do not apply with respect to municipalities, as defined under s. 345.05 (1) (c).

History: 1975 c 39, 199; 1977 c 29, 418; 1979 c 221; 1983 a. 189 s. 329 (31); 1987 a 27; 1989 a 31.

**23.405 Environmental education.** The department shall seek the advice of the environmental education board on the development of environmental education programs

History: 1989 a 299

**23.41 Construction and service contracts. (1)** In this section:

(a) "Construction work" includes all labor and materials used in the erection, installation, alteration, repair, moving, conversion, demolition or removal of any building, structure or facility, or any equipment attached to a building, structure or facility.

(b) "Environmental consultant services" includes services provided by environmental scientists, engineers and other experts.

**(2)** The department may contract for construction work related to hazardous substance spill response under s. 144.76 or environmental repair under s. 144.442 or for engineering services or environmental consultant services in connection with such construction work.

**(3)** The department may contract for environmental consultant services to assist in the preparation of an environmental impact statement or to provide preapplication services under s. 23.40.

**(4)** Each contract entered into under this section shall be signed by the secretary or the secretary's designee on behalf of the state.

**(5)** Each contract for construction work entered into by the department under this section shall be awarded on the basis of bids or competitive sealed proposals in accordance with procedures established by the department. Each contract for construction work shall be awarded to the lowest responsible bidder or the person submitting the most advantageous competitive sealed proposal as determined by the department. If the bid of the lowest responsible bidder or the proposal of the person submitting the most advantageous competitive sealed proposal is determined by the department to be in excess of the estimated reasonable value of the work or not in the public interest, the department may reject all bids or competitive sealed proposals. Every such contract is exempted from ss. 16.70 to 16.75, 16.755, 16.76, 16.767 to 16.82, 16.855, 16.87 and 16.89, but ss. 16.528, 16.754 and 16.765 apply to the contract. Every such contract involving an expenditure of \$30,000 or more is not valid until the contract is approved by the governor.

**(5m)** If the governor or the governor's designee determines that it is in the best interest of this state, he or she may waive the requirement under sub. (5) for bids or competitive sealed proposals in an emergency involving the public health, welfare or safety or the environment.

**(6)** The department shall attempt to ensure that at least 5% of the total amount expended under this section in each fiscal year is paid to minority businesses, as defined in s. 16.75 (3m) (a).

History: 1989 a 31, 359; 1991 a 39.

**23.42 Environmental consulting costs for federal licensing of power projects. (1) DEFINITIONS.** In this section:

(a) "Applicant" means any person who files an application or submits a notification of intent under 16 USC 808 (b) with the commission.

(b) "Application" means a request for a license under the procedures in 16 USC 800, 802, 803 or 808 or a request for an exemption under 16 USC 823a or 824a-3.

(c) "Commission" means the federal energy regulatory commission.

(d) "Date of filing" means the date an applicant submits a notification of intent or the date an applicant files an application, whichever is earlier.

(2) **AUTHORITY.** In order to carry out its consulting role to the commission under 16 USC 800, 802, 803, 808, 823a and 824a-3 and the federal regulations promulgated under those sections, the department may charge fees to applicants for reviewing and evaluating applications and notifications of intent under 16 USC 808 (b).

(3) **FEES.** If the department charges fees under this section:

(a) The department shall charge fees only for the time it expends reviewing and evaluating an application or a notification of intent from the date of filing until the commission makes a determination whether or not to issue the license.

(b) The department shall determine the fee for each applicant by calculating the applicant's proportionate share of the costs incurred by the state in a fiscal year in reviewing or evaluating applications or notifications of intent under this section.

(c) The department may collect fees on a quarterly basis.

(d) The department shall deduct any amount it receives as reimbursement under 16 USC 823a for reviewing and evaluating an application or notification of intent from the fee it charges an applicant for reviewing that application or notification of intent.

(4) **LIMITATION ON CHARGING OF FEES.** Notwithstanding subs. (2) and (3) (a), the department may not charge any fees under this section after June 30, 1994, for reviewing and evaluating applications or notifications of intent.

(5) **USE OF FEES.** The department may not expend the fees it collects under this section except for the costs that are consistent with and that are necessary for reviewing and evaluating applications and notifications of intent under 16 USC 800, 802, 803, 808, 823a and 824a-3.

*History:* 1989 a. 31, 359; 1991 a. 39.

**23.49 Credit card use charges.** The department shall certify to the state treasurer the amount of charges associated with the use of credit cards that is assessed to the department on deposits accepted under s. 23.66 (1m) by conservation wardens, and the state treasurer shall pay the charges from moneys received under s. 59.20 (8) and (8m) that are reserved for payment of the charges under s. 14.58 (21).

*History:* 1985 a. 29; 1989 a. 31.

**23.50 Procedure in forfeiture actions.** (1) The procedure in ss. 23.50 to 23.85 applies to all actions in circuit court to recover forfeitures, penalty assessments, jail assessments, applicable weapons assessments, applicable environmental assessments, applicable wild animal protection assessments, applicable natural resources assessments, applicable fishing shelter removal assessments, applicable snowmobile registration restitution payments and applicable natural resources restitution payments for violations of ss. 77.09, 134.60, 144.422 (2), (2m) (c) and (2r), 159.07, 159.08, 159.81, 167.10 (3) and 167.31 (2), subch. VI of ch. 77, this chapter and chs. 26 to 31 and of ch. 350, and any administrative rules promulgated thereunder and violations of local ordinances enacted by any local authority in accordance with s. 23.33 (11) (am) or 30.77.

(2) All actions to recover these forfeitures, penalty assessments, jail assessments, applicable weapons assessments, applicable environmental assessments, applicable wild animal protection assessments, applicable natural resources assessments, applicable fishing shelter removal assessments, applicable snowmobile registration restitution payments and applicable natural resources restitution payments 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, penalty assessments and jail assessments for violations of local ordinances enacted by any local authority in accordance with s. 23.33 (11) (am) or 30.77 shall utilize the procedure in ch. 800. The 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 (8), 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; 1979 c. 32 s. 92 (17); 1979 c. 34 ss. 703b, 2102 (39) (f); 1981 c. 390; 1985 a. 36; 1987 a. 27; 1987 a. 200 s. 4; 1989 a. 79, 284, 335, 359; 1991 a. 39, 97.

**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 rule 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.

(3c) "Environmental assessment" means the assessment imposed under s. 144.992.

(3g) "Fishing shelter removal assessment" means the assessment imposed under s. 29.9967.

(3m) "Jail assessment" means the assessment imposed by s. 302.46 (1).

(4) "Natural resources assessment" means the assessment imposed under s. 29.997.

(5) "Natural resources restitution payment" means the payment imposed under s. 29.998.

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

(6m) "Snowmobile registration restitution payment" means the payment imposed under s. 350.115.

(7) "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.

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

(9) "Weapons assessment" means the assessment imposed under s. 167.31 (5).

(10) "Wild animal protection assessment" means the assessment imposed under s. 29.9965.

History: 1975 c. 365; 1977 c. 29; 1979 c. 34; 1985 a. 36; 1985 a. 332 s. 251 (7); 1987 a. 27; 1989 a. 107; 1991 a. 39

**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, penalty assessments, jail assessments, applicable weapons assessments, applicable environmental assessments, applicable wild animal protection assessments, applicable natural resources assessments, applicable fishing shelter removal assessments, applicable snowmobile registration restitution payments and applicable natural resources restitution payments 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 those laws, except that the uniform traffic citation created under s. 345.11 may be used by a traffic officer employed under s. 110.07 in enforcing s. 167.31 or by an officer of a law enforcement agency of a municipality or county or a traffic officer employed under s. 110.07 in enforcing s. 159.81. 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. 23.33 (11) (am) or 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; 1979 c. 34; 1985 a. 36; 1987 a. 27; 1987 a. 200 s. 4; 1989 a. 335; 1991 a. 39.

After issuing citation to Indian fisherman, state must prove at pre-trial hearing that enforcement against Indian fishermen is reasonable and necessary. *State v. Peterson*, 98 W (2d) 487, 297 NW (2d) 52 (Ct. App 1980)

**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, penalty assessment, jail assessment, applicable weapons assessment, applicable environmental assessment, applicable wild animal protection assessment, applicable natural resources assessment, applicable fishing shelter removal assessment, applicable snowmobile registration restitution payment and applicable natural resources restitution payment 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, a penalty assessment, a jail assessment, any applicable weapons assessment, any applicable environmental assessment, any applicable wild animal protection assessment, any applicable natural resources assessment, any applicable fishing shelter removal assessment, any applicable snowmobile registration restitution payment and any applicable natural resources restitution payment plus costs, including any applicable fees prescribed in ch. 814, 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, a penalty assessment, a jail assessment, any applicable weapons assessment, any applicable environmental assessment, any applicable wild animal protection assessment, any applicable natural resources assessment, any applicable fishing shelter removal assessment, any applicable snowmobile registration restitution payment and any applicable natural resources restitution payment plus costs, including any applicable fees prescribed in ch. 814, 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; 1979 c. 34; 1981 c. 317; 1985 a. 36; 1987 a. 27, 399; 1991 a. 39.

**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, a penalty assessment, a jail assessment, any applicable weapons assessment, any applicable environmental assessment, any applicable wild animal protection assessment, any applicable natural resources assessment, any applicable fishing shelter removal assessment, any applicable snowmobile registration restitution payment, any applicable natural resources restitution payment and any 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

**23.55 CONSERVATION**

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; 1979 c. 34; 1985 a. 36; 1987 a. 27; 1991 a. 39.

**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. 23.33 (11) (am) or 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, penalty assessments, jail assessments, applicable weapons assessments, applicable environmental assessments, applicable wild animal protection assessments, applicable natural resources assessments, applicable fishing shelter removal assessments, applicable snowmobile registration restitution payments and applicable natural resources restitution payments, the judge who issues a warrant under sub. (1) may endorse upon the warrant the amount of the deposit. If no endorsement 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; 1979 c. 34; 1985 a. 36; 1987 a. 27; 1987 a. 200 s. 4; 1991 a. 39.

**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. 23.33 (11) (am) or 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; 1987 a. 200 s. 4.

**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. 23.33 (11) (am) or 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; 1987 a. 200 s. 4.

**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.

See note to art. I, sec. 11, citing *State v. Erickson*, 101 W (2d) 224, 303 NW (2d) 850 (Ct. App. 1981).

**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. 23.33 (11) (am) or 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 judge 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; 1979 c. 175; 1987 a. 200 s. 4.

**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, 144.422 (2), (2m) (c) or (2r), 159.07, 159.08 or 159.81, this chapter or ch. 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 circuit 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 s. 159.07, 159.08 or 159.81, this chapter or ch. 26, 27, 28, 29, 30, 31 or 350. The district attorney shall be informed of the hearing and may attend.

History: 1975 c. 365; 1979 c. 175; 1981 c. 390; 1989 a. 284, 335, 359; 1991 a. 97.

**23.66 Deposit.** (1) If under the procedure of s. 23.62 a person is cited or arrested, the person may make a deposit as follows:

(a) By mailing the amount of money the enforcing officer directs and a copy of the citation to the office of the clerk of courts in the county where the offense allegedly 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; or

(b) If the enforcing officer permits, by placing the amount of money the enforcing officer directs in a serially numbered envelope addressed to the clerk of courts in the county where the offense allegedly occurred or to the office of the municipal court having jurisdiction, sealing the envelope, signing a statement on the back of the envelope stating the amount of money enclosed and returning the envelope to the enforcing officer. The officer shall deliver the envelope and a copy of the citation to the office of the clerk of courts in the county where the offense allegedly occurred or to the office of the municipal court having jurisdiction. The officer shall note on the face of

the citation the serial number of the envelope used in making a deposit under this paragraph.

(1m) The enforcing officer or the person receiving the deposit may allow the alleged violator to submit a check, share draft or other draft for the amount of the deposit or make the deposit by use of a credit card.

(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, a penalty assessment, a jail assessment, any applicable weapons assessment, any applicable environmental assessment, any applicable wild animal protection assessment, any applicable natural resources assessment, any applicable fishing shelter removal assessment, any applicable snowmobile registration restitution payment and any applicable natural resources restitution payment plus costs, including any applicable fees prescribed in ch. 814, 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, share draft or other draft, the check, share draft or other draft or a microfilm copy of the check, share draft or other draft shall be considered a receipt. If the defendant makes the deposit by use of a credit card, the credit charge receipt 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 that 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, including any applicable fees prescribed in ch. 814, any applicable penalty assessment, any applicable jail assessment, any applicable weapons assessment, any applicable environmental assessment, any applicable wild animal protection assessment, any applicable natural resources assessment, any applicable fishing shelter removal assessment, any applicable snowmobile registration restitution payment and any applicable natural resources restitution payment.

History: 1975 c. 365; 1977 c. 29, 449; 1979 c. 34; 1981 c. 317, 391; 1983 a. 368, 456; 1985 a. 29, 36, 332; 1987 a. 27, 399; 1991 a. 39.

**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, a penalty assessment, a jail assessment, any applicable weapons assessment, any applicable environmental assessment, any applicable wild animal protection assessment, any applicable natural resources assessment, any applicable fishing shelter removal assessment, any applicable snowmobile registration restitution payment and any applicable natural resources restitution payment plus costs, including any applicable fees prescribed in ch. 814, 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



**23.67 CONSERVATION**

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, a penalty assessment, a jail assessment, any applicable weapons assessment, any applicable environmental assessment, any applicable wild animal protection assessment, any applicable natural resources assessment, any applicable fishing shelter removal assessment, any applicable snowmobile registration restitution payment and any applicable natural resources restitution payment plus costs, including any applicable fees prescribed in ch. 814, 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; 1979 c. 34; 1981 c. 317; 1985 a. 36; 1987 a. 27, 399; 1991 a. 39.

**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, a penalty assessment, a jail assessment, any applicable weapons assessment, any applicable environmental assessment, any applicable wild animal protection assessment, any applicable natural resources assessment, any applicable fishing shelter removal assessment, any applicable snowmobile registration restitution payment and any applicable natural resources restitution payment plus any applicable fees prescribed in ch. 814, 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, a penalty assessment, a jail assessment, any applicable weapons assessment, any applicable environmental assessment, any applicable wild animal protection assessment, any applicable natural resources assessment, any applicable fishing shelter removal assessment, any applicable snowmobile registration restitution payment and any applicable natural resources restitution payment plus any applicable fees prescribed in ch. 814, 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 the 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; 1979 c. 34; 1981 c. 317; 1985 a 36; 1987 a 27, 399; 1991 a 39

**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) 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 fee prescribed in s. 814.61 (4), the court shall place the case on the jury calendar. The number of jurors shall be determined under s. 756.096 (3) (b). If no party demands a jury of 12, the right to trial by jury of 12 is waived forever.

(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; 1979 c. 175 s. 53; 1981 c. 317.

**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, the jail assessment, any applicable weapons assessment, any applicable environmental assessment, any applicable wild animal protection assessment, any applicable natural re-

sources assessment, any applicable fishing shelter removal assessment, any applicable snowmobile registration restitution payment, any applicable natural resources restitution payment 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, jail assessments, weapons assessments, environmental assessments, wild animal protection assessments, natural resources assessments, fishing shelter removal assessments, snowmobile registration restitution payments, natural resources restitution payments or 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. 785.

History: 1975 c. 365; 1977 c. 29; 1979 c. 32 s. 92 (13); 1979 c. 34; 1985 a 36; 1987 a 27; 1991 a 39

**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, the penalty assessment, the jail assessment, any applicable weapons assessment, any applicable environmental assessment, any applicable wild animal protection assessment, any applicable natural resources assessment, any applicable fishing shelter removal assessment, any applicable snowmobile registration restitution payment and any applicable natural resources restitution payment shall be entered.

History: 1975 c. 365; 1977 c. 29; 1979 c. 34; 1985 a 36; 1987 a 27; 1991 a 39.

**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 Fees.** Fees in forfeiture actions under this chapter are prescribed in s. 814.63.

History: 1975 c. 365; 1977 c. 305, 318, 449; 1981 c. 317.

**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, applicable weapons assessment, applicable environmental assessment, applicable wild animal protection assessment, applicable natural resources assessment, applicable fishing shelter removal assessment, applicable snowmobile registration restitution pay-

**23.83 CONSERVATION**

ment and applicable natural resources restitution payment 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; 1979 c. 34; 1985 a. 36; 1991 a. 39

**23.84 Forfeitures and assessments collected; to whom paid.** Except for actions in municipal court, all moneys collected in favor of the state or a municipality for forfeiture, penalty assessment, jail assessment, applicable weapons assessment, applicable environmental assessment, applicable wild animal protection assessment, applicable natural resources assessment, applicable fishing shelter removal assessment, applicable snowmobile registration restitution payment and applicable natural resources restitution payment 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, except that all jail assessments shall be paid to the county treasurer. In case of any failure in the 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 year from the time when it should have been paid.

**History:** 1975 c. 365; 1977 c. 29, 305; 1979 c. 34; 1979 c. 110 s. 60 (13); 1985 a. 36; 1987 a. 27; 1991 a. 39

**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, penalty assessments, jail assessments, weapons assessments, environmental assessments, wild animal protection assessments, natural resources assessments, fishing shelter removal assessments, snowmobile registration restitution payments and natural resources restitution payments money received during the previous year. The county clerk shall deduct all expenses incurred by the county in recovering those forfeitures, penalty assessments, weapons assessments, environmental assessments, wild animal protection assessments, natural resources assessments, fishing shelter removal assessments, snowmobile registration restitution payments and natural resources restitution payments from the aggregate amount so received, and shall immediately certify the amount of clear proceeds of those forfeitures, penalty assessments, weapons assessments, environmental

assessments, wild animal protection assessments, natural resources assessments, fishing shelter removal assessments, snowmobile registration restitution payments and natural resources restitution payments to the county treasurer, who shall pay the proceeds to the state treasurer as provided in s. 59.20. Jail assessments shall be treated separately as provided in s. 302.46.

**History:** 1975 c. 365; 1977 c. 29; 1979 c. 34; 1985 a. 36; 1987 a. 27; 1989 a. 107; 1991 a. 39

**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.