

CHAPTER 23

CONSERVATION

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Cross Reference: See definitions in 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 make such rules, inaugurate such studies, investigations and surveys, and establish such services as it deems necessary to carry out the provisions and purposes of this section. The department shall establish long-range plans, projects and priorities for conservation. The department may:

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

1. The subquota prescribed by the department for wild geese to be taken at the Necedah

refuge shall be not less than 10% nor more than 40% of the entire quota for the state as prescribed by the U.S. department of interior, bureau of sport fisheries and wildlife.

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

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

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

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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 and scientific areas as defined in s. 23.092.

(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 in improved conservation methods, and disseminate information to the residents of Wisconsin in conservation matters.

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

(n) *Donation of facilities, accept.* Accept donations of buildings, facilities and structures constructed upon lands owned by this state and under the jurisdiction of the department. The donor of such buildings, facilities and structures may contract for this construction according to plans and specifications provided by the department or may enter into a contract for profes-

sional architectural and engineering services to develop plans and specifications of such buildings, facilities and structures and contract for the construction of same. Upon the completion of construction satisfactory to the department, title of such buildings, facilities and structures shall vest in the state of Wisconsin. No person shall construct any building, facility or structure under this paragraph without the prior approval of the department regarding plans and specifications, materials, suitability, design, capacity or location. The plans and specifications for any building, structure or facility donated under this paragraph shall also be subject to the approval of the building commission.

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

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

(4) RESCUES, EMERGENCIES AND DISASTERS. The department may on its own motion and shall, when so directed by the governor, assist other state, county, and local governmental agencies or do all things reasonably necessary in the rescue of persons lost in the forests of the state, or who may be otherwise in danger of loss of life, in the recovery of the bodies of drowned persons, and in cases of emergency or disaster, by assigning equipment and employes of the department to such rescue, recovery, emergency, and disaster relief missions.

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

obligation beyond the appropriations made by the legislature.

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

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

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

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

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

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

(d) Applications shall be made in the manner and on forms prescribed by the department. The department shall thereupon make such investigations as it deems necessary to satisfy itself that the project will best serve the public interest and need. Upon approval of the project

the department shall encumber a sum not more than one-half of the cost estimate of such project. When the project is completed, the department shall pay to the county not more than one-half the actual cost of such project. The department may inform itself and require any necessary evidence from the county to substantiate the cost before payment is made.

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

(f) Recreation facilities developed under the assistance of this 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

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furnished by the county may be included in computing the county share contribution.

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

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

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

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

(17m) GRANTS TO COUNTIES FOR THE DEVELOPMENT OF HABITAT ON COUNTY FORESTS. (a) The county board of any county, which by resolution indicates its desire to improve the natural environment for game and nongame species on county lands entered under s. 28.11, may make application to the department for the allocation of funds appropriated for such purposes by s. 20.370 (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.

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

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

(23) YOUTH CAMPS. The department may establish and operate youth conservation

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

(25) MOTORCYCLE RECREATIONAL PROGRAM.

(a) The department shall administer an off-the-road motorcycle recreational aid program from moneys appropriated under s. 20.370 (4) (bv) and (ir). The department shall distribute these funds to towns, villages, cities and counties for the acquisition, development, operation and maintenance of off-the-road motorcycle trails and facilities.

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

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

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

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

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

1. Purchase lands or secure easements, leases, permits or other appropriate agreements, written or oral, permitting use of private property for snowmobile trails, facilities and areas, if such easements, leases, permits or other agreements provide public access to the trail, facility or area. No lands purchased or leases, easements, permits or agreements secured under authority of this section may be acquired by the county through condemnation. Counties shall certify to the department that such lands, easements, leases, permits or other appropriate agreements have been secured. However, when bridges, culverts, toilet facilities, parking lots or shelters are to be constructed under this section and the improvements are estimated to cost in excess of \$3,000, the land underlying such improvements must be purchased by the county or

secured by the county by written easements or leases having a term of not less than 3 years.

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

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

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

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

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

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

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

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

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ters of the county or access points to the regional or state trail system. "Class III" trail means any other trail in the county which is available to the public.

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

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

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

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

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

(f) 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.

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 intensive recreational uses or are so located to provide regional recreational opportunities for urban areas.

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

(3) **USE ZONES.** The department may establish use zones within state recreation areas providing for the full range of recreational uses, including hunting and fishing. It may adopt rules to control uses within zones and may limit the number of persons using any zone. Such use

zones shall be consistent with the activities identified in the master plan formulated under sub. (2).

History: 1977 c. 29

23.092 Natural and scientific areas. (1) DEFINITION. As used in this section "natural areas" and "scientific areas" include tracts of land or water which have native biotic communities, unique natural features or significant geological or archaeological sites. Generally, "natural areas" are remnant areas which largely have escaped disturbance since settlement or which exhibit little recent disturbance so that recovery has occurred and presettlement conditions are approached. Generally, "scientific areas" are natural areas of at least statewide significance and useful for education or research.

(2) **DESIGNATION.** The department may acquire, protect, manage and operate natural areas for the purpose of protecting examples of significant natural values, including, without limitation because of enumeration, scenic areas, wetlands, important geologic features, flood plains, native flora and fauna, wildlife habitat, shoreland and lake frontage and other natural features.

(3) **MASTER PLAN.** The department may acquire natural areas or scientific areas only after a master plan for use and management is prepared, public hearings on the plan are held in the county where the majority of the land in the project is located, s. 1.11 is complied with and the plan is approved by the natural resources board.

(4) **USES AND USE ZONES.** The primary uses of natural areas or scientific areas are for environmental education, nature interpretation, research and limited recreation activities. The department may establish use zones in natural areas or scientific areas, adopt rules to control uses within a zone and limit the number of persons using any zone. The zones and use restrictions shall be consistent with the master plan. The zones and use restrictions shall not apply to property which is not owned, operated or managed by the department without the express written consent of the owner.

History: 1979 c. 34.

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

23.095 Malicious waste of natural resources. (1) It is unlawful to unreasonably

waste, injure, destroy or impair any natural resource within the state.

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

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

History: 1975 c. 365

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

(2) Whenever the county board of any county by resolution authorizes the appointment of county conservation wardens, and fixes the number of the same, the 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 him a conservation warden (or county, or special conservation warden) for the (county of _____), state of Wisconsin, and do authorize and empower him to execute and fulfill the duties of that office according to law, during good behavior and the faithful performance of his duties.

In testimony whereof, the secretary has hereunto affixed his signature and the official seal of

the department, at its office in the city of Madison, Wisconsin, this ____ day of _____, 19____

(Seal)

STATE OF WISCONSIN

DEPARTMENT OF NATURAL RESOURCES

By _____

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

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

History: 1971 c. 164; 1977 c. 196 s. 131; 1983 a. 192 s. 303 (2)

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

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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.

23.12 Bylaws. Said natural resources board may make and establish such rules and bylaws, not inconsistent with law, as it deems useful to

itself and its subordinates in the conduct of the business entrusted to it.

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

History: 1971 c. 164.

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

History: 1977 c. 29.

23.15 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.

(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 he deems necessary respecting said lands to be sold and approve or disapprove such application. If he shall approve the same, a permit shall be issued by him for such sale on the terms set forth in the application.

(3) Upon completion of such sale, the chairman and secretary of the natural resources board, or the secretary of natural resources, if he 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.

(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.

(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

23.20 Use of department gravel pits. The department may permit any town or county 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 or county 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.

23.25 Geographic powers and duties. (1) The department shall:

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

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

(c) In cooperation with county boards and with their approval, change the names of lakes, streams, places and other geographic features with the end in view of eliminating, as far as possible, duplication of names within the state;

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

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

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

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

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

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

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

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

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

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

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

23.30 Outdoor recreation program. (1) PURPOSE. The purpose of this section is to promote, encourage, coordinate and implement a comprehensive long-range plan to acquire, maintain and develop for public use those areas of the state best adapted to the development of a comprehensive system of state and local outdoor recreation facilities and services in all fields, including, without limitation because of

enumeration, parks, forests, camping grounds, fishing and hunting grounds, related historical sites, highway scenic easements and local recreation programs, except spectator sports, and to facilitate and encourage the fullest public use thereof.

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

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

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

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

(c) Recommend to the legislature outdoor recreation program appropriations and allocations which, in conjunction with other financial sources supporting outdoor recreation re-

sources, are necessary to carry out plans coordinated by the board.

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

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

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

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

History: 1971 c 125

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

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

See note to 28 04, citing 63 Atty. Gen. 519.

23.31 Recreation resources facilities. (1) 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), may direct that state debt be contracted for providing recreation resources facilities or making additions to existing recreation resources facilities. 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

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 onsite surveys and other studies.

History: 1977 c. 374; 1979 c. 221; 1983 a. 27

23.35 Olympic ice rink. (1) The department has sole responsibility for the Olympic ice rink, the land inside the rink and all land and facilities directly related to its operation including mechanical equipment, housing for mechanical equipment, piping and electrical lines. No person may use the Olympic ice rink or land or facilities related to its operation without the approval of the department.

(2) The state fair park board shall make the youth building adjacent to the rink available to the department for use during the skating season. The state fair park board is responsible for grounds maintenance, including snow plowing.

(3) The department shall reimburse the state fair park board for expenses incurred directly as a result of the cooperative efforts required by sub. (2). The state fair park board and the department shall execute a written agreement

specifying the details of the cooperation required by this section.

(4) Operating costs of the Olympic ice rink shall be paid from the appropriation under s. 20.370 (1) (ea), (ed) and (mu).

History: 1975 c. 224 s. 105d; 1977 c. 29; 1979 c. 34 s. 2102 (39) (a); 1981 c. 20

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.

(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 that part of the fee related to the cost of authorized environmental consultant services.

(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

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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.** Subject to the requirements of s. 16.87 (2), the department may enter into contracts for environmental consultant services to assist in the preparation of an environmental impact statement or to provide preapplication services. Environmental consultant services include services provided by environmental scientists, engineers and experts.

(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).

23.48 Wisconsin conservation corps program. (1) **DEFINITIONS.** Unless the context requires otherwise, as used in this section:

(a) "Board" means the Wisconsin conservation corps board.

(b) "Conservation activity" means an activity which has a long-term beneficial impact on the land and waters of this state and enhances, promotes or preserves wildlife, fisheries, forest, agricultural, recreational, historical, cultural and commercial resources. This term also includes but is not limited to energy conservation projects, reclamation of lands and disaster assistance.

(c) "Corps enrollee" means a person enrolled in the Wisconsin conservation corps program.

(d) "In-kind services and materials" includes services such as training, supervision, administration, transportation, insurance liability coverage and similar services and materials such as supplies, fuel, tools, equipment, safety equipment and other materials for a conservation project.

(e) "Local unit of government" means the governing body of any city, town, village, county, county utility district, town sanitary district, public inland lake protection and rehabilitation district, metropolitan sewerage district or school district or the elected tribal governing body of a federally recognized American Indian tribe or band.

(f) "Nonprofit organization" has the meaning specified under s. 108.02 (26).

(g) "State agency" has the meaning specified for agency under s. 227.01 (1).

(2) **OBJECTIVES.** The board shall develop guidelines for the Wisconsin conservation corps program designed to promote the objectives of:

(a) *Employment of young adults.* Providing employment for young men and women in all regions of the state.

(b) *Conservation.* Conserving, developing, enhancing or maintaining the natural resources of this state through the implementation of conservation projects which have a long-term beneficial impact on the environment.

(c) *Personal development.* Encouraging and developing work skills, discipline, cooperation, meaningful work experiences and training and educational opportunities for corps enrollees.

(3) **PROGRAM RESPONSIBILITY AND COORDINATION.** The board is the policy-making body responsible for the Wisconsin conservation corps program and shall establish guidelines for this program. The board may delegate responsibility for administration, implementation of conservation projects, corps enrollee employment and supervision, project coordination and other details of the program to the executive secretary or other staff of the board. The department shall assist the board in payroll, accounting and related management functions.

(4) **STAFF AND EMPLOYEES.** (a) *Executive secretary.* The board shall appoint an executive secretary outside the classified service to serve at its pleasure.

(b) *Staff.* The board shall employ staff within the classified service which is necessary to administer the Wisconsin conservation corps program, including staff to coordinate, supervise and implement conservation projects, to recruit and train corps enrollees and to provide administrative, typing and clerical services. The department shall provide staff within the classified service which is necessary to provide for payroll, accounting and related management functions associated with the Wisconsin conservation corps program.

(5) **APPLICATION FOR CONSERVATION PROJECT APPROVAL.** (a) *Eligible sponsors.* The federal government, a state agency, local unit of government or nonprofit organization may apply to the board for approval of a conservation project.

(b) *Eligible projects.* In order to qualify as an approved conservation project, the project is required to provide employment opportunities and to be a conservation activity. If the sponsor is a nonprofit organization, the project is required to serve a valid public purpose in order to qualify as an approved conservation project.

(c) *Sponsor's application.* In order to qualify as an approved conservation project, the sponsor is required to submit in the application:

1. A summary of the extent and value of all in-kind services and materials it will provide for the project as well as any other costs associated with the project which it agrees to pay.

2. A preliminary cost estimate including a summary of all anticipated costs resulting from implementation of the project.

3. A preliminary work plan specifying the nature, scope and duration of the project.

(d) *Local government sponsors.* The board and department shall encourage local units of government to apply for the approval of conservation projects and shall provide assistance and information to facilitate these applications.

(e) *Not to involve labor dispute or displace other employees.* No project may be approved by the board if corps enrollees will be used in any manner in connection with a work or labor dispute or if approval of the project would impair existing contracts or collective bargaining agreements with existing employees of the sponsor. No project may be approved by the board if corps enrollees will be used to displace existing permanent employees of the sponsor, including any employees who have been temporarily laid-off by the sponsor.

(6) GUIDELINES FOR CONSERVATION PROJECT APPROVAL. The board shall establish guidelines to be used in selecting conservation projects for approval. These guidelines shall include:

(a) *Employment opportunities.* The extent to which the project will provide employment in meaningful labor intensive work activities for corps enrollees.

(b) *Conservation.* The extent to which the project will promote the long-term beneficial conservation of resources.

(c) *Implementation.* The degree of difficulty in implementing the project and its compatibility with other projects in the area.

(d) *Extent of sponsor's responsibility.* The share of the total cost of the project, including the value of in-kind services and materials, to be paid or provided by the sponsor.

(e) *Public purpose and benefit.* The extent to which the project will serve a valid public purpose and benefit a large segment of the public.

(7) CONSERVATION PROJECT FUNDING. (a) *Conservation projects; appropriations.* Moneys appropriated under s. 20.370 (1) (jj), (jm) and (jq) may be utilized for conservation projects as authorized under those appropriations.

(b) *Other state agency appropriations.* A state agency may utilize moneys from any appropriation for that agency to sponsor a conservation project if implementation of the conservation project is consistent with any purpose for which the moneys are appropriated.

(8) ADMINISTRATION; CONSERVATION PROJECT APPROVAL; WORK PLANS; IMPLEMENTATION; ENROLLEE SUPERVISION. (a) *Guidelines for administration.* The board shall provide guidelines for administration of the Wisconsin conservation corps program.

(b) *Administration.* The Wisconsin conservation corps program shall be administered according to guidelines provided by the board.

(c) *Administrative expenses; appropriations; reallocation.* Moneys appropriated under s. 20.370 (8) (jj), (jm) and (jq) may be utilized for the payment of administrative expenses related to the Wisconsin conservation corps program as authorized under those appropriations. If the board determines that these appropriations are not sufficient, it may request the joint committee on finance to take action under s. 13.101 (4) to transfer moneys from the appropriation under s. 20.370 (1) (jj), (jm) or (jq) to the appropriation under s. 20.370 (8) (jj), (jm) or (jq).

(d) *Approval.* Conservation projects shall be selected and approved by the board based on guidelines established under sub. (6) and subject to review under par. (h).

(e) *Complete project cost estimate.* Prior to approval of a conservation project, the executive secretary shall prepare and submit to the board a complete project cost estimate. This estimate shall include a summary of all anticipated costs resulting from the implementation of the project.

(f) *Detailed work plan.* Prior to approval of a conservation project, the executive secretary shall prepare and submit to the board a detailed work plan specifying the nature, scope and duration of the project; the number of corps enrollees; training, supervisory, administrative and other service requirements; supply, fuel, tool, equipment, safety equipment and other material requirements; time schedules; and other details relating to the implementation of the project.

(g) *Responsibility agreement.* Prior to approval of a conservation project, the executive secretary shall prepare and submit to the board a responsibility agreement which incorporates the complete project cost estimate and detailed work plan and specifies in detail the responsibilities of the sponsor and the board with respect to the project.

(h) *Natural resources board review.* The natural resources board may prohibit the encumbrance or expenditure of moneys from the conservation fund for a specific conservation project if the natural resources board disapproves of the proposed conservation project design.

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(i) *Signing of responsibility agreement.* A conservation project is not authorized and may not be implemented until the sponsor and the board sign the responsibility agreement.

(j) *Implementation.* Except as provided in a responsibility agreement, the board is responsible for the implementation of an authorized conservation project. The board may delegate to a sponsor responsibility for implementing various aspects of a conservation project in the responsibility agreement.

(k) *Enrollee supervision.* The board is responsible for the overall supervision and control of corps enrollees. The board may delegate to a sponsor responsibility for enrollee recruitment, training and supervision and for administrative services to be provided for a conservation project in the responsibility agreement.

(L) *Project coordination.* The board is responsible for the coordination of work activities related to various conservation projects in the same area.

(9) WORK CAMPS; TRAINING. (a) *Work camps.* If necessary for the implementation of a conservation project, the board may establish or utilize residential facilities but the board may not use moneys appropriated under s. 20.370 (1) (jq) or (8) (jq) for the establishment of new residential facilities.

(b) *Education and training.* The board shall facilitate arrangements with local schools and institutions of higher education for academic study by corps enrollees during nonworking hours to upgrade literacy skills, obtain equivalency diplomas or college degrees or enhance employable skills. The board shall encourage the development of training programs for corps enrollees for use during time periods when circumstances do not permit work on a conservation project.

(10) CORPS ENROLLEES. (a) *Authorization, classification.* The board may employ corps enrollees. The board shall classify these enrollees as corps members, assistant crew leaders or crew leaders.

(b) *Outside civil service.* All corps enrollees shall be employed outside the civil service.

(c) *Wages.* Corps members shall be paid at the prevailing federal minimum wage. Assistant crew leaders and crew leaders may be paid more than the prevailing federal minimum wage.

(d) *Unemployment compensation.* A corps enrollee is not eligible for unemployment compensation benefits by virtue of his or her employment in the Wisconsin conservation corps program. To the extent permitted by federal law, the Wisconsin conservation corps program shall be considered a work-relief and working-training program for the purpose of determin-

ing eligibility for benefits under s. 108.02 (5) (g) 1.

(e) *Worker's compensation.* A corps enrollee is eligible for worker's compensation benefits as provided under ch. 102.

(f) *Health care and other benefits.* A corps enrollee is not an eligible employe for health care benefits or other benefits under ch. 40.

(g) *Incentive payment or voucher.* A person who is employed as a corps enrollee for a one-year period of continuous employment, as determined by standards adopted by the board, and who receives a satisfactory employment evaluation upon termination of employment is entitled to an incentive payment of \$500 or an education voucher worth \$1,000. The board may authorize a partial incentive payment or education voucher to a person who is employed as a corps enrollee for less than a one-year period of continuous employment and who receives a satisfactory employment evaluation upon termination of employment if the board determines that employment was terminated because of special circumstances beyond the control of the corps enrollee. The education voucher is valid for 3 years after the date of issuance for the payment of tuition at any institution of higher education, as defined under s. 39.32 (1) (a), which accepts the voucher and the board shall authorize payment to the institution of face value of the voucher upon presentment.

(h) *Helmets, footwear, safety equipment.* The board shall provide each corps enrollee with a safety helmet displaying a Wisconsin conservation corps emblem. The board shall require each corps enrollee to have adequate protective footwear and may partially reimburse corps enrollees for the cost of obtaining this footwear. The board shall ensure that all other necessary safety equipment is provided for each corps enrollee working on a conservation project.

(11) QUALIFICATIONS AND REQUIREMENTS FOR CORPS ENROLLEES. (a) *Age.* In order to qualify for employment as a corps member, a person is required to be at least 18 but not more than 26 years of age at the time he or she accepts employment. In order to qualify for employment as an assistant crew leader or a crew leader, a person is required to be at least 18 years of age at the time he or she accepts employment.

(b) *Unemployed.* In order to qualify for employment as a corps member, a person is required to be unemployed at the time he or she applies for employment. In order to qualify for employment as an assistant crew leader, a person is required to be either unemployed at the time he or she applies for employment or is

required to be employed as a corps member. In order to establish that a person is unemployed at the time of application for employment, the board may require the person to be certified as unemployed by a local job service office.

(c) *Enrollment period.* In order to qualify for employment as a corps enrollee, a person is required to sign a statement of intention to serve in the Wisconsin conservation corps program for a one-year period. This statement does not obligate the board to provide employment for the enrollee for that period.

(d) *Training and skills.* No training or skills are required in order to qualify for employment as a corps member. The board shall establish minimum levels of performance, training and skills required to qualify for employment as or promotion to assistant crew leader or crew leader.

(e) *Physical examination.* No physical examination is required in order to apply for employment as a corps enrollee but the board shall require a physical examination prior to employment. The board may accept evidence of a physical examination conducted within one year prior to employment if the examining physician signs a form containing the information required by the board.

(12) SELECTION OF CORPS ENROLLEES. (a) *Standards.* The board shall establish standards for the selection of corps enrollees from among those persons who are qualified and seek employment.

(b) *Affirmative action plan.* The board shall adopt a statewide affirmative action plan and shall comply with the requirements under s. 230.06 (1) (g) to (k). The standards established under par. (a) shall be consistent with this plan.

(c) *Hiring procedure.* The board shall develop procedures for the hiring of corps enrollees in cooperation with the department of industry, labor and human relations. The board shall utilize any appropriate local job service office in the area of a conservation project to distribute applications, conduct interviews and evaluate applicants and make recommendations concerning the hiring of corps enrollees. The board may utilize project sponsors who are sponsoring long-term conservation projects to conduct interviews, evaluate applicants and make recommendations concerning the hiring of corps enrollees.

(13) ENROLLMENT PERIOD; EVALUATION; PROMOTION; DISCIPLINE. (a) *Enrollment period.* The normal enrollment period for a corps member who is not promoted to assistant crew leader is one year. The normal enrollment period for a corps member who is promoted to assistant crew leader or for a person who is hired as assistant crew leader is 2 years. The board may

authorize the employment of a corps member or assistant crew leader beyond the normal enrollment period for a limited time, not to exceed 3 months, under special circumstances where continued employment is required in order to complete a conservation project in progress. The normal enrollment period for a crew leader is 2 years. The board may extend the employment of a crew leader beyond the normal enrollment period if the crew leader possesses special experience, training or skills valuable to the program.

(b) *Evaluation, promotion, discipline.* The board shall establish standards and procedures to evaluate the performance, to determine promotions, for discipline and for termination of employment of corps enrollees.

History: 1983 a. 27, 181

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, applicable natural resources assessments and applicable natural resources restitution payments for violations of s. 134.60, this chapter and chs. 26 to 31 and 350, and any administrative rules promulgated thereunder and violations of local ordinances enacted by any local authority in accordance with s. 30.77.

(2) All actions to recover these forfeitures, penalty assessments, applicable natural resources assessments 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 and penalty assessments for violations of local ordinances enacted by any local authority in accordance with s. 30.77 shall utilize the procedure in ch. 800. Such actions shall be brought before the municipal court having jurisdiction. Provisions relating to citations, arrests, questioning, releases, searches, deposits and stipulations of no contest in ss. 23.51 (1), (3) and (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

23.51 Words and phrases defined. In ss. 23.50 to 23.85 the following words and phrases

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have the designated meanings unless a different meaning is expressly provided or the context clearly indicates a different meaning:

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

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

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

(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.

(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 and a penalty assessment.

History: 1975 c. 365; 1977 c. 29; 1979 c. 34.

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, applicable natural resources assessments 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. In accordance with s. 345.11 (1m), the citation shall not be used for violations of ch. 350 relating to highway use. The citation may be used for violations of local ordinances enacted by any local authority in accordance with s. 30.77.

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

History: 1975 c. 365; 1977 c. 29; 1979 c. 34.

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, applicable natural resources assessment 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, any applicable natural resources assessment and any applicable natural resources restitution payment plus costs, including the fee prescribed in s. 814.63 (1), 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, any applicable natural resources assessment and any applicable natural resources restitution payment plus costs, including the fee prescribed in s. 814.63 (1), 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

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, any applicable natural resources assessment, any applicable natural resources restitution payment and such other relief that is sought by the plaintiff.

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

(2) SUMMONS. The summons shall contain:

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

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

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

History: 1975 c. 365; 1977 c. 29; 1979 c. 34.

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 or-

dinances enacted by any local authority in accordance with s. 30.77, after a warrant that substantially complies with s. 968.04 has been issued. Except as provided in sub. (2), the person arrested shall be brought without unreasonable delay before a court having jurisdiction to try the action.

(2) In actions to collect forfeitures, penalty assessments, applicable natural resources assessments 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

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

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

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

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

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

History: 1975 c. 365

23.58 Temporary questioning without arrest.

After having identified himself or herself as an enforcing officer, an enforcing officer may stop a person in a public place for a reasonable period of time when the officer reasonably suspects that such person is committing, is about to commit or has committed a violation of those statutes enumerated in s. 23.50 (1), any administrative rules promulgated thereunder, or any local ordinances enacted by any local authority in accordance with s. 30.77. Such a stop may be made only where the enforcing officer has proper authority to make an arrest for such a violation. The officer may demand the name and address of the person and an explanation of the person's conduct. Such detention and temporary questioning shall be

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conducted in the vicinity where the person was stopped.

History: 1975 c. 365.

23.59 Search during temporary questioning.

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

History: 1975 c. 365.

23.60 Search incident to the issuance of a lawfully issued citation.

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

History: 1975 c. 365.

23.61 Search and seizure; when authorized.

A search of a person, object or place may be

made and things may be seized when the search is made:

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

History: 1975 c. 365.

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. 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.

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, 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 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.

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.

(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, any applicable natural resources assessment and any applicable natural resources restitution payment plus costs, including the fee prescribed in s. 814.63 (1), 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.

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

(4) The basic amount of the deposit shall be determined in accordance with a deposit schedule which the judicial conference shall establish. Annually, the judicial conference shall review and may revise the schedule. In addition to the basic amount determined according to the schedule, the deposit shall include court costs, including the fee prescribed in s. 814.63 (1), any applicable penalty assessment, any applicable natural resources assessment 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.

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, any applicable natural resources assessment and any applicable natural resources restitution payment plus costs, including the fee prescribed in s. 814.63 (1), not to exceed the amount of the deposit.

(3) The person receiving the deposit and stipulation of no contest shall prepare a receipt in triplicate showing the purpose for which the deposit is made, stating that the defendant may inquire at the office of the clerk of court or municipal court regarding the disposition of the deposit, and notifying the defendant that if the stipulation of no contest is accepted by the court the defendant will be deemed to have submitted to a forfeiture, a penalty assessment, any applicable natural resources assessment

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and any applicable natural resources restitution payment plus costs, including the fee prescribed in s. 814.63 (1), 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.

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, any applicable natural resources assessment and any applicable natural resources restitution payment plus the fee prescribed in s. 814.63 (1), 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, any applicable natural resources assessment and any applicable natural resources restitution payment plus the fee prescribed in s. 814.63 (1), 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.

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, any applicable natural resources assessment, 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, natural resources assessments, natural resources restitution payments and costs shall be taken out of the deposit and the balance, if any, returned to the defendant.

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

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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.

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, any applicable natural resources assessment and any applicable natural resources restitution payment shall be entered.

History: 1975 c. 365; 1977 c. 29; 1979 c. 34.

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 natural resources assessment 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.

23.84 Forfeitures and penalty assessments collected; to whom paid. Except for actions in

municipal court, all moneys collected in favor of the state or a municipality for forfeiture, penalty assessment, applicable natural resources assessment 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. In case of any failure in such payment the municipal or county treasurer may collect the payment from the officer by an action in the treasurer's name of office and upon the official bond of the officer, with interest at the rate of 12% per 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).

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, natural resources assessments and natural resources restitution payments money received during the year next preceding. The county clerk shall deduct all expenses incurred by the county in recovering such forfeitures, penalty assessments, natural resources assessments and natural resources restitution payments from the aggregate amount so received, and shall immediately certify to the county treasurer the amount of clear proceeds of such forfeitures, penalty assessments, natural resources assessments and natural resources restitution payments, so ascertained, who shall pay such proceeds to the state treasurer as provided in s. 59.20.

History: 1975 c. 365; 1977 c. 29; 1979 c. 34.

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