

## **RECORD OF DECISION**

Proposed Hampton – Rochester – La Crosse 345 kV Transmission  
System Improvement Project

**RURAL UTILITIES SERVICE**  
**U.S. Department of Agriculture**

Dairyland Power Cooperative  
Wisconsin 64

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## **I. Summary of the Agency's Decision**

The Rural Utilities Service (RUS) has prepared a Final Environmental Impact Statement (Final EIS) related to possible financial assistance to Dairyland Power Cooperative (Dairyland) for its projected 11 percent ownership interest in the construction of the Hampton – Rochester – La Crosse (HRL) Transmission System Improvement Project (Proposal), a proposed transmission project between Hampton, Minnesota (southeast of the Twin Cities) and La Crosse, Wisconsin. The Final EIS was prepared pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. §§ 4321 et seq.) and in accordance with the Council on Environmental Quality's (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR §§ 1500-1508) and RUS Environmental Policies and Procedures (7 CFR § 1794).

RUS is the lead federal agency as defined at 40 CFR § 1501.5, with the U.S. Army Corps of Engineers (USACE) and the U.S. Fish and Wildlife Service (USFWS) as cooperating agencies. As the lead federal agency, and as part of its broad environmental review process, and since RUS may fund a portion of the Proposal, the Proposal is an undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470(f), and its implementing regulations (36 CFR Part 800). Pursuant to 36 CFR § 800.2(d)(3), RUS is using its procedures for public involvement under NEPA, in part, to meet its responsibilities to solicit and consider the views of the public and other interested parties during the Section 106 review process. Accordingly, comments submitted in the EIS process also informed RUS's decision making in the Section 106 review process.

To minimize duplication of effort pursuant to 40 CFR § 1506.2, and to maintain consistency with the States' approaches, RUS has verified and used information directly from the Minnesota EIS and the Wisconsin EIS in preparing the Final EIS, to the extent the information is relevant to RUS' process. RUS prepared the Final EIS in compliance with its federal responsibilities under NEPA and other federal statutes and regulations.

The Final EIS evaluated the potential environmental impacts of and alternatives to

the Proposal.

The Proposal consists of the following:

- A new 345 kV transmission line from the Hampton Substation near Hampton, Minnesota, to a proposed North Rochester Substation to be located between Zumbrota and Pine Island, Minnesota.
- A new 345 kV transmission line from the proposed North Rochester Substation across the Mississippi River near Alma, Wisconsin.
- A new 345 kV transmission line from Alma, Wisconsin to a new substation proposed in the north La Crosse, Wisconsin area (Briggs Road Substation).
- A new 161 kV transmission line between the proposed North Rochester Substation and the existing Northern Hills Substation, located in northwest Rochester, Minnesota.
- A new 161kV transmission line between the proposed North Rochester Substation and the existing Chester Substation, located east of Rochester.

The total length of the proposed 345 kV transmission line is approximately 141 miles and the approximate length of the 161 kV lines, not including portions co-located with the 345 kV line, is 30 miles. Substation construction and modification are also included as part of the Proposal. The Proposal is a joint effort among the CapX 2020 group of utilities (Applicants), of which Dairyland is a participant. The other participants include Xcel Energy [comprised of Northern States Power Company, a Minnesota corporation (NSPM), and Northern States Power Company, a Wisconsin Corporation (NSPW)], Southern Minnesota Municipal Power Agency (SMMPA), Rochester Public Utilities (RPU), and WPPI Energy, Inc. (WPPI).

RUS published a Notice of Intent (NOI) to prepare an EIS on May 28, 2009 (74 FR 25485-254860). RUS published notices in the Federal Register announcing availability of the Draft EIS on December 16, 2011 (76 FR 78235-78236) and the Final EIS on July 13, 2012 (77 FR 41369-41370). The U.S. Environmental Protection Agency (USEPA) acknowledged receipt from RUS of the Draft EIS on December 16, 2011 (76 FR 78235-78236) and the Final EIS on July 20, 2012 (77 FR 42727-42728) in the Federal Register.

This document is RUS' Record of Decision (ROD), and is in response to Dairyland's potential request for financial assistance in constructing the Proposal. If the USACE and/or the USFWS determine that a ROD is needed to fulfill their responsibility

under NEPA, they will also publish RODs describing the action and mitigation measures that are relevant to their areas of authority, concluding their permitting and consultation responsibilities and processes.

RUS has considered and concurred with Dairyland's purpose and need for the Proposal, and has evaluated reasonable alternatives to the Proposal, the potential impacts of the Proposal on the environment, relevant financial and engineering considerations of the Proposal, and other associated issues, and finds that the Final EIS is consistent with federal regulations and meets the standard for an adequate statement. The Final EIS' preferred alternative is RUS' selected alternative.

## **II. Introduction**

The Applicants, including Dairyland, propose to own, operate, and maintain the Proposal in the area between Hampton, Minnesota (southeast of the Twin Cities) and La Crosse, Wisconsin.

This document is RUS' ROD. The ROD states RUS' decision, the rationale for the decision, and summarizes all alternatives considered in reaching the decision.

The purpose of the Proposal is to (1) improve community reliability of the transmission system in Rochester and Winona, Minnesota; La Crosse, Wisconsin and the surrounding areas, which includes areas served by Dairyland; (2) improve the regional reliability of the transmission system; and (3) increase generation outlet capacity. Refer to the Final EIS, Section 1.1, and the Alternatives Evaluation Study (AES) for additional detail regarding purpose, need and reliability.

## **III. Background**

As noted in Section I above, Dairyland may apply to RUS for financial assistance for the Proposal. As part of the loan application process RUS' procedures require Dairyland to prepare several studies prior to the EIS, including an AES and a Macro-Corridor Study (MCS) that are subject to RUS' review and approval. The studies were made available for public and agency comment and review during the EIS scoping period. The AES was posted on the agency's website in March 2009, and the MCS was made available in May 2009. Additionally, a Scoping Report, published

on the agency's website in February 2010, provides a summary of the issues raised through public scoping activities (May to July 2009).

In Minnesota, a Certificate of Need (CON) and a Route Permit from the Minnesota Public Utilities Commission (PUC) is required for construction of a large transmission project such as the Proposal. All elements of the Proposal in Minnesota (except the North Rochester to Chester 161 kV line, which was included in a separate application), were included in the same applications for a CON and a Route Permit. The Route Permit process in Minnesota includes preparation of a state-level EIS by the Minnesota Department of Commerce (MDC). The MDC published its Final EIS in August, 2011. The PUC published the CON for the Proposal in 2009 and published the final order, including the Route Permit, on May 30, 2012.

In Wisconsin, an applicant applies to the Public Service Commission of Wisconsin (PSC) for a Certificate of Public Convenience and Necessity (CPCN) identifying the route to be permitted. The Wisconsin CPCN process includes preparation of an EIS jointly by the PSC and the Wisconsin Department of Natural Resources (WDNR). The PSC/WDNR published the Final EIS in January, 2012. The PSC published its final decision approving the CPCN for the Wisconsin part of the Proposal on May 30, 2012.

All of these documents were addressed in the Final EIS and has been considered in the RUS decision.

#### **IV. Alternative Development and Evaluation**

##### **A. Alternatives Dismissed from Detailed Consideration**

Tables 1 and 2 contain the alternatives evaluated in Section 2.2 of the Final EIS and eliminated from further study, and the rationale for their elimination. Prior to the EIS alternatives were evaluated in the AES, MCS, and the RUS Scoping Report (available on RUS' website: <http://www.rurdev.usda.gov/uwp-capx2020-hampton-rochester-lacrosse.html>).

The AES assessed different alternatives such as demand-side management, use of existing generation, construction of new generation, and several transmission

alternatives. The AES was released for public review and comment in May 2009.

Since the AES determined there was a need for a new 345 kV transmission line between Hampton, MN and La Crosse, WI, the MCS was developed to identify Macro-Corridors within which the transmission line could be built. Upon consultation with a broad range of stakeholders, including local, state, and federal agencies, and tribes with an interest in the Proposal area, the Applicants identified macro-corridors for the 345 kV line and for the 161 kV transmission lines needed for connection with the existing system. Two or three macro-corridors were identified for all parts of the 345 kV lines and a single macro-corridor was identified for each of the 161 kV lines. Three macro-corridors were considered for the 345 kV crossing of the Mississippi River. One or more potential transmission routes were identified within each macro-corridor. The MCS was released for public review and comment in May 2009.

The biggest change from the final MCS macro-corridors to the EIS was that two of the three potential Mississippi River crossings were eliminated from detailed consideration, resulting in a single macro-corridor crossing the Mississippi River.

The three crossing alternatives included in the MCS are compared in Table 1. As summarized below, the comparison shows that the Alma crossing would have the least potential environmental impact.

All three alternatives cross the Mississippi River at an existing transmission line crossing (the primary criteria used to identify the river-crossing alternatives). However, the Alma crossing, which is located at Dairyland's existing Alma generating station on the Mississippi River, is the only one that can make full use of existing transmission corridors away from the river. Furthermore, there are no major roadways that could be used as corridors within the MCS final corridors at either Winona or La Crescent on the Minnesota side.

The floodplain is narrowest at the Alma crossing, thereby minimizing floodplain impacts.

At the La Crescent alternative, on the Wisconsin side alignment options are limited to either heavily developed land or wetlands.

Due to the extent of USFWS wildlife refuge managed lands in this portion of the Mississippi River corridor, the existing right-of-way (ROW) at all three crossings is at least partially on USFWS wildlife refuges. However, Winona and La Crescent have much narrower available existing ROWs than Alma. Only the Alma crossing is feasible with minimal additional ROW. The Winona crossing requires a much greater length through refuge property, and crosses large areas of wetlands. The La Crescent crossing would impact far more refuge forested wetland than the Alma crossing. While the Alma crossing has nearby eagle nests, the crossing is not located near known bird concentration points. The Winona crossing is located near bird concentration points, and the La Crescent crossing is located near a very large active rookery. USFWS concluded early in the process that the Alma crossing may pose the least impact to refuge resources.

The Alma crossing would have the least impact on wetlands.

From an engineering perspective, the Alma crossing represents the least potential impacts to Mississippi River and bluffland resources.

Finally, due to extensive wetlands, development, and topography (steep bluffs), substation locations may not be feasible for the La Crescent crossing.

**Table 1: Comparison of Preliminary River Crossing Alternatives**

<b>Alma Crossing</b>	<b>Winona Crossing</b>	<b>La Crescent Crossing</b>
<b>Use of Existing Corridors, MN</b>		
No new corridor required.	10 miles new corridor required.	15 miles new corridor required.
<b>Use of Existing Corridors, WI</b>		
Two feasible route options that follow existing transmission lines.	Two feasible route options: 1) an existing transmission line and 2) property boundaries/roads.	Route options may not be feasible due to potentially unpermittable wetland impacts and/or displacement of business.
<b>Length in Floodplain</b>		
1.4 miles	3.25 miles	2.5 miles



<b>Alma Crossing</b>	<b>Winona Crossing</b>	<b>La Crescent Crossing</b>
<b>ROW Width within Refuge Land – feet needed for Proposal (USFWS 2009a)</b>		
Existing 125 feet, permitted 180 feet, established 12/23/1948; indefinite, general stipulations.	Existing < 100 feet, permitted 100 feet. New metal poles installed 2003.	Existing < 100 feet, permitted 100 feet, issued 6/6/1967 and expires 6/5/2017; general stipulations.
<b>Length through Refuge Property</b>		
2,900 feet	13,540 feet	2,790 feet
<b>Area of Refuge Open Water/Marsh within 150 ft. of Centerline (USFWS 2009a)</b>		
10 acres open water/1.9 acres marsh.	45.7 acres.	15.5 acres.
<b>Forested Refuge Area within 150 ft. of Centerline (USFWS 2009a).</b>		
9.6 acres.	7.8 acres.	19.9 acres.
<b>Nearby Biological Features (USFWS 2008a, 2009b)</b>		
Two active eagle nests on the MN side: one adjacent to the existing line and one 0.3 mile from the corridor.	Large numbers of migratory birds that use the open water/marsh area.	Active eagle nest 0.5 mile from line; active rookery with hundreds of great blue heron, great egret, and double-crested cormorant nests is located 0.3 mile upriver on the WI side.
<b>USFWS Position (USFWS 2008a, 2009a)</b>		
May pose least impact because of existing ROWs and greater existing ROW width, and because it is least likely to impact migratory birds since it is some distance from known bird concentration points.	Due to the predominantly wetland habitat crossing and the importance of the refuge to migratory birds, USFWS opposes this alternative.	Route is of concern due to proximity of the rookery (in addition to the eagle nest).

<b>Alma Crossing</b>	<b>Winona Crossing</b>	<b>La Crescent Crossing</b>
Estimated Number of Poles in Wetlands <sup>1</sup>		
7	28	15
Estimated Permanent Wetland Impacts, Acres (80 sq. ft per pole)		
0.01	0.05	0.03
Engineering Considerations		
Narrowest river crossing.	Widest river crossing, requiring multiple poles to be located in Mississippi River backwaters.	Second widest river crossing.
Route follows existing transmission corridor through blufflands. Wider ROW through refuge property allows flexibility to design lower structures to mitigate potential impacts to birds and aesthetics.	New corridor required in blufflands, limited access (may necessitate more new access roads in terrain that is highly erodible and subject to slope failure). Narrow ROW through refuge property results in taller structures causing greater potential impacts to birds and aesthetics.	New corridor required in blufflands, limited access (may necessitate more new access roads in terrain that is highly erodible and subject to slope failure). Narrow ROW through refuge property results in taller structures causing greater potential impacts to birds and aesthetics.
Feasible Substation Locations		
Three potential substation sites.		Wetlands make La Crosse Substation not feasible; other alternatives require business displacement or an upgraded line in the La Crosse Marsh.

As summarized in Table 2, a number of alternatives to meet the purpose and need were considered in the EIS but not studied in detail. In the Minnesota region of the Proposal area, an Applicant-preferred (Route P) and an alternate route (Route A) were identified in the Minnesota Route Permit application. During the scoping process for the Minnesota Draft EIS, a large number of alternatives were added (all alternatives were analyzed in the Draft and Final EIS). In general, RUS' comparative screening analysis shows that most of these alternatives have more impacts than

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<sup>1</sup> 600-foot spacing on USFWS property, 1,000-foot elsewhere, plus accommodations for crossing open water.

the sections of Route P or A they would replace.

The alternatives with the potential to result in reductions in impacts compared to the corresponding sections of Route P or A were retained for detailed analysis (Final EIS Table 2-3).

**Table 2: Alternatives Considered But Not Studied In Detail**

Alternative	Reasons for Not Studying in Detail
Demand Side Management (DSM)	Because DSM is already included in the projections upon which the need for the Proposal is based, it cannot independently meet the need for community or regional reliability. DSM would also not address the need for generation outlet.
<b>Use of Existing Generation/Transmission</b>	
Rochester Area Generation	Even with all local generation in place, 2011 peak period scenario models showed line overloads for various combinations of facility forced outages. In addition, use of Rochester area generation has the potential to address only the Rochester part of the community reliability needs and does not address the need for regional reliability or generation outlet.
La Crosse Area Generation	Generation units in the area are either presently inoperable and/or include concerns about their ability to meet North American Electric Reliability Corporation (NERC) and Midwest Independent Transmission System Operator (MISO) standards. In addition, use of La Crosse area generation has the potential to address only the La Crosse part of the community reliability needs and does not address the need for regional reliability or generation outlet.
Reconductoring	Reconductoring would require a longer construction time (approximately 6 years) because of the need for staged outages. The combination of staged outages and a long construction period would result in unacceptable risks of overload to the system, based on modeled growth projections. In addition, reconductoring does not address the need for regional reliability or generation outlet.
<b>New Generation/Transmission</b>	
New Peaking Units	New peaking units in the Proposal area would require new transmission lines and would not be a cost-effective solution; they also have environmental impacts, particularly air emissions. Furthermore, new generating units would not address the need for regional reliability or generation outlet.

Alternative	Reasons for Not Studying in Detail
New Renewable Energy	New renewable energy sources are not available in sufficient quantities to address the community reliability need; importing renewable energy from outside the area would not address regional transmission reliability concerns.
<b>Decentralized Generation Systems</b>	
Net Metering	Based on current trends of low participation in both Minnesota and Wisconsin, net metering would not be expected to have an impact on transmission needs. Because of the relatively high cost of small-scale generation, this trend is not expected to change sufficiently to impact transmission needs.
Distributed Generation	Distributed generation (used primarily at the site where it originates) is not a cost-effective alternative to the Proposal and would not address regional reliability or generation outlet.
Dispersed Generation	Dispersed generation (small scale units intended to supply energy to the grid) requires a robust transmission grid; it does not reduce the demonstrated need for transmission.
<b>HRL Routes Not Studied In Detail</b>	
161 kV alternatives (MISO considered)	MISO considered other new 161 kV transmission line alternatives for the Rochester area; however, they were comparable in cost to the Rochester upgrades included in the Proposal and did not address other components of the Proposal's need.
Winona River Crossing	The Winona and La Crescent crossings were eliminated primarily because they require many miles of new corridor and would result in substantially more environmental impacts to USFWS refuge resources. See Table 1 for details.
La Crescent River Crossing	
Undergrounding	The Applicants considered placing the 345 kV line underground at the Mississippi River crossing. Underground construction: (1) requires a wider ROW with associated habitat clearing; (2) adds approximately \$90 million to the Proposal cost for underground construction of 1.3 miles of the proposed 345 kV line; (3) has specific environmental impacts of its own; and (4) does not eliminate the existing overhead transmission line facilities. Undergrounding also has unique reliability concerns. Failures of underground cables take longer to locate and repair than overhead lines. Complete replacement of a span would require several months of outage. RUS concurs with the Applicants' conclusion that undergrounding is not a reasonable alternative for the Proposal.

Alternative	Reasons for Not Studying in Detail
<i>Minnesota Routes</i>	
Alternative route for North Rochester to Chester.	The alternative route was longer, and followed existing transmission lines and roadways for less of its length. Other impacts were similar.
Thirty-nine of the Fifty-six Alternatives Added to the MN EIS During Minnesota Draft EIS Scoping	RUS' comparative screening analysis showed that these alternatives would have more impacts than the sections of Route P or A they would replace, and/or do not comply with the State's statutory siting criteria. Table 2-3 of the Final EIS provides details.
<i>Wisconsin Routes</i>	
Bluff Route	The Bluff Route was eliminated because it does not meet the Wisconsin siting criteria of following existing linear corridors. In general, transmission line impacts can be minimized by following existing linear corridors because the impacts created are incremental rather than new. This is particularly relevant when the Proposal follows an existing transmission line, because in those cases, the Proposal includes removal of the existing transmission line and its subsequent placement on the same poles as the Proposal lines.
Blair Route	The Blair Route has the lowest risk for birds using the Upper Mississippi River National Wildlife and Fish Refuge (UMRNW&FR); however, compared to the Arcadia Route, which is also not close to the UMRNW&FR, the Blair Route would add approximately 5 miles of length (9% more) and cost an additional \$13 million. Since the Arcadia Route accomplished the same purpose of avoidance of the route nearest the UMRNW&FR (the Q1 Route) and its attendant concerns at less cost and length, the Blair Route was eliminated from detailed evaluation and the Arcadia Route was retained.
Q1 Route through Black River Bottoms	A portion of the Q1 Route through the Black River Bottoms of the UMRNW&FR was eliminated from detailed consideration for the 345 kV line because of the potential impacts to high quality resources. In addition, the USFWS will not consider permitting this route, and it was concluded by the USFWS that the proposed use conflicts with resource and management objectives – as well as USFWS policy.

Note: This table provides only a general summary of reasons for elimination. Refer to Section 2.2 of the Final EIS, *Alternatives Considered but Not Studied in Detail*, for detailed explanations.

## **B. Alternatives Evaluated in Detail**

### **1. No Action Alternative**

The No Action Alternative provides a baseline for comparison of the action alternatives. This alternative is evaluated in accordance with the Council on Environmental Quality NEPA regulations (40 CFR § 1502.14). Under this alternative, the Proposal would not be constructed. RUS would not finance the Proposal, and there would be no change to the existing environment.

### **2. Build Alternatives**

Alternatives evaluated in detail are shown in Attachment B.

#### **Minnesota**

For consistency with the State process, the Applicants' proposed (P) and alternate (A) routes were evaluated in three sections, designated as follows:

- Route 1 - 345 kV line from Hampton to North Rochester
- Route 2 – 161 kV line from North Rochester to Northern Hills
- Route 3 – 345 kV line from North Rochester to Wisconsin state line

The Applicants also included a third alternative for crossing the Zumbro River, the Zumbro Dam Option; and an alternative to avoid the McCarthy Lake Wildlife Management Area (WMA), Route 3P-Kellogg. Because they appeared to have potential for reduced impact and/or greater consistency with State legal requirements for transmission line siting,<sup>2</sup> the following alternative segments proposed during the Minnesota Draft EIS scoping process were also retained for detailed analysis (Attachment B):

- Routes 1P-006 and 1P-007, which were proposed to prevent impact to potential future quarry development (existing quarries would not be affected by Route 1P).
- Routes 3P-001 and 3P-002, which follow roadways at locations where Route 3P follows no existing corridor, and therefore result in less overall incremental impact and are more consistent with Minnesota law. These segments are

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<sup>2</sup> See Final EIS Section 2.2.6 for a discussion of State law regarding siting of transmission lines.

- feasible if Route 2P is selected.
- Route 2P-001, which impacts fewer residences and avoids wetland impacts.
  - Route 3A – Crossover, which allows for combinations of Route 3A and 3P.
  - Route 3P-004, which follows more roadway than the comparable section of Route 3P and also avoids tree clearing.
  - Routes 3P-006, 3P-007 and 3P-011, which avoid forest clearing.
  - Route 3B-003, which avoids the McCarthy Lake WMA.

Note that these segments are applicable only to the P or A route (except for 3A, which allows for combinations, and 3B-003, which is applicable to both P and A). Therefore, when the major route (P or A) is eliminated, the associated alternative segments are also eliminated.

### **Wisconsin**

Six alternatives were included in the CPCN application and evaluated in detail in the Final EIS (Attachment B). Three of these were MCS alternatives: the Q1-Galesville Route, the Q1-Highway 35 Route, and the Arcadia Route. Three alternatives were added after the completion of the MCS: the WI-88 Options, the Arcadia-Ettrick Option, and the Arcadia-Alma Option.

Use of the WI-88 Options (A and B) avoids impact to the Great River Road National Scenic Byway (GRRNSB) at the northern end of the Q1 corridor. The Arcadia-Ettrick Option, is an alternative to a portion of the Arcadia Route, and avoids the more populated area at Galesville. The Arcadia-Alma Option, is the same as the Arcadia Route except for a very short section near the Mississippi River, which allows for avoidance of a development at the top of the bluff.

Refer to the Final EIS Section 2.4.2.5 for more information on the alternatives evaluated in detail.

## **C. Alternatives Not Selected and RUS' Rationale**

### **1. No Action Alternative**

The No Action Alternative does not meet the purpose and need for the project.

## **2. 345 kV Line – Hampton Substation to Proposed North Rochester Substation**

In this segment, the Applicants' preferred route, (Route 1P) was selected over the Applicants' alternate route (Route 1A), and the local options, Routes 1P-006 and 1P-007, were not selected.

Route 1A is 36% longer than Route 1P, and only 8% of its length follows existing transmission line or roadway – the main siting criterion in Minnesota. In contrast, 82% of Route 1P follows existing ROW. Furthermore, Route 1A has more stream crossings, more potential threatened or endangered species within the ROW, more potential impact on grassland bird conservation areas and biodiversity sites, 4.7 acres of conversion of wetland forest (compared to none for Route 1P), more temporary and permanent impacts on agricultural acreage, a comparable number of residences within 300 feet of the centerline, and is 15% more costly. Therefore, in a comparison of Route 1P and 1A, Route 1A was not selected.

Routes 1P-006 and -007 are substantially longer than the segments of Route 1P they would replace, especially Route 1P-007, which is more than twice the length of the comparable Route 1P section. Both Route 1P-006 and 1P-007 impact more residences than Route 1P and both have floodplain impacts Route 1P does not have. Neither of these routes was considered preferable to Route 1P and neither was selected.

## **3. 161 kV Line – North Rochester to Northern Hills**

Route 2A has more length following transmission lines and Route 2P has more length following roadways. Because where a route follows a transmission line, the existing lines would be removed and placed on the same poles as the Proposal, following transmission lines generally results in the fewest impacts. While Route 2A would not directly impact the Douglas State Trail, it parallels it for several thousand feet. RUS finds Route 2A to have sufficiently less environmental impact to justify the additional cost of approximately 6%; this is primarily because Route 2A would replace an existing transmission line rather than create a new one, has half as many residences close to the line, has minimal additional wetland impact, impacts to the



Douglas State Trail can be minimized, and most other impacts are similar. Therefore, in a comparison of Routes 2A and 2P, Route 2P was not selected.

#### **4. 345 kV Line – North Rochester to Mississippi River**

In a comparison of Routes 3P and 3A, Route 3A was not selected. The main differences between Routes 3P and 3A are at the crossing of the Zumbro River, which Route 3P crosses at the existing bridge on White Bridge Road, while Route 3A crosses at a location with no existing infrastructure. The estimated cost of Route 3P is 4% greater than Route 3A; however, Route 3P has a preferred crossing of the Zumbro River, fewer acres converted from forested to emergent wetlands, and less impact on forests. Most other impacts are comparable between Route 3P and Route 3A. Therefore, in a comparison of Route 3P and 3A, Route 3A was not selected.

The Zumbro Dam Option provides another alternative for crossing the Zumbro River. However, the only existing infrastructure is the dam itself; there are no transmission or roadway corridors that could be used. Therefore, this option was not selected.

Since Route 2P was not selected, either Route 3P-001 or 3P-002 was available to be used (they replace the same segment of Route 3P). Route 3P-001 replaces a longer segment of Route 3P and results in more use of existing roadway than Route 3P-002, and was thus considered preferable to Route 3P-002. Therefore, Routes 3P-002 and the section of Route 3P that Route 3P-001 replaces were not selected.

Route 3P-004 follows more roadway than the comparable section of Route 3P, avoids tree clearing, and follows a section line where Route 3P goes cross country. It has no apparent disadvantages in comparison to the section of Route 3P it would replace. Therefore, Route 3P-004 was retained and the section of Route 3P it would replace was eliminated.

Routes 3P-006, 3P-007 and 3P-011, which are just east of the Zumbro River, all avoid the tree clearing that the comparable section of Route 3P would require; however, Routes 3P-006 and 3P-011 have more nearby residences, and Route 3P-007 was substantially longer. None of these routes were selected.

Route 3B-003, which follows MN-42, is an alternative to Route 3P just west of the

Mississippi River, where Route 3P follows an existing transmission line. The main advantages of Route 3B-003 are that it avoids the McCarthy Lake WMA, the associated Biodiversity Sites of High Significance (as designated by the State of Minnesota), and several thousand feet of wetland crossing. Route 3B-003 necessitates a new transmission corridor about 11 miles long approximately 1.5 to two miles northwest of the existing 161 kV line (Route 3P includes removal of the existing structures and placement on the Route 3P poles). Additionally, Route 3B-003 has several more residences within 300 feet of the centerline of the alignment than the comparable section of Route 3P. Route 3B-003 is also the subject of concern regarding steep banks, erosion, slope failure, water drainage, and rock fall along MN-42. The primary advantage of Route 3B-003 – avoiding the impacts to wetlands in Route 3P – is negligible considering that Route 3P would result in only 0.02 acre of wetland impact specifically covered under Section 404 of the Clean Water Act (permanent filling or impact) and that Route 3B-003 has other noted disadvantages. Therefore, Route 3B-003 was not selected.

Route 3P-Kellogg, an alternative that avoids the McCarthy Lake WMA, crosses 4,000 feet of wetland along US-61 in the Mississippi/Zumbro River floodplain. It is approximately twice as long as the segment of Route 3P it would replace, and would follow the GRRNSB for approximately 1.5 miles at a location where there is no existing transmission line. Because of these disadvantages, Route 3P-Kellogg was not selected.

## **5. Wisconsin Alternatives**

Since the Proposal is located in the vicinity of an existing 161 kV transmission line (Q1 161 Line) that is currently required to be rebuilt (due to age and deteriorating condition), with funding anticipated to be requested from RUS, the summary that follows includes discussion of the rebuild of that line in addition to the 345 kV alternatives.

Of the six routes evaluated in detail, the Q1–Highway 35 Route is the most direct and most closely follows the Q1 161 Line (thereby resulting in reduced cost and impact by constructing the rebuilt line and proposed 345 kV lines on the same

structures).

### **Q1 – Highway 35 Route**

The Q1–Highway 35 Route crosses the Black River Bottoms at the Van Loon State Wildlife Area, crossing a forested wetland parallel to and approximately 400 feet from the roadway. While this offset avoids the scenic easements associated with WI-35 and provides a buffer strip of wooded land, it also results in greater fragmentation of the forested wetland in the Van Loon Wildlife Area. Because other routes avoid these impacts, the Q1-Highway 35 Route was not selected.

### **Arcadia-Etrick Option**

The major advantage of the Arcadia-Etrick Option in comparison with the others is that, because it does not pass by the more populated area at Galesville, it has the least impact on residences (after elimination of the Q1-Highway 35 Route, all other routes pass by Galesville). It has 8 residences within 100 feet of the centerline compared to 9 to 14 for the other alternatives; and 57 residences within 300 feet of the centerline, compared to 102 to 114 for the other alternatives. However, the Arcadia-Etrick Option is the longest (4 to 18% longer) and the costliest (4 to 15% costlier).<sup>3</sup> The total cost is \$10 million more than the next costliest alternative. The Arcadia-Etrick Option has far more stream crossings than the other alternatives (38 to 160% more), including 5 trout streams (compared to one or none for the other alternatives). It would require more total forest clearing than any other alternative (19 to 43% more). Most other quantifiable impacts are similar to the other alternatives. Because the Arcadia-Etrick Option is costliest and has more quantifiable impacts than other options, it was not selected.

### **WI-88 Options**

The WI-88 Options are alternatives to the Q1-Galesville Route for the northern 12 miles of the Q1–Galesville Route. This is in the vicinity of the GRRNSB, where the Wisconsin Department of Transportation (WisDOT) has purchased scenic

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<sup>3</sup> Cost comparisons are based on the costs included with the Applicants' Route Permit Application (Minnesota) and CPCN (Wisconsin). While costs for the selected route has been updated, costs for the other alternatives have not.

easements to help preserve the value of the GRRNSB. While many segments of the GRRNSB have views of the river, bluffs, and surrounding countryside, not all parts are scenic. The northern 12 miles of the Q1–Galesville Route, which has an existing transmission line, has views of a power plant, railroad, other infrastructure and structures and does not have views of the river or bluffs. In contrast, the WI-88 Options are in an agricultural valley with no transmission lines and fewer other visual intrusions, in comparison to the northern 12 miles of the Q1-Galesville Route. Use of either WI-88 Options is 6 to 9% costlier, requires 19 to 20% more forest clearing, and approximately 27% more conversion of forested wetlands. Other impacts are similar to the Q1–Galesville Route. Because the WI-88 Options were included to provide an alternative to avoid the scenic impact to the GRRNSB, and the visual analysis suggests that incremental visual impacts would likely be greater with the use of either of the WI-88 Options, and other overall impacts appear to be greater, RUS concluded that the WI-88 Options are not preferable alternatives to the Q1 section of the Q1–Galesville Route, and they were therefore not selected.

### **Arcadia Route and Arcadia-Alma Option**

Because the costs and impacts of these alternatives are very similar, they are discussed together as the “Arcadia Routes”.

While overall wetland impacts are similar, the Arcadia Routes would result in approximately 12% more conversion of forested wetland than the Q1-Galesville Route. The Arcadia Routes would result in 22% more upland forest clearing and 80% more stream crossings, including a trout stream. In addition, the Arcadia Routes are estimated to be \$20 million (11%) more costly). The Arcadia Route has 7% fewer residences within 300 feet of the centerline (102 compared to 109). In addition, the USFWS has concluded that the Q1–Galesville Route poses substantially higher potential for local impacts to migratory birds flying to and from the UMRNW&FR and Trempealeau National Wildlife Refuge than do the Arcadia alternatives. No data on bird collisions from the existing transmission lines at the refuges has been collected.

In terms of overall quantifiable impacts and costs, the Q1-Galeville Route is

preferable, and therefore the Arcadia Routes were not selected.

### **Briggs Road Substation**

Both the West and East Sites are acceptable from an engineering perspective; however, the East Site is hilly and would require extensive grading. Either site would require minor rerouting of the Tremval-Mayfair and Marshland 161 kV lines for connection into the substation. Impacts from the rerouting would be similar for either site and are included in the Proposal. The East Site has high potential for archaeological resources and the West Site has low potential. A pedestrian survey of the West Site conducted in 2012 found no cultural material and the investigators recommended no further investigation (see discussion in Section V.D.3). The East Site would require more tree clearing and the relocation of an equestrian facility. With these exceptions, the two Briggs Road Substation Sites are generally comparable in terms of impacts. The East Site was therefore not selected.

#### **D. RUS' Preferred Alternative.**

As noted in Section I, the Proposal as described in the Final EIS is RUS' preferred alternative. RUS' preferred alternative is shown in Attachment A.

RUS' preferred alternative for the Proposal consists of the following:

- 345 kV line from Hampton to North Rochester: Route 1P, with the modification to avoid the developed area at the US 52/MN-19 interchange filed by Xcel on behalf of the Applicants<sup>4</sup>.
- 161 kV line from North Rochester to Northern Hills: Route 2A.
- 345 kV line from North Rochester to the Mississippi River: Route 3P, as modified by the use of Routes 3P-001 and 3P-004.
- North Rochester to Chester 161 kV line, the Applicants' preferred alternative as modified in the Minnesota Route Permit for the line.
- Q1-Galesville Route in Wisconsin.
- Briggs Road West Substation Site in Wisconsin.

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<sup>4</sup> This filing was entered into the PUC Docket 09-1448 on August 2, 2011, and is included in Final EIS Appendix J.

## **E. Environmentally Preferred Alternative**

The identification of an environmentally preferred alternative is required by NEPA [40 CFR § 1505.2(b)]. The environmentally preferred alternative is that alternative which has the least impact on the physical and biological environment and which best protects, preserves, and enhances historic, cultural, and natural resources. The No Action Alternative best meets this definition; however, the No Action Alternative does not meet the purpose and need. Of the action alternatives that meet the purpose and need, the selected alternative, with the mitigation included in Attachment E, is the environmentally preferred alternative.

Because of the potential increased risk of collision to some birds that use the UMRNW&FR and Trempealeau Refuges, the Q1–Galesville Route is not the environmentally-preferred alternative in terms of the avian resources USFWS manages. However, RUS has concluded that the use of the Q1–Galesville Route along with mitigation measures specific to bird collision risk (including marking of lines, modified structure types and structure placement) would result in quantifiable environmental impacts less than any alternatives to that route.

## **V. Public Involvement**

### **A. Notice**

#### **1. Scoping**

RUS published a NOI describing the Proposal in the Federal Register on May 28, 2009 (74 FR 25485-254860, as well as in newspapers local to the Proposal. Through the NOI, RUS announced its intent to prepare an EIS for the Proposal, described the Proposal, provided scoping meeting locations and dates, started a 30-day comment period, and provided contacts for further information about the Proposal and for submitting scoping comments. The public scoping meetings were held June 16-18 and June 23-25, 2009. Meetings were held at Plainview-Elgin-Millville High School in Plainview; Wanamingo Community Center in Wanamingo; City of St. Charles Community Meeting Room in St. Charles; and La Crescent American Legion in La Crescent in Minnesota, as well as at Centerville/Town of

Trempealeau Community Center in Galesville and Cochrane-Fountain City High School in Fountain City in Wisconsin. A total of 1,135 comments were received during the scoping comment period, which was extended to 60 days.

## **2. Draft EIS**

The Draft EIS addressed comments received during the initial scoping period, as well as other comments received after the initial scoping period ended. RUS published its Notice of Availability (NOA) for the Draft EIS in the Federal Register on December 16, 2011 (76 FR 78235-78236), and in newspapers local to the Proposal. The USEPA published its receipt of the Draft EIS in the Federal Register on December 16, 2011, thereby beginning the 45-day public comment period.

RUS, as lead agency, held public meetings to receive comments on the Draft EIS on January 9-13, 2012 at Alma High School in Alma and Centerville/Town of Trempealeau Community Center in Galesville in Wisconsin and Wanamingo Community Center in Wanamingo; Cannon Falls High School in Cannon Falls; and the American Legion Hall in Plainview in Minnesota. The NOA also identified USACE and USFWS as cooperating agencies. Because the Proposal may involve action in floodplains or wetlands, RUS's NOA also served as notice of a proposed floodplain or wetland action by RUS consistent with Executive Orders 11988 and 11990.

Approximately 236 people signed the attendance sheets at the public meetings. Approximately 1,186 comments were received on the Draft EIS. The comment period was to end on January 30, 2012, but the comment deadline was extended to February 13, 2012 after it was discovered that some affected landowners along the WI-88 corridor did not receive a notification letter. These landowners were identified and were notified by phone and/or mail before the first public meeting was held, notice of the extension of the comment deadline was posted on RUS' website, and attendees were notified at the public meetings.

## **3. Final EIS**

RUS published its NOA of the Final EIS in the Federal Register on July 13, 2012 (77 FR 41369-41370), and in newspapers local to the Proposal. USEPA published its

receipt of the Final EIS in the Federal Register on July 20, 2012. The 30-day comment period ended on August 20, 2012. Approximately 28 comments were received.

## **B. Comments Received**

The comments received from scoping identified the need for clarification of identified issues, including description of the Proposal, route alternatives, biological resources (flora and fauna), visual impacts, water resources, land use, socio-economic impacts, cultural resources, air quality, acoustic impacts, and health/safety. Refer to Section 1.4.3.1 of the Final EIS, which summarizes the comments received during the scoping period, as well as Appendix C of the Final EIS for additional detail. Information received during the scoping period was incorporated into the development of the Draft EIS.

All comments on the Draft EIS, as well as any supporting attachments have been entered into the administrative record. Based on comments received, responses were prepared (Final EIS, Appendix C, Table C-4) and the EIS was modified as appropriate. Changes made to the text as a result of the comments received are printed in bold in the Final EIS.

RUS received six letters with comments on or acknowledgement of the Final EIS. The comments have been entered into the administrative record. A summary of the comments and RUS' responses are included as Attachment C.

## **C. Changes from the Draft to the Final EIS**

Based on comments received on the Draft EIS, responses were prepared (Final EIS, Appendix C, Table C-4), and the Final EIS was modified as appropriate. Changes made to the text as a result of comments received are printed in bold in the Final EIS. Except for the responses included in Attachment C, no further agency responses are needed beyond those included in the Final EIS.

## **D. Changes from the Final EIS to the ROD**

### **1. Federal Grant-Funded Land**

Section 3.6.3 of the Final EIS addressed potential impacts to Land and Water



Conservation Fund (LAWCF) land and land subject to the Pittman-Robertson Act. After discussions with the Minnesota DNR (MDNR) and the USFWS, the Applicants have determined that the Proposal can be constructed without impact to LAWCF land or land subject to the Pittman-Robertson Act.

## **2. Avian Mitigation Plan**

Since the publication of the Final EIS, the Applicants have met with the USFWS, USACE and MDNR and have further assessed collision risk and developed a draft avian mitigation plan with recommendations for locations of bird flight diverters. The USFWS is reviewing this plan, as well as assessing two final design options at the crossing of the UMRNW&FR that will best balance resource protection. The Applicants will continue to coordinate with the USFWS.

## **3. Briggs Road Substation Archaeological Work**

The Final EIS, Section 3.9.2.4, noted that additional archaeological survey work would be conducted at the Briggs Road West Substation site prior to issuance of the ROD. The Mississippi Valley Archaeological Center (MVAC) conducted a Phase I pedestrian survey of the West Site in November, 2012, in accordance with standard published WI guidelines for archaeological surveys.<sup>5</sup> No cultural materials were identified or recovered and the MVAC recommended no additional fieldwork.

## **4. North Rochester to Chester Line**

Since the publication of the Final EIS, the Minnesota PUC issued the final Route Permit for the North Rochester to Chester 161 kV line (Chester Line; Docket E-002/TL-11-800, September 12, 2012). The permit application was included as Appendices O and P of the Final EIS. A small change from the permit application, called Route Segment Alternative A, was proposed during the State's public information and environmental assessment scoping process for the Chester Line. Route Segment Alternative A affects a 0.5-mile-long segment of the portion of the Chester Line that is not co-located with the 345-kV line (referred to as the north-

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<sup>5</sup> Shovel testing as noted in the Final EIS was determined not to be needed because surface visibility was adequate to conduct a pedestrian survey.

south section in Attachment B). The north-south section of the Chester Line has a 0.5-mile-long east-west segment, where it ties into the 345 kV line. Route Segment Alternative A would shift this east-west segment to the south by one-half mile. The use of Route Segment Alternative A results in an additional 0.5 mile of the Chester Line being co-located with the 345 kV line and shortens the section not co-located with the 345 kV line (the “north-south section”) by 0.5 mile. The resulting decrease in the free-standing length of the Chester Line would reduce the cost of the line and result in less farmland impact due to the reduced length. The shorter route follows a field line rather than a roadway, and would have one less stream crossing than the route included in the permit application. One residence would be affected by either alternative, although Route Alternative A is 45 feet further away from the residence. Other impacts are similar. RUS concurs with the PUC decision to include Route Segment Alternative A as part of the selected alternative.

## **5. Future Potential Alignment Changes**

In accordance with the CEQ regulations, substantial changes in the Proposal that are relevant to environmental concerns would require a supplemental EIS (40 CFR §1502.9). The Final EIS does not specifically address the potential for future minor alignment changes that would not trigger additional RUS action under NEPA. However, the Final EIS, Section 1.3.2.2, discusses the Minnesota and Wisconsin EIS and route selection requirements, which are consistent with the federal EIS requirements, and both Minnesota and Wisconsin include provisions for alignment modifications in their Route Permits. As discussed below, for both Minnesota and Wisconsin, the permit requirements for alignment modifications are sufficiently stringent to ensure that no substantial changes relevant to environmental concerns may be made.

The Minnesota Route Permit, which was included as Appendix AA of the Final EIS, identifies an approximately 1,000-foot wide route within which the transmission line is permitted for construction. The Minnesota Route Permit also identifies the specific alignment within the permitted route upon which the impact assessment is based. As noted in the Final EIS, the Minnesota Route Permit states that “the designated

route identifies an alignment that minimizes the overall potential impacts to the factors identified in Minnesota Rule 7850.4100.” Those factors, which are consistent with the factors assessed in the Final EIS, are enumerated in the Final EIS (Section 1.3.2.2). While the entire approximately 1,000-foot route is included in the Route Permit, the permit requires that any modifications from the designated alignment within the permitted route “shall be located so as to have comparable overall impacts relative to the factors in Minnesota Rule 7850.4100 as does the alignment identified in this permit.” Any changes from the designated alignment must be approved by the Minnesota PUC. In special cases, an alignment can even deviate from the permitted route width; however, the same requirements for impacts and approval would apply.

The Wisconsin Route Permit allows the Applicant to propose minor route adjustments, subject to PSC approval, “but any changes in alignment from the approved centerline may not affect resources or cause impacts not discussed in the EIS” (Wisconsin PSC final decision, included as Appendix BB of the Final EIS). While the stipulation refers to the Wisconsin EIS, as discussed in the Final EIS, Section 1.3.2.2, Wisconsin regulations require the Wisconsin EIS to be prepared in accordance with CEQ regulations.

## **VI. Summary of Environmental Effects**

Impacts of RUS’ selected alternative are summarized in Table 3.

**Table 3: Summary of Impacts of Preferred Alternative.**

Resource Category	Impacts
<b>Soils and Geology</b>	
Implementation of construction stormwater permits, SWPPPs and construction BMPs will minimize impacts.	
<b>Water Resources</b>	
Implementation of SWPPPs and BMPs will minimize impacts. All water bodies will be spanned, and construction equipment will not enter water bodies, except for short-term use of a barge at the Mississippi River, to access the shoreline. Some very minor, localized and short-term impacts to groundwater could occur in areas with very shallow groundwater if tower foundations require dewatering. Post-construction impact on groundwater would not be expected, as no discharges or pumping would be expected.	
Stream crossings	188
Permanent impacts to floodplains (acres)	< 1
<b>Air Resources</b>	
Short term, local emissions from construction equipment and fugitive dust during construction. Post-construction air quality impact would be minimal, as transmission lines release negligible air emissions.	
<b>Acoustic Environment</b>	
Short-term noise from construction equipment. Minimal post-construction noise as transmission lines produce only very low levels of noise.	
<b>Biological Resources</b>	
Bird collisions with power lines are a potential impact, however, no or negligible impacts to populations of Refuge bird species or other species are expected. Bald eagle nest surveys will be conducted prior to construction. No impacts to threatened or endangered species are expected, except that if sheepsnose ( <i>Plethobasus cyphus</i> ) and/or Higgins eye pearlymussel ( <i>Lampsilis higginsii</i> ) are found in that part of Pool 5 of the Mississippi River that must be entered during construction, they will be relocated. Both these species are federally endangered. The Applicants plan to have a survey conducted to determine if they are present in parts of the river that may be affected by the Proposal.	
<i>Notable habitat areas</i>	
Important Bird Areas, miles crossed	1.9
Grassland Bird Conservation Areas, miles crossed	3.7
Outstanding Biodiversity Sites (MN only), miles crossed	0.5
High Biodiversity Sites (MN only), miles crossed	2.1
<i>Wetland and forest</i>	
Permanent wetlands impacts (acres)	0.12
Temporary wetlands impacts (acres)	16
Wetland Acres permanently changed from forested to emergent (acres)	49
Total area of forest removed (acres)	1,177
<b>Land Resources</b>	
<i>Agriculture</i>	
Permanent impact (acres)	180
Temporary impact (acres)	1,136

Resource Category	Impacts
Forestry	No impacts to economically important forestry expected.
Mining	No impacts to mines are anticipated.
<i>Formally Classified Lands (miles)</i>	
Upper Mississippi River National Wildlife and Fish Refuge crossed, miles	0.5
Douglas Trail paralleled, miles	2.9
McCarthy Lake WMA crossed, miles	0.9
RJD State Forest crossed, miles	2.1
<b>Visual Resources</b>	
The transmission line as a visual intrusion will have the greatest impact on those living near the ROW.	
GRRNSB	Crossing in MN and paralleling for 2.7 miles in WI.
<b>Cultural Resources</b>	
No impacts to cultural resources are expected. Surveys will be done. It is anticipated that archaeological sites of cultural significance can be avoided.	
<b>Socioeconomics</b>	
<i>Number of residences within 300 feet of route centerline</i>	
<i>Minnesota 345 kV and Chester 161 kV:</i>	
0-75 feet from route centerline	1
76-150 feet from route centerline	19
151-300 feet from route centerline	41
<i>North Rochester – Northern Hills 161 kV:</i>	
0-40 feet from route centerline	0
41-100 feet from route centerline	1
101-300 feet from route centerline	27
<i>Wisconsin 345 kV:</i>	
0-100 feet from route centerline	14
101-150 feet from route centerline	11
151-300 feet from route centerline	84

Resource Category	Impacts
<b>Corridor Sharing</b>	
<i>345 kV lines:</i>	
Total length of route (miles)	141
Length following transmission lines (miles)	61
Length following roads but not transmission lines (miles)	29
Length following railroad but not transmission line or road (mile)	3
Length following property lines but not transmission lines or roads (MN) (miles)	33
Length not following transmission lines, property lines or roads (MN) (miles)	4
Length not following transmission line, roads or railroads (WI) (miles)	10
<i>161 kV lines (not including portion of Chester Line co-located with 345 kV):</i>	
Total length of route (miles)	30
Length following transmission lines (miles)	14
Length following road but not transmission lines (miles)	11
Length following property lines but not transmission lines or roads (miles)	3.1
Length not following transmission lines, property lines or roads (miles)	1.7
<b>Estimated Cost (million)</b>	
Cost	\$452

## VII. Decision and Rationale for Decision

RUS decisions must comply with all relevant federal and state environmental laws and regulations. These laws, regulations and permit requirements are summarized in Tables 1-1, 1-2, and 1-3 of the Final EIS.

### A. Decisions

This ROD documents findings specific to the proposed action, which is the construction and operation of an approximately 141-mile long, 345 kV transmission line and related facilities between Hampton, Minnesota and La Crosse, Wisconsin (including two connecting 161 kV lines in the Rochester area, 18 miles of which will be co-located with the 345 kV line), as described in the analysis of the Final EIS, *Financing Assistance for Proposed Hampton – Rochester – La Crosse 345 kV*

*Transmission System Improvement Project*, the availability of which was published July 20, 2012 in the Federal Register (77 FR 41369-41370). This includes mitigation and other measures incorporated into the Proposal to prevent or minimize both short-term and long-term impacts on resources from construction and operation of the Proposal (Attachment E). Except as noted, the items in Attachment E are required by applicable environmental regulations or permits and/or by the Applicants' Route Permits. The Applicants are required to provide monitoring for environmental compliance. The Minnesota Route Permit requires the Applicants to provide dedicated environmental inspectors and monitors to monitor compliance with environmental requirements. The Wisconsin Route Permit requires the Applicants to hire an independent environmental monitor with stop-work authority, who reports to PSC staff.

RUS has made the following decisions:

- Based on an evaluation of the information and impact analyses presented in the Final EIS, including the evaluation of all alternatives, and in consideration of the agency's Environmental Policies and Procedures (7 CFR Part 1794), RUS finds the overall impact analysis and evaluation of reasonable alternatives consistent with NEPA. In the Final EIS, RUS, in cooperation with USACE and USFWS, identified the Proposal as described in the Final EIS with proposed measures to minimize impacts as its preferred alternative. In this ROD, RUS identifies the Final EIS preferred alternative as its selected alternative (Attachment A). This ROD concludes the RUS's environmental review process in accordance with its Environmental Policies and Procedures.
- A review and analysis of the selected alternative's justification, associated engineering studies, and preliminary financial information has led to RUS's concurrence with the selected alternative's purpose and need.

RUS hereby agrees to the above and, should Dairyland apply to RUS for financing assistance for the Proposal, the consideration of Dairyland's loan application may

proceed. The following condition applies:

Dairyland will implement the selected alternative as described in this ROD, with further details as described for the preferred alternative in the Final EIS. This includes, but is not limited to, those actions incorporated into the selected alternative to reduce or eliminate impacts and any mitigation measures that the this ROD state will be implemented.

## **B. Rationale and Compliance with Legal and Policy Mandates**

This section explains how the selected alternative, as described in the Final EIS and in this ROD, satisfies RUS 's statutory, regulatory, and policy mandates.

### **1. National Environmental Policy Act**

In the Final EIS, RUS has fully considered all reasonable alternatives to the proposed action and concluded that the selected alternative – construction and operation of the Proposal – best meets the purpose and need for action. The agency has met the requirements of NEPA and agency policies and procedures for public involvement. This has included responses to requests for information from concerned individuals, non-governmental organizations, and state and other federal agencies. The impacts, actions, and mitigation to reduce them are provided in the Final EIS. Dairyland will be responsible for implementation of these measures, with RUS, USACE, and USFWS oversight.

### **2. National Historic Preservation Act**

Consultation with the Tribal Historic Preservation Officers, WI and MN State Historic Preservation Officers, Advisory Council on Historic Preservation, public and Consulting Parties is documented in Appendix Y of the Final EIS and through the fully executed Programmatic Agreement (Attachment D). The Programmatic Agreement sets forth procedures for consultation related to the proposed surveys and for the determination of eligibility, assessment of effects, resolution of adverse effects, and post-review discoveries through the entire area of potential effect as necessary.



### **3. Endangered Species Act**

As discussed in the Final EIS, RUS and the Applicants have coordinated with the USFWS and state agencies regarding potential impacts to threatened or endangered species.

Surveys for the dwarf trout lily at areas identified by the USFWS and the MDNR were conducted in April 2012 and no dwarf trout lilies were found. The Higgins eye pearly mussel (*Lampsilis higginsii*) and the Sheepnose mussel (*Plethobasus cyphus*), both of which are federally endangered, may be present where the Proposal will cross Pool 5 of the Mississippi River. While there will be no permanent structures in the river<sup>6</sup>, a barge may be needed for access. The Applicants will conduct a survey to determine if these species are present in parts of the river that may be affected by the Proposal. No impacts to threatened or endangered species are expected, except for, if sheepnose and/or Higgins eye pearly mussel are found in that part of Pool 5 of the Mississippi River that must be entered during construction, they will be relocated in accordance with MDNR and USFWS requirements.

The Blanding's turtle (*Emydoidea blandingii*), a state-listed species, is known to occur with one mile of the centerline of the 161 kV Chester Line. Under the terms of the Route Permit for the Chester Line, the Applicants are required to follow MDNR recommendations for avoiding and minimizing impacts to Blanding's turtle.

### **4. Executive Order 11988, Flood Plain Management**

Impacts to floodplains were avoided to the extent practicable. Implementation of stormwater pollution prevention plans (SWPPPs) and associated best management practices (BMPs) will minimize impacts. All water bodies will be spanned, and construction equipment will not enter water bodies, except for short-term use of a barge at the Mississippi River, to access the shoreline. Less than one acre of permanent impacts to floodplains is expected.

### **5. Executive Order 11990, Protection of Wetlands**

Impacts to wetlands were avoided to the extent practicable. Under the preferred

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<sup>6</sup> Determined as normal pool elevation, as defined by the USACE.

alternative for the Proposal, there would be 0.12 acres of permanent wetland impacts, and 16 acres of temporary impacts. Forty-nine acres of wetland would be permanently converted from forested to emergent wetlands.

#### **VIII. RUS Loan Review**

This ROD is not an approval of the expenditure of federal funds. The ROD concludes the agency's environmental review process in accordance with NEPA and RUS's Environmental Policies and Procedures (7 CFR Part 1794). Should Dairyland apply to RUS for financing assistance, the ultimate decision as to loan approval depends upon the conclusion of this environmental review process plus financial and engineering analyses. Issuance of the ROD will allow these reviews to proceed, if Dairyland applies to RUS for financing assistance.

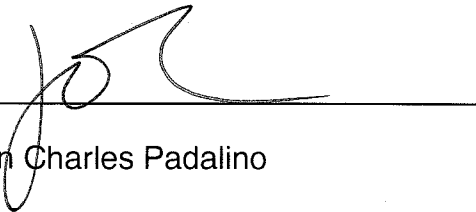
#### **IX. Right to Administrative Review**

This Record of Decision concludes the agency's environmental review process pursuant to the National Environmental Policy Act and the RUS's Environmental Policies and Procedures (7 CFR Part 1794). There are no provisions to appeal this decision. Legal challenges to the ROD may be filed in federal district court under the Administrative Procedures Act.

**X. Approval**

This Record of Decision is effective on signature.

Dated: JAN 11 2013

A handwritten signature in black ink, appearing to read 'John', is written over a horizontal line.

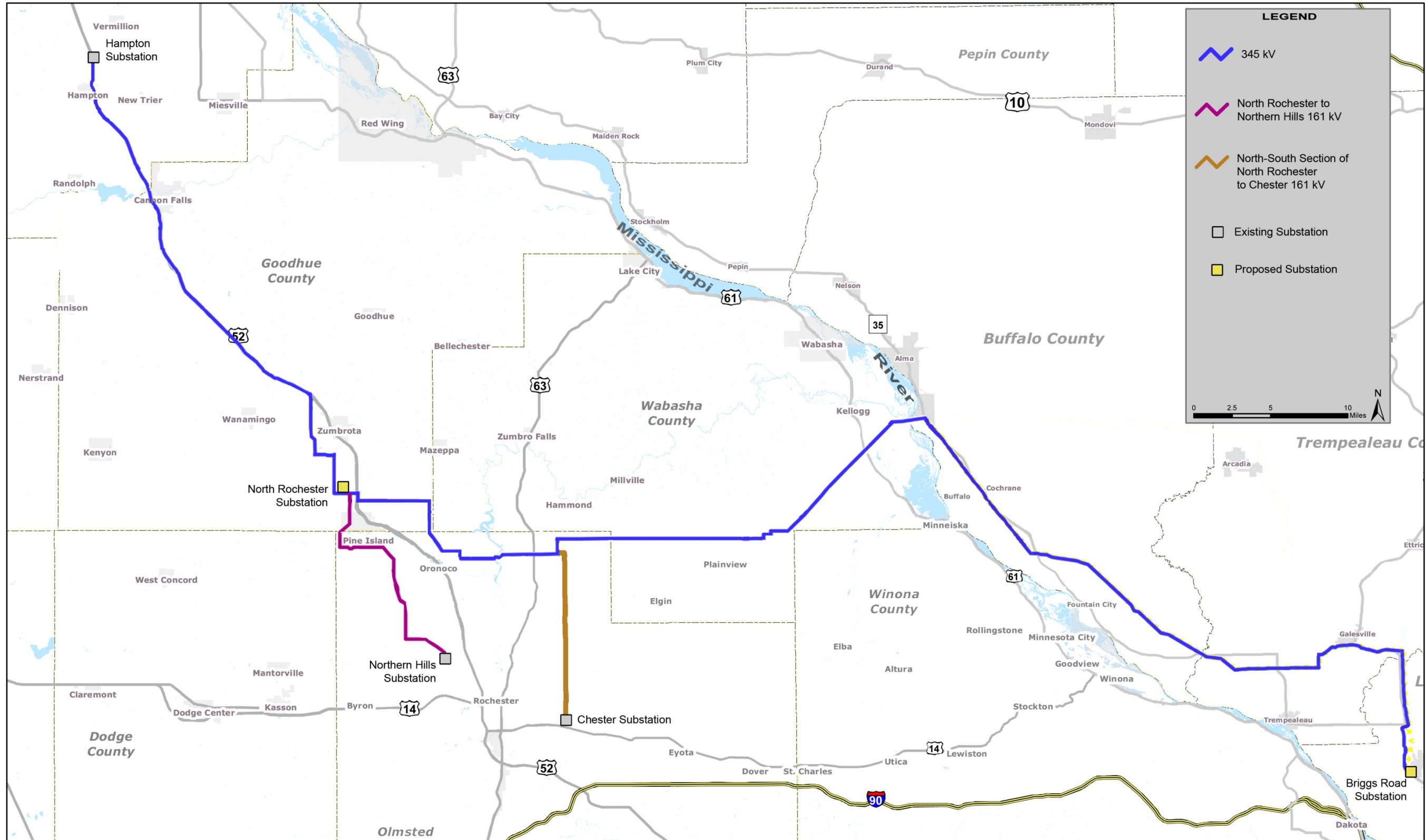
John Charles Padalino

Acting Administrator

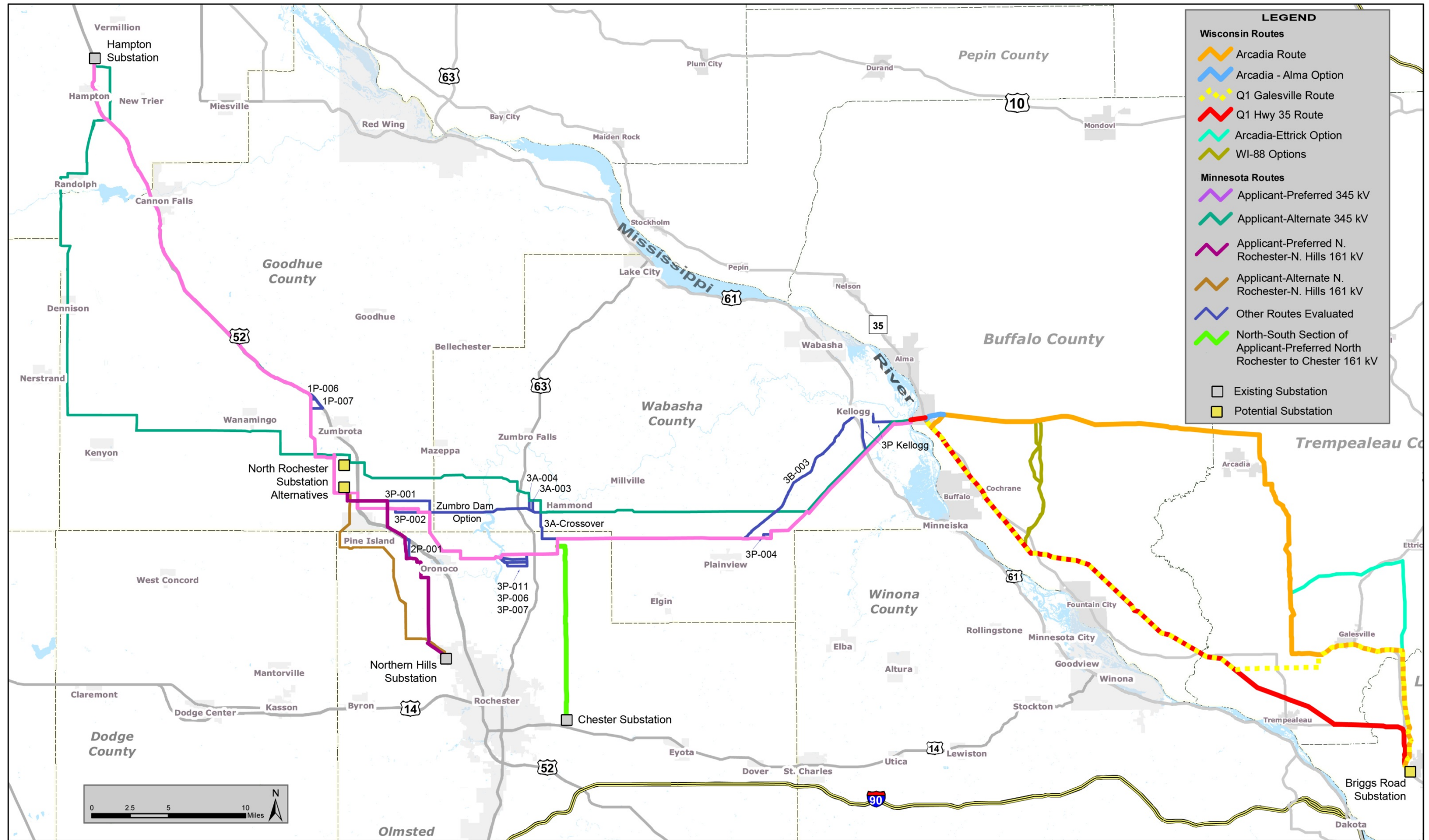
Rural Utilities Service

**Contact Person**

For additional information on this Record of Decision or the Environmental Impact Statement, please contact Ms. Stephanie Strength, Environmental Protection Specialist, at USDA, Rural Utilities Service, 1400 Independence Avenue, SW., Room 2244, Stop 1571, Washington, D.C. 20250-1571; telephone: (970) 403-3559; fax: (202) 720-0820; or e-mail: [stephanie.strength@wdc.usda.gov](mailto:stephanie.strength@wdc.usda.gov).



**Attachment A: Selected Alternative.**



**Attachment B: Alternatives Evaluated in Detail.**

## ATTACHMENT C: RESPONSES TO COMMENTS ON THE FINAL EIS

Agency or Organization	Comment	Response
USFWS	The USFWS re-iterated its concerns regarding potential impacts to migratory birds, the importance of coordination with USFWS and state resource agencies, and RUS' responsibility to comply with the Migratory Bird Treaty Act.	USFWS concerns have been incorporated into the Final EIS. Mitigation measures are summarized in Attachment E.
USFWS	The USFWS summarized the requirements of the Bald and Golden Eagle Protection Act.	Based on previous comments from the USFWS, these requirements have been incorporated into the Final EIS. Mitigation measures relative to the Bald and Golden Eagle Protection Act are summarized in Attachment E.
USFWS	Regarding the uncertainty of impacts to Pittman-Robertson grant funded lands, USFWS requests to be informed at the earliest possible opportunity if Pittman-Robertson grant funded lands will be impacted.	Since the publication of the Final EIS, the Applicants have determined that the Proposal can be constructed with no impacts to Pittman-Robertson grant funded lands.
USEPA	The commenter requests additional rationale for the eastern-most portion of the preferred alternative, from just north of Fountain City, WI to Holmen, WI, due to the "potential for negative environmental impacts to visual, wetland, avian and habitat." This route section is part of the Q1-Galesville Route.	<p>The rationale for RUS' preferred alternative, which was identified, based on cost-effectiveness, technical feasibility, and minimization of environmental impact, is summarized in the Final EIS executive summary and detailed in Sections 2.5 and 2.6 of the Final EIS. Impacts are summarized in the executive summary and detailed in Section 3 of the Final EIS. Impacts for the specific resources and Proposal section identified by USEPA in the comment are included in the EIS analyses and are summarized below.</p> <p><b>Visual impacts:</b> Visual impacts were of most concern at locations where the Proposal paralleled or crossed the Great River Road National Scenic Byway (GRRNSB). The applicants evaluated these areas through photo simulations, which were included as Appendix K of the Final EIS. The part of the Proposal for which USEPA requests additional information does not affect the GRRNSB and was therefore not included in the photo simulations. In the section of interest to USEPA, the Proposal passes primarily through farmland, with some wooded</p>

Agency or Organization	Comment	Response
		<p>tracts on the bluff tops. To minimize impacts, the Proposal primarily follows existing transmission lines, however, as described in the EIS, it will be taller and therefore more of a visual intrusion than the existing line. The Proposal diverges from the Q1 transmission route at the Black River Bottoms to reduce impacts to the Black River Bottoms and the Upper Mississippi River National Wildlife and Fish Refuge (UMRNW&amp;FR). To avoid this area, the Proposal will pass by the more populated area at Galesville. As discussed in the EIS, the primary visual impact will be to residents living near the transmission line. For more detail, please refer to Section 3.7 of the Final EIS.</p> <p><b>Wetland impacts.</b> Wetlands, including sensitive wetlands are described individually in the Final EIS, Section 3.5.1.3. Wetland impacts are detailed in Section 3.5.2.3 of the Final EIS and summarized in Tables 2-6 (Minnesota), 2-7 (Wisconsin) and 2-8 (preferred). As shown in Table 2-8, wetland impacts from the Proposal are as follows: 0.12 acre of permanent impact, 16 acres of temporary (construction) impact and 49 acres permanently converted from forested to emergent wetlands. As shown in Table 2-7, the permanent and temporary impacts associated with the Q1-Galesville Route are comparable to the permanent and temporary impacts associated with the other Wisconsin alternatives. Among the Wisconsin alternatives, the Q1-Galesville Route has the smallest acreage of wetlands permanently converted from forested to emergent.</p> <p><b>Avian.</b> Section 3.5.1.4, pp. 262 to 286 and Section 3.5.2.4, pp. 304 - 320, contain in-depth discussions (with exhibits) of avian resources and potential avian impacts from the Proposal. The Q1-Galesville Route is discussed specifically. These discussions, which were also included in the Draft EIS, have additional detail added for the Final EIS based on comments from the USFWS. This assessment incorporates Appendix N of the EIS, Bird Collision Susceptibility Assessment, which includes relevant details of occurrence and distribution on the UMRNW&amp;FR of the 29 refuge-monitored avian species. For each of these species Appendix N also includes avian characteristics relevant to collision susceptibility, site-specific factors related to collision potential, and a summary of collision susceptibility based on the scientific literature. As requested by the USFWS, relevant available information on potential impacts from collision for 145 other avian species not monitored by the refuge was added to Appendix N for the Final EIS.</p>



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		<b>Habitat.</b> As discussed in Section 3.5.2.4 of the Final EIS, the primary impact for wildlife other than birds is habitat loss. Habitat loss for birds and other wildlife is discussed in Section 3.5.2.4.
USEPA	The commenter requests that RUS quantify the impacts related to the two new substations. (The comment refers to the Chester Substation and the Briggs Road Substation as preferred locations; however, the Chester Substation is existing. RUS assumes the commenter meant the North Rochester Substation.)	As the substations are part of the Proposal, the impacts from the new substations are included in the total impacts in Tables 2-6 (Minnesota), 2-7 (Wisconsin) and 2-8 (preferred).
USEPA	The commenter requests that RUS outline any mitigation measures for habitat losses associated with the substations.	As described in the Final EIS Section 2.4.2.4 and 2.6, both new preferred substation sites are located in existing agricultural crop fields (typically corn, soybeans and alfalfa). Because the habitat value of agricultural fields such as corn, soybean, and alfalfa fields is low, mitigation for habitat loss for agricultural crop fields is not addressed in the EIS.
USEPA	The commenter requests that wetland impacts and mitigation be summarized in the ROD.	Impacts from the preferred alternative (which includes wetland impacts) are summarized in Table 3 of the ROD and mitigation measures and other measures to reduce impacts (including those for wetlands) are summarized in Attachment E. Specific locations for mitigation have not yet been determined, but will be determined through coordination with the USACE.
USEPA	The commenter believes that the mitigation ratios for wetland conversions are inconsistent with amount of compensatory mitigation specified by 40 CFR 230 and 33 CFR 332.	The amount of required compensatory mitigation is specified in 33 CFR 332.3(f). This section specifies that the amount of compensatory mitigation “must be, to the extent practicable, sufficient to replace lost aquatic resource functions” and that when “appropriate functional or condition assessment methods or other suitable metrics are available, these methods should be used where practicable to determine how much compensatory mitigation is required.” The minimum one-to-one ratio applies to cases where appropriate assessment methods or metrics are not available or not practicable [33 CFR 332.3(f)(1)]. In the case of conversions of forested wetlands to emergent or shrub/scrub wetlands, there is

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		no loss of wetland acreage. The USACE must therefore assess the loss of aquatic resource functions associated with the conversion (i.e., the net difference between the aquatic resource functions associated with a forested wetland compared to an emergent or shrub/scrub wetland at the same location). While the USACE will assess these on a case-by-case basis, in the USACE's experience, mitigation is likely to be 0.25:1 for replacement in kind and 0.5:1 for other replacement, as stated in the Final EIS.
USEPA	The commenter requests a description of impacts to state-listed species in the ROD.	Potential impacts to federally-listed species are included in Table 3 in the ROD. As described in the Final EIS, no impacts to any other state-listed species are expected.
USEPA	The commenter requests the following mitigation measure: span all stream and river crossings.	As described in the Final EIS (e.g., Section 3.2.3.1) and summarized in Attachment E of the ROD, all streams will be spanned.
USEPA	<p>In comments on the Draft EIS, the commenter requested consideration of measures to reduced exposure to diesel exhaust. These comments from the USEPA on the Draft EIS are included in the Final EIS.</p> <p>In comments on the Final EIS, the commenter requested that these measures be included as mitigation measures "to reduce risk to construction workers, communities and sensitive populations."</p>	<p>In response to the comments on the Draft EIS, the Final EIS was revised to include a discussion of USEPA's requirements for low-sulfur and/or ultra-low-sulfur diesel fuel (Section 3.3.3).</p> <p>Regarding construction workers, the Occupational Safety and Health Administration (OSHA) is responsible for establishing standards for construction health and safety. These can be found at 29 CFR 1926, and will be required to be implemented by the contractors who will be performing the work. OSHA requirements are not typically addressed as part of the NEPA process.</p> <p>Regarding communities and sensitive populations, as discussed in the Final EIS Section 3.3.1.1, under the Clean Air Act, USEPA is responsible for identifying pollutants that may endanger public health or welfare. The USEPA is to set standards where "the attainment and maintenance are requisite to protect public health" with "an adequate margin of safety," to protect "sensitive" populations such as children, the elderly, and people with heart or lung disease. The USEPA achieves this mission through the establishment of the National Ambient Air Quality Standards (NAAQS) (40 CFR 50). Based on current USEPA criteria, exhaust emissions from construction would not be expected to result in any exceedances of the NAAQS (Final EIS Section 3.3.2.1). Therefore, additional</p>

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		mitigation would not be needed.
USEPA	The commenter requests collaboration with the USFWS, WDNR and MDNR to protect avian species from collisions with power lines.	Mitigation measures for avian impacts are described in Section 3.5.3.4 of the Final EIS and summarized in Attachment E of the ROD. The Final EIS describes the collision risk assessment (avian mitigation plan) and details of coordination and follow-up with USFWS, WDNR and MDNR. Since the publication of the Final EIS, the Applicants have had additional meetings with the USFWS, the USACE and the MDNR regarding avian mitigation.
USEPA	The commenter requests that RUS “incorporate revised measures from the [APLIC] guidelines to the fullest extent possible for the life of the proposed project.”	As requested by USFWS, the Final EIS was revised to include the following statement regarding potential future APLIC guidance: “The Applicants will consider this guidance as it relates to maintenance of the Proposal, when it becomes available.”
USEPA	The commenter requests coordination with USFWS, WDNR and MDNR to “refine the Vegetative Management Plan” described in Section 3.5.3.2 of the Final EIS. The commenter believes the vegetative management plan should be expanded for tree mitigation.	<p>Except for the small portion of the Proposal that directly affects the UMRNF&amp;WR, near the Mississippi River crossing, vegetative management (as described in the referenced Final EIS Section) is outside the authority of the USFWS; therefore USFWS would not be involved in development or refinement of a vegetative management plan for the Proposal. As discussed in Section 3.5.3.2 of the Final EIS, the Minnesota Route Permit requires the permit holder to develop a vegetative management plan and submit it to the State; therefore, coordination with the State of Minnesota is already incorporated into the Proposal. As noted in the Final EIS Section 3.5.3.2, Wisconsin regulations require implementation of BMPs to control the spread of invasive species. These BMPs also require post-construction monitoring. Thus, coordination with the State of Wisconsin regarding vegetative management is already incorporated into the Proposal.</p> <p>Regarding tree mitigation, see the discussion added to the Final EIS in Section 3.5.3.1.</p>
USEPA	The commenter recommends implementation of “noise monitoring and contingent noise mitigation measures to reduce impacts to construction	As noted in the comment on diesel exhaust, OSHA is responsible for establishing standards for construction health and safety, including worker noise protection. These regulations can be found at 29 CFR 1926, and will be required to be implemented by the contractors who will be performing the work. OSHA requirements are not typically addressed as part of the NEPA process.

Agency or Organization	Comment	Response
	workers.”	
USEPA	The commenter recommends “minimizing impacts to the Great River Road Scenic Byway view-shed by working with WDNR and WisDOT.”	Since project inception, the Applicants have worked with WisDOT and the Mississippi River Parkway Commission to identify impacts and mitigation measures specific to the Wisconsin portion of the GRRNSB. These are detailed in Section 3.7.3 of the Final EIS and are also included in Attachment E of the ROD. The GRRNSB is not under the authority of the WDNR.
Federal Highway Administration (FHWA)	The FHWA stated that it has no comments on the Final EIS or the Proposal.	Statement noted.
Minnesota Pollution Control Agency (MPCA)	The MPCA stated that it had no comments on the Final EIS and noted that the Applicants are responsible for obtaining permits and complying with permit conditions.	Statement noted.
Dakota County	The county noted that it “found nothing in the EIS that is factually incorrect or that creates significant concerns.”	Comment noted.
Wisconsin Mississippi River Parkway Commission (WIMRPC)	The WIMRPC felt that RUS relied too heavily on the Applicant-provided information and the Wisconsin EIS, and did not complete an independent analysis.	As stated in the Final EIS, RUS used information developed by others, after independent verification. In its analysis of potential impacts to the GRRNSB, RUS used information developed by others in addition to information RUS developed, and concluded that the overall impacts of the Q1-Galesville Route were less than the impacts of other alternatives that did not affect the GRRNSB. The analysis is detailed in the Final EIS. No changes are needed.
WIMRPC	The WIMRPC believes that the Final EIS considered only the highway itself and not the corridor through which it passes.	The Final EIS evaluated the visual impacts from the highway, which includes the corridor. No changes are needed.
WIMRPC	The WIMRPC believes there was insufficient background	Section 3.7.1.1 of the Final EIS provides a discussion of the history and background of the GRRNSB. RUS believes the detail is commensurate with the

Agency or Organization	Comment	Response
	information about the GRRNSB in the Final EIS.	potential impacts. No changes are needed.
WIMRPC	The WIMRPC stated that there was no discussion of pole types or the amount of clearing that would be required, and insufficient analysis of visual impacts.	Pole types are discussed in the Final EIS, Section 2.4.2.1. Mitigation measures specific to the Wisconsin portion of the GRRNSB, including pole types, are discussed in the Final EIS, Section 3.7.3. Impacts are discussed in the Final EIS, Section 3.7.2, and presented visually in the Applicants' visual simulation, included as Appendix K of the Final EIS. Tree clearing is included in the total summaries, in Table 2-7 of the Final EIS. No changes are needed.
WIMRPC	The WIMRPC questioned why an offset to avoid impact to the scenic easements was included at Highway 35 at the Black River Bottom, but not at the northern end of the Proposal area in Wisconsin.	At the Black River Bottoms, the route would cross a forested area that currently has no transmission lines and minimal visual intrusion. As described in the Final EIS, this is not the situation at the northern end of the Proposal area in Wisconsin.
WIMRPC	The WIMRPC does not agree with RUS' assessment of visual impacts, and also believes that the rating of "poor" by WisDOT's consultant should not have been included.	RUS acknowledges WIMRPC's disagreement with its analysis. RUS believes the rating and description from the WisDOT consultant are relevant to the analysis. No changes are needed.
WIMRPC	The WIMRPC requests that mitigation be carefully evaluated and implemented.	Mitigation is discussed in detail in the Final EIS, Section 3.7.3, and summarized in Appendix E of this ROD.
Private party.	Commenter believes that Dairyland's Articles of Incorporation do not allow it to apply for financing from RUS for the Proposal.	RUS' loan review, which is separate from the NEPA process, is discussed in Section VIII of this ROD. RUS will comply with all applicable laws in its decision regarding Dairyland's loan application.
Private party.	Commenter states that RUS did not evaluate the "no build" alternative.	The "no build" alternative is another name for the no action alternative, which is evaluated in the EIS, as required under NEPA.

**ATTACHMENT D: FINAL PROGRAMMATIC AGREEMENT**

## ATTACHMENT E: SUMMARY OF MITIGATION AND OTHER MEASURES TO REDUCE IMPACTS

Resource	Mitigation Measures
Soils and Geology	Use of runoff and erosion control best management practices (BMPs) will be required as part of the National Pollution Discharge Elimination System (NPDES) storm water permit approval process administered by the Minnesota Pollution Control Agency (MPCA) and by the WDNR in Wisconsin. Spill prevention and response procedures will be required by these permits.
	A Storm Water Pollution Prevention Plan (SWPPP) will be required for construction activities. Typical BMPs that would be part of a SWPPP include, but are not limited to: silt fencing, check dams, erosion control blankets, limitations on areas of exposed soil, and seeding of exposed soil surfaces.
	BMPs will be inspected and maintained throughout Proposal construction.
	Final stabilization of the disturbed areas with perennial vegetative covers will be required.
	In areas of temporary construction disturbance, topsoil will be stockpiled, protected and re-used. This is not specifically required in the Wisconsin Route Permit; however, the Applicants will ensure that it is included in a pre-construction submittal to the appropriate agency.
	De-compaction methods such as chisel plowing will be used as appropriate.
	Material excavated from foundations will be removed and disposed off-site (except in cases where the landowners specifically requests that the materials be left on site, and as allowed by law). This is not specifically required in the Wisconsin Route Permit; however, the Applicants will ensure that it is included in a pre-construction submittal to the appropriate agency.
	Standard engineering practices to prevent slope failures and rockfalls will be employed.
Water Resources	In general, construction equipment will not permitted to be driven across waterways except under special circumstances, and even then, only after discussion with the appropriate resource agency.
	All streams will be spanned by the transmission lines.
	Placement of structures within 100-year floodplain zones will be avoided unless there are no feasible alternatives. This is not specifically required in the Wisconsin Route Permit; however, the Applicants will ensure that it is included in a pre-construction submittal to the appropriate agency.
	BMPs and the SWPPP will be required for the NPDES storm water construction permit.

Resource	Mitigation Measures
	<p>When construction is located near (within one mile) of certain protected waters, such as trout streams or waters that have been designated as impaired, additional precautions, erosion controls, and sediment removal practices are required.</p> <p>Federal spill prevention regulations require that if the aggregate above ground storage capacity of a facility is 1,320 gallons or more and a spill could potentially discharge to Waters of the U.S., the facility needs to be covered by a spill prevention, control and countermeasure (SPCC) plan, required to prevent discharge of oil to Waters of the U.S.</p> <p>For areas where construction impacts cannot be avoided, low-growing native tree and shrub buffers along these streams will be allowed to regrow, so that the benefit provided can be restored. This is not specifically required in the Route Permits; however, the Applicants will ensure that it is included in a pre-construction submittal to the appropriate agencies.</p>
Air Quality and Climate	<p>Measures required by the stormwater permit and associated BMPs to reduce soil erosion will also reduce dust generation.</p> <p>The substation equipment that will be installed as part of the Proposal includes state-of-the-art circuit breakers designed to minimize emissions of sulfur hexafluoride, a potent greenhouse gas that is used as an insulator for electrical equipment.</p> <p>USEPA requirements for low-sulfur and/or ultra-low sulfur diesel fuel, coupled with required advanced emissions control technologies in new engines, are expected to result in decreases in exhaust emissions of more than 90%.</p>
Acoustic Environment	<p>The Proposal has been sited away from sensitive receptors to the extent practicable. Buffers are provided at substations.</p>
Biological Resources	<p>Measures to reduce the spread of invasive species would be addressed in the Vegetative Management Plan required for work in Minnesota and in the construction BMPs required for Wisconsin.</p> <p>Access through wetlands will be required during transmission line construction. Methods that may be used to minimize the impact associated with access include, but are not limited to: construction under frozen conditions (i.e., ice roads); use of low ground pressure equipment and construction mats; and restrictions on the length and width of the access path.</p> <p>The USACE requires wetland mitigation for permanent wetland impacts. The required mitigation is determined based on consultation with the USACE. However, mitigation ratios are likely to start at 2.5:1 for permanent impacts associated with conversion from wetland to non-wetland. Reductions in the mitigation ratio down to a minimum 2:1 may be provided for suitable compensatory mitigation. For conversions of forested wetland to emergent or shrub/scrub, mitigation is likely to be 0.25:1 for</p>



Resource	Mitigation Measures
	replacement in kind and 0.5:1 for other replacement.
	Wetlands would not be used for staging areas.
	Wetlands will be spanned whenever feasible. In cases where the wetland area is too wide to be spanned, the use of single-pole design and self-supporting structures (without guy wires) will be used to reduce impacts to wetlands by creating the smallest feasible footprint, except for specific cases where MDNR, WDNR and/or the USFWS have requested multiple pole construction for other mitigation. For example, multiple pole construction, which allows for reduced pole height, will be used in the vicinity of the Mississippi River crossing and other areas to reduce visual impact and the potential for bird collisions. Changes from the single-pole construction are not addressed in the Route Permits and will be coordinated by the Applicants with USFWS, MDNR and WDNR as applicable.
	Since completion of the Final EIS, the Applicants have met with the USFWS, the USACE and the MDNR and have further assessed collision risk and have developed a draft avian mitigation plan with recommendations for locations of bird flight diverters. The USFWS is reviewing this plan, as well as assessing two final design options at the crossing of the UMRNW&FR that will best balance resource protection. The Applicants will continue to coordinate with the USFWS. An avian mitigation plan is also included in the Minnesota Route Permit.
	The use of existing transmission line corridors, and the co-location of these lines with the Proposal, will reduce the risk of bird collision impact by reducing the number of transmission lines (compared to construction of new lines on new ROW).
	The use of self-supporting structures without guy wires will reduce the potential for bird collision.
	The National Bald Eagle Management Guidelines will be followed to the greatest extent practicable. The Applicants will coordinate with the USFWS.
	Bald eagle nest surveys will be conducted in the Proposal area prior to construction to identify any bald eagle nests in close proximity to the proposed transmission line. If nests are identified, the Applicants will work with the USFWS eagle coordinator to assess what, if any, measures are needed to avoid impact. Applicants will work with USFWS to obtain a permit under the Bald and Golden Eagle Protection Act, if deemed necessary.
	The Applicants will conduct additional pre-construction surveys if habitat suitable for federal or state-listed threatened or endangered species would be impacted, or if more information is needed to address areas with limited data.
Land Resources	Farmland impacts will be avoided to the extent feasible by the single-pole footprint and by using maximum practical span lengths. RUS has completed coordination with the National Resource Conservation Service regarding farmland conversion.

Resource	Mitigation Measures
	Impacts to the UMRNW&FR will be reduced by minimizing the length of Refuge crossing, by using an existing transmission line corridor, and by minimizing additional ROW requirements to the extent feasible while also keeping the height under 200 feet to avoid painting and lighting to meet FAA requirements.
	Impacts from Route 3P on the Richard J. Dorer State Forest, the McCarthy Lake WMA and associated biological sites will be minimized by following an existing transmission line corridor, by use of the single pole structure where appropriate, and by maximizing span lengths. In addition, the existing transmission line will be removed and added to the Proposal line. Single pole construction will be used except for specific cases where MDNR, WDNR and/or the USFWS have requested multiple pole construction for other mitigation. For example, multiple pole construction may be used to reduce visual impact and the potential for bird collisions.
	Impacts to the Douglas Trail area will be minimized by locating the transmission line right of way outside of the trail right-of-way, thus avoiding tree clearing along the trail.
	The Applicants will work with the MDNR during the detailed design and permitting stages to develop a mitigation plan that will minimize the loss of trees in Minnesota State-owned lands.
	The Proposal was designed to avoid impact to Land and Water Conservation Fund (LAWCF) land and to Pittman-Robertson Act land. Since the completion of the Final EIS, the Applicants have determined that the Proposal can be constructed without impact to LAWCF and Pittman-Robertson land.
Visual Resources	Use of existing transmission line and roadway ROW, including the removal of existing transmission lines and co-location of these lines with the Proposal, will mitigate visual impacts.
	The maximization of ROW sharing with existing linear corridors (transmission lines, roadways, and railroads) minimizes the proliferation of visual impacts to both open spaces and developed areas.
	In identifying alternatives for evaluation the selected alternative, routing through areas with high-quality, distinctive viewsheds, including scenic highways, river crossings, and similar areas was avoided where feasible.
	Where feasible, rivers and streams are crossed using the shortest distance possible (perpendicular to the water body).
	Uniform structure types will be used to the extent practical. The height of the structure may be reduced (including using the shorter H-frame structures) to minimize impacts within scenic areas.
	Lines will be carefully constructed so as to prevent any unnecessary destruction, scarring or defacing of the natural surroundings in the vicinity of the work.
	Placement of lines in close proximity to residential areas was avoided to the extent feasible.
	Buffers will be provided around substations.

Resource	Mitigation Measures
	Existing 161 kV and 69 kV transmission lines will be removed from a three-mile segment adjacent to the GRRNSB in Wisconsin and re-routed farther away from the road.
	Structure types along a segment south of Alma along the GRRNSB will be modified to narrow the ROW to retain a screen of trees.
	The number of poles located in scenic easements and the length of GRRNSB scenic easements containing transmission facilities will be reduced from existing conditions.
	Along the GRRNSB, the proposed transmission line will be consolidated with an existing transmission line on new structures.
	Along the GRRNSB, alternative pole finishes such as galvanized (gray) or self-weathering (brown) may be used to allow the structures to better blend into the surrounding landscape. The Wisconsin Mississippi River Parkway Commission (WI-MRPC) will make the final decision on pole finishes. (This item is not included in the Route Permits).
	Along the GRRNSB, pole locations were moved as requested by WisDOT to make the poles less visible.
	Along the GRRNSB, in locations requested by WisDOT, the Applicants have agreed to alternative structure designs to make the poles less visible.
	As identified in the Wisconsin route permit, the design incorporates removal of existing transmission line facilities from scenic easement areas when possible.
Transportation	Implementation of the DOTs' Utility Accommodation Plans will minimize conflicts with roadway use and users.
	The Applicants will incur the cost of traffic control.
	The Proposal alternatives incorporate avoidance of airspace impacts where feasible.
	If potential electrical interference modeling suggests potential impacts to railroads, the Applicants will work with the railroad to design and install mitigating equipment.
	In any case where the safe use of an airstrip in active use would be compromised by construction of the transmission line, the Applicants will be responsible for relocation and would work with the owner of the air strip to find a suitable site to relocate the airstrip. Determination of "safe use" and "active use" would be based on the Applicants' coordination with the applicable State DOT, the Federal Aviation Administration and potentially local authorities with jurisdiction. (This item is not included in the Route Permits).

Resource	Mitigation Measures
Cultural Resources	Because not all affected historic properties will be known prior to construction, the PA establishes procedures to guide consultation, the identification and evaluation of historic properties, the assessment of adverse effects to them, and the development of appropriate mitigation for any adverse effects. The Applicants are signatory to the PA.
	The use of self-supporting single-pole structures minimizes the potential for impacts to archaeological resources by using the smallest feasible footprint. This design also offers the flexibility of making small field changes in the pole location to avoid impacts.
	It is anticipated that all impacts to archaeological resources can be avoided by adjusting the locations of poles.
	Cultural resources will continue to be assessed as consultation under Section 106 of the National Historic Preservation Act proceeds, and will continue through implementation of the PA that has been developed to conclude review under Section 106 (included as Appendix D of this ROD).
Public Health and Safety	Routes were identified to minimize proximity to residences, and no residences are allowed within 75 feet of the 345 kV line. Buffers will be provided around substations.
Socioeconomics	The use of existing transmission line and roadway ROW helps minimize socioeconomic impacts, compared to construction transmission lines on new ROW. Where existing transmission line ROW is used, the removal of existing transmission lines and co-location of these lines with the Proposal further reduces socioeconomic impacts.
	Impacts to agriculture are minimized by use of the single-pole, self-supporting structures, and the use of long span lengths.
	The easement payment is considered compensation for property value impacts. Many owners also have the option to sell their entire property to the utility, under state law.
	Construction debris will be removed from private property and disposed off-site. This is not specifically required in the Wisconsin Route Permit; however, the Applicants will ensure that it is included in a pre-construction submittal to the appropriate agency.
	If a temporary road is to be removed, the land upon which the road is constructed will be returned to its previous use and restored to equivalent condition prior to construction. This is not specifically required in the Wisconsin Route Permit; however, the Applicants will ensure that it is included in a pre-construction submittal to the appropriate agency.

Resource	Mitigation Measures
	Once post-construction reclamation is completed, landowners are contacted by the Applicants' right-of-way agent to determine if the clean-up measures have been finished to their satisfaction and if any other damage may have occurred. If damage has occurred to crops, fences, or the property, the Applicants would negotiate with the affected landowner, under terms outlined in the easement agreement, to determine an acceptable compensation for the damage.
	Depending upon the wishes of the landowner, compensation may be monetary or may involve hiring a contractor to restore the damaged property as near as possible to its original condition.
	Both Minnesota and Wisconsin regulations require agriculture-specific mitigation plans.
	The Applicants will work with individual landowners to address pole placement.
	The Applicants will consult with the Landowner on drain tile locations and attempt to probe to locate drain tiles. Damages to drain tiles will be repaired by the Applicants as described in detail in the agriculture mitigation plan.
	Compaction and rutting will be remediated as described in the agriculture mitigation plan.
	Terraces and grassed waterways damaged by construction or maintenance activities will be restored to the condition they were in prior to the damage.
	Compensation for damages to agricultural land will be made as described in the agriculture mitigation plan.
	In Minnesota, as required by the State Agricultural Mitigation Plan, the Applicants will employ a qualified agricultural monitor to audit compliance with the agriculture mitigation plan, and a utilities inspector who will verify compliance with the plan.
	At substation facilities, the Applicants will work with adjacent landowners, if requested, to prevent spread of weeds from the substation area to adjacent agricultural land.
	The Applicants will work with landowners to coordinate down time (and compensation, if appropriate) for operational (or soon to be operational) irrigation equipment that will be affected by construction and/or maintenance activities.
	Temporary roads will not impede drainage and will be constructed to mitigate soil erosion on or near the temporary roads.

Resource	Mitigation Measures
	The Applicants will employ additional measures on or near organic agricultural land, as needed, as described in the agriculture mitigation plan, to ensure consistency with the requirements of the National Organic Program.
	In accordance with the agriculture mitigation plans, the Applicants will work with landowners to temporarily change farming practices, such as moving animals to another pasture or changing manure application schedule.
	In Wisconsin, the Applicants must work with the applicable distribution utility to test for stray voltage at each agricultural, animal confinement operation along the approved route and after the Proposal is energized.

**PROGRAMMATIC AGREEMENT AMONG**

**The U.S. Department of Agriculture, Rural Utilities Service (RUS)**

**The U.S. Army Corps of Engineers (USACE)**

**The U.S. Fish and Wildlife Service (USFWS)**

**The Minnesota State Historic Preservation Office**

**The Wisconsin State Historic Preservation Office**

**REGARDING**

**The Hampton – Rochester – La Crosse 345-kV Transmission System  
Improvement Project**

**In Dakota, Olmsted, Goodhue, and Wabasha Counties in Minnesota and Buffalo,  
Trempealeau and La Crosse Counties in Wisconsin**

**WHEREAS**, the Rural Utilities Service (RUS) is authorized to provide assistance in the development of infrastructure in rural America under its Electric Program in accordance with the rural Electrification Act of 1936 (7 U.S.C. §§ 901-950b); and

**WHEREAS**, under this program RUS receives applications for financial assistance to improve the transmission of electricity to rural areas; and

**WHEREAS**, Dairyland Power Cooperative (Dairyland), Xcel Energy, Southern Minnesota Municipal Power Agency, Rochester Public Utilities, WPPI Energy, Inc. and Dairyland Power Cooperative (Utilities) propose to construct approximately 141 miles of new 345-kilovolt (kV) transmission line between Hampton, Minnesota and La Crosse, Wisconsin; two connecting 161 kV lines in the Rochester, Minnesota area; associated aboveground facilities, such as transmission facilities and substations; and ancillary facilities, such as temporary work areas and contractor yards; and reconstruction of Dairyland's 161 kV line from Alma to North La Crosse (Q1 Rebuild), to the extent it is co-located with the 345-kV line (the proposed project); and

**WHEREAS**, Dairyland has applied to RUS for financial assistance for its part of the construction of the proposed project; and

**WHEREAS**, RUS may fund the proposed project, thereby making it an undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470f, and its implementing regulations "Protection of Historic Properties" (36 CFR Part 800); and

**WHEREAS**, the USACE will be evaluating a permit application for the proposed project to place structures in, under, or over navigable waters of the U.S. pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403), and place dredged or fill material in waters of the U.S. pursuant to Section 404 of the Clean Water Act (33 U.S.C. § 1344; see 33 C.F.R. Part 323), and

**WHEREAS**, authorization of work or structures in waters of the U.S. by USACE is an undertaking subject to review under Section 106 of NHPA and 36 CFR Part 800; and

**WHEREAS**, the USFWS must issue a permit for crossing the Upper Mississippi River National Fish and Wildlife Refuge, and

**WHEREAS**, issuance of a permit to cross the Upper Mississippi River National Fish and Wildlife Refuge is an undertaking subject to review under Section 106 of NHPA and 36 CFR Part 800; and

**WHEREAS**, RUS, USACE, and USFWS have agreed that RUS will be the lead federal agency for purposes of Section 106 of the NHPA in accordance with 36 CFR § 800.2(a)(2); and

**WHEREAS**, the proposed project will be constructed generally within a 150-foot-wide right-of-way (ROW) for the 345-kV line and within an 80-foot-wide ROW for the 161-kV line; and

**WHEREAS**, RUS has determined that the area of potential effects (APE) for the undertaking for direct effects consists of all areas of ground disturbance resulting from construction, operation and maintenance of the proposed project, including, but not limited to access roads, substation and transmission facilities, environmental crossings, temporary work areas and contractor yards, and other appurtenant facilities, whether contiguous with the proposed project's route or not; and

**WHEREAS**, RUS has determined that the APE for indirect (visual) effects for the undertaking will extend for 1,000 feet from the transmission line centerline and 1,000 feet from permanent above ground proposed project-related substation and transmission facilities, and other appurtenant facilities, whether contiguous with the route or not; and

**WHEREAS**, RUS, in consultation with the Minnesota and Wisconsin State Historic Preservation Offices (SHPO), has determined that the proposed project could have an adverse effect on properties listed in or eligible for listing in the National Register of Historic Places (NRHP); and

**WHEREAS**, RUS is phasing identification and evaluation of historic properties and application of the criteria of adverse effects in accordance with 36 CFR § 800.4(b)(2) and 36 CFR § 800.5(a)(3), respectively, because the proposed project alternatives consist of corridors covering large land areas; and

**WHEREAS**, in accordance with 36 CFR § 800.14(b)(1)(ii), execution of a Programmatic Agreement (PA) is appropriate because effects on historic properties cannot be fully determined prior to approval of the proposed project; and



**WHEREAS**, RUS invited the tribes listed in Attachment A to participate in government-to-government consultation for the proposed project; and

**WHEREAS**, RUS has consulted with the Leech Lake Band of Ojibwe, the Little Traverse Bay Band of Odawa Indians, the Oneida Nation of Wisconsin and the Stockbridge-Munsee Tribe, but these tribes have decided to discontinue consultation; and

**WHEREAS**, RUS has consulted, and will continue to consult, with the Ho-Chunk Nation, the Keweenaw Nation, the Mille Lacs Band of Ojibwe, and the Shakopee Mdewakanton Sioux (Consulting Tribes), and has invited these tribes to concur in this PA and the Mille Lacs Band of Ojibwe Indians have stated they will not be a concurring party to the PA; and

**WHEREAS**, on July 27, 2012 RUS has notified the Advisory Council on Historic Preservation (ACHP), in accordance with 36 CFR § 800.6(a)(1)(i)(C), providing the specified documentation; and

**WHEREAS**, on August 16, 2012 ACHP had not responded to the invitation to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

**WHEREAS**, the terms used in this PA are defined in 36 CFR § 800.16;

**NOW, THEREFORE**, RUS, USACE, USFWS, and Minnesota and Wisconsin SHPOs agree that the undertaking will be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

## **STIPULATIONS**

RUS, USACE and USFWS, as appropriate, will ensure that the following stipulations are carried out.

### **I. CONDITIONS**

- A. RUS will ensure that the terms of this PA have been implemented prior to the start of construction on a project construction spread basis. The anticipated dates of agency review of the information (obtained in accordance with Condition III) and anticipated construction start for each defined Construction Spread of the Hampton – Rochester – La Crosse 345 kV transmission line are as follows:

Construction Spread of the Hampton–Rochester–La Crosse 345 kV Project		
Approximate Limits of Construction Spread	Anticipated Agency Review	Anticipated Construction Start
North Rochester – Northern Hills, MN (161kV, 18 miles)	December 12, 2012	January, 2013
North Rochester – Miss. River, MN (345kV, 57 miles)	May 10, 2013	July, 2013
Mississippi River Crossing, WI (345kv, 1.5 miles)	August, 9, 2013	August, 2013
Mississippi River – Briggs Road, WI (345kV, 47 miles)	March 16, 2014	April, 2014
North Rochester – Chester, MN (161kV,12 miles)	September 12, 2014	November, 2014
Tremval – Mayfair & Marshland – Genoa, WI (161kV, 2.3 miles)	September 12, 2014	November, 2014
Hampton – North Rochester, MN (345kV, 36 miles)	December 10, 2014	December, 2014

## II. PROFESSIONAL STANDARDS

- A. The archeological studies and work required under the terms of this PA will be carried out by or under the direct supervision of a professional who, at a minimum, meets the U.S. Secretary of the Interior's *Professional Qualifications Standards* (48 FR 44716, September 29, 1983) in archeology or architectural history, as appropriate.
- B. Studies of traditional resources that are of cultural and religious significance to the Consulting Tribes will be carried out by or under the direct supervision of a person identified by Dairyland in consultation with the appropriate Consulting Tribes, and acceptable to RUS.

### III. IDENTIFICATION AND TREATMENT

- A. Identification: In accordance with 36 CFR § 800.4(a) through (c), RUS, USACE, USFWS, SHPOs, Consulting Tribes, and Dairyland will consult to identify the appropriate level of effort needed to identify historic properties, including those to which Consulting Tribes attach religious and cultural significance. The level of effort for the study will meet the reasonable and good faith regulatory standard [36 CFR 800.6 and 800.4(b)].
1. In determining the level of effort for identification studies, RUS will be guided by:
    - a. The ACHP's guidance on conducting archeology under Section 106 of the NHPA (April 3, 2009).
    - b. Applicable guidance prepared by the USFWS (for refuge lands) and by the SHPOs in the respective states.
    - c. The U.S. Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation* (48 FR 44716), September 29, 1983).
  2. RUS will seek agreement with the federal agencies and the consulting parties on the scope of any proposed identification study. When RUS determines that the proposed identification study meets the reasonable and good faith regulatory standard, it will advise Dairyland in writing to implement the approved study.
- B. Upon completion of field testing/data gathering, and analysis, Dairyland will submit a draft report describing the findings of the identification study to RUS for review and approval.
1. The draft survey report will include a map or maps showing the APE and ROW along with the location of identified archeological, traditional or architectural resources. The draft report also will contain recommendations regarding the potential National Register of Historic Places (NRHP) eligibility of identified resources; identify those resources for which additional study might be needed; and make recommendations regarding treatment, including those measures that might avoid adverse effects.
  2. If RUS finds the draft acceptable, it will submit the identification report to the USACE, USFWS, and relevant SHPO and Consulting Tribes for review. The consulting parties will have thirty (30) days from receipt to provide written comments to RUS on the draft report. RUS will ensure that written comments submitted in a timely manner are considered by Dairyland in preparation of the final identification report.

- C. Avoidance: RUS, in consultation with the federal agencies, relevant SHPO, Dairyland, and Consulting Tribes will use the information contained in identification studies to identify measures that would avoid adverse effects to historic properties. Whenever deemed feasible by RUS, avoidance of adverse effects to historic properties will be the preferred treatment. RUS will seek agreement with consulting parties on avoidance measures. The Utilities will incorporate those avoidance measures deemed prudent and feasible by RUS into the proposed project plans and specifications.
- D. Evaluation: Wherever avoidance is not feasible, the Utilities, in consultation with the relevant SHPO, Consulting Tribes, and USACE and/or USFWS, as appropriate, will evaluate identified cultural resources by applying the NRHP criteria. If the parties cannot agree, Dairyland will submit the matter to RUS and USFWS, as appropriate, for resolution in accordance with 36 CFR § 800.4(c)(2). If the parties can agree, the Utilities will submit the completed evaluation to RUS and USFWS, as appropriate, for review and approval. The evaluation will include a description of the cultural resource, an explanation of why the NRHP criteria are or are not met, and map or maps to show the geographic relationship between historic properties and the APE.
- E. Criteria of Adverse Effect: If, on the basis of this evaluation, RUS, USACE and USFWS, as appropriate, determine that historic properties are located in the APE, they will consult with the relevant SHPO and Consulting Tribes to apply the criteria of adverse effect in accordance with 36 CFR § 800.5(a).
- F. Treatment: RUS will consult with the USACE and USFWS, as appropriate, in addition to the relevant SHPO and Consulting Tribes in accordance with 36 CFR § 800.6(a) to identify appropriate measures that are in the public interest to avoid, minimize or mitigate adverse effects to historic properties.
1. When agreement between RUS and the consulting parties can be reached on how to resolve the adverse effect, Dairyland will prepare a Treatment Plan describing the measures to be carried out, the manner in which they will be carried out, and a schedule for their implementation.
  2. In resolving the adverse effect to NRHP listed or eligible archeological resources, RUS and the consulting parties will not be limited to data recovery.
  3. When mitigation consists of or includes data recovery, the Treatment Plan will identify the specific research questions to be addressed by

data recovery with an explanation of their relevance, the archeological methods to be used, and provisions for public interpretation and education subject to restrictions established by 36 CFR § 800.6(a)(5).

4. The Utilities will submit the Treatment Plan to RUS, USFWS, and USACE, as appropriate, for review and approval. Prior to granting approval, RUS, USFWS, and USACE, as appropriate, will submit the Treatment Plan to the relevant SHPO and Consulting Tribes for review. These parties will have thirty (30) days from receipt to submit a written review. RUS, USFWS, and, USACE, as appropriate, will ensure that the approved Treatment Plan takes into account timely comments and recommendations submitted by the consulting parties.
5. RUS will ensure that the Utilities implement the approved Treatment Plan prior to beginning any construction activities.
6. If the agencies and consulting parties cannot agree on measures to resolve adverse effects, the dispute will be resolved in accordance with Stipulation IX.

#### IV. CURATION

- A. The Utilities will return all artifacts and materials recovered through implementation of the terms of this PA to the respective private landowner, unless the Utilities have obtained signed gift agreements deeding artifacts and materials to the state in which the land resides (i.e., either Minnesota or Wisconsin). The Utilities will request the landowners to donate the cultural material whenever possible and appropriate.
- B. If the Utilities have obtained signed gift agreements from private landowners deeding artifacts and recovered materials to the states of Minnesota or Wisconsin, then the Utilities will curate the artifacts. Such artifacts and materials will be submitted for permanent curation with the proposed project-related collections from public lands (see C. below) at a repository that meets federal standards.
- C. Any artifacts, materials, or records removed from public lands that are not subject to the Native American Graves Protection and Repatriation Act (NAGPRA) will be curated by the Utilities in accordance with 36 CFR 79, "*Curation of Federally-Owned and Administered Archeological Collections.*" The Utilities will submit such artifacts, materials, or records for permanent curation at a repository that meets federal standards.

- D. Any artifacts, materials, or records removed from public lands that are subject to the NAGPRA will be given immediately to the federal landowner for proper disposition under the appropriate agency's NAGPRA-related protocol.

## V. CONSTRUCTION MONITORING

The Utilities will use individual(s) approved by RUS, the applicable SHPO, the relevant Consulting Tribe, and USFWS and USACE, as appropriate, to monitor construction activities in close proximity to historic properties per the specific treatment measures developed under Stipulation III.F. Treatment. The construction monitors will be under the direct supervision of a professional who meets the requirements of Stipulation II for archeology. Unanticipated discoveries or effects will be treated in accordance with Stipulation VII.

## VI. CONFIDENTIALITY

RUS, USFWS, and USACE will protect information about historic properties of religious and cultural significance to Indian tribes, including location information or information provided by Indian tribes to assist in the identification of such properties, to the extent allowed by Section 304 of the NHPA, 36 CFR § 800.11(c), and other applicable laws and regulations, if any.

## VII. POST-REVIEW UNANTICIPATED DISCOVERIES

- A. If previously unidentified historic properties or unanticipated effects to historic properties are discovered during construction of the proposed project, the construction contractor will immediately halt all activity within one hundred (100) feet of the discovery, notify the Utilities of the discovery and implement interim measures to protect the discovery from looting and vandalism.
- B. Immediately upon receipt of the notification required in Stipulation VII.A, the Utilities will inspect the construction site to determine the extent of the discovery and ensure that construction activities have halted, clearly mark the area of the discovery, implement additional measures, as appropriate, to protect the discovery from looting and vandalism, and notify RUS, USFWS, USACE, the relevant SHPO and other Consulting Tribes.

C. Upon receipt of notification, RUS or USFWS as appropriate, will treat the discovery in accordance with 36 CFR § 800.13(b)(3) and (c).

D. Treatment of Human Remains

1. When the discovery contains human remains and is located on federal property, USFWS will comply with NAGPRA [25 U.S.C. 3001 et. seq.] and its implementing regulations (43 CFR Part 10). The Utilities will implement the procedures in Attachment C for inadvertent discoveries of NAGPRA human remains and cultural items on the Upper Mississippi River National Wildlife and Fish Refuge.
2. If the construction contractor for the Utilities believes that a discovery contains human remains and the discovery is not located on federal lands, the construction contractor will comply with Stipulation VII.A. Immediately upon receipt of such notification, the Utilities will comply with the procedures required by Minnesota Statutes Section 390.005 for discoveries in Minnesota, and the procedures required by Wisconsin Statutes Section 157.70 for discoveries in Wisconsin. At the request of the Wisconsin consulting party, the Wisconsin Burial Sites Preservation Law and associated administrative rules are included as Attachment B. However, the Utilities are responsible for compliance with the laws and regulations in effect at the time the work is completed. The following applies to discoveries in Minnesota:
  - a. The Utilities will notify the county coroner or medical examiner. Under the terms of this PA, Dairyland also will notify RUS, USFWS, USACE, the relevant SHPO, and Consulting Tribes of the discovery.
  - b. If the unidentified human remains are found outside of platted, recorded, or identified cemeteries and in contexts which indicate antiquity of greater than fifty (50) years, the coroner or medical examiner will notify the Minnesota Office of the State Archaeologist (OSA) and the Minnesota Indian Affairs Council (MIAC) in compliance with Minnesota Statute 307.08.
  - c. If the unidentified human remains are found outside of platted, recorded, or identified cemeteries and in contexts which indicate age of less than fifty (50) years, the coroner or medical examiner will handle the remains in accordance with Minnesota Statute 390.21.
  - d. Suspected human remains will not be disturbed further or removed until disposition has been determined by the OSA and the MIAC consistent with the guidance titled *State Archaeologist's Procedures for Implementing Minnesota's Private Cemeteries Act*. (Anfinson, 2008).

3. At all times human remains must be treated with the utmost dignity and respect, and in a manner consistent with the ACHP's *Policy Statement on the Treatment of Human Remains, Burial Sites and Funerary Objects* (February 23, 2007).

E. The Utilities will ensure that the requirements of Stipulation VII are incorporated into all construction contracts.

## VIII. REPORTING

A. Quarterly following the execution of this PA until construction is complete, the Utilities will submit a written report to RUS, USFWS, USACE, the SHPOs, and Consulting Tribes describing progress on implementation of the terms of this PA, the development of construction plans and specifications, construction completed during the period covered by the report, any mitigation measures that have been implemented, the schedule for completion of mitigation, the treatment of any post-review discoveries pursuant to Stipulation VII, any scheduling changes proposed, any problems encountered, and any disputes addressed pursuant to Stipulation IX. This report may be submitted electronically to the all signatories and consulting parties. The report will be submitted within 15 days of the end of each quarter.

B. The Utilities will invite the appropriate consulting tribe to inspect construction whenever work occurs within 100 feet of a historic property in which that consulting tribe has an identified interest. The consulting tribe will be given a minimum of two weeks' notice prior to construction in that location.

C. Upon written request, the Utilities will grant the Consulting Tribes and USFWS access to the work site to observe construction. All parties granted on-site access will comply fully with the Utilities' safety requirements, which will be provided by the Utilities.

## IX. DISPUTE RESOLUTION

A. Should any signatory or consulting party to this PA object in writing at any time to any actions proposed or the manner in which the terms of this PA are implemented, RUS, USFWS, and USACE, as appropriate, within the limits of their authority, will consult with such party to resolve the objection.



If RUS, USFWS or USACE, as appropriate, determines that the objection cannot be resolved, that agency will:

1. Forward all documentation relevant to the dispute, including the resolution proposed by RUS, USFWS or USACE, as appropriate, to the ACHP. The ACHP will provide the RUS with its advice, pursuant to 36 CFR § 800.2(b)(2), on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, RUS will prepare a written response that takes into account any timely advice or comments from the ACHP, signatories and consulting parties regarding the dispute, and provide a copy of this written response. RUS then will proceed according to its final decision.
  2. Notify RUS, USFWS, and USACE, as appropriate, that it will comment pursuant to 36 CFR 800.7(c), and proceed to comment. Any ACHP comments provided in response to such a request will be taken into account by RUS, USFWS, and USACE, as appropriate, in accordance with 36 CFR § 800.7(c)(4).
  3. If the ACHP does not provide its advice regarding the dispute within thirty (30) days, RUS, USFWS or USACE, as appropriate, may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, RUS, USFWS or USACE, as appropriate, will prepare a written response that takes into account any timely comments regarding the dispute from the signatories and consulting parties to the PA, and provide them and the ACHP with a copy of such written response.
- B. The responsibilities of RUS, USFWS, and USACE, as appropriate, to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remain unchanged.
- C. If at any time during the implementation of the measures stipulated in this PA an objection should be raised by the public, RUS, USFWS or USACE, as appropriate, will notify the signatories to this PA and consult with the objecting party to seek resolution. If RUS, USFWS or USACE, as appropriate, determines that the objection cannot be resolved, that agency will seek the advice or comment of ACHP in accordance with Stipulation IX.A.

## X. TERMS OF AGREEMENT

- A. The term of this PA will be five (5) years from the date of execution by the signatories, unless the signatories agree to extend its term. If its stipulations have not been carried out, and prior to work continuing on the proposed project, RUS, USFWS or USACE, as appropriate, will either (a) execute another agreement pursuant to 36 CFR 800.6, or (b) request, take into account, and respond to the comments of ACHP under 36 CFR 800.7.
- B. Six (6) months prior to the PA's expiration date, Dairyland will notify the other signatories of the impending expiration. RUS, USFWS or USACE, as appropriate, may consult with the other signatories to reconsider the terms of the PA and amend it in accordance with Stipulation XI. RUS, USFWS or USACE, as appropriate, will notify the signatories as to the course to be pursued.

## XI. AMENDMENT

- A. Any signatory to this PA may withdraw from it by providing thirty (30) days' notice to the other parties, provided that the parties will consult during the period prior to withdrawal to seek agreement on amendments or other actions that would avoid withdrawal.
- B. Upon termination of the PA, and prior to work continuing construction will cease on the proposed project, until either (a) executes an agreement pursuant to 36 CFR 800.6, or (b) requests, takes into account, and responds to the comments of ACHP under 36 CFR 800.7. RUS will notify the signatories and consulting parties as to the course of action it will pursue.

**EXECUTION** of this PA by RUS, USFWS, USACE, the Minnesota SHPO and the Wisconsin SHPO, and implementation of its terms evidences that RUS has taken into account the effects of this undertaking on historic properties and afforded ACHP a reasonable opportunity to comment.

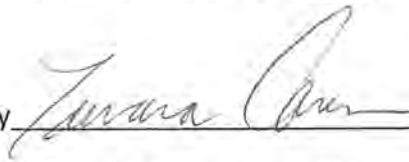
Signatories:

US DEPARTMENT OF AGRICULTURE, RURAL UTILITIES SERVICE

By Mark S. Plank Date 11/1/12

Mark S. Plank, Director  
Engineering and Environmental Staff  
Water and Environmental Program

US ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT

By  Date 8/29/12

Tamara E. Cameron, Chief  
Regulatory Branch

US FISH AND WILDLIFE SERVICE

By Thomas O. Melius Date Sept. 28, 2012

MINNESOTA STATE HISTORIC PRESERVATION OFFICE


By Burton Howard Date 9/5/2012

WISCONSIN STATE HISTORIC PRESERVATION OFFICE

By  Date 8/30/12

Concurring Parties:

THE HO-CHUNK NATION

By  Date 10 03 12  
William Quackenbush



THE KETEGITIGAANING OJIBWE NATION

By \_\_\_\_\_ Date \_\_\_\_\_

SHAKOPEE MDEWAKANTON SIOUX

By \_\_\_\_\_ Date \_\_\_\_\_

Invited Signatories:

DAIRYLAND POWER COOPERATIVE

By Chuck Calles Date 9-5-2012

XCEL ENERGY

By  Date 9/10/12

**Greg Chamberlain, Director**  
Transmission Portfolio Delivery  
As Authorized Agent

ATTACHMENT A: Tribes Invited to Consult

Tribes invited to participate in Section 106 consultation, beginning in 2009

Bad River Band of Lake Superior Chippewa Indians  
Bay Mills Indian Community  
Bois Forte Band of Chippewa Indians  
Cheyenne River Sioux Tribe  
Crow Creek Sioux Tribe  
Eastern Shoshone Tribe  
Flandreau Santee Sioux Tribe  
Fond du Lac Band of Lake Superior Chippewa  
Forest County Potawatomi Community  
Grand Portage Band of Chippewa Indians  
Grand Traverse Band of Ottawa and Chippewa Indians  
Hannahville Indian Community  
Ho-Chunk Nation  
Keweenaw Bay Indian Community  
Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin  
Lac du Flambeau Band of Lake Superior Chippewa Indians  
Lac Vieux Desert Band of Lake Superior Chippewa  
Leech Lake Band of Ojibwe Indians  
Little River Band of Ottawa Indians  
Little Traverse Bay Bands of Odawa Indians  
Lower Brule Sioux Tribe  
Lower Sioux Indian Community  
Match-E-Be-Nash-She-Wish Band of Pottawatomi - Gun Lake Tribe  
Menominee Indian Tribe of Wisconsin  
MHA Nation - Three Affiliated Tribes  
Mille Lacs Band of Ojibwe Indians  
Nottawaseppi Huron Band of Potawatomi Indians, Pine Creek Indian Reservation  
Oglala Sioux Tribe  
Omaha Tribe of Nebraska  
Oneida Nation of Wisconsin  
Pokagon Band of Potawatomi Indians  
Ponca Tribe of Nebraska  
Prairie Island Indian Community  
Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin  
Red Lake Band of Minnesota Chippewa Tribe  
Rosebud Sioux Tribe  
Sac and Fox of Missouri in Kansas and Nebraska  
Sac and Fox Tribe  
Saginaw Chippewa Indian Tribe  
Santee Sioux Tribe of Nebraska  
Sault Tribe of Chippewa Indians  
Shakopee Mdewakanton Sioux Community  
Sisseton-Wahpeton Oyate  
Sokaogon Chippewa Community of Wisconsin  
Spirit Lake Dakota Nation

St. Croix Chippewa Indians of Wisconsin  
Standing Rock Sioux Tribe  
Stockbridge-Munsee Community Band of Mohican Indians  
Turtle Mountain Band of the Chippewa Tribe  
Upper Sioux Indian Community  
White Earth Band of Minnesota Chippewa  
Winnebago Tribe of Nebraska  
Yankton Sioux

ATTACHMENT B: Wisconsin Statutes and Regulations



1985 Assembly Bill 507

Date of enactment: April 29, 1986

Date of publication: May 6, 1986

## 1985 Wisconsin Act 316

AN ACT to repeal chapter 155 (title) and 155.10; to renumber and amend 155.01 to 155.06 and 157.01 to 157.06; to amend chapter 157 (title), 27.012 (1) (f) and (h) and (4) (b), 62.23 (7) (c), 70.11 (13) and 700.40 (1) (a); and to create subchapter I (title) of chapter 157, subchapter II (title) of chapter 157, subchapter III of chapter 157, 15.07 (5) (o), 15.701 (4), 15.705 (1), 19.85 (1) (em), 20.245 (6), 59.97 (4) (m), 60.61 (2) (h) and 979.01 (1r) of the statutes, relating to the preservation of human burial sites, creating a burial sites preservation board attached to the historical society, granting a tax exemption, imposing a penalty and making an appropriation.

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

PREFATORY NOTE: This bill proposes statutory protection for human burial sites in this state. It was prepared at the direction of the legislative council American Indian study committee's subcommittee on Indian burial sites.

For detailed information on this bill, see the explanatory NOTES which are included in the bill.

**SECTION 1. Legislative findings and purpose.** (1) The legislature finds that:

(a) Human burial sites which do not presently resemble well-tended and well-marked cemeteries are subject to a higher degree of vandalism and inadvertent destruction than well-tended and well-marked cemeteries.

(b) Over 80% of known prehistoric burial sites in many parts of this state have been damaged or destroyed.

(c) Some human burial sites and human remains may contain information of interest to science and may be subject to scientific study, which may include excavation.

(d) Human burial sites are subject to pillage and destruction for commercial purposes, including land development, agriculture, mining and sale of artifacts.

(e) Curiosity and the private collection of artifacts are other causes of the destruction of human burial sites.

(f) Existing law on cemeteries reflects the value society places on preserving human burials sites, but the law does not clearly provide equal and adequate protection or incentives to assure preservation of all human burial sites in this state.

(2) The legislature intends by this act to:

(a) Assure that all human burials be accorded equal treatment and respect for human dignity without reference to ethnic origins, cultural backgrounds or religious affiliations.

(b) Provide adequate protection for all interests related to any human burial site encountered during

archaeological excavation, metallic or nonmetallic mining, construction, agricultural activities, environmental impact assessments or other ground-disturbing activities, without causing avoidable or undue delay or hardship to any person who has an interest in using the land on which the burial site is located.

(c) Balance the interests of scientists, landowners, developers and others with an interest in a burial site, including those with a kinship interest and those with a general cultural, tribal or religious affiliation with the burial site.

NOTE: The legislative findings are intended to describe the range of concerns related to human burial sites. The provisions on legislative intent reflect the purposes which are intended to be accomplished by this bill.

**SECTION 2.** 15.07 (5) (o) of the statutes is created to read:

15.07 (5) (o) Members of the burial sites preservation board, \$25 per day.

NOTE: The bill provides members of the burial sites preservation board with a payment of \$25 per day for each meeting of the board. The \$25 payment is in addition to actual and necessary expenses of board members such as meals, lodging and transportation expenses. Full-time state employees do not receive the \$25 payment.

**SECTION 3.** 15.701 (4) of the statutes is created to read:

15.701 (4) BURIAL SITES PRESERVATION BOARD. The burial sites preservation board shall have the program responsibilities specified for the board under s. 157.70.

NOTE: This describes the responsibilities of the burial sites preservation board, as set forth in s. 157.70.

**SECTION 4.** 15.705 (1) of the statutes is created to read:

15.705 (1) BURIAL SITES PRESERVATION BOARD. There is created a burial sites preservation board attached to the historical society under s. 15.03, consisting of the state archaeologist, as a nonvoting member, the director of the historical society if the director is not serving as the state historic preservation officer, the state historic preservation officer, or her or his for-

mally appointed designee, who shall be a nonvoting member unless the director of the historical society is serving as the state historic preservation officer, and the following members appointed for 3-year terms:

(a) Three members, selected from a list of names submitted by the Wisconsin archeological survey, who shall have professional qualifications in the fields of archaeology, physical anthropology, history or a related field.

(b) Three members who shall be members of federally recognized Indian tribes or bands in this state, selected from names submitted by the Great Lakes inter-tribal council and the Menominee tribe. Each such member shall be knowledgeable in the field of tribal preservation planning, history, archaeology or a related field or shall be an elder, traditional person or spiritual leader of his or her tribe.

NOTE: The bill creates a burial sites preservation board, which will meet at least once every 3 months. The members of the board are nominated by the governor, and with the advice and consent of the senate appointed for 3-year terms.

The burial sites preservation board is attached, for administrative purposes only, to the historical society. The board has policy-making powers related to the burial sites preservation program and quasi-judicial powers related to decisions regarding permits for the disturbance of burial sites. The powers and duties of the board are created and set forth, in detail, in s. 157.70.

SECTION 6. 20.005 (3) (schedule) of the statutes: at the appropriate place, insert the following amounts for the purposes indicated:

**20.245 Historical society**

(6 ) BURIAL SITE CATALOG  
AND EXCAVATION

(a ) General program operations

1985-86

1986-87

GPR A

-0-

67, 448

SECTION 7. 20.245 (6) of the statutes is created to read:

20.245 (6) BURIAL SITE CATALOG AND EXCAVATION.  
(a) *General program operations.* The amounts in the schedule for the catalog of burial sites under s. 157.70 (2) and excavations of burial sites under s. 157.70 (4) (c) 3. a.

NOTE: The bill provides an appropriation to the historical society for the purpose of implementing the new statutes related to the protection of burial sites.

SECTION 8. 27.012 (1) (f) and (h) and (4) (b) of the statutes are amended to read:

27.012 (1) (f) "Object" means ~~a man-made~~ an article, implement or other item of archaeological interest. "Object" does not include human remains, as defined in s. 157.70 (1) (f).

(h) "State site" or "state archaeological site" means a land or water area, owned by this state, where there are objects or other evidence of archaeological interest. ~~This term includes Those terms include all aboriginal mounds and earthworks, ancient burial grounds, prehistoric and historical ruins, Indian mounds and objects and other archaeological and historical fea-~~

SECTION 5. 19.85 (1) (em) of the statutes is created to read:

19.85 (1) (em) Deliberating under s. 157.70 if the location of a burial site, as defined in s. 157.70 (1) (b), is a subject of the deliberation and if discussing the location in public would be likely to result in disturbance of the burial site.

NOTE: As a general rule, all meetings of governmental bodies must be held in open session. Meetings must be held at a place reasonably accessible to members of the public and open to all citizens at all times. The statutes provide various exemptions which permit a governmental body to meet in closed session.

This bill creates an exemption to permit the burial sites preservation board to meet in closed session for purposes of discussions which involve the location of a burial site if disclosure of the location to the public would be likely to result in disturbance of the burial site. The following points should be noted:

1. The exemption is not mandatory. The board will have to decide, on a case-by-case basis, whether to use the exemption.
2. The exemption is drafted narrowly. The board will not be able to use the exemption in all of its deliberations related to burial sites.
3. The board will be able to split its deliberations on specific burial sites into 2 segments. The board can conduct part of the discussion in open session, instructing parties not to mention the location of the burial site. The board can then commence a closed session, restricted to those aspects of the burial site which cannot be discussed without reference to its location.

tures on state land. Those terms do not include any burial site, as defined in s. 157.70 (1) (b).

(4) (b) If a site is located on privately owned land, ~~persons~~ any person wishing to dig or excavate at such a site ~~are~~ is strongly encouraged to secure a permit to do so. The applicant for a permit must submit the written consent of the owner. The director may not issue such a permit for any site which is a burial site, as defined in s. 157.70 (1) (b).

NOTE: Currently, s. 27.012 requires a permit for archaeological activities on state land and reserves to the state title to all objects found and data gathered in field archaeology on state sites. This statute is administered by the state archaeologist, an appointee of the director of the historical society.

The amendment to s. 27.012 removes burial sites located on state property from the archaeological permit procedure and makes the burial sites subject to the procedure under s. 157.70.

SECTION 9. 59.97 (4) (m) of the statutes is created to read:

59.97 (4) (m) Burial sites, as defined in s. 157.70 (1) (b).

NOTE: This provision is added to the list of purposes for which county zoning authority may be exercised. The current statutory list of county zoning purposes already includes simi-

lar authority which permits counties to regulate historic landmarks and historic districts.

Existing county zoning authority would permit zoning which would result in the protection of burial sites by creating conservancy districts or similar land use protections. The creation of a specific reference to burial sites is intended to serve 2 purposes:

1. It will remove any potential doubt that a county has statutory authority to protect burial sites through its zoning ordinance.

2. By creating explicit authority to protect burial sites, this language will encourage the protection of burial sites by identifying the protection of burial sites as an appropriate governmental function.

The subcommittee recognizes that tribal zoning within areas subject to tribal jurisdiction could also provide protection for burial sites. Tribal zoning would supersede municipal zoning which applies to the same land area.

SECTION 10. 60.61 (2) (h) of the statutes is created to read:

60.61 (2) (h) Provide for the preservation of burial sites, as defined in s. 157.70 (1) (b).

NOTE: This language pertains to town zoning authority. The purpose of this language is explained in the NOTE to s. 59.97 (4) (m).

SECTION 11. 62.23 (7) (c) of the statutes is amended to read:

62.23 (7) (c) *Purposes in view.* Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote health and the general welfare; to provide adequate light and air, including access to sunlight for solar collectors and to wind for wind energy systems; to encourage the protection of groundwater resources; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements; and to preserve burial sites, as defined in s. 157.70 (1) (b). Such regulations shall be made with reasonable consideration, among other things, of the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such city.

NOTE: This language pertains to the zoning authority of cities, villages and towns exercising village powers. The purpose of this language is explained in the NOTE to s. 59.97 (4) (m).

SECTION 12. 70.11 (13) of the statutes is amended to read:

70.11 (13) CEMETERIES. Land owned by cemetery associations and used exclusively as public burial grounds and tombs and monuments therein, and privately owned burial lots; land adjoining such burial grounds, owned and occupied exclusively by the association for cemetery purposes; personal property owned by any cemetery association and necessary for the care and management of burial grounds; burial sites and contiguous lands which are cataloged under s. 157.70 (2) (a).

NOTE: This bill provides a property tax exemption for land containing a burial site which is entered in the state catalog of burial sites under s. 157.70. This makes the property tax treatment of burial sites consistent with the property tax treatment of cemeteries. The director of the historical society identifies and records burial sites in the catalog, and determines the amount of contiguous land necessary to protect the burial site from disturbance.

SECTION 13. Chapter 155 (title) of the statutes is repealed.

SECTION 14. 155.01 to 155.06 of the statutes are renumbered 157.01 to 157.06, and 157.04, as renumbered, is amended to read:

**157.04 Penalty.** Any officer or person having a corpse in charge, and refusing to report and deliver it, when required by this ~~chapter~~ subchapter, or violating the provisions forbidding sale or delivery thereof, to be used outside the state, shall be liable to the person, university or medical school aggrieved, in the sum of ~~fifty dollars~~ \$50.

SECTION 15. 155.10 of the statutes is repealed.

NOTE: This section of existing law prohibits disturbance of a burial site and is punishable by imprisonment or a fine of up to \$500. Presumably it would apply to any burial site. It has been repealed and is incorporated into the penalty provisions of s. 157.70, as created in this bill.

SECTION 16. Chapter 157 (title) of the statutes is amended to read:

CHAPTER 157  
CEMETERIES DISPOSITION OF  
HUMAN REMAINS

SECTION 17. Subchapter I (title) of chapter 157 of the statutes is created to read:

CHAPTER 157  
SUBCHAPTER I  
CORPSES  
[to precede s. 157.01]

SECTION 18. 157.01 to 157.06 of the statutes are renumbered 157.061 to 157.065, and 157.061 (intro.), as renumbered, is amended to read:

**157.061 Definitions.** (intro.) ~~As used~~ Except as otherwise provided, in this ~~chapter~~ subchapter:

NOTE: These sections combine present ch. 155 on corpses and present ch. 157 on cemeteries into one chapter (ch. 157) with a new title; each old chapter being a subchapter of the new chapter.

SECTION 19. Subchapter II (title) of chapter 157 of the statutes is created to read:

CHAPTER 157  
SUBCHAPTER II  
CEMETERIES  
[to precede s. 157.061]

SECTION 20. Subchapter III of chapter 157 of the statutes is created to read:

CHAPTER 157  
SUBCHAPTER III  
BURIAL SITES PRESERVATION

**157.70 Burial sites preservation.** (1) DEFINITIONS. In this section:

(a) "Board" means the burial site preservation board.

(b) "Burial site" means any place where human remains are buried.

(c) "Cataloged" means recorded under sub. (2) (a), (4) (e) or (6) (c).

(d) "Director" means the director of the historical society or his or her formally appointed designee.

(e) "Disturb" includes defacing, mutilating, injuring, exposing, removing, destroying, desecrating or molesting in any way.

(f) "Human remains" means any part of the body of a deceased person in any stage of decomposition.

(g) "Interest" means an interest based on any of the following:

1. Direct kinship.
2. A cultural, tribal or religious affiliation.
3. A scientific, environmental or educational purpose.
4. Land use.
5. A commercial purpose not related to land use which is consistent with the purposes of this section.
6. Any other interest which the board deems to be in the public interest.

(h) "Owner" means a person who owns or leases land on which a burial site is located.

(i) "Qualified archaeologist" means an individual who has a graduate degree in archaeology, anthropology or a closely related field and at least one year of full-time professional experience or equivalent specialized training in archaeological or physical anthropological research, administration or management, at least 4 months of supervised field and analytic experience in general North American archaeology or physical anthropology and a demonstrated ability to carry research to completion.

(2) DIRECTOR'S DUTIES. The director shall:

(a) Under a special inspection warrant as required under s. 66.122, identify and record in a catalog burial sites in this state, together with sufficient contiguous land necessary to protect the burial site from disturbance, and notify in writing every owner of a burial site so recorded and any county or local historical society in the county where the burial site is located. Any information in the catalog related to the location of any burial site, the disclosure of which would be likely to result in the disturbance of the burial site, is not subject to s. 19.35 (1). The notice shall include information about the permit required under sub. (5) and the toll free number the owner may call for more information.

(b) Identify and record in a catalog burial sites likely to be of archaeological interest or areas likely to contain burial sites. Any information in the catalog related to the location of any burial site likely to be of archaeological interest or of any area likely to contain a burial site, the disclosure of which would be likely to

result in the disturbance of the burial site, is not subject to s. 19.35 (1).

(c) Make recommendations concerning burial sites on private property for acquisition by the state or other public agencies to preserve the burial sites.

(d) Provide for and publicize a telephone service which allows any person in this state to call, without charge, the director to report a discovery or disturbance of a burial site.

(e) Establish a registry for any person whom the board determines to have an interest in a cataloged burial site or class of cataloged burial sites under sub. (2m) (b) or (c). The registry shall include the name of every person whom the board determines to have an interest in the preservation of a burial site or in providing for the reinterment of the human remains and objects related to burial in the burial site if the burial site is disturbed and identify the burial site in which the person is determined to have an interest. Any information in the registry related to the location of any burial site, the disclosure of which would be likely to result in disturbance of the burial site, is not subject to disclosure under to s. 19.35 (1).

(f) Assist owners in identifying persons to be notified under sub. (5) (b) 2.

(g) Assist Indian tribes, state agencies and other persons in any negotiation with any federal agency for the preservation of burial sites and human remains.

(h) Mediate, upon application of any owner or person in the registry under par. (e), any dispute related to the disturbance or proposed disturbance of a burial site.

(i) Cause a cataloged burial site to be recorded by the register of deeds of the county in which the burial site is located. The historical society shall reimburse the county for the cost of recording under this paragraph from the appropriation under s. 20.245 (6) (a).

(2m) BOARD DUTIES. The board shall:

(a) Meet at least every 3 months.

(b) Determine which Indian tribes in this state have an interest in any cataloged burial site or class of cataloged burial sites and notify the director for entry in the registry under sub. (2) (e).

(c) Determine which applicants for entry in the registry under sub. (2p) have an interest in a cataloged burial site or class of cataloged burial sites.

(d) As it deems necessary, review determinations of the director and the division of hearings and appeals in the department of administration under sub. (5).

(e) As it deems necessary, review disposition actions taken by the director under sub. (6).

(f) As it deems appropriate, approve transfers of burial sites under sub. (6m) (b) 2.

(2p) APPLICATION FOR REGISTRY. Any person may apply to the board for entry in the registry and shall indicate in which burial site she or he is claiming an interest.

(2r) **SITE DISTURBANCE PROHIBITED.** Except as provided under subs. (4) and (5), no person may intentionally cause or permit the disturbance of a burial site. This subsection does not prohibit normal agricultural or silvicultural practices which do not disturb the human remains in a burial site or the surface characteristics of a burial site.

(3) **REPORT OF DISTURBED BURIAL SITES.** (a) Except as provided under s. 979.01, a person shall immediately notify the director if the person knows or has reasonable grounds to believe that a burial site is being disturbed or may be disturbed contrary to the requirements of subs. (4) and (5).

(b) Upon receipt of any notice under par. (a), the director shall determine if the burial site which is the subject of the notice has been cataloged under sub. (2) (a).

(4) **PROCEDURE FOR UNCATALOGED BURIAL SITES.** (a) If the director determines that a burial site reported under sub. (3) is not cataloged under sub. (2) (a), he or she shall immediately notify the owner of the burial site of the procedure under this subsection and of the liabilities and penalties which apply for failure to comply with the procedure. If the director deems it appropriate, he or she may give notice to the board, and to any person who has or may have an interest in the burial site, that a burial site has been reported under sub. (3).

(b) No owner who has received notice under par. (a) may in any way intentionally cause or permit any activity which would disturb the burial site which is the subject of the notice unless authorized by the director under par. (c) 2 or (d).

(c) 1. Using information available concerning the burial site and the proposed activity, the director shall determine whether the proposed activity will disturb the burial site and whether the registry under sub. (2) (e) shows that any person has an interest in the burial site.

2. If the director determines that the proposed activity will not disturb the burial site or will disturb a burial site in which no person is shown on the registry under sub. (2) (e) to have an interest, he or she shall notify the owner of the owner's right to cause or permit the activity.

3. If the director determines that the proposed activity will disturb a burial site in which any other person who is not the owner is shown on the registry under sub. (2) (e) to have an interest and that the interest is substantial, the director shall notify the owner that the owner may not cause or permit the activity unless the owner does one of the following:

a. Authorizes the director or a qualified archaeologist approved by the director to excavate the burial site to remove and analyze any human remains and objects related to the burial in the burial site from the burial site within a reasonable time, beginning within 30 days of when ground conditions permit, for disposition under sub. (6).

b. Changes the proposed activity so as not to disturb any burial site.

(d) If the director determines that an owner has satisfied the requirements under par. (c) 3, he or she shall notify the owner of the owner's right to cause or permit any activity which is in keeping with the owner's action under par. (c) 3.

(e) If under par. (c) 3. a all human remains and objects related to the burial in a burial site reported under sub. (3) (a) are not removed from the burial site, the director shall enter the burial site into the record prepared under sub. (2) (a).

(f) The director shall submit a written report to the board of any determination which he or she makes under this subsection.

(5) **PROCEDURE FOR CATALOGED BURIAL SITES.** (a) No person may intentionally cause or permit the disturbance of a cataloged burial site without a permit from the director issued under this subsection.

(b) Any person who intends to cause or permit any activity on a cataloged burial site which in any way might disturb the burial site shall:

1. Apply to the director for a permit to disturb the burial site. The application shall include the purpose of the disturbance and the names and addresses of any persons notified under subd. 2. The director shall send the applicant the names of any person in the registry with an interest in the burial site.

2. On a form provided by the director, notify any person whose name the director has sent under subd. 1 of the proposed disturbance. The notice to any person under this subdivision shall include information on the notified person's right to a hearing on whether the director should grant a permit to disturb the burial site.

(c) 1. Upon request of the applicant or any person notified under par. (b), or if the director determines that a hearing is necessary, the director shall request the division of hearings and appeals in the department of administration to conduct a hearing on whether a permit should be issued to disturb the burial site which is the subject of the request. If in any part of the hearing the location of a burial site is the subject of the testimony, such part of the hearing shall be conducted in a session closed to the public and the record of such part of the hearing shall be exempt from disclosure under s. 19.35 (1).

1m. If a hearing is not requested or determined to be necessary under subd. 1, the director shall determine whether a permit should be issued to disturb the burial site which is the subject of the application under par. (b) 1. If the director determines that the benefits to the permit applicant in disturbing the burial site outweigh the benefits to all other persons shown on the registry under sub. (2) (e) to have an interest in not disturbing the burial site, the director shall grant a permit to disturb the burial site. In making the determination, the director shall consider the interest of the public in addition to any other interests. If the direc-

tor determines that any of the following classes of interest are represented, the director shall weight the interests in the following order of priority:

- a. Direct kinship.
- b. A cultural, tribal or religious affiliation.
- c. A scientific, environmental or educational purpose.
- d. Land use.
- e. A commercial purpose not related to land use which is consistent with the purposes of this section.
- f. Any other interest which the director deems to be in the public interest.

2. If a hearing is requested or determined to be necessary under subd. 1, the division of hearings and appeals in the department of administration shall conduct a hearing to determine whether the benefits to the permit applicant in disturbing the burial site outweigh the benefits to all other persons shown on the registry under sub. (2) (e) to have an interest in not disturbing the burial site. If the division finds in favor of the applicant, the division shall issue a determination in favor of granting a permit to disturb a burial site which is the subject of the hearing under this paragraph. In making the determination, the division shall consider the interest of the public in addition to the interests of the parties. If any of the following classes of interest are represented in the hearing, the division shall weight the interests in the following order of priority:

- a. Direct kinship.
- b. A cultural, tribal or religious affiliation.
- c. A scientific, environmental or educational purpose.
- d. Land use.
- e. A commercial purpose not related to land use which is consistent with the purposes of this section.
- f. Any other interest which the board deems to be in the public interest.

2m. If the division makes a determination for granting a permit to disturb a burial site which is the subject of the hearing under this paragraph, the division may determine the person to whom the human remains and objects related to the burial in the burial site should be transferred for analysis and reinterment or other appropriate disposition when the burial site is disturbed. In making such a determination, the division shall follow the order of priority prescribed in sub. (6) (a).

3. If the determination under subd. 1m or 2 is for granting a permit to disturb a burial site which is the subject of the hearing under this paragraph, the director shall grant the permit if the owner authorizes the director or a qualified archaeologist approved by the director to excavate the burial site to remove, within a reasonable time, beginning within 30 days of when ground conditions permit, for disposition under sub. (6), any human remains and objects related to the burial in the burial site to be disturbed under the permit.

4. A permit issued under this subsection may be subject to any condition or exemption deemed necessary to limit the disturbance of a burial site or to minimize any other burden on any person affected by granting the permit.

5. Any party in a hearing under this paragraph may appeal the determination under subd. 1m or 2 to the board.

(6) DISPOSITION OF HUMAN REMAINS REMOVED FROM BURIAL SITES. (a) If human remains and objects related to the burial in the site are removed from a burial site under sub. (4) (c) 3. a or (5) (c) 3 and the division has not determined under sub. (5) (c) 2m the person to whom such remains and objects should be transferred for analysis and reinterment or other appropriate disposition, the director shall notify any person in the registry under sub. (2) (e) with an interest in the analysis and reinterment or appropriate disposition of such human remains and objects. The director shall transfer the remains and objects to such person for appropriate reinterment or other appropriate disposition upon receipt of a written application by any person with an interest in the analysis and reinterment or other appropriate disposition based on the following, in the order of priority stated, when persons in prior classes are not available at the time of application and in the absence of actual notice of opposition by a member of the same or a prior class:

1. Direct kinship.
2. A cultural, tribal or religious affiliation.
3. A scientific, environmental or educational purpose.
4. Any other interest which the board deems to be in the public interest.

(b) If the director cannot identify any person with an interest in reinterment of the human remains and objects received under par. (a), the director shall provide for reinterment or other disposition of the human remains and objects in an appropriate manner.

(c) The director shall enter into the catalog prepared under sub. (2) (a) the site of any reinterment under par. (a) or (b).

(d) The director shall submit to the board a written report of any disposition action taken under this subsection.

(e) The board may review and modify any disposition action taken by the director under this subsection.

(6m) BURIAL SITES ON PUBLIC LANDS. (a) In this subsection, "municipality" has the meaning given under s. 66.066 (1) (a) and includes the state.

(b) Notwithstanding any other provision of this section, a municipality:

1. May not intentionally cause or permit the disturbance of any burial site on land it owns.

2. May not transfer any burial site to any person who is not a municipality unless the transfer provides for preservation of the burial site from any disturb-

ance by any person and unless the transfer is approved by the board.

3. Shall endeavor to take positive action to preserve any burial site on land it owns through appropriate land use management including but not limited to appropriate multiuse purposes such as nature preserves.

(7) ACTION BY ATTORNEY GENERAL. Upon request of the board, the attorney general or the district attorney of the proper county shall aid in any investigation, inspection, hearing or trial had under the provisions of this section and shall institute and prosecute all necessary actions or proceedings for the enforcement of such provisions and for the punishment of violations of the same. The attorney general or district attorney so requested shall report to or confer with the board regarding the request within 30 days after receipt of the request.

(8) REMEDIES. Any person who intentionally disturbs, without the authorization of the director under sub. (4) (c) 2 or (d), a burial site which is not cataloged or who intentionally disturbs, without a permit issued under sub. (5), a cataloged burial site is liable for attorney fees and damages or other appropriate relief to any person with an interest in preserving the burial site or in reintering the human remains and objects related to the burial in the burial site. Any person with an interest in preserving a burial site or in reintering the human remains in the burial site may bring an action for an injunction to prevent disturbance to the burial site or to obtain the human remains and objects related to the burial in the burial site for appropriate reinterment, in the order of priority specified in sub. (6) (a).

(9) PRESERVATION OF RIGHTS. The transfer of title to any property shall not change the rights and duties of any person under this section.

(10) PENALTIES. (a) Any person who fails to report the disturbance of a burial site as required under sub. (3) shall forfeit not less than \$100 nor more than \$500.

(b) Any person who intentionally disturbs a burial site which is not cataloged without the authorization of the director under sub. (4) (c) 2 or (d) shall forfeit not less than \$500 nor more than \$1,000.

(c) Any owner who intentionally causes or permits any activity which disturbs a burial site after receiving notice from the director under sub. (4) (a) without the authorization required under sub. (4) (c) 2 or (d) shall forfeit not less than \$1,000 nor more than \$5,000.

(d) Any person who intentionally causes or permits any activity which disturbs a cataloged burial site without a permit issued under sub. (5) shall forfeit not less than \$1,000 nor more than \$5,000.

(e) Any person who disturbs a burial site for commercial gain not related to use of the land where a burial site is located or who disturbs a cataloged burial site for commercial gain related to use of the land where a burial site is located in violation of this section may be fined not to exceed 2 times the gross value

gained or 2 times the gross loss caused by the disturbance, whichever is the greater, plus court costs and the costs of investigation and prosecution, reasonably incurred, or imprisoned for not more than one year in the county jail or both. In calculating the amount of the fine based on personal injury, any measurement of pain and suffering shall be excluded.

NOTE: Below is a summary of s. 157.70.

*Scope of the Draft*

The bill provides statutory protection for all human burial sites in this state. The bill does not distinguish between different types of burial sites. Also, the bill does not make distinctions according to the age of the burial site.

The definition of "burial site" refers primarily to places where human remains have been intentionally interred. The term also includes sites where human remains have been buried accidentally, as by a landslide, or sites where human remains left in the open have subsequently been covered by soil. The definition does not include sites where skeletal material is found on the surface of the land.

*Responsibilities of the Director*

The bill creates new duties for the director of the state historical society. The director may delegate these duties to an employe of the historical society. The primary duties of the director are to: (1) identify and catalog burial sites and notify the owner of property on which a cataloged burial site is located; (2) identify and catalog places where burial sites are likely to be located; (3) identify persons with an interest in cataloged burial sites and prepare a register of those persons; (4) administer the new statutes which restrict the disturbance of burial sites; and (5) supervise the disposition of human remains and objects which are removed from a burial site.

Information about the location of cataloged burial sites is not subject to disclosure as public records.

The director also has a variety of other duties, including making recommendations concerning state or municipal acquisition of burial sites and mediating disputes between property owners and persons interested in a burial site.

*Burial Sites Preservation Board*

The bill creates a part-time burial sites preservation board. The members are nominated by the governor, and appointed with the advice and consent of the senate.

The board includes: (1) 3 members with professional qualifications in archaeology, physical anthropology, history or related fields; (2) 3 members of federally recognized Indian tribes or bands in Wisconsin with a knowledge of tribal preservation planning, history, archaeology or related fields or with a position as an elder, traditional person or spiritual leader of the tribe; and (3) the director of the historical society. The state archeologist and the state historic preservation officer serve as nonvoting members. The Indian members are recommended to the governor by the Great Lakes inter-tribal council and the Menominee Tribe. The other 3 professional members are recommended by the Wisconsin archeological survey.

All of the public members are appointed for 3-year terms.

The burial sites preservation board is attached, for administrative purposes only, to the historical society. The board is a part-time body with policy-making powers related to the burial sites preservation program and quasi-judicial powers related to decisions regarding permits for the disturbance of burial sites. The primary duties of the board are: (1) to develop the detailed policies necessary to implement the state burial sites preservation program; (2) to review the decisions of the director or the administrative hearing examiner concerning applications for permits to disturb cataloged burial sites; and (3) to review deci-

sions of the director regarding the disposition of human remains and objects related to burial which are removed from a burial site.

Initially, the board's duties will focus on developing policies to implement the state burial sites preservation program. The statutes cannot deal with all of the contingencies and fact situations which will occur as the program is implemented. In particular, the board will need to develop additional criteria for including burial sites in the state catalog. For example, the board will need to develop policies for sites where a burial site is known to exist but the precise location is not known. Also, the board will need to develop specific policies for resolving conflicts when more than one person has a substantial interest in a burial site or in reinterment of human remains and objects related to the burial.

The board also has other responsibilities, including a requirement to approve transfers by municipalities of municipal property containing a burial site.

#### *Duty to Report Disturbance of Burial Sites*

The bill creates a requirement, imposed on all persons, to immediately notify the director of the historical society if the person knows or has grounds to believe that a burial site is being disturbed without authorization. A person who fails to report a disturbance of a burial site is subject to a forfeiture.

The reporting requirement does not apply to deaths which must be reported to the police or to the medical examiner or coroner.

#### *Protection of Burial Sites*

##### *1. Uncataloged Burial Sites*

No person may intentionally disturb a burial site which is not listed in the state catalog of burial sites unless the disturbance is authorized by the director. The bill creates a procedure for obtaining this authorization.

If the director determines that a proposed activity will not disturb the burial site or will disturb a burial site in which no person on the register has an interest, the director is required to permit the activity. If the director determines that the activity will disturb a burial site in which a person on the register has a substantial interest, the owner must either permit a qualified archaeologist to excavate the burial site or change the activity so as not to disturb the burial site. The owner must allow a reasonable time for the excavation, beginning within 30 days after the time when ground conditions are suitable for excavation.

The director is required to enter an uncataloged burial site into the state burial site catalog if all human remains are not removed from the site.

A person who intentionally disturbs an uncataloged burial site without authorization is subject to a forfeiture of not less than \$500 nor more than \$1,000. An owner who intentionally disturbs or permits the disturbance of an uncataloged burial site without authorization after receiving notice of the statutory requirements is subject to a forfeiture of not less than \$1,000 nor more than \$5,000.

##### *2. Cataloged Burial Sites*

If a burial site is included in the state burial site catalog, a person may only disturb the burial site pursuant to a permit issued by the director. The person must notify anyone listed on the register whom the director determines to have an interest in the burial site and must apply for a permit to disturb the burial site.

A permit to disturb a burial site is issued if the benefits to the applicant in disturbing the burial site outweigh the benefits to any other person with an interest in not disturbing the burial site. The bill includes priorities for the various types of interests in a burial site. A person with an interest in a burial site may request a contested case hearing on the decision to issue a permit. Portions of a contested case hearing which relate to the

location of a cataloged burial site must be held in closed session, and those parts of the hearing record are not subject to disclosure as public records.

If a permit is issued to disturb the burial site, the owner must authorize the director or a qualified archaeologist approved by the director to excavate the burial site to remove any human remains. The owner must allow a reasonable time for the excavation, beginning within 30 days after the time when ground conditions are suitable for excavation.

A person who intentionally disturbs or permits the disturbance of a cataloged burial site without a permit is subject to a forfeiture of not less than \$1,000 nor more than \$5,000.

#### *Disposition of Human Remains and Objects Related to Burial*

If human remains and objects related to burial are removed from a burial site, the director or the hearing examiner must attempt to identify persons with an interest in the reinterment or other appropriate disposition of the human remains and objects. If such a person is identified, the remains and objects are transferred to the person for appropriate reinterment or other appropriate disposition. The bill includes priorities if more than one person has an interest in reinterment or other appropriate disposition.

If the director cannot identify a person with an interest in reinterment or other disposition of the human remains and objects, the director provides for reinterment or other disposition.

#### *Burial Sites on Public Lands*

The bill creates an additional protection for burial sites on publicly owned land. A public body may not convey land containing a burial site unless the transfer is approved by the burial sites preservation board.

#### *Remedies*

The bill requires the attorney general or the district attorney of the appropriate county to investigate and prosecute the violations of the burial site statute.

The bill also creates a private remedy in which a person with an interest in the burial site may bring an action for an injunction to prevent further disturbance to the burial site. A person who intentionally disturbs a burial site without authorization of the director is liable for damages or other appropriate relief, and attorney fees, to any person with an interest in the burial site.

#### *Disturbing a Burial Site for Commercial Gain*

A person who disturbs a burial site for commercial gain commits a misdemeanor and is subject to a criminal penalty. The monetary portion of the penalty is a fine not to exceed 2 times the gross value gained or 2 times the gross loss caused by the disturbance, whichever is greater. This penalty is modeled after the racketeering statute, s. 946.84. In addition to or in lieu of the fine, the bill provides for imprisonment in the county jail for not more than one year.

SECTION 21. 700.40 (1) (a) of the statutes is amended to read:

700.40 (1) (a) "Conservation easement" means a holder's nonpossessory interest in real property imposing any limitation or affirmative obligation the purpose of which includes retaining or protecting natural, scenic or open space values of real property, assuring the availability of real property for agricultural, forest, recreational or open space use, protecting natural resources, maintaining or enhancing air or water quality, preserving a burial site, as defined in s. 157.70 (1) (b), or preserving the historical, architect-



tural, archaeological or cultural aspects of real property.

NOTE: This clarifies that a conservation easement may be created to protect a burial site.

SECTION 22. 979.01 (1r) of the statutes is created to read:

979.01 (1r) If the coroner or medical examiner is notified of a death under sub. (1) and determines that his or her notification of the death was not required under sub. (1), he or she shall notify the director of the historical society under s. 157.70 (3).

NOTE: This provides that discoveries of human remains which are reported to the coroner or medical examiner will be referred to the director of the historical society if the coroner or medical examiner does not have reason to take jurisdiction of the discovery.

SECTION 23. **Nonstatutory provisions.** (1) APPOINTMENT OF FIRST MEMBERS OF THE BURIAL SITES

SECTION 24. **Program responsibility changes.** In the sections of the statutes listed in Column A, the program responsibilities references shown in Column B are deleted and the program responsibilities references shown in Column C are inserted:

A	B	C
Statute Sections	References Deleted	References Inserted
15.101 (9)	none	157.70 (5)(c)
15.191 (intro.)	155.01	157.01
15.251 (intro.)	none	157.70 (7)
15.401 (17)	155.01 (1)	157.01 (1)
15.911 (intro.)	155.02 (3), 155.03 (2)	157.02 (3), 157.03 (2)

SECTION 25. **Cross-reference changes.** In the sections of the statutes listed in Column A, the cross-references shown in Column B are changed to the cross-references shown in Column C:

A	B	C
Statute Sections	Old Cross-References	New Cross-References
32.06 (intro.)	ch. 157	subch. II of ch. 157
32.57 (2)(k)	157.03	157.062
32.57 (2)(k)	157.05	157.064
60.23 (16)	ch. 157	subch. II of ch. 157
69.37	155.02	157.02
69.38 (1)(a)	155.02	157.02
69.45 (1)	155.02	157.02
157.03, as renumbered	155.02 (3)	157.02 (3)
157.065 (1)(b) 5, as renumbered	157.03	157.062
157.065 (3)(e), as renumbered	157.05	157.064
157.11 (4)	157.03	157.062
187.01 (3)	ch. 157	subch. II of ch. 157
187.04	ch. 157	subch. II of ch. 157
187.10 (4)	ch. 157	subch. II of ch. 157
343.17 (1)(b)	155.06 (4)(b)	157.06 (4)(b)
343.17 (1)(c)	155.06 (6)	157.06 (6)
343.17 (1)(d) and (3)(b)	155.06	157.06
445.03 (1)(b)	ch. 155	subch. I of ch. 157

SECTION 26. **Effective date.** This act takes effect on January 1, 1987.

PRESERVATION BOARD. The governor shall appoint one of the first professional members and one of the first nonprofessional members of the burial sites preservation board for terms to expire on July 1, 1986, one of the first professional members and one of the first nonprofessional members for terms to expire on July 1, 1987, and one of the first professional members and one of the first nonprofessional members for terms to expire on July 1, 1988.

(2) POSITION AUTHORIZATION. The authorized FTE positions for the historical society are increased by 1.0 GPR archaeologist position, 1.0 GPR program supervisor position and 1.0 GPR program assistant position, to be funded from the appropriation under section 20.245 (6) of the statutes, as created by this act, for the purpose of performing the responsibilities assigned to the director by this act.

**157.625 Reporting exemption for certain cemeteries.**

(1) A cemetery authority that is not required under this chapter or under s. 440.92 to maintain any care funds or preneed trust funds is not required to file an annual report under s. 157.62 (2).

(2) A cemetery authority whose annual operating budget for the cemetery is \$2,500 or less is not required to file an annual report under s. 157.62 (2).

(3) Section 157.62 does not apply to a cemetery authority that is not required to be licensed under s. 440.91 (1) and that is not organized or conducted for pecuniary profit.

**History:** 1991 a. 269; 2005 a. 25.

**157.63 Reporting and auditing exemptions; certification of compliance of cemetery affiliated with religious society.**

(1) In lieu of filing an annual report under s. 157.62 (2), a cemetery authority of a cemetery that is affiliated with a religious society organized under ch. 187 or that religious society may file an annual certification with the department as provided in this section.

(2) A certification under this section shall be made on a form prescribed and furnished by the department and include all of the following:

(a) The name and address of each cemetery to which the certification applies.

(b) A notarized statement of a person who is legally authorized to act on behalf of the religious society under this section that, during the reporting period under s. 157.62, each cemetery and the cemetery authority of each cemetery specified under par. (a) have either fully complied or have substantially complied with ss. 157.11 (9g) and 157.12 (3).

(3) If the statement under sub. (2) (b) includes a statement of substantial compliance, the statement under sub. (2) (b) must also specify those instances when the cemetery or cemetery authority did not fully comply with s. 157.11 (9g) or 157.12 (3).

(4) A certification under this section is effective for the 12-month period immediately following the reporting period under s. 157.62 (2) for which the cemetery authority is certified under this section to have fully or substantially complied with ss. 157.11 (9g) and 157.12 (3).

(5) During the effective period specified under sub. (4), the department may not audit the care funds or any records or accounts relating to the care funds of a cemetery to which a certification under this section applies.

(6) The religious society that is affiliated with a cemetery to which a certification under this section applies is liable for the damages of any person that result from the failure of the cemetery or cemetery authority to fully comply with s. 157.11 (9g) or 157.12 (3) during the reporting period under s. 157.62 (2) for which such compliance has been certified under this section.

**History:** 1989 a. 307; 1991 a. 269.

**Cross Reference:** See also ch. RL 51, Wis. adm. code.

**157.635 Regulations of cemetery affiliated with religious society.**

Nothing in this subchapter prohibits a cemetery authority of a cemetery that is affiliated with a religious society organized under ch. 187 from prohibiting the burial of the human remains of an individual in the cemetery if the individual was in a class of individuals who are prohibited under regulations adopted by the cemetery authority or religious society from being buried in the cemetery.

**History:** 1989 a. 307.

**157.637 Veteran burials.** A cemetery authority of a cemetery, other than a cemetery that is affiliated with a religious society organized under ch. 187, may not prohibit the burial, as defined in s. 157.061 (1), of the human remains of a person specified in s. 45.61 (2) at the cemetery if the cemetery authority is paid in its usual and customary manner for the burial.

**History:** 2003 a. 70; 2005 a. 22.

**157.64 Penalties. (1)** In addition to or in lieu of other remedies provided by law, any person who violates this subchapter or any rule promulgated under this subchapter may be required to forfeit not more than \$200 for each separate offense. Each day of continued violation constitutes a separate offense.

(2) Any person who intentionally does any of the following may be fined not more than \$1,000 or imprisoned for not more than 90 days or both:

(a) Violates s. 157.08 (2) (b), 157.11 (9g) or 157.12 (2) (b), (c) or (d) or (4) (b).

(b) Fails to handle funds for the improvement and care of a cemetery as required in s. 157.11 or 157.125.

(c) Fails to deposit or invest care funds or preneed trust funds as required in s. 157.19.

(d) Fails to file a report or files an incomplete, false or misleading report under s. 157.62 (1) or (2).

(e) Fails to maintain records as required in s. 157.62 (3) and (4).

(f) Files a false or misleading certification under s. 157.63.

(g) Violates s. 157.111.

(3) Any person who intentionally commits an act specified under sub. (2) (a) to (f) with intent to defraud may be punished for theft under s. 943.20.

**History:** 1989 a. 307; 1991 a. 269; 1993 a. 386.

**157.65 Enforcement. (1)** (a) If the department of regulation and licensing has reason to believe that any person is violating or has violated this subchapter or any rule promulgated under this subchapter and that the continuation of that activity might cause injury to the public interest, the department of regulation and licensing may investigate.

(b) If the department of commerce has reason to believe that any person is violating s. 157.12 or any rule promulgated under s. 157.12 and that the continuation of that activity might cause injury to the public interest, the department of commerce may investigate.

(2) The department of justice or any district attorney, upon informing the department of justice, may commence an action in circuit court in the name of the state to restrain by temporary or permanent injunction any violation of this subchapter. The court may, prior to entry of final judgment, make such orders or judgments as may be necessary to restore to any person any pecuniary loss suffered because of the acts or practices involved in the action, if proof of such loss is submitted to the satisfaction of the court. The department of justice may subpoena persons and require the production of books and other documents, and may request the board described in s. 15.405 (3m) or the department of commerce to exercise its authority under sub. (1) to aid in the investigation of alleged violations of this subchapter.

(3) In lieu of instituting or continuing an action under this section, the department of justice may accept a written assurance of discontinuance of any act or practice alleged to be a violation of this subchapter from the person who has engaged in the act or practice. An assurance entered into under this subsection shall not be considered evidence of a violation of this subchapter, but a violation of the assurance shall be treated as a violation of this subchapter.

**History:** 1989 a. 307; 1995 a. 27 ss. 4405, 4406, 9116 (5); 2005 a. 25.

SUBCHAPTER III

BURIAL SITES PRESERVATION

**157.70 Burial sites preservation. (1) DEFINITIONS.** In this section:

(a) “Board” means the burial site preservation board.

(b) “Burial site” means any place where human remains are buried.

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(c) “Cataloged” means recorded under sub. (2) (a), (4) (e) or (6) (c).

(cm) “Dedicated” has the meaning given in s. 157.061 (4).

(d) “Director” means the director of the historical society or his or her formally appointed designee.

(e) “Disturb” includes defacing, mutilating, injuring, exposing, removing, destroying, desecrating or molesting in any way.

(f) “Human remains” means any part of the body of a deceased person in any stage of decomposition.

(g) “Interest” means an interest based on any of the following:

1. Direct kinship.
2. A cultural, tribal or religious affiliation.
3. A scientific, environmental or educational purpose.
4. Land use.
5. A commercial purpose not related to land use which is consistent with the purposes of this section.
6. Any other interest which the board deems to be in the public interest.

(h) “Owner” means a person who owns or leases land on which a burial site is located.

(hm) “Person” includes the state.

(i) “Qualified archaeologist” means an individual who has a graduate degree in archaeology, anthropology or a closely related field and at least one year of full–time professional experience or equivalent specialized training in archaeological or physical anthropological research, administration or management, at least 4 months of supervised field and analytic experience in general North American archaeology or physical anthropology and a demonstrated ability to carry research to completion.

**(1m) APPLICABILITY.** This section does not apply to the disturbance of cataloged land contiguous to a cataloged burial site if the cataloged burial site was recorded under sub. (2) (i) before August 9, 1989.

**(2) DIRECTOR’S DUTIES.** The director shall:

(a) Under a special inspection warrant as required under s. 66.0119, identify and record in a catalog burial sites in this state and, for burial sites which are not dedicated, sufficient contiguous land necessary to protect the burial site from disturbance, and notify in writing every owner of a burial site or of such land so recorded and any county or local historical society in the county where the burial site or the land is located. Any information in the catalog related to the location of any burial site, the disclosure of which would be likely to result in the disturbance of the burial site or the cataloged land contiguous to the burial site, is not subject to s. 19.35 (1). The notice shall include information about the permit required under sub. (5) and the toll free number the owner may call for more information. In this paragraph, “sufficient contiguous land” means land that is within at least 5 feet from any part of a burial site.

(b) Identify and record in a catalog burial sites likely to be of archaeological interest or areas likely to contain burial sites. Any information in the catalog related to the location of any burial site likely to be of archaeological interest or of any area likely to contain a burial site, the disclosure of which would be likely to result in the disturbance of the burial site or the cataloged land contiguous to a cataloged burial site, is not subject to s. 19.35 (1).

(c) Make recommendations concerning burial sites on private property for acquisition by the state or other public agencies to preserve the burial sites.

(d) Provide for and publicize a telephone service which allows any person in this state to call, without charge, the director to report a discovery or disturbance of a burial site.

(e) Establish a registry for any person whom the board determines to have an interest in a cataloged burial site or class of cataloged burial sites under sub. (2m) (b) or (c). The registry shall include the name of every person whom the board determines to have an interest in the preservation of a burial site or in providing

for the reinterment of the human remains and objects related to burial in the burial site if the burial site is disturbed and identify the burial site in which the person is determined to have an interest. Any information in the registry related to the location of any burial site, the disclosure of which would be likely to result in disturbance of the burial site, is not subject to disclosure under s. 19.35 (1).

(f) Assist owners in identifying persons to be notified under sub. (5) (b) 2.

(g) Assist Indian tribes, state agencies and other persons in any negotiation with any federal agency for the preservation of burial sites and human remains.

(h) Mediate, upon application of any owner or person in the registry under par. (e), any dispute related to the disturbance or proposed disturbance of a burial site.

(i) Cause a cataloged burial site to be recorded by the register of deeds of the county in which the burial site is located. The historical society shall reimburse the county for the cost of recording under this paragraph from the appropriation under s. 20.245 (1) (a).

**(2m) BOARD DUTIES.** The board shall:

(a) Meet at least every 3 months.

(b) Determine which Indian tribes in this state have an interest in any cataloged burial site or class of cataloged burial sites and notify the director for entry in the registry under sub. (2) (e).

(c) Determine which applicants for entry in the registry under sub. (2p) have an interest in a cataloged burial site or class of cataloged burial sites.

(d) As it deems necessary, review determinations of the director and the division of hearings and appeals in the department of administration under sub. (5).

(e) As it deems necessary, review disposition actions taken by the director under sub. (6).

(f) As it deems appropriate, approve transfers of burial sites under sub. (6m) (b) 2.

**(2p) APPLICATION FOR REGISTRY.** Any person may apply to the board for entry in the registry and shall indicate in which burial site she or he is claiming an interest.

**(2r) SITE DISTURBANCE PROHIBITED.** Except as provided under subs. (4) and (5) and ss. 157.111 and 157.112, no person may intentionally cause or permit the disturbance of a burial site or cataloged land contiguous to a cataloged burial site. This subsection does not prohibit normal agricultural or silvicultural practices which do not disturb the human remains in a burial site or the surface characteristics of a burial site.

**(3) REPORT OF DISTURBED BURIAL SITES.** (a) Except as provided under s. 979.01, a person shall immediately notify the director if the person knows or has reasonable grounds to believe that a burial site or the cataloged land contiguous to a cataloged burial site is being disturbed or may be disturbed contrary to the requirements of subs. (4) and (5).

(b) Upon receipt of any notice under par. (a), the director shall determine if the burial site which is the subject of the notice has been cataloged under sub. (2) (a).

**(4) PROCEDURE FOR UNCATALOGED BURIAL SITES.** (a) If the director determines that a burial site reported under sub. (3) is not cataloged under sub. (2) (a), he or she shall immediately notify the owner of the burial site of the procedure under this subsection and of the liabilities and penalties which apply for failure to comply with the procedure. If the director deems it appropriate, he or she may give notice to the board, and to any person who has or may have an interest in the burial site, that a burial site has been reported under sub. (3).

(b) No owner who has received notice under par. (a) may in any way intentionally cause or permit any activity which would disturb the burial site which is the subject of the notice unless authorized by the director under par. (c) 2. or (d).

(c) 1. Using information available concerning the burial site and the proposed activity, the director shall determine whether the proposed activity will disturb the burial site and whether the registry under sub. (2) (e) shows that any person has an interest in the burial site.

2. If the director determines that the proposed activity will not disturb the burial site or will disturb a burial site in which no person is shown on the registry under sub. (2) (e) to have an interest, he or she shall notify the owner of the owner's right to cause or permit the activity.

3. If the director determines that the proposed activity will disturb a burial site in which any other person who is not the owner is shown on the registry under sub. (2) (e) to have an interest and that the interest is substantial, the director shall notify the owner that the owner may not cause or permit the activity unless the owner does one of the following:

a. Subject to s. 157.111, authorizes the director or a qualified archaeologist approved by the director to excavate the burial site to remove and analyze any human remains and objects related to the burial in the burial site from the burial site within a reasonable time, beginning within 30 days of when ground conditions permit, for disposition under sub. (6).

b. Changes the proposed activity so as not to disturb any burial site.

(d) If the director determines that an owner has satisfied the requirements under par. (c) 3., he or she shall notify the owner of the owner's right to cause or permit any activity which is in keeping with the owner's action under par. (c) 3.

(e) If under par. (c) 3. a. all human remains and objects related to the burial in a burial site reported under sub. (3) (a) are not removed from the burial site, the director shall enter the burial site into the record prepared under sub. (2) (a).

(f) The director shall submit a written report to the board of any determination which he or she makes under this subsection.

**(5) PROCEDURE FOR CATALOGED BURIAL SITES.** (a) No person may intentionally cause or permit the disturbance of a cataloged burial site or the cataloged land contiguous to a cataloged burial site without a permit from the director issued under this subsection.

(b) Any person who intends to cause or permit any activity on a cataloged burial site or on cataloged land contiguous to a cataloged burial site which in any way might disturb the burial site or the land shall:

1. Apply to the director for a permit to disturb the burial site or the land. The application shall include the purpose of the disturbance and the names and addresses of any persons notified under subd. 2. The director shall send the applicant the names of any person in the registry with an interest in the burial site.

2. On a form provided by the director, notify any person whose name the director has sent under subd. 1. of the proposed disturbance. The notice to any person under this subdivision shall include information on the notified person's right to a hearing on whether the director should grant a permit to disturb the burial site or the land.

(c) 1. Upon request of the applicant or any person notified under par. (b), or if the director determines that a hearing is necessary, the director shall request the division of hearings and appeals in the department of administration to conduct a hearing on whether a permit should be issued to disturb the burial site or the land which is the subject of the request. If in any part of the hearing the location of a burial site is the subject of the testimony, such part of the hearing shall be conducted in a session closed to the public and the record of such part of the hearing shall be exempt from disclosure under s. 19.35 (1).

1m. If a hearing is not requested or determined to be necessary under subd. 1., the director shall determine whether a permit should be issued to disturb the burial site or the land which is the subject of the application under par. (b) 1. If the director determines that the benefits to the permit applicant in disturbing the

burial site or the land outweigh the benefits to all other persons shown on the registry under sub. (2) (e) to have an interest in not disturbing the burial site or the land, the director shall grant a permit to disturb the burial site or the land. In making the determination, the director shall consider the interest of the public in addition to any other interests. If the director determines that any of the following classes of interest are represented, the director shall weight the interests in the following order of priority:

- a. Direct kinship.
- b. A cultural, tribal or religious affiliation.
- c. A scientific, environmental or educational purpose.
- cm. Historical and aesthetic significance of the burial site.
- d. Land use.
- e. A commercial purpose not related to land use which is consistent with the purposes of this section.
- f. Any other interest which the director deems to be in the public interest.

2. If a hearing is requested or determined to be necessary under subd. 1., the division of hearings and appeals in the department of administration shall conduct a hearing to determine whether the benefits to the permit applicant in disturbing the burial site or the land outweigh the benefits to all other persons shown on the registry under sub. (2) (e) to have an interest in not disturbing the burial site or the land. If the division finds in favor of the applicant, the division shall issue a determination in favor of granting a permit to disturb a burial site or the land which is the subject of the hearing under this paragraph. In making the determination, the division shall consider the interest of the public in addition to the interests of the parties. If any of the following classes of interest are represented in the hearing, the division shall weight the interests in the following order of priority:

- a. Direct kinship.
- b. A cultural, tribal or religious affiliation.
- c. A scientific, environmental or educational purpose.
- cm. Historical and aesthetic significance of the burial site.
- d. Land use.
- e. A commercial purpose not related to land use which is consistent with the purposes of this section.
- f. Any other interest which the board deems to be in the public interest.

2m. If the division makes a determination for granting a permit to disturb a burial site which is the subject of the hearing under this paragraph, the division may determine the person to whom the human remains and objects related to the burial in the burial site should be transferred for analysis and reinterment or other appropriate disposition when the burial site is disturbed. In making such a determination, the division shall follow the order of priority prescribed in sub. (6) (a).

3. If the determination under subd. 1m. or 2. is for granting a permit to disturb a burial site which is the subject of the hearing under this paragraph, the director shall grant the permit if the owner authorizes the director or a qualified archaeologist approved by the director to excavate the burial site to remove, within a reasonable time, beginning within 30 days of when ground conditions permit, for disposition under sub. (6), any human remains and objects related to the burial in the burial site to be disturbed under the permit.

4. A permit issued under this subsection shall be subject to s. 157.111 and may be subject to any other condition or exemption deemed necessary to limit the disturbance of a burial site or the land or to minimize any other burden on any person affected by granting the permit.

5. Any party in a hearing under this paragraph may appeal the determination under subd. 1m. or 2. to the board.

(d) 1. The director may charge a fee to recover the cost of excavation of a cataloged burial site under par. (c) 3. on the basis of the historical society's assessment of the costs associated with excavation of the cataloged site.

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2. The director may charge a fee to recover costs incurred by the historical society to analyze and reinter or otherwise dispose of human remains and other material under par. (c) 2m.

**(6) DISPOSITION OF HUMAN REMAINS REMOVED FROM BURIAL SITES.** (a) If human remains and objects related to the burial in the site are removed from a burial site under sub. (4) (c) 3. a. or (5) (c) 3. and the division has not determined under sub. (5) (c) 2m. the person to whom such remains and objects should be transferred for analysis and reinterment or other appropriate disposition, the director shall notify any person in the registry under sub. (2) (e) with an interest in the analysis and reinterment or appropriate disposition of such human remains and objects. The director shall transfer the remains and objects to such person for appropriate reinterment or other appropriate disposition upon receipt of a written application by any person with an interest in the analysis and reinterment or other appropriate disposition based on the following, in the order of priority stated, when persons in prior classes are not available at the time of application and in the absence of actual notice of opposition by a member of the same or a prior class:

1. Direct kinship.
2. A cultural, tribal or religious affiliation.
3. A scientific, environmental or educational purpose.
4. Any other interest which the board deems to be in the public interest.

(b) If the director cannot identify any person with an interest in reintering the human remains and objects received under par. (a), the director shall provide for reinterment or other disposition of the human remains and objects in an appropriate manner.

(c) The director shall enter into the catalog prepared under sub. (2) (a) the site of any reinterment under par. (a) or (b).

(d) The director shall submit to the board a written report of any disposition action taken under this subsection.

(e) The board may review and modify any disposition action taken by the director under this subsection.

**(6m) BURIAL SITES ON PUBLIC LANDS.** (a) In this subsection, “municipality” has the meaning given under s. 66.0621 (1) (a) and includes the state.

(b) Notwithstanding any other provision of this section, a municipality:

2. May not transfer any burial site to any person who is not a municipality unless the transfer provides for preservation of the burial site from any disturbance by any person and unless the transfer is approved by the board.

3. Shall endeavor to take positive action to preserve any burial site on land it owns through appropriate land use management including but not limited to appropriate multiuse purposes such as nature preserves.

**(7) ACTION BY ATTORNEY GENERAL.** Upon request of the board, the attorney general or the district attorney of the proper county shall aid in any investigation, inspection, hearing or trial had under the provisions of this section and shall institute and prosecute all necessary actions or proceedings for the enforcement of such provisions and for the punishment of violations of the same.

The attorney general or district attorney so requested shall report to or confer with the board regarding the request within 30 days after receipt of the request.

**(8) REMEDIES.** Any person who intentionally disturbs, without the authorization of the director under sub. (4) (c) 2. or (d), a burial site which is not cataloged or who intentionally disturbs, without a permit issued under sub. (5), a cataloged burial site or the cataloged land contiguous to a cataloged burial site is liable for attorney fees and damages or other appropriate relief to any person with an interest in preserving the burial site or in reintering the human remains and objects related to the burial in the burial site. Any person with an interest in preserving a burial site or in reintering the human remains in the burial site may bring an action for an injunction to prevent disturbance to the burial site or the cataloged land contiguous to a cataloged burial site or to obtain the human remains and objects related to the burial in the burial site for appropriate reinterment, in the order of priority specified in sub. (6) (a).

**(9) PRESERVATION OF RIGHTS.** The transfer of title to any property shall not change the rights and duties of any person under this section.

**(10) PENALTIES.** (a) Any person who fails to report the disturbance of a burial site or the cataloged land contiguous to a cataloged burial site as required under sub. (3) shall forfeit not less than \$100 nor more than \$1,000.

(b) Any person who intentionally disturbs a burial site which is not cataloged without the authorization of the director under sub. (4) (c) 2. or (d) shall forfeit not less than \$500 nor more than \$2,000 if the burial site is not dedicated or shall forfeit not less than \$1,000 nor more than \$10,000 if the burial site is dedicated.

(c) Any owner who intentionally causes or permits any activity which disturbs a burial site after receiving notice from the director under sub. (4) (a) without the authorization required under sub. (4) (c) 2. or (d) shall forfeit not less than \$1,000 nor more than \$10,000.

(d) Any person who intentionally causes or permits any activity which disturbs a cataloged burial site or the cataloged land contiguous to a cataloged burial site without a permit issued under sub. (5) shall forfeit not less than \$1,000 nor more than \$10,000.

(e) Any person who disturbs a burial site for commercial gain not related to use of the land where a burial site is located or who disturbs a cataloged burial site for commercial gain related to use of the land where a burial site is located in violation of this section may be fined not to exceed 2 times the gross value gained or 2 times the gross loss caused by the disturbance, whichever is the greater, plus court costs and the costs of investigation and prosecution, reasonably incurred, or imprisoned for not more than one year in the county jail or both. In calculating the amount of the fine based on personal injury, any measurement of pain and suffering shall be excluded.

**History:** 1985 a. 316; 1987 a. 27; 1989 a. 3, 31, 359; 1991 a. 39; 1993 a. 386; 1995 a. 357; 1999 a. 83; 1999 a. 150 s. 672; 2001 a. 16.

**Cross Reference:** See also ch. HS 1, Wis. adm. code.

**Note:** 1985 Wis. Act 316, which created this section, contains extensive notes. Also, Section 1 of the Act is entitled “Legislative findings and purpose”.

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## Chapter HS 2

### BURIAL SITES PRESERVATION PROGRAM

HS 2.01 Authority.  
HS 2.02 Definitions.  
HS 2.03 Cataloging burial sites.

HS 2.04 Disturbing burial sites.  
HS 2.05 Disposition of remains.

**HS 2.01 Authority.** This chapter is promulgated under the authority of ss. 157.70 and 227.11 (2) (a), Stats., and provides a process to implement s. 157.70, Stats. This chapter establishes procedures that the state historical society will use to identify, catalog, preserve, excavate, analyze, and decide disposition of human burials in this state.

**History:** Cr. Register, September, 1990, No. 417, eff. 10-1-90.

**HS 2.02 Definitions.** In this chapter:

(1) "Adequate historical documentation" means information verifiable through at least 2 of the following types of independent sources: church records, deeds, maps, and other written and oral sources.

(2) "Board" means the burial sites preservation board.

(3) "Cataloged burial site" means a piece of land that has a record of having buried human remains and is recorded with the county register of deeds. This shall be the case even if the recorded burial site is unintended, abandoned, and has no surface indications of burials.

**Note:** The Wisconsin Historical Society recognizes that the definition of "Cataloged burial site" in s. HS 2.02 (3) conflicts with the definition of "Catalogued" burial site at s. 157.70 (1) (c), Stats. Therefore, to carry out its duties under s. 157.70, Stats. and ch. HS 2, the definition of "Cataloged burial site" at s. HS 2.02 (3) shall be disregarded, and all instances of "Catalogued" in ch. HS 2 shall have the meaning given in s. 157.70 (1) (c), Stats. This interpretation shall not affect the Catalog of Wisconsin Burial Sites as it exists prior to May 1, 2005.

(4) "Class of burial sites" means burial sites of a particular age, culture, or geographic region.

(5) "Cultural affiliation" means an association with an historic immigrant nationality or ethnic group.

(6) "Direct kinship" means lineal or legal descent, or a spouse.

(7) "Director" means the director of the state historical society of Wisconsin or a formally appointed designee.

(8) "Grave marker" means any surface indication of a burial including stone monuments, spirit houses, wooden crosses, and prehistoric Indian mounds.

(9) "Human remains" means any part of the body of a deceased person in any stage of decomposition in a context indicating substantial evidence for burial.

(10) "Objects related to the burial" means items that were intentionally placed and directly associated with the burial.

(11) "Religious affiliation" means a membership in an organized religion recognized by federal internal revenue service tax exemption or a membership in a traditional Indian religion in Wisconsin, pursuant to federal regulations established under the American Indian Religious Freedom Act, 42 USC, Sec. 1996.

(12) "Skeletal analyst" means an individual who has a graduate degree in archeology, anthropology, or a closely related field and at least one year of full-time professional experience or equivalent specialized training in human osteological research, at least 4 months of supervised analytic experience in the identification, analysis, and interpretation of human osteological remains, and a demonstrated ability to carry research to completion.

(13) "Sufficient contiguous land" means the land within at least 5 feet from any part of the burial site including beds of lakes, streams, and rivers surrounding the burial site necessary to ensure its protection.

(14) "Tribal affiliation" means an association with federally recognized Indian tribes or bands.

(15) "Uncataloged burial site" means any burial site that has not been cataloged according to s. HS 2.03 and is not recorded with the register of deeds.

**History:** Cr. Register, September, 1990, No. 417, eff. 10-1-90.

**HS 2.03 Cataloging burial sites. (1) INITIATION OF A CATALOG REQUEST.** For a person other than the director, to initiate a request to include a burial site in the catalog of burial sites an applicant shall supply the following information to the director:

(a) The applicant's name and address and telephone number.

(b) The burial site owner's name and address and telephone number.

(c) Documentation of the burial site.

(d) A photographic print of the burial site and the accompanying negative to document the condition of the site at the time of the application.

(e) A town, range, and section, description of the site's location.

(f) A sketch showing the known area of the site in relation to named roads, lakes, or rivers.

(g) A copy of the pertinent United States geological survey topographic quadrangle map or a plat noting the location of the burial site. Persons may call the director at 1-800-342-7834 to obtain a copy of the appropriate topographic quadrangle map or plat.

**(2) DOCUMENTATION OF A BURIAL SITE.** Documentation of a burial site under sub. (1) (c) may include, but is not limited to, the following:

(a) Physical evidence, as demonstrated by archeological or written historical reports showing the presence of human bone or grave markers;

(b) Adequate historical documentation;

(c) Oral depositions, affidavits, or oral histories;

(d) Any additional information requested by the director.

**(3) REVIEW OF APPLICATION BY THE DIRECTOR.** (a) If prepared by a person other than the director, the director shall review the application. If the application is inaccurate, incomplete, or inadequate the request for cataloging shall be returned to the applicant within 30 days of receipt of the application with an explanation of the deficiencies.

(b) If the application is complete and accurate to the best of the director's knowledge, the director shall enter the site into the state catalog of burial sites.

**(4) TAX EXEMPTION.** (a) For a burial site to be given tax exempt status, the director or other person interested in cataloging the burial site shall document and catalog the site as in subs. (1) to (3) and shall determine the specific boundaries of the burial site.

(b) The director or other person interested in cataloging the burial site shall prepare a plan map of the site's boundaries. This map shall be tied to a legal point of reference such as an existing property corner marker or an existing geodetic survey marker, or other such marker that can be relocated through reference to

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records of public land title and the official points of reference in the field.

(c) If prepared by a person other than the director the specific legal description of the site's boundaries shall be submitted to the director for review. If the legal description is inaccurate, incomplete, or inadequate, the legal description shall be returned to the applicant within 30 days of receipt of the description with an explanation of the deficiencies.

(d) If the legal description is complete and accurate to the best of the director's knowledge, the director shall record the burial site with the register of deeds in the county in which the site is located.

**(5) NOTIFICATION.** The director shall notify the applicant, owner, all persons on the registry for that burial site or class of burial sites, the local unit of government, and the county historical society or local historical societies within the county when a particular burial site has been cataloged and recorded with the county register of deeds.

**(6) REMOVAL FROM THE CATALOG.** (a) If evidence is ever presented to the director to indicate that a cataloged burial site does not contain human remains or all human remains are removed in accordance with s. HS 2.04, the director shall notify by certified letter, the owner, the applicant who initiated the catalog request, all persons on the registry for that burial site or class of burial sites, county or local historical societies, and the local unit of government having jurisdiction over the burial site and give these persons 60 days within receipt of notification to respond to the director on this new evidence.

(b) After 60 days, if the director decides that there is sufficient evidence to indicate that a cataloged site does not contain any burials, the director shall do all of the following:

1. Remove the site from the catalog.
2. Submit a request to the register of deeds to delete or cancel the documentation for a burial site on this land.
3. Notify the owner, applicant who initiated the catalog request, all persons on the registry for that burial site or class of burial sites, county or local historical societies, and the local unit of government of the decision to remove the burial site from the catalog.

(c) A person shall have 30 days from the date of the director's decision to appeal the director's decision to the board. During the appeals process, the director's decision to remove a burial site from the catalog shall be suspended.

**History:** Cr. Register, September, 1990, No. 417, eff. 10-1-90.

**HS 2.04 Disturbing burial sites. (1) EXCEPTIONS.** Permission from the director to disturb burial sites is not required in cases where disinterment:

- (a) Has been authorized under s. 69.18 (4), Stats.
- (b) Is undertaken by a coroner or medical examiner in conjunction with a criminal investigation.
- (c) Has been authorized by any court order or judgment rendered under s. 69.18 (4), Stats.

**(2) TESTING.** If there is reason to believe that a burial site may be present, the director may authorize, orally or in writing, limited appropriate subsurface exploration to determine whether a property contains a burial site.

**(3) DIRECTOR'S INTEREST.** As head of the agency representing the state's interest in preservation of the state's cultural heritage, the director shall claim an interest in all burial sites under s. 157.70 (1) (g) 6., Stats.

**(4) UNCATALOGED BURIAL SITES.** (a) If a reported activity disturbs or threatens to disturb an uncataloged burial site, the director shall notify the owner of the burial site by phone if possible and by certified letter, return receipt requested, of the disturbance of this burial site and the procedures, liabilities and penalties for enforcing violation of s. 157.70, Stats. The director may notify the board, persons on the registry, and any other person who may have

an interest in the burial site. The director may request a meeting of the board.

(b) If the human remains and objects related to the burial are left undisturbed, the director shall record the burial site's location and shall enter it into the catalog of burial sites as per s. HS 2.03.

(c) If the owner or owner's agent wishes to remove the human remains and objects related to the burial, the owner shall arrange a schedule of excavation with the director. If the excavation work can not be done in a reasonable time by the director, the director shall send a standard contract to the owner for the owner to use in hiring a qualified archeologist approved by the director under s. 157.70 (4) (c) 3. a., Stats.

(d) The owner shall send a copy of the signed contract between the owner and a qualified archeologist to the director. Upon receipt of this contract, the director shall give both oral authorization and written permission to the owner allowing the disturbance of the burial site. Once this excavation is finished to the director's satisfaction, the director shall notify the owner that the owner may proceed with the proposed activity.

(e) The archeologist hired under par. (b) shall submit at least 2 copies of a report to the director on the excavation and analysis of the human remains and associated objects. This report shall be reviewed and approved by the director.

**(5) CATALOGED BURIAL SITES.** (a) Any person who wishes to disturb a cataloged burial site shall apply to the director.

(b) If the applicant wishes to disturb the area within the specific legal boundaries or known area of a cataloged burial site, the director shall send the applicant the names of all persons on the registry for that site or class of sites and the forms to notify these persons of the applicant's request. This form shall state the purpose of the disturbance, information on the right of interested persons to request a hearing by the division of hearing and appeals, the purpose of such a hearing, and the consequences if no hearing is requested.

(c) The applicant shall send the forms of notification, using the forms specified in this subsection to persons on the registry by certified mail, return receipt requested. Persons on the registry shall be given 30 days from date of receipt by which to comment on the proposal. If the certified letter is undeliverable, the director shall attempt to contact that person by telephone. If the addressee refuses to sign the return receipt, or fails to contact the director by mail or telephone within 30 days of returned certified letter, that person forfeits the opportunity to comment on the proposed disturbance.

(d) The application to disturb a cataloged burial site shall include all of the following:

1. The applicant's name and address.
2. The nature and purpose of the disturbance.
3. The names of the persons on the registry who have been notified and proof of this notification in the form of the receipt from the certified letter or in the form of other documentation accepted by the director.

(e) If there is no request for a hearing, within 30 days from the most recent date of receipt of the certified letters sent, the director shall decide whether to grant a permit to disturb within 30 days of that most recent dated receipt of the certified letters. The decision will be based on weighing the benefits to the applicant wishing to disturb the burial site and the benefits to persons with an interest in having the site remain undisturbed as well as the interests of the public as a whole.

(f) If requested within 30 days of the receipt of the notification form by the applicant, or other persons on the registry for that site under s. 157.70 (1) (g), Stats., or, if deemed necessary by the director, the director shall request that the division of hearings and appeals conduct a hearing to decide if a cataloged burial site may be disturbed.

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(g) This request for the division of hearings and appeals to conduct a hearing shall be made through the director who shall send copies of all documentation concerning the burial site in question to the division of hearings and appeals. The hearings held under this section shall be class 1 proceedings as defined by s. 227.01 (3) (a), Stats., and review thereof shall be provided ch. 227, Stats.

(h) If the director requests a hearing, the division of hearings and appeals shall schedule a hearing within 45 days of the director's request.

(i) If a hearing is held, the division shall make a decision within 30 days from the close of the hearing and submission of all documents and briefs.

(j) If either the division of hearings and appeals or the director grants permission to disturb the burial site, the director shall send a standard contract to be used as a basis of agreement between the owner and a qualified archeologist.

(k) Any party may request that decisions rendered in any hearing under this section be appealed to the board.

(L) In emergency situations, when burials on a cataloged site are being disturbed by natural forces or accidental causes, the director may waive the procedure specified in s. HS 2.04 (5) and invoke the uncataloged procedure.

**(6) QUALIFICATIONS FOR ARCHEOLOGISTS AND SKELETAL ANALYSTS.** (a) Only qualified archeologists, defined in s. 157.70 (1) (i), Stats., approved by the director shall be permitted to oversee the excavation of burials. Qualified archeologists shall demonstrate experience in the excavation of burials by submitting all of the following to the director for approval:

1. Vita.
2. Two letters of reference.

(b) If any human remains are removed from a burial site they shall be analyzed by a skeletal analyst approved by the director. To be approved by the director, the skeletal analyst shall demonstrate knowledge and experience in human osteology by submitting all of the following to the director for approval:

1. Vita.
2. Two letters of reference.

**(7) SCHEDULE FOR THE REPORTS.** The director shall negotiate with the qualified archeologist and persons on the registry for that burial site or class of burial sites on a schedule for the written report of this analysis.

**(8) REVIEW OF REPORTS.** Two copies of the report of the excavation and analysis, along with a copy of all field notes, maps, and photographs relating to the documentation of the burials shall be submitted to the director for review.

**(9) BONE SAMPLES.** Upon approval of the director, the skeletal analyst or archeologist may retain a sample of bone for analysis when this will aid in identifying the burial's type or class, or when this is consistent with the disposition decision as stipulated in s. HS 2.05 (1).

**(10) ARCHIVING DOCUMENTATION.** All approved reports, the copy of all field notes, maps, and photographs relating to the documentation of the burial shall be permanently archived at the state historical society.

**(11) COPIES OF THE REPORT.** A copy of the report shall be sent to the owner of the burial site and other interested persons upon request to the director.

**(12) RESPONSIBILITY FOR COSTS OF EXCAVATION AND ANALYSIS.** (a) Any person who obtains permission to disturb a cataloged burial site shall pay for the costs of archeological excavation and skeletal analysis. The person may hire any qualified archeologist and skeletal analyst approved by the director.

(b) In instances where an uncataloged burial site is accidentally uncovered, and it is not feasible to leave the burial place, the director shall, within a reasonable time beginning 30 days of when ground conditions permit, excavate and analyze the remains at no

cost to the owner. Requests for excavation shall be considered in the order in which they are received. If the director cannot accomplish the work within the time frame desired, the owner may hire, at his or her own expense, a qualified archeologist and skeletal analyst approved by the director to excavate and analyze the remains.

**(13) BURIAL SITES ON PUBLIC LAND.** All transfers of public land containing burial sites to private parties shall be approved by a majority vote of the board. The municipality or public agency wishing to transfer a property containing a burial site shall submit a written explanation to the board. This explanation shall include a land description of the property and a copy of the proposed deed restrictions concerning the burial site.

**History:** Cr. Register, September, 1990, No. 417, eff. 10-1-90; corrections made in (1) (c) and (5) (L) under s. 13.93 (2m) (b) 7., Stats., Register April 2005 No. 592.

**HS 2.05 Disposition of remains. (1) DECISIONS ON DISPOSITION.** The director shall not decide the final disposition of any excavated human remains and objects related to the burial until the remains, related objects, and other artifacts recovered in the course of the excavation have received appropriate analysis and a satisfactory report on these remains and artifacts has been received by the director.

**(2) INTERIM DISPOSITION.** Unless otherwise agreed upon by the director and contracting archeologist, after the completion of the analysis, the human remains, objects related to the burial, and other artifacts recovered in the course of the excavation shall be cared for by arrangement of the state historical society until disposition has been decided.

**(3) NOTIFICATION.** All persons on the registry for the particular burial site in question or class of burial sites, shall be notified by certified letter, return receipt requested, that they may apply to arrange for the final disposition of the remains and objects related to the burial.

**(4) APPLICATION PROCEDURE.** Persons in the registry who have an interest in the disposition of the human remains and objects related to the burial, may apply in writing to the director for possession. This written application shall include all of the following:

- (a) The applicant's name and address
- (b) The category of interest as defined by s. 157.70 (1) (g), Stats.

(c) The specific plans for final disposition, including location of the human remains and objects related to the burial.

**(5) DIRECTOR'S REVIEW.** The director shall review the application. If the application is inaccurate, incomplete, or inadequate the request for disposition shall be returned to the applicant within 30 days of receipt of the application with an explanation of the deficiencies.

**(6) DISPOSITION DECISION.** If the application is complete and accurate to the best of the director's knowledge, the director shall, based on the order of priority of interests established in s. 157.70 (6) (a), Stats., decide to whom the remains will be transferred to for disposition. Upon making the decision, the director shall notify the applicants, all persons on the registry for the burial site or class of burial sites, and other persons deemed appropriate to notify, to whom the remains will be transferred for disposition.

**(7) BOARD REVIEW.** Any person on the registry for a particular burial site may request a board review of the director's decision regarding disposition of the remains from that particular burial site.

**(8) COST OF DISPOSITION.** The person or agency whose actions result in the disturbance of a cataloged burial site shall pay the costs of reburial, cremation or curation of the human remains and any objects related to the burial.

**(9) REINTERMENT.** If the human remains and objects related to the burial are reinterred, the director shall require the information necessary to catalog this site.



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**(10) CURATION.** (a) If the human remains and objects related to the burial are to be curated, they shall be in an institution with adequate long-term curatorial capabilities. Regular access for scholars and persons on the registry for the burial site or class of burial sites shall be guaranteed.

(b) Originals or copies of all field notes, maps, and photographs from a burial site investigation shall be curated at the state historical society.

**(11) COMPLIANCE.** (a) Any person awarded disposition of the remains for reinterment shall submit a witnessed and notarized statement to the director within 60 days of acquiring the remains, or within 60 days of when ground conditions permit reinterment

or cremation, stating that the agreed upon reinterment or cremation has been completed.

(b) Any person awarded disposition of the remains for curation shall submit a witnessed and notarized statement to the director within 60 days of acquiring the remains, that states that the agreed upon curation has been established.

**(12) FAILURE TO COMPLY.** If the director determines that the remains have not been reinterred, cremated or curated as agreed, the director shall order all remains returned to the director. The director shall notify the persons on the registry as stipulated in sub. (3).

**History:** Cr. Register, September, 1990, No. 417, eff. 10-1-90.

CHAPTER 15

STRUCTURE OF THE EXECUTIVE BRANCH

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SUBCHAPTER I

GENERAL PROVISIONS

**15.001 Declaration of policy.** (1) THREE BRANCHES OF GOVERNMENT. The “republican form of government” guaranteed by the U.S. constitution contemplates the separation of powers within state government among the legislative, the executive and the judicial branches of the government. The legislative branch has the broad objective of determining policies and programs and review of program performance for programs previously authorized, the executive branch carries out the programs and policies and the judicial branch has the responsibility for adjudicating any conflicts which might arise from the interpretation or application of the laws. It is a traditional concept of American government that the 3 branches are to function separately, without intermingling of authority, except as specifically provided by law.

(2) GOALS OF EXECUTIVE BRANCH ORGANIZATION. (a) As the chief administrative officer of the state, the governor should be provided with the administrative facilities and the authority to carry out the functions of the governor’s office efficiently and effectively within the policy limits established by the legislature.

(b) The administrative agencies which comprise the executive branch should be consolidated into a reasonable number of departments and independent agencies consistent with executive capacity to administer effectively at all levels.

(c) The integration of the agencies in the executive branch should be on a functional basis, so that programs can be coordinated.

(d) Each agency in the executive branch should be assigned a name commensurate with the scope of its program responsibilities, and should be integrated into one of the departments or independent agencies of the executive branch as closely as the conflicting goals of administrative integration and responsiveness to the legislature will permit.

(3) GOALS OF CONTINUING REORGANIZATION. Structural reorganization should be a continuing process through careful executive and legislative appraisal of the placement of proposed new programs and the coordination of existing programs in response to changing emphasis or public needs, and should be consistent with the following goals:

(a) The organization of state government should assure its responsiveness to popular control. It is the goal of reorganization to improve legislative policy-making capability and to improve

## 15.001 STRUCTURE OF THE EXECUTIVE BRANCH

the administrative capability of the executive to carry out these policies.

(b) The organization of state government should facilitate communication between citizens and government. It is the goal of reorganization through coordination of related programs in function-oriented departments to improve public understanding of government programs and policies and to improve the relationships between citizens and administrative agencies.

(c) The organization of state government shall assure efficient and effective administration of the policies established by the legislature. It is the goal of reorganization to promote efficiency by improving the management and coordination of state services and by eliminating overlapping activities.

**History:** 1991 a. 316.

**15.01 Definitions.** In this chapter:

(1g) “Affiliated credentialing board” means a part-time body that meets all of the following conditions:

(a) Is attached to an examining board to regulate a profession that does not practice independently of the profession regulated by the examining board or that practices in collaboration with the profession regulated by the examining board.

(b) With the advice of the examining board to which it is attached, sets standards of professional competence and conduct for the profession under the affiliated credentialing board’s supervision, reviews the qualifications of prospective new practitioners, grants credentials, takes disciplinary action against credential holders and performs other functions assigned to it by law.

(1r) “Board” means a part-time body functioning as the policy-making unit for a department or independent agency or a part-time body with policy-making or quasi-judicial powers.

(2) “Commission” means a 3-member governing body in charge of a department or independent agency or of a division or other subunit within a department, except for the Wisconsin waterways commission which shall consist of 5 members and the parole commission which shall consist of 8 members. A Wisconsin group created for participation in a continuing interstate body, or the interstate body itself, shall be known as a “commission”, but is not a commission for purposes of s. 15.06. The parole commission created under s. 15.145 (1) shall be known as a “commission”, but is not a commission for purposes of s. 15.06. The sentencing commission created under s. 15.105 (27) shall be known as a “commission” but is not a commission for purposes of s. 15.06 (1) to (4m), (7), and (9).

(3) “Committee” means a part-time body appointed to study a specific problem and to recommend a solution or policy alternative with respect to that problem, and intended to terminate on the completion of its assignment. Because of their temporary nature, committees shall be created by session law rather than by statute.

(4) “Council” means a part-time body appointed to function on a continuing basis for the study, and recommendation of solutions and policy alternatives, of the problems arising in a specified functional area of state government, except the Milwaukee River revitalization council has the powers and duties specified in s. 23.18, the council on physical disabilities has the powers and duties specified in s. 46.29 (1) and (2), and the state council on alcohol and other drug abuse has the powers and duties specified in s. 14.24.

(5) “Department” means the principal administrative agency within the executive branch of Wisconsin state government, but does not include the independent agencies under subch. III.

(6) “Division,” “bureau,” “section” and “unit” means the subunits of a department or an independent agency, whether specifically created by law or created by the head of the department or the independent agency for the more economic and efficient administration and operation of the programs assigned to the department or independent agency. The office of justice assistance in the department of administration and the office of credit unions in the department of financial institutions have the mean-

ing of “division” under this subsection. The office of the long-term care ombudsman under the board on aging and long-term care and the office of educational accountability in the department of public instruction have the meaning of “bureau” under this subsection.

(7) “Examining board” means a part-time body which sets standards of professional competence and conduct for the profession under its supervision, prepares, conducts and grades the examinations of prospective new practitioners, grants licenses, investigates complaints of alleged unprofessional conduct and performs other functions assigned to it by law. “Examining board” includes the board of nursing.

(8) “Head”, in relation to a department, means the constitutional officer, commission, secretary or board in charge of the department. “Head”, in relation to an independent agency, means the commission, commissioner or board in charge of the independent agency.

(9) “Independent agency” means an administrative agency within the executive branch created under subch. III.

**History:** 1977 c. 29, 274; 1979 c. 34; 1983 a. 27, 189, 371, 410, 538; 1985 a. 29, 120, 180; 1987 s. 27, 342, 399; 1989 a. 31, 107, 202; 1991 a. 39, 269, 315; 1993 a. 16, 107, 210, 215; 1995 a. 27 ss. 74 and 9145 (1); 1995 a. 442, 462; 1997 a. 27, 237; 2001 a. 16, 105, 109; 2005 a. 25.

**15.02 Offices, departments and independent agencies.** The constitutional offices, administrative departments and independent agencies which comprise the executive branch of Wisconsin state government are structured as follows:

(1) SEPARATE CONSTITUTIONAL OFFICES. The governor, lieutenant governor, secretary of state and state treasurer each head a staff to be termed the “office” of the respective constitutional officer.

(2) PRINCIPAL ADMINISTRATIVE UNITS. The principal administrative unit of the executive branch is a “department” or an “independent agency”. Each such unit shall bear a title beginning with the words “State of Wisconsin” and continuing with “department of...” or with the name of the independent agency. A department may be headed by a constitutional officer, a secretary, a commission or a board. An independent agency may be headed by a commission, a commissioner or a board.

(3) INTERNAL STRUCTURE. (a) The secretary of each department may, subject to sub. (4), establish the internal structure within the office of secretary so as to best suit the purposes of his or her department. No secretary may authorize the designation of “assistant secretary” as the official position title of any employee of his or her department.

(b) For field operations, departments may establish district or area offices which may cut across divisional lines of responsibility.

(c) For their internal structure, all departments shall adhere to the following standard terms, and independent agencies are encouraged to review their internal structure and to adhere as much as possible to the following standard terms:

1. The principal subunit of the department is the “division”. Each division shall be headed by an “administrator”. The office of justice assistance in the department of administration and the office of credit unions in the department of financial institutions have the meaning of “division” and the executive staff director of the office of justice assistance in the department of administration and the director of credit unions have the meaning of “administrator” under this subdivision.

2. The principal subunit of the division is the “bureau”. Each bureau shall be headed by a “director”. The office of the long-term care ombudsman under the board on aging and long-term care and the office of educational accountability in the department of public instruction have the meaning of “bureau” under this subdivision.

2m. Notwithstanding subds. 1. and 2., the principal subunit of the department of tourism is the “bureau”, which shall be headed by a “director”.

3. If further subdivision is necessary, bureaus may be divided into subunits which shall be known as “sections” and which shall be headed by “chiefs” and sections may be divided into subunits which shall be known as “units” and which shall be headed by “supervisors”.

(4) **INTERNAL ORGANIZATION AND ALLOCATION OF FUNCTIONS.** The head of each department or independent agency shall, subject to the approval of the governor, establish the internal organization of the department or independent agency and allocate and reallocate duties and functions not assigned by law to an officer or any subunit of the department or independent agency to promote economic and efficient administration and operation of the department or independent agency. The head may delegate and redelegate to any officer or employee of the department or independent agency any function vested by law in the head. The governor may delegate the authority to approve selected organizational changes to the head of any department or independent agency.

**History:** 1971 c. 261; 1973 c. 12; 1975 c. 39; 1977 c. 29; 1979 c. 221; 1987 a. 27, 399; 1993 a. 16, 184, 215, 491; 1995 a. 27 ss. 75, 76, 76c and 9145 (1); 1997 a. 27. Limits of internal departmental reorganization discussed. 61 Atty. Gen. 306.

**15.03 Attachment for limited purposes.** Any division, office, commission, council or board attached under this section to a department or independent agency or a specified division thereof shall be a distinct unit of that department, independent agency or specified division. Any division, office, commission, council or board so attached shall exercise its powers, duties and functions prescribed by law, including rule making, licensing and regulation, and operational planning within the area of program responsibility of the division, office, commission, council or board, independently of the head of the department or independent agency, but budgeting, program coordination and related management functions shall be performed under the direction and supervision of the head of the department or independent agency, except that with respect to the office of the commissioner of railroads, all personnel and biennial budget requests by the office of the commissioner of railroads shall be provided to the department of transportation as required under s. 189.02 (7) and shall be processed and properly forwarded by the public service commission without change except as requested and concurred in by the office of the commissioner of railroads.

**History:** 1981 c. 347; 1983 a. 27; 1993 a. 123; 1999 a. 9.

**15.04 Heads of departments and independent agencies; powers and duties. (1) DUTIES.** Each head of a department or independent agency shall:

(a) *Supervision.* Except as provided in s. 15.03, plan, direct, coordinate and execute the functions vested in the department or independent agency.

(b) *Budget.* Biennially compile a comprehensive program budget which reflects all fiscal matters related to the operation of the department or independent agency and each program, subprogram and activity therein.

(c) *Advisory bodies.* In addition to any councils specifically created by law, create and appoint such councils or committees as the operation of the department or independent agency requires. Members of councils and committees created under this general authority shall serve without compensation, but may be reimbursed for their actual and necessary expenses incurred in the performance of their duties and, if such reimbursement is made, such reimbursement in the case of an officer or employee of this state who represents an agency as a member of such a council or committee shall be paid by the agency which pays the officer’s or employee’s salary.

(d) *Biennial report.* On or before October 15 of each odd-numbered year, submit to the governor and the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (2), a report on the performance and operations of the department or independent agency during the preceding biennium, and projecting the goals and objectives of the department or independent agency as developed for the program budget

report. The secretary of administration may prescribe the format of the report and may require such other information deemed appropriate. Each department or independent agency shall provide a copy of its biennial report to legislators upon request. Any department or independent agency may issue such additional reports on its findings and recommendations as its operations require. A department or independent agency may, on or before October 15, submit an annual report prepared by it, in place of the biennial report required under this paragraph, if the submission of the annual reports is approved by the secretary of administration.

(e) *Seal.* Have authority to adopt a seal for the department or independent agency.

(f) *Bonds.* Have authority to require that any officer or employee of the department or independent agency give an official bond under ch. 19, if the secretary of administration agrees that the position held by such officer or employee requires bonding.

(g) *Discrimination review.* In order to determine whether there is any arbitrary discrimination on the basis of race, religion, national origin, sex, marital status or sexual orientation as defined in s. 111.32 (13m), examine and assess the statutes under which the head has powers or regulatory responsibilities, the procedures by which those statutes are administered and the rules promulgated under those statutes. If the department or agency head finds any such discrimination, he or she shall take remedial action, including making recommendations to the appropriate executive, legislative or administrative authority.

(i) *Records and forms management program.* Establish and maintain a records and forms management program.

(j) *Records and forms officer.* Appoint a records and forms officer, who shall be responsible for compliance by the department or independent agency with all records and forms management laws and rules and who may prevent any form from being put into use.

(k) *Form numbering and filing system.* Establish a numbering and filing system for forms.

(m) *Notice on forms.* See that each form used by the department or independent agency to seek information from municipalities, counties or the public contains on the first page of the form, or in the instructions for completing the form, a conspicuous notice of the authorization for the form, whether or not completing the form is voluntary, if it is not voluntary, the penalty for failure to respond and whether or not any personally identifiable information, as defined under s. 19.62 (5), requested in the form is likely to be used for purposes other than for which it is originally being collected. This paragraph does not apply to state tax forms.

(2) **DEPUTY.** Each secretary of a department or head of an independent agency under s. 230.08 (2) (L) may appoint a deputy who shall serve at the pleasure of the secretary or agency head outside the classified service. The deputy shall exercise the powers, duties and functions of the secretary or head in the absence of the secretary or head, and shall perform such other duties as the secretary or head prescribes. The adjutant general may appoint 2 deputies as provided in s. 21.18 (1). In this subsection “secretary” includes the attorney general and the state superintendent of public instruction.

(3) **DEPUTY APPROVALS.** Positions for which appointment is made under sub. (2) may be authorized only under s. 16.505.

**History:** 1971 c. 125; 1975 c. 94; 1977 c. 196, 273, 418, 447; 1979 c. 221; 1981 c. 112, 350; 1981 c. 391 s. 210; 1983 a. 27, 524; 1985 a. 29; 1985 a. 180 ss. 2 to 4, 30m; 1985 a. 332; 1987 a. 147 s. 25; 1987 a. 186; 1989 a. 248; 1991 a. 39, 189; 1995 a. 27; 1997 a. 73.

**15.05 Secretaries. (1) SELECTION.** (a) If a department is under the direction and supervision of a secretary, the secretary shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve at the pleasure of the governor.

(b) Except as provided in pars. (c) and (d), if a department is under the direction and supervision of a board, the board shall

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appoint a secretary to serve at the pleasure of the board outside the classified service. In such departments, the powers and duties of the board shall be regulatory, advisory and policy-making, and not administrative. All of the administrative powers and duties of the department are vested in the secretary, to be administered by him or her under the direction of the board. The secretary, with the approval of the board, shall promulgate rules for administering the department and performing the duties assigned to the department.

(c) The secretary of natural resources shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve at the pleasure of the governor.

(d) The secretary of agriculture, trade and consumer protection shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve at the pleasure of the governor.

**(3) EXECUTIVE ASSISTANT.** Each secretary may appoint an executive assistant to serve at his or her pleasure outside the classified service. The executive assistant shall perform duties as the secretary prescribes. In this subsection, “secretary” includes the attorney general, the adjutant general, the director of the technical college system and the state superintendent of public instruction.

**(3m) FIELD DISTRICT OR FIELD AREA DIRECTORS.** Each secretary may appoint a director under the classified service for each district or area office established in his or her department under s. 15.02 (3) (b).

**(4) OFFICIAL OATH.** Each secretary shall take and file the official oath prior to assuming office.

**(5) EXECUTIVE ASSISTANT APPROVALS.** Positions for which appointment is made under sub. (3) may be authorized only under s. 16.505.

**History:** 1973 c. 90; 1977 c. 4, 196; 1985 a. 18; 1985 a. 332 s. 251 (3); 1989 a. 31, 169; 1993 a. 399; 1995 a. 27.

A secretary, appointed by the governor, could be removed only by the governor, even though the general appointment statute had been amended to provide that the secretary is appointed by a board to serve at the board’s pleasure. *Moses v. Board of Veterans Affairs*, 80 Wis. 2d 411, 259 N.W.2d 102 (1977).

**15.06 Commissions and commissioners. (1) SELECTION OF MEMBERS.** (a) Except as otherwise provided in this subsection, the members of commissions shall be nominated by the governor, and with the advice and consent of the senate appointed, for staggered 6-year terms expiring on March 1 of the odd-numbered years.

(ag) Members of the Wisconsin waterways commission shall be nominated by the governor, and with the advice and consent of the senate appointed, for staggered 5-year terms.

(ar) The commissioner of railroads shall be nominated by the governor, and with the advice and consent of the senate appointed, for a 6-year term expiring on March 1 of an odd-numbered year.

(b) The commissioner of insurance shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve at the pleasure of the governor. The governor may remove from office the commissioner of insurance who was appointed for a fixed term before August 1, 1987.

**(2) SELECTION OF OFFICERS.** Each commission may annually elect officers other than a chairperson from among its members as its work requires. Any officer may be reappointed or reelected. At the time of making new nominations to commissions, the governor shall designate a member or nominee of each commission to serve as the commission’s chairperson for a 2-year term expiring on March 1 of the odd-numbered year except that the labor and industry review commission shall elect one of its members to serve as the commission’s chairperson for a 2-year term expiring on March 1 of the odd-numbered year.

**(3) FULL-TIME OFFICES.** (a) A commissioner may not hold any other office or position of profit or pursue any other business or vocation, but shall devote his or her entire time to the duties of his or her office. This paragraph does not apply to:

1. The commissioner of insurance.

3. The members of the Wisconsin waterways commission.

(b) The commissioner of insurance shall not engage in any other occupation, business or activity that is in any way inconsistent with the performance of the duties of the commissioner of insurance, nor shall the commissioner hold any other public office.

**(4) CHAIRPERSON; ADMINISTRATIVE DUTIES.** The administrative duties of each commission shall be vested in its chairperson, to be administered by the chairperson under the statutes and rules of the commission and subject to the policies established by the commission.

**(4m) EXECUTIVE ASSISTANT.** Each commission chairperson under s. 230.08 (2) (m) and each commissioner of the public service commission may appoint an executive assistant to serve at his or her pleasure outside the classified service. The executive assistant shall perform duties as the chairperson or commissioner prescribes.

**(5) FREQUENCY OF MEETINGS; PLACE.** Every commission shall meet on the call of the chairperson or a majority of its members. Every commission shall maintain its offices in Madison, but may meet or hold hearings at such other locations as will best serve the citizens of this state.

**(6) QUORUM.** A majority of the membership of a commission constitutes a quorum to do business, except that vacancies shall not prevent a commission from doing business. This subsection does not apply to the parole commission.

**(7) REPORTS.** Every commission attached to a department shall submit to the head of the department, upon request of that person not more often than annually, a report on the operation of the commission.

**(8) OFFICIAL OATH.** Every commissioner shall take and file the official oath prior to assuming office.

**(9) EXECUTIVE ASSISTANT APPROVALS.** Positions for which appointment is made under sub. (4m) may be authorized only under s. 16.505.

**History:** 1971 c. 193, 307; 1977 c. 29, 196, 274; 1981 c. 347; 1983 a. 27, 371, 410, 538; 1985 a. 29; 1987 a. 27, 403; 1989 a. 31; 1991 a. 39, 269, 316; 1993 a. 16, 123; 1995 a. 27; 1997 a. 27; 2001 a. 16; 2003 a. 33; 2005, a. 149.

A single member of the personnel commission is empowered to act as the commission when 2 of the 3 commission positions are vacant. 68 Atty. Gen. 323.

A commissioner designated as chairperson of the commission under sub. (2) is not appointed to a new position, and Art. IV, s. 26, precludes a salary increase based on that designation. 76 Atty. Gen. 52.

Sub. (3) (a) prohibits a commissioner from pursuing business interests that would prevent properly fulfilling the duties of the office. 77 Atty. Gen. 36.

**15.07 Boards. (1) SELECTION OF MEMBERS.** (a) If a department or independent agency is under the direction and supervision of a board, the members of the board, other than the members serving on the board because of holding another office or position, shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve for terms prescribed by law, except:

1. Members of the higher educational aids board shall be appointed by the governor without senate confirmation.

2. Members of the elections board shall be appointed as provided in s. 15.61.

3. Members of the employee trust funds board appointed or elected under s. 15.16 (1) (a), (b), (d) and (f) shall be appointed or elected as provided in that section.

4. Members of the investment board appointed under s. 15.76 (3) shall be appointed as provided in that section.

5. The members of the educational communications board appointed under s. 15.57 (5) and (7) shall be appointed as provided in that section.

6. Members of the University of Wisconsin Hospitals and Clinics Board appointed under s. 15.96 (8) shall be appointed by the governor without senate confirmation.

(b) For each board not covered under par. (a), the governor shall appoint the members of the board, other than the members serving on the board because of holding another office or position

and except as otherwise provided, for terms prescribed by law except that all members of the following boards, or all members of the following boards specified in this paragraph, other than the members serving on a board because of holding another office or position, shall be nominated by the governor, and with the advice and consent of the senate appointed, for terms provided by law:

1. Banking review board.
  2. College savings program board.
  3. Credit union review board.
  5. Savings institutions review board.
  8. Real estate board.
  9. Board on aging and long-term care.
  10. Land and water conservation board.
  11. Waste facility siting board.
  12. Prison industries board.
  14. Deferred compensation board.
  15. The 3 members of the lower Wisconsin state riverway board appointed under s. 15.445 (3) (b) 7.
  - 15m. The members of the state fair park board appointed under s. 15.445 (4) (a) 3. to 5.
  17. Real estate appraisers board.
  - 19m. Auctioneer board.
  20. The 3 members of the Kickapoo reserve management board appointed under s. 15.445 (2) (b) 3.
  22. Private employer health care coverage board.
- Note:** Subd. 22. is repealed eff. 1–1–10 by 1999 Wis. Act 9.
23. Cemetery board.

(c) Except as provided under par. (cm), fixed terms of members of boards shall expire on May 1 and, if the term is for an even number of years, shall expire in an odd-numbered year.

(cm) The term of one member of the ethics board shall expire on each May 1. The terms of 3 members of the development finance board appointed under s. 15.155 (1) (a) 6. shall expire on May 1 of every even-numbered year and the terms of the other 3 members appointed under s. 15.155 (1) (a) 6. shall expire on May 1 of every odd-numbered year. The terms of the 3 members of the land and water conservation board appointed under s. 15.135 (4) (b) 2. shall expire on January 1. The term of the member of the land and water conservation board appointed under s. 15.135 (4) (b) 2m. shall expire on May 1 of an even-numbered year. The terms of members of the real estate board shall expire on July 1. The terms of the appraiser members of the real estate appraisers board and the terms of the auctioneer and auction company representative members of the auctioneer board shall expire on May 1 in an even-numbered year. The terms of the members of the cemetery board shall expire on July 1 in an even-numbered year. The term of the student member of the Board of Regents of the University of Wisconsin System who is at least 24 years old shall expire on May 1 of every even-numbered year.

**Note:** Par. (cm) is shown as affected by 2 acts of the 2005 Wisconsin legislature and as merged by the revisor under s. 13.93 (2) (c).

(cs) No member of the auctioneer board, cemetery board, real estate appraisers board, or real estate board may be an officer, director, or employee of a private organization that promotes or furthers any profession or occupation regulated by that board.

**(2) SELECTION OF OFFICERS.** At its first meeting in each year, every board shall elect a chairperson, vice chairperson and secretary each of whom may be reelected for successive terms, except that:

- (a) The chairperson and vice chairperson of the investment board shall be designated biennially by the governor.
- (b) The chairperson of the board on health care information shall be designated biennially by the governor.

**Note:** Par. (b) is repealed eff. 7–1–06 by 2005 Wis. Act 228.

(d) The officers elected by the board of regents of the University of Wisconsin System and the technical college system board shall be known as a president, vice president and secretary.

(e) The representative of the department of justice shall serve as chairperson of the claims board and the representative of the department of administration shall serve as its secretary.

(f) The state superintendent of public instruction or his or her designated representative shall serve as chairperson of the school district boundary appeal board.

(g) A representative of the department of justice designated by the attorney general shall serve as nonvoting secretary to the law enforcement standards board.

(h) The chairperson of the state fair park board shall be designated annually by the governor from among the members appointed under s. 15.445 (4) (a) 3., 4. and 5.

(j) At its first meeting in each even-numbered year, the state capitol and executive residence board shall elect officers for 2-year terms.

(L) The governor shall serve as chairperson of the information technology management board and the secretary of administration or his or her designee shall serve as secretary of that board.

(m) The representative of the department of administration shall serve as chairperson of the incorporation review board.

**(3) FREQUENCY OF MEETINGS.** (a) If a department or independent agency is under the direction and supervision of a board, the board shall meet quarterly and may meet at other times on the call of the chairperson or a majority of its members. If a department or independent agency is under the direction and supervision of a board, the board shall, in addition, meet no later than August 31 of each even-numbered year to consider and approve a proposed budget of the department or independent agency for the succeeding fiscal biennium.

(b) Except as provided in par. (bm), each board not covered under par. (a) shall meet annually, and may meet at other times on the call of the chairperson or a majority of its members. The auctioneer board, the cemetery board, the real estate board, and the real estate appraisers board shall also meet on the call of the secretary of regulation and licensing or his or her designee within the department.

(bm) 1. The board on health care information shall meet 4 times each year and may meet at other times on the call of the chairperson or a majority of the board's members.

**Note:** Subd. 1. is repealed eff. 7–1–06 by 2005 Wis. Act 228.

2. The environmental education board shall meet 4 times each year and may meet at other times on the call of the chairperson.

3. The auctioneer board shall meet at least 4 times each year.

4. The information technology management board shall meet at least 4 times each year and may meet at other times on the call of the chairperson.

5. The incorporation review board shall meet on the call of the chairperson or a majority of the board's members.

6. The cemetery board shall meet at least 4 times each year.

**(4) QUORUM.** A majority of the membership of a board constitutes a quorum to do business and, unless a more restrictive provision is adopted by the board, a majority of a quorum may act in any matter within the jurisdiction of the board. This subsection does not apply to actions of the ethics board or the school district boundary appeal board as provided in ss. 19.47 (4) and 117.05 (2) (a).

**(5) REIMBURSEMENT FOR EXPENSES; COMPENSATION.** Except as provided in sub. (5m), the members of each board shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties, such reimbursement in the case of an officer or employee of this state who represents an agency as a member of a board to be paid by the agency which pays the member's salary. The members shall receive no compensation for their services, except that the following members of boards, except full-time state officers or employees, also shall be paid the per diem stated below for each day on which they were actually and necessarily engaged in the performance of their duties:

- (a) Members of the investment board, \$50 per day.

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(b) Members of the banking review board, \$25 per day but not to exceed \$1,500 per year.

(c) Members of the auctioneer board, \$25 per day.

(d) Members of the board of agriculture, trade and consumer protection, not exceeding \$35 per day as fixed by the board with the approval of the governor, but not to exceed \$1,000 per year.

(e) In lieu of a per diem, the members of the technical college system board shall receive \$100 annually.

(f) Members of the teachers retirement board, appointive members of the Wisconsin retirement board, appointive members of the group insurance board, members of the deferred compensation board and members of the employee trust funds board, \$25 per day.

(g) Members of the savings institutions review board, \$10 per day.

(h) Voting members of the land and water conservation board, \$25 per day.

(i) Members of the educational approval board, \$25 per day.

(j) Members of the state fair park board, \$10 per day but not to exceed \$600 per year.

(k) Members of the ethics board, \$25 per day.

(L) Members of the school district boundary appeal board, \$25 per day.

(n) Members of the elections board, \$25 per day.

(o) Members of the burial sites preservation board, \$25 per day.

(r) Members of the real estate board, \$25 per day.

(s) Members of the credit union review board, \$25 per day but not to exceed \$1,500 per year.

(t) Members of the waste facility siting board who are town or county officials, \$35 per day.

(w) Members of the lower Wisconsin state riverway board, \$25 per day.

(x) Members of the real estate appraisers board, \$25 per day.

(y) Members of the Kickapoo reserve management board, \$25 per day.

(z) Members of the cemetery board, \$25 per day.

**(5m) LIMITATIONS ON SALARY AND EXPENSES.** (b) *Lower Wisconsin state riverway board.* The members, except for the chairperson, of the lower Wisconsin state riverway board shall be reimbursed under sub. (5) for only their necessary and actual travel expenses incurred in the performance of their duties, or shall be paid \$25 plus mileage incurred in the performance of their duties, whichever is greater. The chairperson of the lower Wisconsin state riverway board shall be reimbursed for all his or her actual and necessary expenses incurred in the performance of his or her duties. The lower Wisconsin state riverway board shall determine which expenses of the chairperson are actual and necessary before reimbursement.

**(6) REPORTS.** Every board created in or attached to a department or independent agency shall submit to the head of the department or independent agency, upon request of that person not more than annually, a report on the operation of the board.

**(7) OFFICIAL OATH.** Each member of a board shall take and file the official oath prior to assuming office.

**History:** 1971 c. 100 s. 23; 1971 c. 125, 261, 270, 323; 1973 c. 90, 156, 299, 334; 1975 c. 39, 41, 422; 1977 c. 29 ss. 24, 26, 1650m (3); 1977 c. 203, 277, 418, 427; 1979 c. 34, 110, 221, 346; 1981 c. 20, 62, 94, 96, 156, 314, 346, 374, 391; 1983 a. 27, 282, 403; 1985 a. 20, 29, 316; 1987 a. 27, 119, 142, 354, 399, 403; 1989 a. 31, 102, 114, 219, 299, 340; 1991 a. 25, 39, 116, 221, 269, 316; 1993 a. 16, 75, 102, 184, 349, 399, 490; 1995 a. 27, 216, 247; 1997 a. 27 ss. 43 to 48m, 9456 (3m); 1999 a. 9, 44, 181, 197; 2001 a. 16; 2003 a. 33 ss. 79 to 85, 2811; 2003 a. 48 ss. 10, 11; 2003 a. 171; 2003 a. 206 s. 23; 2005 a. 25 ss. 41g to 45m, 2493; 2005 a. 76; 13.93 (2) (c); 2005 a. 228, 253.

“Membership” as used in sub. (4) means the authorized number of positions and not the number of positions that are currently occupied. 66 Atty. Gen. 192.

**15.08 Examining boards and councils. (1) SELECTION OF MEMBERS.** All members of examining boards shall be residents of this state and shall, unless otherwise provided by law, be nomi-

nated by the governor, and with the advice and consent of the senate appointed. Appointments shall be for the terms provided by law. Terms shall expire on July 1. No member may serve more than 2 consecutive terms. No member of an examining board may be an officer, director or employee of a private organization which promotes or furthers the profession or occupation regulated by that board.

**(1m) PUBLIC MEMBERS.** (a) Public members appointed under s. 15.405 or 15.407 shall have all the powers and duties of other members except they shall not prepare questions for or grade any licensing examinations.

(am) Public members appointed under s. 15.405 or 15.407 shall not be, nor ever have been, licensed, certified, registered or engaged in any profession or occupation licensed or otherwise regulated by the board, examining board or examining council to which they are appointed, shall not be married to any person so licensed, certified, registered or engaged, and shall not employ, be employed by or be professionally associated with any person so licensed, certified, registered or engaged.

(b) The public members of the chiropractic examining board, the dentistry examining board, the hearing and speech examining board, the medical examining board, perfusionists examining council, respiratory care practitioners examining council and council on physician assistants, the board of nursing, the nursing home administrator examining board, the veterinary examining board, the optometry examining board, the pharmacy examining board, the marriage and family therapy, professional counseling, and social work examining board, and the psychology examining board shall not be engaged in any profession or occupation concerned with the delivery of physical or mental health care.

(c) The membership of each examining board and examining council created in the department of regulation and licensing after June 1, 1975, shall be increased by one member who shall be a public member appointed to serve for the same term served by the other members of such examining board or examining council, unless the act relating to the creation of such examining board or examining council provides that 2 or more public members shall be appointed to such examining board or examining council.

**(2) SELECTION OF OFFICERS.** At its first meeting in each year, every examining board shall elect from among its members a chairperson, vice chairperson and, unless otherwise provided by law, a secretary. Any officer may be reelected to succeed himself or herself.

**(3) FREQUENCY OF MEETINGS.** (a) Every examining board shall meet annually and may meet at other times on the call of the chairperson or of a majority of its members.

(b) The medical examining board shall meet at least 12 times annually.

(c) The hearing and speech examining board shall meet at least once every 3 months.

**(4) QUORUM.** (a) A majority of the membership of an examining board constitutes a quorum to do business, and a majority of a quorum may act in any matter within the jurisdiction of the examining board.

(b) Notwithstanding par. (a), no certificate or license which entitles the person certified or licensed to practice a trade or profession shall be suspended or revoked without the affirmative vote of two-thirds of the voting membership of the examining board.

**(5) GENERAL POWERS.** Each examining board:

(a) May compel the attendance of witnesses, administer oaths, take testimony and receive proof concerning all matters within its jurisdiction.

(b) Shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.

(c) May limit, suspend or revoke, or reprimand the holder of, any license, permit or certificate granted by the examining board.

**(6) IMPROVEMENT OF THE PROFESSION.** In addition to any other duties vested in it by law, each examining board shall foster the standards of education or training pertaining to its own trade or profession, not only in relation of the trade or profession to the interest of the individual or to organized business enterprise, but also in relation to government and to the general welfare. Each examining board shall endeavor, both within and outside its own trade or profession, to bring about a better understanding of the relationship of the particular trade or profession to the general welfare of this state.

**(7) COMPENSATION AND REIMBURSEMENT FOR EXPENSES.** Each member of an examining board shall, unless the member is a full-time salaried employee of this state, be paid a per diem of \$25 for each day on which the member was actually and necessarily engaged in the performance of examining board duties. Each member of an examining board shall be reimbursed for the actual and necessary expenses incurred in the performance of examining board duties.

**(8) OFFICIAL OATH.** Every member of an examining board shall take and file the official oath prior to assuming office.

**(9) ANNUAL REPORTS.** Every examining board shall submit to the head of the department in which it is created, upon request of that person not more often than annually, a report on the operation of the examining board.

**(10) SEAL.** Every examining board may adopt a seal.

**History:** 1971 c. 40; 1975 c. 86, 199; 1977 c. 418; 1979 c. 32; 1979 c. 34 ss. 32e to 32s, 2102 (45) (a); 1979 c. 221; 1981 c. 94; 1983 a. 403, 524; 1985 a. 332, 340; 1987 a. 399; 1989 a. 229, 316, 359; 1991 a. 39, 160, 316; 1993 a. 105, 107, 184, 490; 1995 a. 245; 1997 a. 175; 1999 a. 180; 2001 a. 80, 89, 105.

Selection and terms of officers of regulatory and licensing boards are discussed. 75 Atty. Gen. 247 (1986).

**15.085 Affiliated credentialing boards. (1) SELECTION OF MEMBERS.** All members of affiliated credentialing boards shall be residents of this state and shall, unless otherwise provided by law, be nominated by the governor, and with the advice and consent of the senate appointed. Appointments shall be for the terms provided by law. Terms shall expire on July 1. No member may serve more than 2 consecutive terms. No member of an affiliated credentialing board may be an officer, director or employee of a private organization which promotes or furthers the profession or occupation regulated by that board.

**(1m) PUBLIC MEMBERS.** (a) Public members appointed under s. 15.406 shall have all of the powers and duties of other members except that they shall not prepare questions for or grade any licensing examinations.

(am) Public members appointed under s. 15.406 shall not be, nor ever have been, licensed, certified, registered or engaged in any profession or occupation licensed or otherwise regulated by the affiliated credentialing board to which they are appointed, shall not be married to any person so licensed, certified, registered or engaged, and shall not employ, be employed by or be professionally associated with any person so licensed, certified, registered or engaged.

(b) The public members of the physical therapists affiliated credentialing board, podiatrists affiliated credentialing board or occupational therapists affiliated credentialing board shall not be engaged in any profession or occupation concerned with the delivery of physical or mental health care.

**(2) SELECTION OF OFFICERS.** At its first meeting in each year, every affiliated credentialing board shall elect from among its members a chairperson, vice chairperson and, unless otherwise provided by law, a secretary. Any officer may be reelected to succeed himself or herself.

**(3) FREQUENCY OF MEETINGS.** (a) Every affiliated credentialing board shall meet annually and may meet at other times on the call of the chairperson or of a majority of its members.

(b) The chairperson of an affiliated credentialing board shall meet at least once every 6 months with the examining board to which the affiliated credentialing board is attached to consider all matters of joint interest.

**(4) QUORUM.** (a) A majority of the membership of an affiliated credentialing board constitutes a quorum to do business, and a majority of a quorum may act in any matter within the jurisdiction of the affiliated credentialing board.

(b) Notwithstanding par. (a), no certificate or license which entitles the person certified or licensed to practice a trade or profession shall be suspended or revoked without the affirmative vote of two-thirds of the membership of the affiliated credentialing board.

**(5) GENERAL POWERS.** Each affiliated credentialing board:

(a) May compel the attendance of witnesses, administer oaths, take testimony and receive proof concerning all matters within its jurisdiction.

(b) Shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession. In addition to any other procedure under ch. 227 relating to the promulgation of rules, when promulgating a rule, other than an emergency rule under s. 227.24, an affiliated credentialing board shall do all of the following:

1. Submit the proposed rule to the examining board to which the affiliated credentialing board is attached. The proposed rule shall be submitted under this subdivision at least 60 days before the proposed rule is submitted to the legislative council staff under s. 227.15 (1).

2. Consider any comments on a proposed rule made by the examining board to which the affiliated credentialing board is attached, if the examining board submits the comments to the affiliated credentialing board within 30 days after a public hearing on the proposed rule under s. 227.18 or, if no hearing is held, within 30 days after the proposed rule is published under s. 227.16 (2) (e).

3. Include, in the report submitted to the legislature under s. 227.19 (2), any comments on the proposed rule submitted by the examining board under subd. 2. and the affiliated credentialing board's responses to those comments.

(c) May limit, suspend or revoke, or reprimand the holder of, any license, permit or certificate granted by the affiliated credentialing board.

**(6) IMPROVEMENT OF THE PROFESSION.** In addition to any other duties vested in it by law, each affiliated credentialing board shall foster the standards of education or training pertaining to its own trade or profession, not only in relation of the trade or profession to the interest of the individual or to organized business enterprise, but also in relation to government and to the general welfare. Each affiliated credentialing board shall endeavor, both within and outside its own trade or profession, to bring about a better understanding of the relationship of the particular trade or profession to the general welfare of this state.

**(7) COMPENSATION AND REIMBURSEMENT FOR EXPENSES.** Each member of an affiliated credentialing board shall, unless the member is a full-time salaried employee of this state, be paid a per diem of \$25 for each day on which the member was actually and necessarily engaged in the performance of affiliated credentialing board duties. Each member of an affiliated credentialing board shall be reimbursed for the actual and necessary expenses incurred in the performance of affiliated credentialing board duties.

**(8) OFFICIAL OATH.** Every member of an affiliated credentialing board shall take and file the official oath prior to assuming office.

**(9) ANNUAL REPORTS.** Every affiliated credentialing board shall submit to the head of the department in which it is created,



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upon request of that person not more often than annually, a report on the operation of the affiliated credentialing board.

(10) SEAL. Every affiliated credentialing board may adopt a seal.

History: 1993 a. 107; 1997 a. 175; 1999 a. 180.

**15.09 Councils. (1) SELECTION OF MEMBERS.** (a) Unless otherwise provided by law, the governor shall appoint the members of councils for terms prescribed by law. Except as provided in par. (b), fixed terms shall expire on July 1 and shall, if the term is for an even number of years, expire in an odd-numbered year.

(b) The terms of the members of the council on recycling shall expire as specified under s. 15.347 (17) (c).

(2) SELECTION OF OFFICERS. Unless otherwise provided by law, at its first meeting in each year every council shall elect a chairperson, vice chairperson and secretary from among its members. Any officer may be reelected for successive terms. For any council created under the general authority of s. 15.04 (1) (c), the constitutional officer or secretary heading the department or the chief executive officer of the independent agency in which such council is created shall designate an employee of the department or independent agency to serve as secretary of the council and to be a voting member thereof.

(3) LOCATION AND FREQUENCY OF MEETINGS. Unless otherwise provided by law, every council shall meet at least annually and shall also meet on the call of the head of the department or independent agency in which it is created, and may meet at other times on the call of the chairperson or a majority of its members. A council shall meet at such locations as may be determined by it unless the constitutional officer or secretary heading the department or the chief executive officer of the independent agency in which it is created determines a specific meeting place.

(4) QUORUM. Except as otherwise expressly provided, a majority of the membership of a council constitutes a quorum to do business, and a majority of a quorum may act in any matter within the jurisdiction of the council.

(5) POWERS AND DUTIES. Unless otherwise provided by law, a council shall advise the head of the department or independent agency in which it is created and shall function on a continuing basis for the study, and recommendation of solutions and policy alternatives, of the problems arising in a specified functional area of state government.

(6) REIMBURSEMENT FOR EXPENSES. Members of a council shall not be compensated for their services, but, except as otherwise provided in this subsection, members of councils created by statute shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties, such reimbursement in the case of an elective or appointive officer or employee of this state who represents an agency as a member of a council to be paid by the agency which pays his or her salary. Members of the loan originator council under s. 15.187 (1) may not be reimbursed for their actual and necessary expenses incurred in the performance of their duties.

(7) REPORTS. Unless a different provision is made by law for transmittal or publication of a report, every council created in a department or independent agency shall submit to the head of the department or independent agency, upon request of that person not more often than annually, a report on the operation of the council.

(8) OFFICIAL OATH. Each member of a council shall take and file the official oath prior to assuming office.

History: 1971 c. 211; 1977 c. 29; 1977 c. 196 s. 131; 1979 c. 34, 346; 1983 a. 27, 388, 410; 1985 a. 84; 1989 a. 335; 1991 a. 39, 189; 1993 a. 184; 2003 a. 260.

SUBCHAPTER II

DEPARTMENTS

**15.10 Department of administration; creation.** There is created a department of administration under the direction and supervision of the secretary of administration. The secretary of administration shall be appointed on the basis of recognized interest, administrative and executive ability, training and experience in and knowledge of problems and needs in the field of general administration.

**15.103 Same; specified divisions. (1) DIVISION OF HEARINGS AND APPEALS.** There is created a division of hearings and appeals which is attached to the department of administration under s. 15.03. The administrator of the division shall be appointed by the secretary of administration in the classified service.

(1m) DIVISION OF GAMING. There is created in the department of administration a division of gaming.

(4) DIVISION OF TRUST LANDS AND INVESTMENTS. There is created a division of trust lands and investments which is attached to the department of administration under s. 15.03. This division is under the direction and supervision of the board of commissioners of public lands.

History: 1977 c. 170, 418; 1979 c. 361 s. 15; 1981 c. 121; 1983 a. 27; 1989 a. 31, 107; 1991 a. 39; 1993 a. 16 s. 55m; 1995 a. 27; 1997 a. 27 ss. 26, 49; 2001 a. 16; 2003 a. 33.

**15.105 Same; attached boards, commissions, and offices. (1) TAX APPEALS COMMISSION.** There is created a tax appeals commission which is attached to the department of administration under s. 15.03. Members shall be appointed solely on the basis of fitness to perform the duties of their office, and shall be experienced in tax matters. The commission shall meet at the call of the chairperson or at the call of a majority of its members. The chairperson shall not serve on or under any committee of a political party. The commission shall include but not be limited to a small claims division.

(2) CLAIMS BOARD. There is created a claims board, attached to the department of administration under s. 15.03, consisting of a representative of the office of the governor designated by the governor, a representative of the department of administration designated by the secretary of administration, a representative of the department of justice designated by the attorney general and the chairpersons of the senate and assembly committees on finance or their designees appointed at the commencement of each legislative biennium from the membership of their respective committees on finance.

(3) DEPOSITORY SELECTION BOARD. There is created a depository selection board which is attached to the department of administration under s. 15.03. The depository selection board shall consist of the state treasurer, the secretary of administration, and the secretary of revenue or their designees.

(4) PUBLIC RECORDS BOARD. There is created a public records board which is attached to the department of administration under s. 15.03. The public records board shall consist of the governor, the director of the historical society, the attorney general, the state auditor, and the director of the legislative council staff, or their designated representatives, and a representative of the small business community, a representative of a school board or the governing body of a municipality, as defined in s. 281.59 (1) (c), and one other member.

(5) STATE CAPITOL AND EXECUTIVE RESIDENCE BOARD. There is created a state capitol and executive residence board, attached to the department of administration under s. 15.03, consisting of the secretary of administration or the secretary's designee, the director of the historical society or the director's designee, an architect or engineer employed by the department of administration appointed by the secretary of administration, 3 senators and 3 representatives to the assembly appointed as are the members of standing committees in their respective houses, and 7 citizen members appointed for staggered 6-year terms of whom at least

2 shall be architects registered under ch. 443, one shall be a landscape architect registered under ch. 443 and 3 shall be interior designers.

**(10) BOARD ON AGING AND LONG-TERM CARE.** There is created a board on aging and long-term care, attached to the department of administration under s. 15.03. The board shall consist of 7 members appointed for staggered 5-year terms. Members shall have demonstrated a continuing interest in the problems of providing long-term care for the aged or disabled. At least 4 members shall be public members with no interest in or affiliation with any nursing home.

**(12) WASTE FACILITY SITING BOARD.** (a) *Creation; membership.* There is created a waste facility siting board, attached to the department of administration under s. 15.03, consisting of the following members:

1. The secretary of transportation, the secretary of agriculture, trade and consumer protection and the secretary of commerce or their formally appointed designees.

2. Two town officials.

3. One county official.

(b) *Terms.* The town officials and the county official shall be appointed for staggered 3-year terms.

(c) *Vacancies.* If a town or county official who is a member leaves office while serving on the board, the member's position on the board is considered vacant until a successor is appointed under s. 15.07 (1) (b).

(d) *Recommendations.* In appointing the town officials and county official to be members under this subsection, the governor shall consider recommendations made by the Wisconsin towns association and the Wisconsin Counties Association if these recommendations are submitted within 60 days after a town official or county official position on the board becomes vacant.

(e) *Executive director.* The board shall appoint an executive director under or outside of the classified service.

(f) *Assistance.* The board may contract with any state agency to provide assistance necessary for the board to fulfill its duties.

**(19) OFFICE OF JUSTICE ASSISTANCE.** There is created an office of justice assistance which is attached to the department of administration under s. 15.03. The executive staff director of the office shall be appointed by the governor to serve at the pleasure of the governor.

**(22) STATE USE BOARD.** There is created a state use board which is attached to the department of administration under s. 15.03. The board shall consist of 8 members appointed to serve for 4-year terms, including a representative of the department of administration; a representative of the subunit of the department of health and family services which administers mental health laws; a representative of the subunit of the department of workforce development which administers vocational rehabilitation laws; 2 representatives of private businesses, one of whom shall represent a small business; one representative of a work center, as defined in s. 16.752; and one member who does not represent any of the foregoing entities. A member vacates his or her office if the member loses the status upon which his or her appointment is based. In this subsection, "small business" means an independently owned and operated business which is not dominant in its field and which has had less than \$2,500,000 in gross annual sales for each of the 2 previous calendar years or has 25 or fewer employees.

**(23) INCORPORATION REVIEW BOARD.** (a) There is created an incorporation review board attached to the department of administration under s. 15.03. The board shall consist of the secretary of administration or his or her designee, 2 members appointed by the Wisconsin Towns Association, one member appointed by the League of Wisconsin Municipalities, and one member appointed by the Wisconsin Alliance of Cities. Members serve at the pleasure of the appointing authority. All members of the board, other than the secretary of administration or his or her designee, serve only in an advisory capacity.

(b) No member of the incorporation review board may review a petition referred to the board under s. 66.0203 (8) (b) if any of the following applies:

1. The member owns property in, or resides in, the town that is the subject of the incorporation petition.

2. The member owns property in, or resides in, a city or village that is contiguous to the town that is the subject of the incorporation petition.

(c) If the secretary of administration is affected by par. (b), he or she shall appoint a designee who is not so affected to review the petition. If any other member of the board is affected by par. (b), that person's appointing authority shall remove that person from the board and shall appoint another member to review the petition who is not so affected.

**(24) NATIONAL AND COMMUNITY SERVICE BOARD.** (a) *Creation.* There is created a national and community service board which is attached to the department of administration under s. 15.03.

(b) *Membership.* The national and community service board shall consist of the voting members described in par. (c) and the nonvoting members described in par. (d), appointed for 3-year terms.

(c) *Voting members.* The national and community service board shall include as voting members the following members:

1. At least one member who has expertise in the educational, training and developmental needs of youth, particularly of disadvantaged youth.

2. At least one member who has experience in promoting voluntarism among older adults.

3. At least one member who is a representative of private non-profit organizations that are representative of a community, or a significant segment of a community, and that are engaged in meeting the human, educational, environmental or public safety needs of that community.

4. The state superintendent of public instruction or his or her designee.

4m. The secretary of administration or his or her designee.

5. At least one member who is a representative of a school board or of a county, city, village or town government.

6. At least one member who is a representative of organized labor.

7. At least one member who is a representative of the business community.

8. At least one member who is at least 16 years of age and not more than 25 years of age and who is a participant or a supervisor in a national service program described in 42 USC 12572 (a).

9. At least one member who is a representative of a national service program described in 42 USC 12572 (a).

10. If less than 16 members are appointed under subds. 1. to 9., a sufficient number of members to bring the total number of voting members to 16.

(d) *Nonvoting members.* In addition to the voting members specified in par. (c), the national and community service board shall include as a nonvoting member the state representative of the corporation for national and community service designated under 42 USC 12651f, and may include as nonvoting members such representatives of state agencies providing community services, youth services, educational services, social services, services for the aging and job training programs as the governor may appoint.

(e) *Membership limitations.* No more than 4 of the voting members of the national and community service board may be state officers or employees. No more than 9 of the voting members of the national and community service board may belong to the same political party. In appointing members to the national and community service board, the governor shall ensure, to the maximum extent practicable, that the membership of the board is diverse with respect to race, national origin, age, sex and disability.

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**(26) VOLUNTEER FIRE FIGHTER AND EMERGENCY MEDICAL TECHNICIAN SERVICE AWARD BOARD.** (a) There is created a volunteer fire fighter and emergency medical technician service award board that is attached to the department of administration under s. 15.03. The board shall consist of the secretary of administration or his or her designee and the following members appointed for 3-year terms:

1. One member who is volunteer fire fighter and who is a member of a statewide organization that represents fire chiefs.
2. One member who is volunteer fire fighter and who is a member of a statewide organization that represents volunteer fire fighters.
3. One member who is a volunteer emergency medical technician
4. Three members who represent municipalities that operate volunteer fire departments or that contract with volunteer fire companies organized under ch. 181 or 213.
5. One member who has experience in financial planning.

(b) In appointing the members under par. (a), the governor shall seek to appoint members from different regions of the state and from municipalities of different sizes.

**(27) SENTENCING COMMISSION.** (a) *Creation; membership.* There is created a sentencing commission that is attached to the department of administration under s. 15.03 and that shall consist of the following members:

1. The attorney general or his or her designee.
2. The state public defender or his or her designee.
3. Seven members, at least 2 of whom are not employed by any unit of federal, state, or local government, appointed by the governor.
4. One majority party member and one minority party member from each house of the legislature, appointed as are the members of standing committees in their respective houses.
5. Two circuit judges, appointed by the supreme court.
6. One representative of crime victims and one prosecutor, each appointed by the attorney general.
7. One attorney in private practice engaged primarily in the practice of criminal defense, appointed by the criminal law section of the State Bar of Wisconsin.

(b) *Nonvoting members.* The secretary of corrections or his or her designee, the chairperson of the parole commission or his or her designee, and the director of state courts or his or her designee shall be nonvoting members of the commission.

(c) *Terms.* 1. Except as provided in subd. 2., members appointed under par. (a) 3. and 5. to 7. shall serve 3-year terms and are eligible for reappointment.

2. The term of a circuit judge appointed under par. (a) 5. shall end when such person ceases to be a circuit judge. The term of a prosecutor appointed under par. (a) 6. shall end when such person ceases to be a prosecutor.

(d) *Officers.* The governor shall designate annually one of the members of the commission as chairperson. The commission may elect officers other than a chairperson from among its members as its work requires.

(e) *Reimbursement and compensation.* Members of the commission shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties. An officer or employee of the state shall be reimbursed by the agency that pays the member's salary. Members who are full-time state officers or employees shall receive no compensation for their services. Other members shall be paid \$25 per day, in addition to their actual and necessary expenses, for each day on which they are actually and necessarily engaged in the performance of their duties.

(f) *Sunset.* This subsection does not apply after December 31, 2007.

**(28) INFORMATION TECHNOLOGY MANAGEMENT BOARD.** There is created an information technology management board that is attached to the department of administration under s. 15.03. The board shall consist of the governor, the cochairpersons of the joint committee on information policy and technology or a member of the legislature from the same house as a cochairperson designated by that cochairperson, one member of the minority party in each house of the legislature, appointed in the same manner as members of standing committees are appointed, 2 heads of departments or independent agencies appointed to serve at the pleasure of the governor, 2 other members appointed to serve for 4-year terms, and the secretary of administration or his or her designee.

**(29) OFFICE OF STATE EMPLOYMENT RELATIONS.** (a) *Creation.* There is created an office of state employment relations which is attached to the department of administration under s. 15.03 under the direction and supervision of a director. The director shall serve at the pleasure of the governor.

(b) *Same; specified divisions.* 1. 'Division of merit recruitment and selection.' There is created in the office of state employment relations a division of merit recruitment and selection. The administrator of the division of merit recruitment and selection shall be nominated by the governor, and with the advice and consent of the senate appointed for a 5-year term, under the unclassified service from a register of at least 5 names certified to the governor by the director of the office of state employment relations. The director of the office of state employment relations shall prepare and conduct an examination for the position of administrator according to the requirements for classified positions under subch. II of ch. 230. The administrator of the division may be renominated by the governor, and with the advice and consent of the senate reappointed.

(c) *Same; attached board.* 1. 'State employees suggestion board.' There is created in the office of state employment relations a state employees suggestion board consisting of 3 persons, at least one of whom shall be a state officer or employee, appointed for 4-year terms.

(d) *Same; council.* 1. 'Council on affirmative action.' a. There is created in the office of state employment relations a council on affirmative action consisting of 15 members appointed for 3-year terms. A majority of members shall be public members and a majority of members shall be minority persons, women, or persons with disabilities, appointed with consideration to the appropriate representation of each group.

b. The president of the senate, the speaker of the assembly, the minority leader of the senate, and the minority leader of the assembly each shall appoint one member and the remaining members shall be appointed by the governor.

**History:** 1971 c. 40, 164, 270; 1973 c. 90, 333; 1975 c. 397; 1977 c. 29 s. 1649; 1977 c. 196 ss. 9, 10; 1977 c. 325, 392, 396, 418, 447; 1981 c. 20, 62, 182, 350, 374; 1983 a. 27, 91; 1983 a. 192 s. 303 (7); 1983 a. 371; 1985 a. 29 ss. 68 to 70, 87, 3202 (27); 1985 a. 180 s. 30m; 1987 a. 27, 142; 1987 a. 147 s. 25; 1987 a. 204, 342; 1989 a. 31, 56, 107, 345; 1991 a. 212, 269; 1993 a. 75, 246, 349, 437, 465, 491; 1995 a. 27 ss. 79 to 118p, 9116 (5), 9126 (19); 1995 a. 221, 225; 1997 a. 3; 1997 a. 27 ss. 51 to 53, 9456 (3m); 1997 a. 247; 1999 a. 9, 105, 185; 2001 a. 16 ss. 139, 174, 109; 2003 a. 33 ss. 87s to 97d, 115, 2811, 9160; 2003 a. 48 ss. 10, 11; 2003 a. 171; 2003 a. 206 s. 23; 2005 a. 25 ss. 47, 48, 2493; 2005 a. 253.

**15.107 Same; councils. (2) COUNCIL ON SMALL BUSINESS, VETERAN-OWNED BUSINESS AND MINORITY BUSINESS OPPORTUNITIES.** There is created in the department of administration a council on small business, veteran-owned business and minority business opportunities consisting of 13 members, appointed by the secretary of administration for 3-year terms, with representation as follows: at least 2 shall be owners or employees of small businesses at least 51% owned by one or more members of a racial minority group; at least one shall be an owner or employee of a small business at least 51% owned by one or more handicapped persons; at least one shall be an owner or employee of a small business operated on a nonprofit basis for the rehabilitation of disabled persons; at least 2 shall be owners or employees of veteran-owned businesses, as defined in s. 16.75 (4) (d); at least one shall be a rep-

representative of the department of commerce; and at least one shall be a consumer member. No member may serve for more than 2 consecutive full terms. The secretary of administration, or a department employee who is the secretary's designee, shall serve as the council's nonvoting secretary.

(5) ACID DEPOSITION RESEARCH COUNCIL. (a) There is created in the department of administration an acid deposition research council consisting of the following members:

1. The secretary of administration or his or her designee.
2. The chairperson of the public service commission or his or her designee.
3. The secretary of natural resources or his or her designee.
4. A representative of the University of Wisconsin System appointed by the secretary of administration.
5. A representative of a major utility, as defined under s. 285.41 (1) (f), appointed by the secretary of administration.
6. A representative of an industry which is a large source, as defined under s. 285.45 (1) (a), appointed by the secretary of administration.
7. A representative of an environmental organization in this state, appointed by the secretary of administration.

(b) Members of the council appointed under par. (a) 4. to 7. shall serve at the pleasure of the secretary.

(c) The council shall perform the functions specified under s. 16.02.

(7) INTERAGENCY COORDINATING COUNCIL. There is created in the department of administration an interagency coordinating council consisting of the following members appointed to 4-year terms:

- (a) The secretary of employee trust funds or his or her designee.
- (b) A representative of the unit in the department of health and family services that deals with health statistics.
- (c) A representative of the unit in the department of health and family services that deals with the medical assistance program.
- (d) A representative of the unit in the department of health and family services that deals with health care information.
- (e) A representative of the unit in the University of Wisconsin System that deals with health statistics research analysis.
- (f) A representative of the department of administration.
- (g) A representative of the office of the commissioner of insurance.

Note: Sub. (7) is repealed eff. 7-1-06 by 2005 Wis. Act 228.

(11) WOMEN'S COUNCIL. (a) *Creation.* There is created a women's council which is attached to the department of administration under s. 15.03. The council shall consist of 15 members. Except as provided in par. (c), all members shall be appointed for staggered 2-year terms.

(b) *Membership.* The council consists of the following members:

1. The governor, or his or her designee.
2. Six public members appointed by the governor, one of whom the governor shall designate as chairperson.
3. Two public members appointed by the president of the senate.
4. Two public members appointed by the speaker of the assembly.
5. Two members of the senate, appointed in the same manner as members of standing committees are appointed.
6. Two members of the assembly, appointed in the same manner as members of standing committees are appointed.

(c) *Assembly member's and governor's terms.* Each member of the assembly serving on the council shall serve for the period of his or her term in office. The governor or his or her designee serving on the council under par. (b) 1. shall serve a 4-year term.

(12) CERTIFICATION STANDARDS REVIEW COUNCIL. (a) *Creation.* There is created in the department of administration a certification standards review council consisting of 9 members.

(b) *Membership.* 1. The secretary of administration shall appoint 8 members as follows:

- a. One member to represent municipalities having wastewater treatment plants with average flows of more than 5,000,000 gallons per day.
- b. One member to represent municipalities having wastewater treatment plants with average flows of less than 5,000,000 gallons per day.
- c. One member to represent industrial laboratories with permits issued under ch. 283.
- d. One member to represent commercial laboratories.
- e. One member to represent public water utilities.
- f. One member to represent solid and hazardous waste disposal facilities.
- g. One member with a demonstrated interest in laboratory certification.
- h. One member who is a farmer actively engaged in livestock production to represent agricultural interests.

2. The chancellor of the University of Wisconsin–Madison shall appoint one member to represent the state laboratory of hygiene.

(c) *Terms.* Members of the council shall serve for 3-year terms. A person may not serve more than 2 consecutive terms on the council.

(16) WISCONSIN LAND COUNCIL. (a) *Creation.* There is created a Wisconsin land council, attached to the department of administration under s. 15.03.

(b) *Members.* The Wisconsin land council shall consist of the following members:

1. The secretary of administration.
2. The secretary of agriculture, trade and consumer protection.
3. The secretary of commerce.
4. The secretary of natural resources.
5. The secretary of revenue.
6. The secretary of transportation.
7. The state cartographer.
8. One member who represents the interests of cities.
9. One member who represents the interests of counties.
10. One member who represents the interests of towns.
11. One member who represents the interests of local governments.
12. One representative from the University of Wisconsin System.
13. Four members of the public.

(c) *Designees.* Under par. (b), an agency head may appoint a designee to serve on the council, if the designee is an employee or appointive officer of the agency who has sufficient authority to deploy agency resources and directly influence agency decision making.

(d) *Terms, chairperson.* The members listed under par. (b) 8. to 13. shall be appointed for 5-year terms. The governor shall appoint the chairperson of the council, who shall serve at the pleasure of the governor.

(e) *Sunset.* This subsection does not apply after August 31, 2005.

(17) COUNCIL ON UTILITY PUBLIC BENEFITS. There is created a council on utility public benefits that is attached to the department of administration under s. 15.03. The council shall consist of the following members appointed for 3-year terms:

- (a) Two members appointed by the governor.
- (b) Two members appointed by the senate majority leader.

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- (c) One member appointed by the senate minority leader.
- (d) Two members appointed by the speaker of the assembly.
- (e) One member appointed by the assembly minority leader.
- (f) One member appointed by the secretary of natural resources.
- (g) One member appointed by the secretary of administration.
- (h) One member appointed by the chairperson of the public service commission.

**History:** 1971 c. 215; 1973 c. 90; 1977 c. 29, 419; 1979 c. 34; 1979 c. 361 s. 112; 1981 c. 20, 62, 237; 1983 a. 27, 393, 410; 1985 a. 29, 84; 1987 a. 27, 142; 1989 a. 31; 1991 a. 32 s. 17; 1991 a. 39, 170, 269; 1995 a. 27, ss. 119, 120 and 9116 (5); 1995 a. 227, 433, 442; 1997 a. 27, 35, 231; 1999 a. 9; 2001 a. 16, 38; 2003 a. 33; 2005 a. 228, 253.

**15.13 Department of agriculture, trade and consumer protection; creation.** There is created a department of agriculture, trade and consumer protection under the direction and supervision of the board of agriculture, trade and consumer protection. The board shall consist of 7 members with an agricultural background and 2 members who are consumer representatives, appointed for staggered 6-year terms. Appointments to the board shall be made without regard to party affiliation, residence or interest in any special organized group.

**History:** 1977 c. 29; 1995 a. 27; 1997 a. 27.

**15.135 Same; attached boards and commissions. (1)**

**LIVESTOCK FACILITY SITING REVIEW BOARD.** (a) There is created a livestock facility siting review board which is attached to the department of agriculture, trade and consumer protection under s. 15.03. The board consists of the following members:

- 1. A member representing the interests of towns, selected from a list of names submitted by the Wisconsin Towns Association.
- 2. A member representing the interests of counties, selected from a list of names submitted by the Wisconsin Counties Association.
- 3. A member representing environmental interests, selected from a list of names submitted by environmental organizations.
- 4. A member representing livestock farming interests, selected from a list of names submitted by statewide agricultural organizations.
- 5. Three other members.

(b) The members under par. (a) shall be nominated by the secretary of agriculture, trade and consumer protection, and with the advice and consent of the senate appointed, for 5-year terms.

**(4) LAND AND WATER CONSERVATION BOARD.** (am) *Creation.* There is created a land and water conservation board which is attached to the department of agriculture, trade and consumer protection under s. 15.03.

(b) *Members.* The board consists of all of the following members:

- 1. The secretaries of administration, natural resources, and agriculture, trade and consumer protection or their designees.
- 2. Three members of county land conservation committees designated biennially by the county land conservation committees at their annual meeting in even-numbered years, appointed for 2-year terms.
- 2m. One representative appointed for a 2-year term.
- 3. Four other members appointed for staggered 4-year terms. One of those members shall be a resident of a city with a population of 50,000 or more, one shall represent a governmental unit involved in river management, one shall be a farmer and one shall be a member of a charitable corporation, charitable association or charitable trust, the purpose or powers of which include protecting natural resources, including scenic or open space, and maintaining or enhancing air or water quality.

(c) *Advisory members.* The board shall invite:

- 1. The U.S. secretary of agriculture to appoint a representative of the natural resources conservation service and a representa-

tive of the farm service agency to serve as advisory members of the board.

2. The dean of the College of Agricultural and Life Sciences of the University of Wisconsin–Madison and the director of the University of Wisconsin–Extension to serve or appoint a person to serve as an advisory member of the board.

3. The staff of the county land conservation committees employed under s. 92.09 to designate jointly a person to serve as an advisory member of the board.

(d) *Vacancies.* If one or more of the county land conservation committee member positions on the board is vacant, the chairperson may call a special meeting of the committees to fill the vacancies, but vacancies may be filled only if a majority of the committees are represented at the special meeting.

**History:** 1971 c. 125; 1973 c. 299; 1977 c. 29 ss. 32d, 33, 1650m (2), (4); 1979 c. 361 s. 112; 1981 c. 305, 346; 1983 a. 27; 1985 a. 20, 29, 153; 1987 a. 27, 281; 1989 a. 31, 219; 1991 a. 39; 1993 a. 16; 1995 a. 27; 1997 a. 27, 111; 2003 a. 235; 2005 a. 149.

**15.137 Same; councils. (1) AGRICULTURAL PRODUCER SECURITY COUNCIL.**

(a) There is created in the department of agriculture, trade and consumer protection an agricultural producer security council consisting of the following members appointed by the secretary of agriculture for 3-year terms:

- 1. One person representing the Farmers' Educational and Cooperative Union of America, Wisconsin Division.
- 2. One person representing the Midwest Food Processors Association, Inc.
- 3. One person representing the National Farmers' Organization, Inc.
- 4. One person representing the Wisconsin Agri–Service Association, Inc.
- 5. One person representing the Wisconsin Cheese Makers Association.
- 6. One person representing both the Wisconsin Corn Growers Association, Inc., and the Wisconsin Soybean Association, Inc.
- 7. One person representing the Wisconsin Dairy Products Association, Inc.
- 8. One person representing the Wisconsin Farm Bureau Federation.
- 9. One person representing the Wisconsin Federation of Cooperatives.
- 10. One person representing the Wisconsin Potato and Vegetable Growers Association, Inc.

(b) Each organization identified in par. (a) shall nominate 2 persons to represent that organization on the agricultural producer security council. The secretary of agriculture, trade and consumer protection shall appoint members from among the nominees.

**(5) FERTILIZER RESEARCH COUNCIL.** There is created in the department of agriculture, trade and consumer protection a fertilizer research council consisting of the following members:

(a) *Nonvoting members.* The secretary of agriculture, trade and consumer protection, the secretary of natural resources and the dean of the College of Agricultural and Life Sciences at the University of Wisconsin–Madison, or their designees, shall serve as nonvoting members.

(b) *Voting members.* 1. Six voting members shall be appointed jointly by the secretary of the department of agriculture, trade and consumer protection and the dean of the College of Agricultural and Life Sciences at the University of Wisconsin–Madison, to serve for 3-year terms. Three of the members appointed under this subdivision shall be industry representatives selected from a list of candidates provided by the fertilizer industry. Three of the members appointed under this subdivision shall represent farmers who are crop producers.

2. One voting member shall be appointed by the secretary of natural resources to serve for a 3-year term. The member appointed under this subdivision shall be knowledgeable about water quality.

3. No voting member may serve more than 2 consecutive 3-year terms.

**History:** 1977 c. 29 s. 1650m (2), (4); 1977 c. 87, 216, 272, 418; 1979 c. 129; 1981 c. 57, 237; 1985 a. 184; 1987 a. 281; 1991 a. 269, 315; 1993 a. 417; 1997 a. 27; 2001 a. 16.

**15.14 Department of corrections; creation.** There is created a department of corrections under the direction and supervision of the secretary of corrections.

**History:** 1989 a. 31.

**15.145 Same; attached boards and commissions.**

**(1) PAROLE COMMISSION.** There is created in the department of corrections a parole commission consisting of 8 members. Members shall have knowledge of or experience in corrections or criminal justice. The members shall include a chairperson who is nominated by the governor, and with the advice and consent of the senate appointed, for a 2-year term expiring March 1 of the odd-numbered years, subject to removal under s. 17.07 (3m), and the remaining members in the classified service appointed by the chairperson.

**(2) PRISON INDUSTRIES BOARD.** There is created a prison industries board which is attached to the department of corrections under s. 15.03. The board shall consist of 9 members appointed for 4-year terms. Three members shall be appointed to represent private business and industry and 3 members shall be appointed to represent private labor organizations. One member shall be appointed to represent each of the following:

- (c) The technical college system.
- (d) The department of corrections.
- (f) The department of administration.

**(3) INTERSTATE ADULT OFFENDER SUPERVISION BOARD.** There is created an interstate adult offender supervision board which is attached to the department of corrections under s. 15.03. The board shall consist of 5 members appointed for 4-year terms. The governor shall comply with the requirements of s. 304.16 (4) when appointing members of the board. The board shall have the powers, duties, and responsibilities set forth under s. 304.16.

**(4) STATE BOARD FOR INTERSTATE JUVENILE SUPERVISION.** There is created a state board for interstate juvenile supervision, which is attached to the department of corrections under s. 15.03. The board shall consist of 5 members appointed for 3-year terms. The governor shall comply with the requirements of s. 938.999 (9) when appointing members of the board. The board shall have the powers, duties, and responsibilities set forth under s. 938.999.

**History:** 1989 a. 107 ss. 4, 5m; 1989 a. 121; 1993 a. 399; 1997 a. 27, 237; 2001 a. 16, 96; 2005 a. 234.

**15.15 Department of commerce; creation.** There is created a department of commerce under the direction and supervision of the secretary of commerce.

**History:** 1971 c. 321; 1979 c. 361; 1995 a. 27 s. 9116 (5).

**15.153 Same; specified divisions. (3) DIVISION OF ENVIRONMENTAL AND REGULATORY SERVICES.** There is created in the department of commerce a division of environmental and regulatory services. The administrator of this division shall be appointed outside the classified service by the secretary and shall serve at the pleasure of the secretary.

**(4) DIVISION OF INTERNATIONAL AND EXPORT DEVELOPMENT.** There is created in the department of commerce a division of international and export development. The administrator of this division shall be appointed outside the classified service by the secretary and shall serve at the pleasure of the secretary.

**History:** 1975 c. 39, 199; 1979 c. 361 ss. 8, 112; 1995 a. 27.

**15.155 Same; attached boards and commissions.**

**(1) DEVELOPMENT FINANCE BOARD.** (a) There is created a development finance board attached to the department of commerce under s. 15.03 consisting of all of the following:

1. The secretary of commerce or the secretary's designee.

2. The secretary of workforce development or the secretary's designee.

3. The director of the technical college system board or the director's designee.

6. Six other members appointed by the governor for 2-year terms.

(b) The members appointed under par. (a) 6. shall represent the scientific, technical, labor, small business, minority business, as defined in s. 560.036 (1) (e), and financial communities of this state.

**(3) MINORITY BUSINESS DEVELOPMENT BOARD.** There is created a minority business development board attached to the department of commerce under s. 15.03 consisting of members appointed by the governor for 2-year terms.

**(4) RURAL ECONOMIC DEVELOPMENT BOARD.** (a) There is created a rural economic development board attached to the department of commerce under s. 15.03 consisting of the following:

1. The secretary of agriculture, trade and consumer protection or the secretary's designee.

2. The secretary of commerce or the secretary's designee.

3. One majority and one minority party senator from rural districts, appointed as are members of standing committees in the senate.

4. One majority and one minority party representative to the assembly from rural districts, appointed as are members of standing committees in the assembly.

5. Three members appointed by the governor for 3-year terms.

(b) Members of the rural economic development board appointed under par. (a) 5. shall have experience operating a business located in a rural municipality, as defined in s. 560.17 (1) (d). At least one member shall have experience operating a cooperative located in a rural municipality, as defined in s. 560.17 (1) (d).

**(5) SMALL BUSINESS REGULATORY REVIEW BOARD.** There is created a small business regulatory review board, attached to the department of commerce under s. 15.03. The board shall consist of a representative of the department of administration; a representative of the department of agriculture, trade and consumer protection; a representative of the department of commerce; a representative of the department of health and family services; a representative of the department of natural resources; a representative of the department of regulation and licensing; a representative of the department of revenue; a representative of the department of workforce development; 6 representatives of small businesses, as defined in s. 227.114 (1), who shall be appointed for 3-year terms; and the chairpersons of one senate and one assembly committee concerned with small businesses, appointed as are members of standing committees. The representatives of the departments shall be selected by the secretary of that department.

**History:** 1983 a. 27; 1985 a. 29; 1987 a. 27, 399; 1989 a. 31, 325; 1991 a. 39; 1993 a. 399; 1995 a. 27 ss. 112b, 112c, 112d, 112h, 127, 220g, 9116 (5), 9130 (4); 1995 a. 227 s. 10; 1997 a. 3, 27; 1999 a. 9; 2003 a. 33, 145.

**15.157 Same; councils. (3) DWELLING CODE COUNCIL.**

There is created in the department of commerce, a dwelling code council, consisting of 18 members appointed for staggered 3-year terms. Four members shall be representatives of building trade labor organizations; 4 members shall be certified building inspectors employed by local units of government; 2 members shall be representatives of building contractors actively engaged in on-site construction of one- and 2-family housing; 2 members shall be representatives of manufacturers or installers of manufactured one- and 2-family housing; one member shall be an architect, engineer or designer actively engaged in the design or evaluation of one- and 2-family housing; 2 members shall represent the construction material supply industry; one member shall represent remodeling contractors actively engaged in the remodeling of one-family and 2-family housing; and 2 members shall represent the public, one of whom shall represent persons with disabilities,

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as defined in s. 106.50 (1m) (g). An employee of the department designated by the secretary of commerce shall serve as nonvoting secretary of the council. The council shall meet at least twice a year. Eleven members of the council shall constitute a quorum. For the purpose of conducting business a majority vote of the council is required.

**(5) CONTRACTOR CERTIFICATION COUNCIL.** There is created in the department of commerce a contractor certification council consisting of 3 members who are building contractors holding certificates of financial responsibility under s. 101.654 and who are involved in, or who have demonstrated an interest in, continuing education for building contractors. The members shall be appointed by the secretary of commerce for 3-year terms.

**(6) PLUMBERS COUNCIL.** There is created in the department of commerce a plumbers council consisting of 3 members. One member shall be an employee of the department of commerce, selected by the secretary of commerce, to serve as the secretary of the council. Two members, one a master plumber and one a journeyman plumber, shall be appointed by the secretary of commerce for 2-year terms.

**(7) COUNCIL ON MAIN STREET PROGRAMS.** (a) There is created in the department of commerce a council on main street programs, consisting of the following members appointed for 3-year terms:

1. The secretary of commerce or his or her designee.
2. The director of the historical society or his or her designee.
3. One member representing the Wisconsin downtown action council or a similar organization.
4. One member representing a local chamber of commerce or similar organization.
5. One member representing the Wisconsin trust for historic preservation or a similar organization.
6. One member representing a city, village or town.
7. One member representing the planning profession.
8. One member representing the architectural profession.
9. One member representing the financial community.
10. Two members representing the business community.
11. Four members with expertise or an interest in downtown revitalization.

(b) 1. At least 3 of the members appointed under par. (a) 3. to 10. shall own or operate a business in a business area, as defined in s. 560.081 (1) (a).

2. At least 5 of the members appointed under par. (a) 3. to 10. shall have experience in business area revitalization, as defined in s. 560.081 (1) (a) and (c).

3. The members appointed under par. (a) 3. to 11. shall be appointed to provide geographic diversity to the council.

(c) The secretary of commerce shall designate an employee of the department of commerce to serve as nonvoting secretary for the council.

**(8) RURAL HEALTH DEVELOPMENT COUNCIL.** There is created in the department of commerce a rural health development council consisting of 13 members nominated by the governor, and with the advice and consent of the senate appointed, for 5-year terms, and the secretaries of commerce and health and family services, or their designees. The appointed members shall include all of the following:

- (a) A representative of the University of Wisconsin Medical School.
- (b) A representative of the Medical College of Wisconsin, Inc.
- (c) A representative of the Wisconsin Health and Educational Facilities Authority.
- (d) A representative of the farmers home administration.
- (e) Two representatives of private lenders that make loans in rural areas.
- (f) Two representatives of health care facilities located in rural areas.

(g) A physician licensed under ch. 448, a dentist licensed under ch. 447, a nurse licensed under ch. 441, and a dental hygienist licensed under ch. 447, all of whom practice in a rural area, and a representative of public health services.

**(9) AUTOMATIC FIRE SPRINKLER SYSTEM CONTRACTORS AND JOURNEYMEN COUNCIL.** There is created in the department of commerce an automatic fire sprinkler system contractors and journeymen council consisting of 5 members. One member shall be an employee of the department of commerce, selected by the secretary of commerce, to serve as secretary of the council. Two members shall be licensed journeymen automatic fire sprinkler fitters and 2 members shall be persons representing licensed automatic fire sprinkler contractors, all appointed by the secretary of commerce for staggered 4-year terms.

**(10) SMALL BUSINESS ENVIRONMENTAL COUNCIL.** There is created in the department of commerce a small business environmental council consisting of the following members appointed for 3-year terms:

(a) Three members to represent the general public who are not owners, or representatives of owners, of small business stationary sources, as defined in s. 285.79 (1).

(b) One member who owns a small business stationary source, as defined in s. 285.79 (1), or who represents owners of small business stationary sources, appointed by the president of the senate.

(c) One member who owns a small business stationary source, as defined in s. 285.79 (1), or who represents owners of small business stationary sources, appointed by the speaker of the assembly.

(d) One member who owns a small business stationary source, as defined in s. 285.79 (1), or who represents owners of small business stationary sources, appointed by the minority leader of the senate.

(e) One member who owns a small business stationary source, as defined in s. 285.79 (1), or who represents owners of small business stationary sources, appointed by the minority leader of the assembly.

(f) One member appointed by the secretary of natural resources to represent the department of natural resources.

(g) One member appointed by the secretary of commerce to represent the department of commerce.

**(11) PETROLEUM STORAGE ENVIRONMENTAL CLEANUP COUNCIL.** There is created in the department of commerce a petroleum storage environmental cleanup council consisting of 5 members appointed for 4-year terms and the secretary of natural resources and the secretary of commerce, or their designees. The governor shall appoint the members, other than ex officio members, to the council from lists of names submitted by the secretary of natural resources and by the secretary of commerce. In preparing the lists, each secretary shall consider representatives from petroleum product transporters, manufacturers, suppliers, retailers and wholesalers, professional geologists, hydrologists and soil scientists and environmental scientists, consultants, contractors and engineers.

**(12) MULTIFAMILY DWELLING CODE COUNCIL.** (a) There is created in the department of commerce a multifamily dwelling code council consisting of the following members appointed for 3-year terms:

1. Two members representing labor organizations for the skilled building trades, each of whom is actively engaged in his or her trade.

2. Two members representing municipal inspectors, one of whom is actively engaged in inspections in a county whose population is less than 50,000 and one of whom is actively engaged in inspections in a county whose population is 50,000 or more.

3. Two members representing the fire services, each of whom is actively engaged in fire service work and at least one of whom is a fire chief.

4. Two members representing building contractors and building developers, each of whom is actively engaged in on-site construction of multifamily housing.

5. Three members representing manufacturers of materials or suppliers of finished products in one of 5 product categories, consisting of cement products, concrete block products, gypsum products, metal products and wood products. Each member shall represent the manufacturers or suppliers of a different product category, and each member appointed to a 3-year term shall represent the manufacturers or suppliers of the product category that has not been represented by any of the 3 members for the previous 2 years. Each member shall be actively engaged in the business of manufacturing materials or supplying finished products for multifamily housing.

6. One member representing architects, engineers and designers who is actively engaged in the design or evaluation of multifamily housing.

7. Two members representing the public, at least one of whom is an advocate of fair housing.

(b) An employee of the department shall serve as nonvoting secretary of the council.

(c) The council shall meet at least 2 times annually.

(d) Nine members of the council shall constitute a quorum. For the purpose of conducting business a majority vote of the council is required, except that at least 10 members of the council are required to vote affirmatively to recommend changes in the statutes or administrative rules.

**(13) MANUFACTURED HOUSING CODE COUNCIL.** (a) There is created in the department of commerce a manufactured housing code council consisting of the following members appointed by the secretary of commerce for 3-year terms:

1. Two members representing manufacturers of manufactured homes.

2. Two members representing manufactured home dealers.

3. Two members representing owners of manufactured home communities.

4. Two members representing installers of manufactured homes.

5. One member representing an association of the manufactured housing industry in Wisconsin.

6. One member representing suppliers of materials or services to the manufactured housing industry.

7. One member representing the public.

8. One member representing labor.

9. One member representing inspectors of manufactured homes.

(b) The council shall meet at least twice a year. An employee of the department designated by the secretary of the department shall serve as nonvoting secretary of the council.

**History:** 1971 c. 321; 1975 c. 39; 1979 c. 361 ss. 9 to 11, 112; 1981 c. 349; 1983 a. 36, 83, 84, 192, 387; 1985 a. 29; 1987 a. 1, 27, 109; 1989 a. 31 s. 70; 1989 a. 317; 1991 a. 39, 302; 1993 a. 16; 1995 a. 27 ss. 128 to 133, 152 to 162 and 9116 (5); 1995 a. 227; 1997 a. 27, 300; 1999 a. 82; 2001 a. 16, 103, 104; 2005 a. 45, 200.

### 15.16 Department of employee trust funds; creation.

There is created a department of employee trust funds under the direction and supervision of the employee trust funds board.

**(1) EMPLOYEE TRUST FUNDS BOARD.** The employee trust funds board shall consist of the governor or the governor's designee on the group insurance board, the director of the office of state employment relations or the director's designee and 11 persons appointed or elected for 4-year terms as follows:

(a) Four members shall be members of the teachers retirement board, appointed by that board.

1. At least one appointee under this paragraph shall have been appointed or elected to the board under s. 15.165 (3) (a) 1. or 2.

2. At least one appointee under this paragraph shall have been appointed to the board under s. 15.165 (3) (a) 4.

3. At least one appointee under this paragraph shall have been elected to the board under s. 15.165 (3) (a) 7.

4. At least one appointee under this paragraph shall have been appointed to the board under s. 15.165 (3) (a) 3. or 5.

(b) Four members shall be members of the Wisconsin retirement board, appointed by that board.

1. At least one appointee under this paragraph shall have been appointed to the board under s. 15.165 (3) (b) 1., 2., 4., 5. or 8.

2. At least one appointee under this paragraph shall have been appointed to the board under s. 15.165 (3) (b) 3., 6. or 7.

3. At least one appointee under this paragraph shall have been appointed to the board under s. 15.165 (3) (b) 7. or 8.

(c) One member shall be a public member who is not a participant in or beneficiary of the Wisconsin retirement system, with at least 5 years of experience in actuarial analysis, administration of an employee benefit plan or significant administrative responsibility in a major insurer. It is the intent of the legislature that the member appointed under this paragraph shall represent the interests of the taxpayers of this state and shall not be representative of public employee or employer interests.

(d) One member shall be an annuitant, as defined for purposes other than life insurance under s. 40.02 (4), elected by annuitants, as defined for purposes other than life insurance under s. 40.02 (4).

(f) One member who is a participant in the Wisconsin retirement system and who is a technical college educational support personnel employee, as defined in s. 40.02 (55g), or an educational support personnel employee, as defined in s. 40.02 (22m), elected by participating employees meeting the same criteria.

**History:** 1979 c. 221; 1981 c. 96; 1991 a. 116; 1999 a. 181; 2003 a. 33 ss. 101, 9160; 2005 a. 25.

Membership requirements under sub. (1) (a) and (b) apply only at the time of appointment. Appointees serve "at pleasure" of the appointing boards under sub. (1) (a) and (b). 75 Atty. Gen. 127 (1986).

**15.165 Same; attached boards. (1) BOARD MEMBERS.** (a) Any member of a board created under this section who loses the status upon which the appointment or election was based shall cease to be a member of the board upon appointment or election to the board of a qualified successor.

(b) For purposes of this section, annuitants are deemed to be employees in the last position in which they were covered by the Wisconsin retirement system, except that annuitants may not be elected, appointed or vote under sub. (3) (a) 1., 2., 4. or 7.

**(2) GROUP INSURANCE BOARD.** There is created in the department of employee trust funds a group insurance board. The board shall consist of the governor, the attorney general, the secretary of administration, the director of the office of state employment relations, and the commissioner of insurance or their designees, and 6 persons appointed for 2-year terms, of whom one shall be an insured participant in the Wisconsin Retirement System who is not a teacher, one shall be an insured participant in the Wisconsin Retirement System who is a teacher, one shall be an insured participant in the Wisconsin Retirement System who is a retired employee, one shall be an insured employee of a local unit of government, and one shall be the chief executive or a member of the governing body of a local unit of government that is a participating employer in the Wisconsin Retirement System.

**(3) RETIREMENT BOARDS.** (a) *Teachers retirement board.* There is created in the department of employee trust funds a teachers retirement board. The board shall consist of 13 members, to serve for staggered 5-year terms. The board shall consist of the following members:

1. Six public school teachers who are participating employees in the Wisconsin retirement system and who are not eligible for election under any other subdivision of this paragraph, elected by participating employees meeting the same criteria.

2. One public school teacher from a technical college district who is a participating employee in the Wisconsin retirement system, elected by teacher participating employees from technical college districts.



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3. One administrator in Wisconsin's public schools who is not a classroom teacher.

4. Two University of Wisconsin System representatives who are teacher participants in the Wisconsin retirement system. The representatives under this subdivision shall not be from the same campus.

5. One representative who is a member of a school board.

6. One annuitant who was a teacher participant in the Wisconsin retirement system, elected by the annuitants who were teacher participants.

7. One teacher in the city of Milwaukee who is a participating employee in the Wisconsin retirement system, elected by the teachers of the public schools in that city who are participating employees.

(b) *Wisconsin retirement board.* There is created in the department of employee trust funds a Wisconsin retirement board. The board shall consist of 9 members, and board members appointed under subds. 1. to 8. shall serve for staggered 5-year terms. The member appointed under subd. 1. shall be appointed from a list of 5 names submitted by the board of directors of the League of Wisconsin Municipalities, and the member appointed under subd. 4. shall be appointed from a list of 5 names submitted by the executive committee of the Wisconsin Counties Association. Each member appointed under subds. 1., 2., and 3. shall be from a different county. Each member appointed under subds. 4., 5., and 6. shall be appointed from a different county. The board shall consist of the following members:

1. One member who is the chief executive or a member of the governing body of a participating city or village.

2. One member who is a participating employee and the principal finance officer of a participating city or village.

3. One member who is a participating employee of a participating city or village.

4. One member who is the chairperson or a member of the governing body of a participating county or town.

5. One member who is a county clerk or deputy county clerk of a participating county.

6. One member who is a participating employee of a participating local employer other than a city or village.

7. One member who is a participating state employee.

8. One member who is a public member not a participant in or beneficiary of the Wisconsin retirement system. It is the intent of the legislature that the members appointed under this paragraph shall represent the interests of the taxpayers of this state and shall not be representative of public employee or employer interests.

9. The commissioner of insurance or an experienced actuary in the office of the commissioner designated by the commissioner.

(4) **DEFERRED COMPENSATION BOARD.** There is created in the department of employee trust funds a deferred compensation board consisting of 5 members appointed for 4-year terms.

(5) **PRIVATE EMPLOYER HEALTH CARE COVERAGE BOARD.** (a) There is created in the department of employee trust funds a private employer health care coverage board consisting of the secretary of employee trust funds or his or her designee, the secretary of health and family services or his or her designee and the following members appointed for 3-year terms:

1. One member who represents health maintenance organizations.

2. One member who represents hospitals.

3. One member who represents insurance agents, as defined in s. 628.02 (4).

4. Two members who are employees eligible to receive health care coverage under subch. X of ch. 40 and whose employer employs not more than 50 employees.

5. One member who represents insurers.

6. Two members who are, or who represent, employers that employ not more than 50 employees and who are eligible to offer health care coverage under subch. X of ch. 40.

7. One member who is a physician, as defined in s. 448.01 (5).

8. Two members who represent the public interest.

(b) The secretary of employee trust funds or his or her designee and the secretary of health and family services or his or her designee shall be nonvoting members.

**Note:** Sub. (5) is repealed by 1999 Wis. Act 9, eff. 1-1-10.

**History:** 1973 c. 151, 329; 1977 c. 29, 418; 1979 c. 221; 1981 c. 96; 1983 a. 192 s. 303 (7); 1983 a. 290; 1985 a. 230; 1987 a. 403; 1989 a. 31; 1993 a. 399; 1999 a. 9; 2001 a. 103; 2003 a. 33 ss. 102, 9160; 2005 a. 66.

Public school administrators are eligible to be candidates for and to vote for teacher representatives on the teachers retirement board. 76 Atty. Gen. 141.

**15.18 Department of financial institutions.** There is created a department of financial institutions under the direction and supervision of the secretary of financial institutions.

**History:** 1995 a. 27.

**15.183 Same; specified divisions. (1) DIVISION OF BANKING.** There is created a division of banking. Prior to July 1, 2000, the division is attached to the department of financial institutions under s. 15.03. After June 30, 2000, the division is created in the department of financial institutions. The administrator of the division shall be appointed outside the classified service by the secretary of financial institutions and shall serve at the pleasure of the secretary.

(3) **DIVISION OF SECURITIES.** There is created a division of securities. Prior to July 1, 2000, the division is attached to the department of financial institutions under s. 15.03. After June 30, 2000, the division is created in the department of financial institutions. The administrator of the division shall be appointed outside the classified service by the secretary of financial institutions and shall serve at the pleasure of the secretary.

**History:** 1995 a. 27; 1999 a. 9; 2003 a. 33.

**15.185 Same; attached boards and offices. (1) BANKING REVIEW BOARD.** There is created in the department of financial institutions a banking review board consisting of 5 persons, appointed for staggered 5-year terms. At least 3 members shall be experienced bankers having at least 5 years' experience in the banking business. No member is qualified to act in any matter involving a bank in which the member is an officer, director or stockholder, or to which the member is indebted.

(3) **SAVINGS INSTITUTIONS REVIEW BOARD.** There is created in the department of financial institutions a savings institutions review board consisting of 5 members, at least 3 of whom shall have not less than 5 years' experience in the savings and loan or savings bank business in this state, appointed for 5-year terms.

(7) **OFFICE OF CREDIT UNIONS.** (a) *Office of credit unions; creation.* There is created an office of credit unions which is attached to the department of financial institutions under s. 15.03. The director shall be appointed by the governor to serve at the pleasure of the governor. No person may be appointed director who has not had at least 3 years of actual experience either in the operation of a credit union, or serving in a credit union supervisory capacity, or a combination of both. Notwithstanding s. 15.03, all personnel and budget requests by the office of credit unions shall be processed and forwarded by the department of financial institutions without change except as requested and concurred in by the office of credit unions.

(b) *Credit union review board.* There is created in the office of credit unions a credit union review board consisting of 5 persons, appointed for staggered 5-year terms. All members shall have at least 5 years' experience in the operations of a credit union. The office of credit unions may call special meetings of the review board.

**History:** 1995 a. 27, ss. 135, 136, 196, 197, 201, 203, 216, 217; 1997 a. 27; 2003 a. 33.

**15.187 Same; councils. (1) LOAN ORIGINATOR REVIEW COUNCIL.** There is created in the department of financial institutions a loan originator council. The council shall consist of the following members, appointed by the secretary of financial institutions for 4-year terms:

(a) Three persons who are loan originators registered under s. 224.72 (1m).

(b) One person who is an agent of a mortgage broker registered under s. 224.72 (1m).

(c) One person who is an agent of a mortgage banker registered under s. 224.72 (1m).

(d) One person who is a loan solicitor, as defined in s. 224.71 (1u), registered under s. 224.72 (1m).

(e) The secretary of financial institutions or his or her designee.  
**History:** 2003 a. 260.

**15.19 Department of health and family services; creation.** There is created a department of health and family services under the direction and supervision of the secretary of health and family services.

**History:** 1975 c. 39; 1995 a. 27 s. 9126 (19).

**15.195 Same; attached boards and commissions.**

**(4) CHILD ABUSE AND NEGLECT PREVENTION BOARD.** There is created a child abuse and neglect prevention board which is attached to the department of health and family services under s. 15.03. The board shall consist of 20 members as follows:

(a) The governor or his or her designee.

(b) The attorney general or his or her designee.

(c) The secretary of health and family services or his or her designee.

(d) The state superintendent of public instruction or his or her designee.

(dg) The secretary of corrections or his or her designee.

(dr) The secretary of workforce development or his or her designee.

(e) One representative to the assembly appointed by the speaker of the assembly or that appointed representative's designee.

(em) One representative to the assembly appointed by the minority leader of the assembly or that appointed representative's designee.

(f) One senator appointed by the president of the senate or that appointed senator's designee.

(fm) One senator appointed by the minority leader of the senate or that appointed senator's designee.

(g) Ten public members appointed by the governor for staggered 3-year terms. The public members shall be appointed on the basis of expertise, experience, leadership, or advocacy in the prevention of child abuse and neglect.

**(6) BOARD ON HEALTH CARE INFORMATION.** There is created a board on health care information which is attached to the department of health and family services under s. 15.03. The board shall consist of 11 members, one of whom shall be a record administrator, registered by the American Medical Record Association; at least 2 of whom shall be employer purchasers of health care; and 5 of whom shall be or represent health care providers, including one registered nurse, licensed under s. 441.06, 2 physicians, as defined in s. 448.01 (5), and 2 representatives of hospitals, as defined in s. 50.33 (2). The State Medical Society of Wisconsin may recommend board membership for 5 physicians, one of whom the governor shall appoint. The members shall be appointed for 4-year terms.

**Note:** Sub. (6) is repealed eff. 7-1-06 by 2005 Wis. Act 228.

**(8) EMERGENCY MEDICAL SERVICES BOARD.** There is created an emergency medical services board, which is attached to the department of health and family services under s. 15.03. The board shall consist of 11 voting members, appointed for 3-year

terms, who have an interest and expertise in emergency medical services issues, who represent the various geographical areas of the state and who include representatives of the various types of emergency medical services providers. In addition to the 11 voting members, the secretary of health and family services, the secretary of transportation, the director of the technical college system board and the state medical director for emergency medical services or their designees shall serve as nonvoting members of the board.

**(9) INDEPENDENT REVIEW BOARD.** There is created an independent review board that is attached to the department of health and family services under s. 15.03. The board may not include an employee of the department of health and family services and shall consist of the commissioner of insurance or his or her designee and the following members appointed for 4-year terms:

(a) A statistician or researcher.

(b) A medical ethicist of the University of Wisconsin System or the Medical College of Wisconsin.

(c) An expert in issues relating to privacy.

(d) A purchaser of health care.

**Note:** Sub. (9) is repealed eff. 7-1-06 by 2005 Wis. Act 228.

**History:** 1971 c. 219; 1977 c. 29 s. 1650m (2); 1977 c. 273; 1983 a. 27; 1983 a. 109 ss. 1, 3; 1985 a. 56; 1987 a. 399; 1989 a. 102, 107; 1991 a. 250; 1993 a. 16, 168, 184, 233; 1995 a. 27 ss. 138, 139, 9126 (19); 1995 a. 225, 305; 1997 a. 27 ss. 60e to 61, 93; 1997 a. 231; 1999 a. 9; 2001 a. 16, 79; 2003 a. 33; 2005 a. 228, 319.

**15.197 Same; councils. (1) COUNCIL ON MENTAL HEALTH.**

There is created in the department of health and family services a council on mental health consisting of 15 members nominated by the secretary of health and family services and appointed by the governor for staggered 3-year terms. Persons appointed to the council on mental health shall have a recognized interest in and demonstrated knowledge of the problems of mental health. At least one-half of the members shall be consumers of mental health services or persons who do not provide mental health services. The council shall include representatives of all of the following:

(a) Consumers of mental health services and family members of such consumers.

(b) Private organizations or groups concerned with mental health services.

(c) Providers of mental health services.

(d) State and county agencies that are concerned with the planning, provision, operation or use of mental health services or facilities.

**(2) COUNCIL ON BLINDNESS.** There is created in the department of health and family services a council on blindness consisting of 9 members appointed by the secretary of health and family services for staggered 3-year terms. At least 7 of the persons appointed to the council shall be blind or visually impaired, as defined in s. 47.01 (1) or (5) and shall reflect a broad representation of blind or visually impaired persons. All council members shall have a recognized interest in and demonstrated knowledge of the problems of the blind or visually impaired. Council members may be persons receiving services from the department. The council has the functions specified in s. 47.03 (9).

**(4) COUNCIL ON PHYSICAL DISABILITIES.** (a) *Definitions.* In this subsection:

1. "Major life activity" means any of the following:

a. Self-care.

b. Performance of manual tasks unrelated to gainful employment.

c. Walking.

d. Receptive and expressive language.

e. Breathing.

f. Working.

g. Participating in educational programs.

h. Mobility, other than walking.

i. Capacity for independent living.

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2. “Physical disability” means a physical condition, including an anatomical loss or musculoskeletal, neurological, respiratory or cardiovascular impairment, which results from injury, disease or congenital disorder and which significantly interferes with or significantly limits at least one major life activity of a person.

3. “Physically disabled person” means an individual having a physical disability.

(b) *Creation and membership.* There is created a council on physical disabilities, attached to the department of health and family services under s. 15.03. The council shall consist of all of the following:

1. The governor, or his or her designee.

3. Thirteen members, appointed for 3–year terms, under the following criteria:

a. The members shall be appointed from residents of this state who have a demonstrated professional or personal interest in problems of physical disability and shall be selected so as to include a reasonably equitable representation of those communities located in the state’s urban and rural areas and with regard to sex and race.

b. At least 6 members shall be physically disabled persons. Two members may be parents, guardians or relatives of physically disabled persons.

c. At least one member shall be a provider of services to physically disabled persons.

(c) The council has the functions specified in s. 46.29.

**(8) COUNCIL FOR THE DEAF AND HARD OF HEARING.** There is created in the department of health and family services a council for the deaf and hard of hearing consisting of 9 members appointed for staggered 4–year terms.

**(11n) COUNCIL ON DEVELOPMENTAL DISABILITIES.** (ag) There is created a council on developmental disabilities, attached to the department of health and family services under s. 15.03.

(am) Subject to par. (cm), the council shall consist of the following state residents, appointed for staggered 4–year terms, who shall be representative of all geographic areas of the state and reflect the state’s diversity with respect to race and ethnicity:

1. A representative of each of the relevant agencies of the state that administer federal funds related to individuals with disabilities, to be designated by:

- a. The secretary of workforce development.
- b. The secretary of health and family services.
- c. The state superintendent of public instruction.

2. Representatives of individuals with developmental disabilities, who are any of the following:

- a. Individuals with developmental disabilities.
- b. Parents or guardians of children with developmental disabilities.
- c. Immediate relatives or guardians of adults with mentally impairing developmental disabilities who cannot advocate for themselves.

3. A representative of each of the following who has sufficient authority to engage in policy planning and implementation for the entity represented:

- a. The entity in this state that is designated by the federal department of health and human services as a university center for excellence in developmental disabilities education, research, and services.
- b. The state protection and advocacy system under s. 51.62, designated by the director of the state protection and advocacy agency under s. 51.62 (2).
- c. Each of the local governmental agencies, nongovernmental agencies, and private nonprofit groups that are concerned with services for individuals with developmental disabilities.

(bm) A member specified in par. (am) 1. or 3. shall recuse himself or herself from any discussion by the council of grants or contracts for which the member’s department, agency, program, or

group is a grantee, contractor, or applicant and may not vote on a matter that would provide direct financial benefit to the member or otherwise give the appearance of a conflict of interest.

(cm) 1. At least 60% of the membership of the council shall be individuals specified under par. (am) 2. who are not managing employees, as defined under 42 USC 1320a–5 (b), of an entity, or employees of a state agency, that receives federal funds for the developmentally disabled or uses the funds to provide services to persons with developmental disabilities. Of those individuals, one–third shall be individuals specified under par. (am) 2. a., one–third shall be individuals specified under par. (am) 2. b. or c., and one–third shall be individuals specified under par. (am) 2. a., b., or c.

2. At least one of the individuals described under subd. 1. shall be an individual with a developmental disability who resides in or previously resided in an institution, including a state center for the developmentally disabled, or the immediate relative or guardian of such an individual. The requirement under this subdivision does not apply if such an individual does not reside in this state.

**(12) COUNCIL ON BIRTH DEFECT PREVENTION AND SURVEILLANCE.** There is created in the department of health and family services a council on birth defect prevention and surveillance. The council shall consist of the following members appointed for a 4–year term by the secretary of health and family services:

(a) A representative of the University of Wisconsin Medical School who has technical expertise in birth defects epidemiology.

(b) A representative from the Medical College of Wisconsin who has technical expertise in birth defects epidemiology.

(bn) A pediatric nurse or a nurse with expertise in birth defects.

(c) A representative from the subunit of the department that is primarily responsible for the children with special health needs program.

(d) A representative from the subunit of the department that is primarily responsible for early intervention services.

(e) A representative from the subunit of the department that is primarily responsible for health statistics research and analysis.

(f) A representative of the State Medical Society of Wisconsin.

(g) A representative of the Wisconsin Health and Hospital Association.

(h) A representative of the American Academy of Pediatrics—Wisconsin Chapter.

(i) A representative of the council on developmental disabilities.

(j) A representative of a nonprofit organization that has as its primary purpose the prevention of birth defects and does not promote abortion as a method of prevention.

(k) A parent or guardian of a child with a birth defect.

(L) A representative of a local health department, as defined in s. 250.01 (4), who is not an employee of the department of health and family services.

**(13) PUBLIC HEALTH COUNCIL.** There is created in the department of health and family services a public health council consisting of 23 members, nominated by the secretary of health and family services, and appointed for 3–year terms. The council shall include representatives of health care consumers, health care providers, health professions educators, local health departments and boards, federally recognized American Indian tribes or bands in this state, public safety agencies, and, if created by the secretary of health and family services under s. 15.04 (1) (c), the public health advisory committee.

**(16) COUNCIL ON DOMESTIC ABUSE.** There is created in the department of health and family services a council on domestic abuse. The council shall consist of 13 members appointed for staggered 3–year terms. Of those 13 members, 9 shall be nominated by the governor and appointed with the advice and consent of the senate, and one each shall be designated by the speaker of the assembly, the senate majority leader and the minority leader

in each house of the legislature and appointed by the governor. Persons appointed shall have a recognized interest in and knowledge of the problems and treatment of victims of domestic abuse.

(24) MILWAUKEE CHILD WELFARE PARTNERSHIP COUNCIL. (a) There is created a Milwaukee child welfare partnership council, attached to the department of health and family services under s. 15.03. The council shall consist of the following members:

1. Three members of the Milwaukee County board nominated by the Milwaukee County executive.
2. One representative to the assembly appointed by the speaker of the assembly.
3. One representative to the assembly appointed by the minority leader of the assembly.
4. One senator appointed by the president of the senate.
5. One senator appointed by the minority leader of the senate.
6. Ten members who are residents of this state, not less than 6 of whom shall be residents of Milwaukee County.
7. Subject to par. (d), two members who are nominated by a children's services network established in Milwaukee County under s. 49.143 (2) (b) and who are residents of the geographical area established under s. 49.143 (6) that is served by the children's services network.

(b) Notwithstanding s. 15.09 (2), the governor shall designate one of the members appointed under par. (a) 6. as chairperson of the council.

(c) The members of the council appointed under par. (a) 1., 6. and 7. shall be appointed for 3-year terms.

(d) If the department of workforce development establishes more than one geographical area in Milwaukee County under s. 49.143 (6), the children's services networks established in Milwaukee County under s. 49.143 (2) (b), in nominating members under par. (a) 7., shall nominate residents of different geographical areas established under s. 49.143 (6) and, when the term of a member appointed under par. (a) 7. ends or if a vacancy occurs in the membership of the council under par. (a) 7., those children's services networks shall nominate a resident of a different geographical area established under s. 49.143 (6) from the geographical area of the member who is being replaced according to a rotating order of succession determined by the children's services networks.

(25) TRAUMA ADVISORY COUNCIL. (a) There is created in the department of health and family services a trauma advisory council. The trauma advisory council shall consist of the following members who have an interest and expertise in emergency medical services and who are appointed by the secretary of health and family services:

1. Four physicians who represent urban and rural areas.
2. Two registered nurses, as defined in s. 146.40 (1) (f).
3. Two prehospital emergency medical services providers, including one representative of a municipality.
4. Two representatives of a rural hospital.
5. Two representatives of an urban hospital.
6. One member of the emergency medical services board.

(b) In appointing the members under par. (a), the secretary of health and family services shall ensure that all geographic areas of the state are represented.

**History:** 1971 c. 125, 219, 255, 322, 332; 1973 c. 198, 321, 322; 1975 c. 39 ss. 46 to 52, 732 (2); 1975 c. 115, 168, 199, 200; 1977 c. 29 ss. 36, 40, 41, 42, 42c, 42g, 42k, 42p, 42t, 42x, 43, 1650m (2), (4), 1657 (18) (c); 1977 c. 160, 213, 428; 1979 c. 34, 111, 221, 320, 355; 1981 c. 20, 24; 1983 a. 27, 113, 188, 204, 435, 439, 538; 1985 a. 29; 1987 a. 27, 413; 1989 a. 31, 202; 1991 a. 32, 39, 189, 250; 1993 a. 16, 27, 98, 213, 399; 1995 a. 27 ss. 139m to 143, 9126 (19), 9130 (4); 1995 a. 225, 303, 352; 1997 a. 3, 27, 154; 1999 a. 9, 114; 2001 a. 59, 109; 2003 a. 29, 186.

**15.22 Department of workforce development; creation.** There is created a department of workforce development under the direction and supervision of the secretary of workforce development.

**History:** 1977 c. 29; 1995 a. 27 s. 9130 (4); 1997 a. 3.

**15.223 Same; specified divisions. (1) DIVISION OF EQUAL RIGHTS.** There is created in the department of workforce development a division of equal rights.

**History:** 1995 a. 27 ss. 144, 9130 (4); 1997 a. 3, 27; 1999 a. 9; 2001 a. 16.

**15.225 Same; attached boards and commission. (1) LABOR AND INDUSTRY REVIEW COMMISSION.** There is created a labor and industry review commission which is attached to the department of workforce development under s. 15.03, except the budget of the labor and industry review commission shall be transmitted by the department to the governor without change or modification by the department, unless agreed to by the labor and industry review commission.

**History:** 1977 c. 29; 1995 a. 27 ss. 107 to 111, 9126 (19), 9130 (4); 1995 a. 221; 1997 a. 3; 1999 a. 9; 2001 a. 16; 2003 a. 33; 2005 a. 25.

**15.227 Same; councils. (3) COUNCIL ON UNEMPLOYMENT INSURANCE.** There is created in the department of workforce development a council on unemployment insurance appointed by the secretary of workforce development to consist of 5 representatives of employers and 5 representatives of employees appointed to serve for 6-year terms and a permanent classified employee of the department of workforce development who shall serve as non-voting chairperson. In making appointments to the council, the secretary shall give due consideration to achieving balanced representation of the industrial, commercial, construction, nonprofit and public sectors of the state's economy. One of the employer representatives shall be an owner of a small business or a representative of an association primarily composed of small businesses. In this subsection, "small business" means an independently owned and operated business which is not dominant in its field and which has had less than \$2,000,000 in gross annual sales for each of the previous 2 calendar years or has 25 or fewer employees. A member vacates his or her office if the member loses the status upon which his or her appointment is based.

(4) COUNCIL ON WORKER'S COMPENSATION. There is created in the department of workforce development a council on worker's compensation appointed by the secretary of workforce development to consist of a designated employee of the department of workforce development as chairperson, 5 representatives of employers, and 5 representatives of employees. The secretary of workforce development shall also appoint 3 representatives of insurers authorized to do worker's compensation insurance business in this state as nonvoting members of the council.

(8) COUNCIL ON MIGRANT LABOR. There is created in the department of workforce development a council on migrant labor. Nonlegislative members shall serve for staggered 3-year terms and shall include 6 representatives of employers of migrant workers and 6 representatives of migrant workers and their organizations. Two members of the senate and 2 members of the assembly shall be appointed to act as representatives of the public. Legislative members shall be appointed as are members of standing committees and shall be equally divided between the 2 major political parties.

(11) SELF-INSURERS COUNCIL. There is created in the department of workforce development a self-insurers council consisting of 5 members appointed by the secretary of workforce development for 3-year terms.

(13) WISCONSIN APPRENTICESHIP COUNCIL. There is created in the department of workforce development a Wisconsin apprenticeship council appointed by the labor and industry review commission.

(17) LABOR AND MANAGEMENT COUNCIL. (a) There is created in the department of workforce development a labor and management council to advise the department of workforce development about sponsoring labor and management conferences and meetings and promoting positive relations between labor and management.

(b) The council shall have 21 members, serving 5-year terms, consisting of:

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1. Eight representatives of the labor community in this state.
2. Eight representatives of the management community in this state.
3. Five nonvoting members who are public employees or officials.

**History:** 1971 c. 271; 1975 c. 147 s. 54; 1975 c. 404, 405; 1977 c. 17, 29, 325; 1979 c. 102, 189; 1979 c. 221 ss. 45, 46m; 1981 c. 237, 341; 1983 a. 122, 388; 1985 a. 332; 1987 a. 27, 399; 1989 a. 31, 64; 1991 a. 39, 269, 295; 1993 a. 126, 399; 1995 a. 27 ss. 152 to 165, 9126 (19), 9130 (4); 1995 a. 225; 1997 a. 3, 27, 39; 1999 a. 9, 14; 2001 a. 37.

**15.25 Department of justice; creation.** There is created a department of justice under the direction and supervision of the attorney general.

**15.253 Same; specified divisions. (2) DIVISION OF CRIMINAL INVESTIGATION.** There is created in the department of justice a division of criminal investigation.

**History:** 1979 c. 34 s. 39; 1983 a. 192; 1985 a. 29; 1989 a. 122; 1991 a. 269; 1993 a. 16; 2003 a. 33.

**15.255 Same; attached boards. (1) LAW ENFORCEMENT STANDARDS BOARD.** There is created a law enforcement standards board which is attached to the department of justice under s. 15.03.

(a) The board shall be composed of 15 members as follows:

1. Six representatives of local law enforcement in this state at least one of whom shall be a sheriff and at least one of whom shall be a chief of police.
2. One district attorney holding office in this state.
3. Two representatives of local government in this state who occupy executive or legislative posts.
4. One public member, not employed in law enforcement, who is a citizen of this state.
5. The secretary of transportation or the secretary's designee.
6. The attorney general or a member of the attorney general's staff designated by the attorney general.
7. The executive staff director of the office of justice assistance in the department of administration.
8. The secretary of natural resources or the secretary's designee.
9. The special agent in charge of the Milwaukee office of the federal bureau of investigation, or a member of the special agent's staff designated by the special agent, who shall act in an advisory capacity but shall have no vote.

(b) The members of the board under par. (a) 1. to 4. shall be appointed for staggered 4-year terms, but no member shall serve beyond the time when the member ceases to hold the office or employment by reason of which the member was initially eligible for appointment.

(c) Notwithstanding the provisions of any statute, ordinance, local law or charter provision, membership on the board does not disqualify any member from holding any other public office or employment, or cause the forfeiture thereof.

**(2) CRIME VICTIMS RIGHTS BOARD.** (a) There is created a crime victims rights board which is attached to the department of justice under s. 15.03.

(b) The crime victims rights board shall be composed of 5 members as follows:

1. One district attorney holding office in this state.
2. One representative of local law enforcement in this state.
3. One person who is employed or contracted by a county board of supervisors under s. 950.06 to provide services for victims and witnesses of crimes.
4. Two members, not employed in law enforcement, by a district attorney or as specified in subd. 3., who are citizens of this state.

(c) The members of the crime victims rights board specified in par. (b) 2. and 3. shall be appointed by the attorney general. One of the members specified in par. (b) 4. shall be appointed by the

crime victims council and the other member shall be appointed by the governor. The member specified in par. (b) 1. shall be appointed by the Wisconsin District Attorneys Association.

(d) The members of the crime victims rights board under par. (a) shall be appointed for 4-year terms, but no member shall serve beyond the time when the member ceases to hold the office or employment by reason of which the member was initially eligible for appointment.

(e) Notwithstanding the provisions of any statute, ordinance, local law or charter provision, membership on the crime victims rights board does not disqualify any member from holding any other public office or employment, or cause the forfeiture thereof.

**History:** 1971 c. 40; 1977 c. 29; 1981 c. 9; 1983 a. 27; 1987 a. 27, 403; 1991 a. 316; 1997 a. 181.

**15.257 Same; councils. (2) CRIME VICTIMS COUNCIL.** There is created in the department of justice a crime victims council consisting of 15 persons appointed by the attorney general for staggered 3-year terms. Of the 15 members, 10 shall be citizen members, 2 shall represent organizations providing victim support services and one each shall be representatives of law enforcement, district attorneys and the judiciary. The citizen members shall have demonstrated sensitivity and concern for crime victims.

**History:** 1979 c. 34, 189; 1981 c. 20; 1985 a. 29 s. 3200 (35); 1985 a. 332; 1987 a. 27; 1997 a. 27, 88.

**15.31 Department of military affairs; creation.** There is created a department of military affairs under the direction and supervision of the adjutant general who shall be appointed by the governor for a 5-year term. The adjutant general may be reappointed to successive terms. Notwithstanding s. 17.28, if a vacancy occurs in the office of the adjutant general, the governor shall appoint a successor for a 5-year term. A person must meet all of the following requirements to be appointed as the adjutant general:

(1) Hold the federally recognized minimum rank of full colonel.

(2) Except for those qualified under sub. (4), be a current participating member of one of the following components:

- (a) The Wisconsin army national guard.
- (b) The army national guard of the United States.
- (c) The U.S. army reserve.
- (d) The Wisconsin air national guard.
- (e) The air national guard of the United States.
- (f) The U.S. air force reserve.

(3) Be fully qualified to receive federal recognition at the minimum rank of brigadier general and have successfully completed a war college course or the military equivalent acceptable to the appropriate service.

(4) If the applicant is already a federally recognized general officer, meet all of the following conditions:

- (a) Be retired from active drilling status within the proceeding 2 years.
- (b) The basis of the applicant's retired status was service with one of the service components noted in sub. (2).
- (c) Be 62 years of age or less.
- (d) Continue to be eligible for federal recognition as a major general.

**History:** 1981 c. 35; 1983 a. 391; 1987 a. 63; 1989 a. 19; 2003 a. 25, 321.

**15.313 Same; specified division. (1) DIVISION OF EMERGENCY MANAGEMENT.** There is created in the department of military affairs a division of emergency management. The administrator of this division shall be nominated by the governor and with the advice and consent of the senate appointed, to serve at the pleasure of the governor.

**History:** 1989 a. 31 ss. 58, 83; 1995 a. 247.

**15.34 Department of natural resources; creation.**

(1) There is created a department of natural resources under the direction and supervision of the natural resources board.

(2) (a) The natural resources board shall consist of 7 members appointed for staggered 6-year terms.

(b) At least 3 members of the natural resources board shall be from the territory north, and at least 3 members of the board shall be from the territory south, of a line running east and west through the south limits of the city of Stevens Point.

(c) No person may be appointed to the natural resources board, or remain a member of the board, who receives, or has during the previous 2 years received, a significant portion of his or her income directly or indirectly from holders of or applicants for permits issued by the department under ch. 283, except that this paragraph does not apply to permits issued under s. 283.33.

(d) The majority of members of the natural resources board may not derive a significant portion of their incomes from persons who are subject to permits or enforcement orders under ch. 285. Each board member shall inform the governor of any significant change in the income that he or she derives from persons who are subject to permits or enforcement orders under ch. 285.

(e) The restrictions in pars. (c) and (d) do not apply with respect to permits or licenses held or applied for by agencies, departments, or subdivisions of this state.

**History:** 1973 c. 74; 1991 a. 316; 2001 a. 16.

**15.343 Same; specified divisions. (1) DIVISION OF FORESTRY.** There is created in the department of natural resources a division of forestry.

**History:** 1999 a. 9.

**15.345 Same; attached boards and commissions.**

(1) **WISCONSIN WATERWAYS COMMISSION.** There is created a Wisconsin waterways commission which is attached to the department of natural resources under s. 15.03.

(a) The commission shall be composed of 5 members appointed for staggered 5-year terms.

1. One resident of the Lake Superior area.
2. One resident of the Lake Michigan area.
3. One resident of the Mississippi River area.
- 3m. One resident of the Lake Winnebago watershed area.
4. One resident from the inland area of the state.

(b) Each member of the commission must be able to assess the recreational water use problems in his or her geographical area of the state.

(c) No member of the commission may receive any salary for services performed as a commission member. Each commission member shall be reimbursed for actual and necessary expenses incurred while performing official duties.

(2) **LAKE SUPERIOR COMMERCIAL FISHING BOARD.** There is created a Lake Superior commercial fishing board attached to the department of natural resources under s. 15.03.

(a) The board shall be composed of 5 members who reside in counties contiguous to Lake Superior appointed by the governor to serve at the governor's pleasure.

- (b) The 5 members shall include:
1. Three licensed, active commercial fishers.
  2. One licensed, active wholesale fish dealer.
  3. One state citizen.

(3) **LAKE MICHIGAN COMMERCIAL FISHING BOARD.** There is created a Lake Michigan commercial fishing board attached to the department of natural resources under s. 15.03.

(a) The board shall be composed of 7 members who reside in counties contiguous to Lake Michigan appointed by the governor to serve at the governor's pleasure.

- (b) The 7 members shall include:

1. Five licensed, active commercial fishers; of these, 2 shall represent the fisheries of southern Green Bay and 3 the fisheries of northern Green Bay and Lake Michigan proper.

2. One licensed, active wholesale fish dealer.

3. One state citizen.

**History:** 1977 c. 274, 418, 447; 1983 a. 27, 410; 1985 a. 29; 1989 a. 31; 1995 a. 27, s. 166m; 1997 a. 27; 2001 a. 16; 2005 a. 25.

**15.347 Same; councils. (2) DRY CLEANER ENVIRONMENTAL RESPONSE COUNCIL.** There is created in the department of natural resources a dry cleaner environmental response council consisting of the following members appointed for 3-year terms:

(a) One member representing dry cleaning operations with annual gross receipts of less than \$200,000.

(b) Two members representing dry cleaning operations with annual gross receipts of at least \$200,000.

(c) One member representing wholesale distributors of dry cleaning solvent.

(d) One engineer, professional geologist, hydrologist or soil scientist with knowledge, experience or education concerning remediation of environmental contamination.

(e) One member representing manufacturers and sellers of dry cleaning equipment.

(4) **NATURAL AREAS PRESERVATION COUNCIL.** There is created in the department of natural resources a natural areas preservation council consisting of the following representatives:

(a) Two from the department of natural resources, appointed by the board of natural resources, one to serve as secretary.

(b) Four from the University of Wisconsin System, appointed by the board of regents of the University of Wisconsin System.

(c) One from the department of public instruction, appointed by the state superintendent of public instruction.

(d) One from the Milwaukee public museum, appointed by its board of directors.

(e) Three appointed by the council of the Wisconsin academy of sciences, arts and letters, at least one representing the private colleges in this state.

(7) **SNOWMOBILE RECREATIONAL COUNCIL.** There is created in the department of natural resources a snowmobile recreational council consisting of 15 members nominated by the governor, and with the advice and consent of the senate, appointed for staggered 3-year terms. Commencing on July 1, 1972, 5 members shall be appointed to serve for one year, 5 members for 2 years and 5 members for 3 years. Thereafter all terms shall be for 3 years with 5 positions on the council to expire each year. At least 5 members of the council shall be from the territory north, and at least 5 members shall be from the territory south, of a line running east and west through the south limits of the city of Stevens Point.

(12) **METALLIC MINING COUNCIL.** There is created in the department of natural resources a metallic mining council consisting of 9 persons representing a variety and balance of economic, scientific and environmental viewpoints. Members shall be appointed by the secretary of the department for staggered 3-year terms.

(13) **GROUNDWATER COORDINATING COUNCIL.** (a) *Creation.* There is created a groundwater coordinating council, attached to the department of natural resources under s. 15.03. The council shall perform the functions specified under s. 160.50.

(b) *Members.* The groundwater coordinating council shall consist of the following members:

1. The secretary of natural resources.
2. The secretary of commerce.
3. The secretary of agriculture, trade and consumer protection.
4. The secretary of health and family services.
5. The secretary of transportation.
6. The president of the University of Wisconsin System.

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7. The state geologist.

8. One person to represent the governor.

(c) *Designees.* Under par. (b), agency heads may appoint designees to serve on the council, if the designee is an employee or appointive officer of the agency who has sufficient authority to deploy agency resources and directly influence agency decision making.

(d) *Terms.* Members appointed under par. (b) 8. shall be appointed to 4-year terms.

(e) *Staff.* The state agencies with membership on the council and its subcommittees shall provide adequate staff to conduct the functions of the council.

(f) *Meetings.* The council shall meet at least twice each year and may meet at other times on the call of 3 of its members. Section 15.09 (3) does not apply to meetings of the council.

(g) *Annual report.* In August of each year, the council shall submit to the head of each agency with membership on the council, the governor and the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under s. 13.172 (3), a report which summarizes the operations and activities of the council during the fiscal year concluded on the preceding June 30, describes the state of the groundwater resource and its management and sets forth the recommendations of the council. The annual report shall include a description of the current groundwater quality in the state, an assessment of groundwater management programs, information on the implementation of ch. 160 and a list and description of current and anticipated groundwater problems. In each annual report, the council shall include the dissents of any council member to the activities and recommendations of the council.

(15) MILWAUKEE RIVER REVITALIZATION COUNCIL. (a) There is created in the department of natural resources a Milwaukee River revitalization council consisting of:

1. The secretary of natural resources or his or her designee.
2. The secretary of tourism or his or her designee.
3. Eleven members appointed by the governor for 3-year terms.

4. At least one council member shall represent each of the priority watersheds, as identified under s. 281.65 (4) (cm), that are located in the Milwaukee River basin.

(b) The council shall elect its officers under s. 15.09 (2).

(d) Any member designated under par. (a) 1. or 2. or any member appointed under par. (a) 3. who is absent from 4 consecutive meetings vacates his or her position.

(16) STATE TRAILS COUNCIL. There is created in the department of natural resources a state trails council consisting of 9 members, appointed for 4-year terms, who are knowledgeable in the various recreational uses of trails.

(17) COUNCIL ON RECYCLING. (a) *Creation and membership.* There is created a council on recycling, attached to the department of natural resources under s. 15.03, consisting of 7 members selected by the governor.

(c) *Terms.* Each member of the council on recycling designated under par. (a) shall serve a 4-year term expiring on the date that the next term of governor commences under s. 8.25 (4) (b) 2. or until a successor is appointed.

(18) INVASIVE SPECIES COUNCIL. (a) There is created an invasive species council, attached to the department of natural resources under s. 15.03.

(b) The council consists of the following members:

1. The secretary of natural resources or his or her designee.
2. The secretary of administration or his or her designee.
3. The secretary of agriculture, trade and consumer protection or his or her designee.
4. The secretary of commerce or his or her designee.
5. The secretary of tourism or his or her designee.
6. The secretary of transportation or his or her designee.

7. Seven other members appointed by the governor to serve 5-year terms.

(c) The members appointed under par. (b) 7. shall represent public and private interests that are affected by the presence of invasive species in this state.

(19) COUNCIL ON FORESTRY. (a) There is created in the department of natural resources a council of forestry consisting of:

1. The chief state forester or his or her designee.
2. One member of the senate.
3. One member of the senate.
4. One member of the assembly.
5. One member of the assembly.

6. One member who represents the interests of a forest products company that owns and manages large tracts of private forest land that supply raw materials to the forest products industry.

7. One member who represents the interests of owners of non-industrial, private forest land who manage the land to produce ecological, economic, and social benefits.

8. One member who represents the interests of counties that have county forests within their boundaries.

9. One member who represents the interests of the paper and pulp industry.

10. One member who represents the interests of the lumber industry.

11. One member who represents the interests of nonprofit conservation organizations whose purposes include the conservation and use of forest resources.

12. One member who is a forester who engages in the practice of providing consultation services on forestry issues.

13. One member who represents the interests of schools of forestry within the state that have curricula in the management of forest resources that are accredited by the Society of American Foresters.

14. One member who represents the interests of persons who engage in the practice of conservation education.

15. One member who represents the interests of persons who are members of labor unions that are affiliated with the forestry industry.

16. One member who represents the interests of persons who are engaged in the practice of urban and community forestry.

17. One member who represents the interests of persons who are members of the Society of American Foresters.

18. One member who represents the interests of persons who are members of an organization of timber producers.

19. One person who represents the interests of persons who are engaged in an industry that uses secondary wood.

20. One member who is employed by the federal department of agriculture, forest service, who shall be a nonvoting member.

(b) Each member specified in par. (a) shall be appointed by the governor.

(d) The governor shall annually appoint a chairperson for the council from among its members before the first meeting of each year, and the chairperson, at the first meeting of each year, shall annually appoint the vice chairperson and secretary from among the council's members. Any of these appointees may be appointed for successive terms.

(e) The council shall meet 4 times each year and shall also meet on the call of the chairperson of the council or on the call of a majority of its members. Notwithstanding s. 15.09 (3), the council shall meet at such locations within this state as may be designated by the chairperson of the council or by a majority of its members.

**History:** 1971 c. 100 s. 23; 1971 c. 164, 211, 277, 307, 323; 1973 c. 12, 301, 318; 1975 c. 39, 198, 224, 412; 1977 c. 29 ss. 51, 52, 52d, 1650m (1), (4); 1977 c. 377; 1979 c. 34 ss. 39g, 39r, 2102 (39) (g), (58) (b); 1979 c. 221, 355; 1979 c. 361 s. 112; 1981 c. 346 s. 38; 1983 a. 410; 1985 a. 29 ss. 87h, 87m, 3200 (39); 1985 a. 65, 296, 332; 1987 a. 27, 186, 399; 1989 a. 11, 31, 335; 1991 a. 32, 39, 269, 302, 316; 1993 a. 16, 464; 1995 a. 27 ss. 169 to 175b, 9116 (5) and 9126 (19); 1995 a. 227; 1997 a. 27, 300; 2001 a. 109; 2005 a. 168.

**15.348 Conservation congress.** The conservation congress shall be an independent organization of citizens of the state and shall serve in an advisory capacity to the natural resources board on all matters under the jurisdiction of the board. Its records, budgets, studies and surveys shall be kept and established in conjunction with the department of natural resources. Its reports shall be an independent advisory opinion of such congress.  
**History:** 1971 c. 179.

**15.37 Department of public instruction; creation.** There is created a department of public instruction under the direction and supervision of the state superintendent of public instruction.  
**History:** 1971 c. 125; 1995 a. 27; 1997 a. 27.

**15.373 Same; specified divisions. (1) DIVISION FOR LEARNING SUPPORT, EQUITY AND ADVOCACY.** There is created in the department of public instruction a division for learning support, equity and advocacy.

**(2) DIVISION FOR LIBRARIES, TECHNOLOGY, AND COMMUNITY LEARNING.** There is created in the department of public instruction a division for libraries, technology, and community learning.

**History:** 1983 a. 27 s. 2200 (42); 1993 a. 335; 1995 a. 27 s. 9145 (1); 1997 a. 27; 2001 a. 48.

**15.374 Same; offices. (1) OFFICE OF EDUCATIONAL ACCOUNTABILITY.** There is created an office of educational accountability in the department of public instruction. The director of the office shall be appointed by the state superintendent of public instruction.

**History:** 1993 a. 16; 1995 a. 27; 1997 a. 27.

**15.375 Same; attached boards. (2) SCHOOL DISTRICT BOUNDARY APPEAL BOARD.** There is created a school district boundary appeal board in the department of public instruction. The board shall consist of 12 school board members appointed by the state superintendent of public instruction for staggered 2-year terms and the state superintendent of public instruction or his or her designee. Four board members shall be school board members of school districts with small enrollments, 4 board members shall be school board members of school districts with medium enrollments and 4 board members shall be school board members of school districts with large enrollments. No 2 school board members of the board may reside within the boundaries of the same cooperative educational service agency.

**History:** 1979 c. 346; 1983 a. 27; 1989 a. 114, 299; 1991 a. 39; 1993 a. 399; 1995 a. 27 ss. 179 to 182, 9127 (1) and 9145 (1); 1997 a. 27.

**Cross Reference:** See also s. PI 2.05, Wis. adm. code.

**15.377 Same; councils. (1) BLIND AND VISUAL IMPAIRMENT EDUCATION COUNCIL. (a) Definition.** In this subsection, “visually impaired” has the meaning given in s. 115.51 (4).

**(b) Creation.** There is created a blind and visual impairment education council in the department of public instruction.

**(c) Members.** The blind and visual impairment education council shall consist of the following members, at least one of whom has been certified by the library of congress as a braille transcriber, appointed by the state superintendent for 3-year terms:

1. Three parents of children who are visually impaired.
2. Three persons who are members of an organization affiliated with persons who are visually impaired.
3. Three licensed teachers, one of whom is a teacher of the visually impaired, one of whom is an orientation and mobility teacher and one of whom is a general education teacher.
4. One school board member.
5. One school district administrator.
6. One school district special education director.
7. One cooperative educational service agency representative.

8. One person who has experience in educating the visually impaired or in educating teachers of the visually impaired and is affiliated with an institution of higher education.

9. Three other members, at least one of whom is visually impaired.

**(2) DEAF AND HARD-OF-HEARING EDUCATION COUNCIL.** There is created a deaf and hard-of-hearing education council in the department of public instruction. The council shall consist of the following members, at least 3 of whom must be hearing impaired, appointed by the state superintendent of public instruction for 3-year terms:

- (a) Two parents of children who are hearing impaired.
- (b) One licensed teacher of pupils who are hearing impaired.
- (c) One person who is licensed as a speech-language pathologist under subch. II of ch. 459.
- (d) One school district special education director.
- (e) One person who is licensed as an audiologist under subch. II of ch. 459 and whose expertise is in educational audiology.
- (f) One person who is experienced in educating the hearing impaired, or in educating teachers of the hearing impaired, and is affiliated with an institution of higher education.

(g) One person who is an instructor in a technical college interpreter training program.

(h) One person employed as an educational interpreter.

(i) Three other members.

**(4) COUNCIL ON SPECIAL EDUCATION.** There is created in the department of public instruction a council on special education to advise the state superintendent of public instruction about the unmet educational needs of children with disabilities, in developing evaluations and reporting on data to the federal department of education, in developing plans to address findings identified in federal monitoring reports, in developing and implementing policies relating to the coordination of services for children with disabilities and on any other matters upon which the state superintendent wishes the council’s opinion; and to comment publicly on any rules proposed by the department of public instruction regarding the education of children with disabilities. The state superintendent of public instruction shall appoint the members of the council for 3-year terms, and shall ensure that a majority of the members are individuals with disabilities or parents of children with disabilities and that the council is representative of the state population, as determined by the state superintendent. The council shall be composed of individuals who are involved in, or concerned with, the education of children with disabilities, including all of the following:

(a) Teachers of regular education and teachers of special education.

(b) Representatives of institutions of higher education that train special education and related services personnel.

(c) State and local education officials.

(d) Administrators of programs for children with disabilities.

(e) Representatives of agencies other than the department of public instruction involved in the financing or delivery of related services to children with disabilities.

(f) Representatives of private schools and charter schools.

(g) At least one representative of a vocational, community or business organization that provides transition services for children with disabilities.

(h) Representatives from the department of corrections.

(i) Parents of children with disabilities.

(j) Individuals with disabilities.

**(6) COUNCIL ON LIBRARY AND NETWORK DEVELOPMENT.** There is created in the department of public instruction a council on library and network development composed of 19 members. Nine of the members shall be library science, audiovisual and informational science professionals representative of various types of libraries and information services, including public libraries, pub-



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lic library systems, school libraries, public and private academic libraries, special libraries and library educators. Ten of the members shall be public members who have demonstrated an interest in libraries or other types of information services. The members of the council shall be appointed for 3–year terms. The council shall meet 6 times annually and shall meet also on the call of the state superintendent of public instruction, and may meet at other times on the call of the chairperson or a majority of its members.

**(8) PROFESSIONAL STANDARDS COUNCIL FOR TEACHERS.** (a) *Definition.* In this subsection, “labor organization” means an association of employee organizations that represents the public policy, labor and professional interests of teachers.

(b) *Creation.* There is created a professional standards council for teachers in the department of public instruction.

(c) *Members.* The professional standards council for teachers shall consist of the following members, nominated by the state superintendent of public instruction and with the advice and consent of the senate appointed:

1. Two persons licensed and actively employed as elementary school teachers in the public schools, recommended by the largest statewide labor organization representing teachers.

2. Two persons licensed and actively employed as middle school, junior high school or senior high school teachers in the public schools, recommended by the largest statewide labor organization representing teachers.

3. Two persons licensed and actively employed as pupil services professionals, as defined in s. 118.257 (1) (c), in the public schools, recommended by the largest statewide labor organization representing teachers.

4. One person licensed and actively employed as a special education teacher in the public schools, recommended by the largest statewide labor organization representing teachers.

5. Two other persons licensed and actively employed as teachers in the public schools, recommended by the largest statewide labor organization representing teachers.

5m. One person licensed as a teacher and actively employed in a private school, recommended by the Wisconsin Council of Religious and Independent Schools.

6. One person actively employed as a public school district administrator, recommended by the Wisconsin Association of School District Administrators.

7. One person actively employed as a public school principal, recommended by the Association of Wisconsin School Administrators.

8. One faculty member of a department or School of Education in the University of Wisconsin System, recommended by the president of the University of Wisconsin System.

9. One faculty member of a department or School of Education in a private college in Wisconsin, recommended by the Wisconsin Association of Independent Colleges and Universities.

10. One additional faculty member, appointed from the list of persons recommended under subd. 8. or 9.

11. Two members of public school boards, recommended by the Wisconsin Association of School Boards.

12. One person who is a parent of a child who is enrolled in a public school.

13. One person who is a student enrolled in a teacher preparatory program, located in this state, that leads to initial licensure as a teacher.

(d) *Recommendations.* For each vacancy on the council under par. (c) 1. to 9. and 11., the entity authorized to recommend a member shall provide the names of 3 qualified persons to the state superintendent of public instruction.

(e) *Terms.* Members of the council shall serve 3–year terms except that the student appointed under par. (c) 13. shall serve a 2–year term.

(f) *Meetings.* The council shall meet on a regular basis and at least twice each year.

**History:** 1971 c. 152, 211, 292; 1973 c. 89, 220, 336; 1977 c. 29; 1979 c. 346, 347; 1985 a. 29, 177; 1987 a. 27; 1989 a. 31; 1993 a. 184, 399; 1995 a. 27 ss. 183 to 187, 9126 (19), 9145 (1); 1997 a. 27, 164, 298; 1999 a. 9, 100, 186; 2001 a. 57; 2005 a. 121.

**15.40 Department of regulation and licensing; creation.** There is created a department of regulation and licensing under the direction and supervision of the secretary of regulation and licensing.

**History:** 1971 c. 270 s. 104; 1975 c. 39; 1977 c. 29; 1977 c. 196 s. 131; 1977 c. 418 ss. 24 to 27.

**15.405 Same; attached boards and examining boards.**

**(1) ACCOUNTING EXAMINING BOARD.** There is created an accounting examining board in the department of regulation and licensing. The examining board shall consist of 7 members, appointed for staggered 4–year terms. Five members shall hold certificates as certified public accountants and be eligible for licensure to practice in this state. Two members shall be public members.

**(2) EXAMINING BOARD OF ARCHITECTS, LANDSCAPE ARCHITECTS, PROFESSIONAL ENGINEERS, DESIGNERS AND LAND SURVEYORS.** There is created an examining board of architects, landscape architects, professional engineers, designers and land surveyors in the department of regulation and licensing. Any professional member appointed to the examining board shall be registered to practice architecture, landscape architecture, professional engineering, the design of engineering systems or land surveying under ch. 443. The examining board shall consist of the following members appointed for 4–year terms: 3 architects, 3 landscape architects, 3 professional engineers, 3 designers, 3 land surveyors and 10 public members.

(a) In operation, the examining board shall be divided into an architect section, a landscape architect section, an engineer section, a designer section and a land surveyor section. Each section shall consist of the 3 members of the named profession appointed to the examining board and 2 public members appointed to the section. The examining board shall elect its own officers, and shall meet at least twice annually.

(b) All matters pertaining to passing upon the qualifications of applicants for and the granting or revocation of registration, and all other matters of interest to either the architect, landscape architect, engineer, designer or land surveyor section shall be acted upon solely by the interested section.

(c) All matters of joint interest shall be considered by joint meetings of all sections of the examining board or of those sections to which the problem is of interest.

**(2m) EXAMINING BOARD OF PROFESSIONAL GEOLOGISTS, HYDROLOGISTS AND SOIL SCIENTISTS.** (a) There is created in the department of regulation and licensing an examining board of professional geologists, hydrologists and soil scientists consisting of the following members appointed for 4–year terms:

1. Three members who are professional geologists licensed under ch. 470.

2. Three members who are professional hydrologists licensed under ch. 470.

3. Three members who are professional soil scientists licensed under ch. 470.

4. Three public members.

(b) In operation, the examining board shall be divided into a professional geologist section, a professional hydrologist section and a professional soil scientist section. Each section shall consist of the 3 members of the named profession appointed to the examining board and one public member appointed to the section. The examining board shall elect its own officers, and shall meet at least twice annually.

(c) All matters pertaining to passing upon the qualifications of applicants for and the granting or revocation of licenses, and all other matters of interest to either the professional geologist,

hydrologist or soil scientist section shall be acted upon solely by the interested section.

(d) All matters of joint interest shall be considered by joint meetings of all sections of the examining board or of those sections to which the matter is of interest.

**(3)** AUCTIONEER BOARD. (a) There is created in the department of regulation and licensing an auctioneer board consisting of the following members appointed for 4–year terms:

1. Four members, each of whom is registered under ch. 480 as an auctioneer, or is an auction company representative, as defined in s. 480.01 (3), of an auction company that is registered under ch. 480 as an auction company.

2. Three public members.

(b) No member of the board may serve more than 2 terms.

**(3m)** CEMETERY BOARD. (a) In this subsection:

1. “Business representative” has the meaning given in s. 452.01 (3k).

2. “Licensed cemetery authority” means a cemetery authority that is licensed under s. 440.91 (1).

(b) There is created in the department of regulation and licensing a cemetery board consisting of the following members, who shall serve 4–year terms:

1. Four members, each of whom is a business representative of a licensed cemetery authority.

2. Two public members.

(c) No member of the cemetery board may be a business representative of a religious cemetery authority, unless the religious cemetery is regulated by the board.

(d) No member of the cemetery board may serve more than 2 terms.

**(5)** CHIROPRACTIC EXAMINING BOARD. There is created a chiropractic examining board in the department of regulation and licensing. The chiropractic examining board shall consist of 6 members, appointed for staggered 4–year terms. Four members shall be graduates from a school of chiropractic and licensed to practice chiropractic in this state. Two members shall be public members. No person may be appointed to the examining board who is in any way connected with or has a financial interest in any chiropractic school.

**(5g)** CONTROLLED SUBSTANCES BOARD. There is created in the department of regulation and licensing a controlled substances board consisting of the attorney general, the secretary of health and family services and the secretary of agriculture, trade and consumer protection, or their designees; the chairperson of the pharmacy examining board or a designee; and one psychiatrist and one pharmacologist appointed for 3–year terms.

**(6)** DENTISTRY EXAMINING BOARD. There is created a dentistry examining board in the department of regulation and licensing consisting of the following members appointed for 4–year terms:

(a) Six dentists who are licensed under ch. 447.

(b) Three dental hygienists who are licensed under ch. 447. Notwithstanding s. 15.08 (1m) (a), the dental hygienist members may participate in the preparation and grading of licensing examinations for dental hygienists.

(c) Two public members.

**(6m)** HEARING AND SPEECH EXAMINING BOARD. There is created a hearing and speech examining board in the department of regulation and licensing consisting of the following members appointed for 4–year terms:

(a) Three hearing instrument specialists licensed under subch. I of ch. 459.

(b) One otolaryngologist.

(c) Two audiologists licensed under subch. II of ch. 459.

(d) Two speech–language pathologists licensed under subch. II of ch. 459.

(e) Two public members. One of the public members shall be a hearing aid user.

**(7)** MEDICAL EXAMINING BOARD. (a) There is created a medical examining board in the department of regulation and licensing.

(b) The medical examining board shall consist of the following members appointed for staggered 4–year terms:

1. Nine licensed doctors of medicine.

2. One licensed doctor of osteopathy.

3. Three public members.

(c) The chairperson of the injured patients and families compensation fund peer review council under s. 655.275 shall serve as a nonvoting member of the medical examining board.

**(7c)** MARRIAGE AND FAMILY THERAPY, PROFESSIONAL COUNSELING, AND SOCIAL WORK EXAMINING BOARD. (a) There is created a marriage and family therapy, professional counseling, and social work examining board in the department of regulation and licensing consisting of the following members appointed for 4–year terms:

1. Four social worker members who are certified or licensed under ch. 457.

2. Three marriage and family therapist members who are licensed under ch. 457.

3. Three professional counselor members who are licensed under ch. 457.

4. Three public members who represent groups that promote the interests of consumers of services provided by persons who are certified or licensed under ch. 457.

(am) The 4 members appointed under par. (a) 1. shall consist of the following:

1. One member who is certified under ch. 457 as an advanced practice social worker.

2. One member who is certified under ch. 457 as an independent social worker.

3. One member who is licensed under ch. 457 as a clinical social worker.

4. At least one member who is employed as a social worker by a federal, state or local governmental agency.

(b) In operation, the examining board shall be divided into a social worker section, a marriage and family therapist section and a professional counselor section. The social worker section shall consist of the 4 social worker members of the examining board and one of the public members of the examining board. The marriage and family therapist section shall consist of the 3 marriage and family therapist members of the examining board and one of the public members of the examining board. The professional counselor section shall consist of the 3 professional counselor members of the examining board and one of the public members of the examining board.

(c) All matters pertaining to granting, denying, limiting, suspending, or revoking a certificate or license under ch. 457, and all other matters of interest to either the social worker, marriage and family therapist, or professional counselor section shall be acted upon solely by the interested section of the examining board.

(d) All matters that the examining board determines are of joint interest shall be considered by joint meetings of all sections of the examining board or of those sections to which the problem is of interest.

(e) Notwithstanding s. 15.08 (4) (a), at a joint meeting of all sections of the examining board, a majority of the examining board constitutes a quorum to do business only if at least 8 members are present at the meeting. At a meeting of a section of the examining board or a joint meeting of 2 or more of the sections of the examining board, each member who is present has one vote, except as provided in par. (f).

(f) At a joint meeting of the social worker section and one or both of the other sections of the examining board, each member who is present has one vote, except that the social worker members each have three–fourths of a vote if all 4 of those members are present.

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**(7g) BOARD OF NURSING.** There is created a board of nursing in the department of regulation and licensing. The board of nursing shall consist of the following members appointed for staggered 4-year terms: 5 currently licensed registered nurses under ch. 441; 2 currently licensed practical nurses under ch. 441; and 2 public members. Each registered nurse member shall have graduated from a program in professional nursing and each practical nurse member shall have graduated from a program in practical nursing accredited by the state in which the program was conducted.

**(7m) NURSING HOME ADMINISTRATOR EXAMINING BOARD.** There is created a nursing home administrator examining board in the department of regulation and licensing consisting of 9 members appointed for staggered 4-year terms and the secretary of health and family services or a designee, who shall serve as a non-voting member. Five members shall be nursing home administrators licensed in this state. One member shall be a physician. One member shall be a nurse licensed under ch. 441. Two members shall be public members. No more than 2 members may be officials or full-time employees of this state.

**(8) OPTOMETRY EXAMINING BOARD.** There is created an optometry examining board in the department of regulation and licensing. The optometry examining board shall consist of 7 members appointed for staggered 4-year terms. Five of the members shall be licensed optometrists in this state. Two members shall be public members.

**(9) PHARMACY EXAMINING BOARD.** There is created a pharmacy examining board in the department of regulation and licensing. The pharmacy examining board shall consist of 7 members appointed for staggered 4-year terms. Five of the members shall be licensed to practice pharmacy in this state. Two members shall be public members.

**(10m) PSYCHOLOGY EXAMINING BOARD.** There is created in the department of regulation and licensing a psychology examining board consisting of 6 members appointed for staggered 4-year terms. Four of the members shall be psychologists licensed in this state. Each of the psychologist members shall represent a different specialty area within the field of psychology. Two members shall be public members.

**(10r) REAL ESTATE APPRAISERS BOARD.** (a) There is created a real estate appraisers board in the department of regulation and licensing consisting of the following members appointed for 4-year terms:

1. Three appraisers who are certified or licensed under ch. 458.
2. One assessor, as defined in s. 458.09 (1).
3. Three public members.

(b) Of the appraiser members of the board, one shall be certified under s. 458.06 as a general appraiser, one shall be certified under s. 458.06 as a residential appraiser and one shall be licensed under s. 458.08 as an appraiser. No public member of the board may be connected with or have any financial interest in an appraisal business or in any other real estate-related business. Section 15.08 (1m) (am) applies to the public members of the board. No member of the board may serve more than 2 consecutive terms.

(c) Notwithstanding s. 15.07 (4), a majority of the board constitutes a quorum to do business only if at least 2 of the members present are appraiser members and at least one of the members present is a public member.

**(11) REAL ESTATE BOARD.** There is created a real estate board in the department of regulation and licensing. The real estate board shall consist of 7 members appointed to staggered 4-year terms. Four of the members shall be real estate brokers or salespersons licensed in this state. Three members shall be public members. Section 15.08 (1m) (am) applies to the public members of the real estate board. No member may serve more than 2 terms. The real estate board does not have rule-making authority.

**(12) VETERINARY EXAMINING BOARD.** There is created a veterinary examining board in the department of regulation and licensing. The veterinary examining board shall consist of 8 members appointed for staggered 4-year terms. Five of the members shall be licensed veterinarians in this state. One member shall be a veterinary technician certified in this state. Two members shall be public members. No member of the examining board may in any way be financially interested in any school having a veterinary department or a course of study in veterinary or animal technology.

**(16) FUNERAL DIRECTORS EXAMINING BOARD.** There is created a funeral directors examining board in the department of regulation and licensing. The funeral directors examining board shall consist of 6 members appointed for staggered 4-year terms. Four members shall be licensed funeral directors under ch. 445 in this state. Two members shall be public members.

**(17) BARBERING AND COSMETOLOGY EXAMINING BOARD.** There is created a barbering and cosmetology examining board in the department of regulation and licensing. The barbering and cosmetology examining board shall consist of 9 members appointed for 4-year terms. Four members shall be licensed barbers, aestheticians, or cosmetologists, 2 members shall be public members, one member shall be a representative of a private school of barbering or cosmetology, one member shall be a representative of a public school of barbering or cosmetology and one member shall be a licensed electrologist. Except for the 2 members representing schools, no member may be connected with or have any financial interest in a barbering or cosmetology school.

**History:** 1973 c. 90, 156; 1975 c. 39, 86, 199, 200, 383, 422; 1977 c. 26, 29, 203; 1977 c. 418; 1979 c. 34 ss. 45, 47 to 52; 1979 c. 221, 304; 1981 c. 94 ss. 5, 9; 1981 c. 356; 1983 a. 27, 403, 485, 538; 1985 a. 340; 1987 a. 257 s. 2; 1987 a. 264, 265, 316; 1989 a. 316, 340; 1991 a. 39, 78, 160, 189, 269; 1993 a. 16, 102, 463, 465, 491; 1995 a. 27 s. 9126 (19); 1995 a. 225; 1995 a. 305 s. 1; 1995 a. 321, 417; 1997 a. 96, 252, 300; 2001 a. 16, 80; 2003 a. 111, 270; 2005 a. 25, 314.

An incumbent real estate examining board member is entitled to hold over in office until a successor is duly appointed and confirmed by the senate. The board was without authority to reimburse the nominee for expenses incurred in attending a meeting during an orientation period prior to confirmation. 63 Atty. Gen. 192.

**15.406 Same; attached affiliated credentialing boards.**

**(1) PHYSICAL THERAPISTS AFFILIATED CREDENTIALING BOARD.** There is created in the department of regulation and licensing, attached to the medical examining board, a physical therapists affiliated credentialing board consisting of the following members appointed for 4-year terms:

- (a) Three physical therapists who are licensed under subch. III of ch. 448.
- (am) One physical therapist assistant licensed under subch. III of ch. 448.
- (b) One public member.

**(2) DIETITIANS AFFILIATED CREDENTIALING BOARD.** There is created in the department of regulation and licensing, attached to the medical examining board, a dietitians affiliated credentialing board consisting of the following members appointed for 4-year terms:

- (a) Three dietitians who are certified under subch. V of ch. 448.
- (b) One public member.

**(3) PODIATRISTS AFFILIATED CREDENTIALING BOARD.** There is created in the department of regulation and licensing, attached to the medical examining board, a podiatrists affiliated credentialing board consisting of the following members appointed for 4-year terms:

- (a) Three podiatrists who are licensed under subch. IV of ch. 448.
- (b) One public member.

**(4) ATHLETIC TRAINERS AFFILIATED CREDENTIALING BOARD.** There is created in the department of regulation and licensing, attached to the medical examining board, an athletic trainers affiliated credentialing board consisting of the following members appointed for 4-year terms:

(a) Four athletic trainers who are licensed under subch. VI of ch. 448 and who have not been issued a credential in athletic training by a governmental authority in a jurisdiction outside this state. One of the athletic trainer members may also be licensed under ch. 446 or 447 or subch. II, III or IV of ch. 448.

(b) One member who is licensed to practice medicine and surgery under subch. II of ch. 448 and who has experience with athletic training and sports medicine.

(c) One public member.

**(5) OCCUPATIONAL THERAPISTS AFFILIATED CREDENTIALING BOARD.** There is created in the department of regulation and licensing, attached to the medical examining board, an occupational therapists affiliated credentialing board consisting of the following members appointed for 4-year terms:

(a) Three occupational therapists who are licensed under subch. VII of ch. 448.

(b) Two occupational therapy assistants who are licensed under subch. VI of ch. 448.

(c) Two public members.

**History:** 1993 a. 107, 443; 1997 a. 75, 175; 1999 a. 9, 180; 2001 a. 70.

**15.407 Same; councils. (1m) RESPIRATORY CARE PRACTITIONERS EXAMINING COUNCIL.** There is created a respiratory care practitioners examining council in the department of regulation and licensing and serving the medical examining board in an advisory capacity in the formulating of rules to be promulgated by the medical examining board for the regulation of respiratory care practitioners. The respiratory care practitioners examining council shall consist of 3 certified respiratory care practitioners, each of whom shall have engaged in the practice of respiratory care for at least 3 years preceding appointment, one physician and one public member. The respiratory care practitioner and physician members shall be appointed by the medical examining board. The members of the examining council shall serve 3-year terms. Section 15.08 (1) to (4) (a) and (6) to (10) shall apply to the respiratory care practitioners examining council.

**(2) COUNCIL ON PHYSICIAN ASSISTANTS.** There is created a council on physician assistants in the department of regulation and licensing and serving the medical examining board in an advisory capacity. The council's membership shall consist of:

(a) The vice chancellor for health sciences of the University of Wisconsin–Madison or the vice chancellor's designee.

(b) One public member appointed by the governor for a 2-year term.

(c) Three physician assistants selected by the medical examining board for staggered 2-year terms.

**(2m) PERFUSIONISTS EXAMINING COUNCIL.** There is created a perfusionists examining council in the department of regulation and licensing and serving the medical examining board in an advisory capacity. The council shall consist of the following members appointed for 3-year terms:

(a) Three licensed perfusionists appointed by the medical examining board.

(b) One physician who is a cardiothoracic surgeon or a cardiovascular anesthesiologist and who is appointed by the medical examining board.

(c) One public member appointed by the governor.

**(3) EXAMINING COUNCILS; BOARD OF NURSING.** The following examining councils are created in the department of regulation and licensing to serve the board of nursing in an advisory capacity. Section 15.08 (1) to (4) (a) and (6) to (10), applies to the examining councils.

(a) *Registered nurses.* There is created an examining council on registered nurses to consist of 4 registered nurses of not less than 3 years' experience in nursing, appointed by the board of nursing for staggered 4-year terms.

(b) *Practical nurses.* There is created an examining council on licensed practical nurses to consist of one registered nurse, 3 licensed practical nurses and one registered nurse who is a faculty member of an accredited school for practical nurses, appointed by the board of nursing for staggered 3-year terms. No member may be a member of the examining council on registered nurses.

**(4) COUNCIL ON SPEECH–LANGUAGE PATHOLOGY AND AUDIOLOGY.** There is created a council on speech–language pathology and audiology in the department of regulation and licensing and serving the hearing and speech examining board in an advisory capacity. The council shall consist of the following members appointed for 3-year terms:

(a) Three speech–language pathologists licensed under subch. II of ch. 459.

(b) Two audiologists licensed under subch. II of ch. 459.

**(5) COUNCIL ON REAL ESTATE CURRICULUM AND EXAMINATIONS.** There is created in the department of regulation and licensing a council on real estate curriculum and examinations consisting of 7 members appointed for 4-year terms. Five members shall be real estate brokers or salespersons licensed under ch. 452 and 2 members shall be public members. Of the real estate broker or salesperson members, one member shall be a member of the real estate board appointed by the real estate board, at least 2 members shall be licensed real estate brokers with at least 5 years of experience as real estate brokers, and at least one member shall be a licensed real estate salesperson with at least 2 years of experience as a real estate salesperson. Of the 2 public members, at least one member shall have at least 2 years of experience in planning or presenting real estate educational programs. No member of the council may serve more than 2 consecutive terms.

**(6) PHARMACIST ADVISORY COUNCIL.** There is created a pharmacist advisory council in the department of regulation and licensing and serving the pharmacy examining board in an advisory capacity. The council shall consist of the following members appointed for 3-year terms:

(a) Two pharmacists licensed under ch. 450 appointed by the chairperson of the pharmacy examining board.

(b) One physician licensed under subch. II of ch. 448 appointed by the chairperson of the medical examining board.

(c) One nurse licensed under ch. 441 appointed by the chairperson of the board of nursing.

**(7) MASSAGE THERAPY AND BODYWORK COUNCIL.** (a) There is created a massage therapy and bodywork council in the department of regulation and licensing, serving the department in an advisory capacity. The council shall consist of 7 members, appointed for 4-year terms, who are massage therapists or bodyworkers certified under ch. 460 and who have engaged in the practice of massage therapy or bodywork for at least 2 years preceding appointment.

(b) In appointing members under par. (a), the governor shall ensure, to the maximum extent practicable, that the membership of the council is diverse, based on all of the following factors:

1. Massage or bodywork therapies practiced in this state.

2. Affiliation and nonaffiliation with a professional association for the practice of massage therapy or bodywork.

3. Professional associations with which massage therapists or bodyworkers in this state are affiliated.

4. Practice in urban and rural areas in this state.

**(8) CREMATORY AUTHORITY COUNCIL.** There is created a crematory authority council in the department of regulation and licensing consisting of the secretary of regulation and licensing or a designee of the secretary, who shall serve as a nonvoting member, and the following persons appointed for 3-year terms:

(a) Three persons licensed as funeral directors under ch. 445 who operate crematories.

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(b) Three representatives of cemetery authorities, as defined in s. 157.061 (2), who operate crematories.

(c) One public member.

**History:** 1973 c. 149; 1975 c. 39, 86, 199, 383, 422; 1977 c. 418; 1979 c. 34 ss. 46, 53; 1981 c. 390 s. 252; 1985 a. 332 s. 251 (1); 1987 a. 399; 1989 a. 229, 316, 341, 359; 1991 a. 316; 1993 a. 105, 107; 1997 a. 68, 175; 1997 a. 237 s. 727m; 1999 a. 32, 180, 186; 2001 a. 74, 89; 2005 a. 31.

**15.43 Department of revenue; creation.** There is created a department of revenue under the direction and supervision of the secretary of revenue.

**15.433 Same; specified divisions. (1) LOTTERY DIVISION.** There is created in the department of revenue a lottery division.

**History:** 1995 a. 27.

**15.435 Same; attached boards. (1) INVESTMENT AND LOCAL IMPACT FUND BOARD.** (a) *Creation; membership.* There is created an investment and local impact fund board, attached to the department of revenue under s. 15.03, consisting of the following members:

1. The secretary of commerce and the secretary of revenue or their designees.
2. Three public members.
3. Five local officials consisting of 2 municipal officials, 2 county officials, and one school board member.
4. One Native American.

(b) *Terms.* The public members, local officials and Native American shall be appointed for staggered 4-year terms.

(c) *Vacancies.* If a municipal or county official or a school board member leaves office while serving on the board, the member's position on the board shall be considered vacant until a successor is appointed under s. 15.07 (1) (b).

(d) *Qualifications.* 1. One of the public members shall reside in a town in which a metalliferous mineral ore body is known to exist.

2. One of the public members shall reside in a county in which metalliferous mineral development is occurring or in an adjacent county.

3. One of the local officials shall reside in a county or school district in which metalliferous mineral development is occurring or in an adjacent county or school district; and

4. One local official shall reside in a county or school district in which metalliferous minerals are extracted or an adjacent county or school district.

5. The Native American shall reside in a municipality in which a metalliferous mineral ore body is known to exist.

(e) *Recommendations.* 1. One public member shall be recommended by the town boards in towns in which a metalliferous mineral ore body is known to exist. Preference shall be given to the appointment of a public member who resides in a township in which the development of a metalliferous mineral ore body is occurring.

2. One municipal official member shall be recommended by the League of Wisconsin Municipalities.

3. One municipal official member shall be recommended by the Wisconsin Towns Association.

4. The school board member shall be recommended by the Wisconsin Association of School Boards.

5. The county official members shall be recommended by the Wisconsin Counties Association.

6. The Native American member shall be recommended by the Great Lakes Inter-Tribal Council, Inc. Preference should be given to the appointment of a Native American who resides in a town in which the development of a metalliferous mineral ore body is occurring.

(g) *Assistance; advice.* The board may request of any state agency such assistance as may be necessary for the board to fulfill its duties.

**History:** 1977 c. 31, 423; 1979 c. 63; 1979 c. 361 s. 112; 1981 c. 86, 391; 1983 a. 36 s. 96 (4); 1983 a. 192 ss. 20, 303 (7); 1985 a. 29; 1987 a. 27; 1989 a. 31; 1995 a. 27 ss. 188, 189 and 9116 (5); 1997 a. 27; 2001 a. 103; 2005 a. 149.

**15.44 Department of tourism.** There is created a department of tourism under the direction and supervision of the secretary of tourism.

**History:** 1995 a. 27.

**15.445 Same; attached boards. (1) ARTS BOARD.** There is created an arts board which is attached to the department of tourism under s. 15.03. The arts board shall consist of 15 members appointed for 3-year terms who are residents of this state and who are known for their concern for the arts. At least 2 members shall be from the northwest portion of this state, at least 2 members shall be from the northeast portion of this state, at least 2 members shall be from the southwest portion of this state and at least 2 members shall be from the southeast portion of this state.

(2) **KICKAPOO RESERVE MANAGEMENT BOARD.** (a) *Creation.* There is created a Kickapoo reserve management board which is attached to the department of tourism under s. 15.03.

(b) *Membership.* The board consists of the following members appointed to serve for 3-year terms:

1. Four members who are residents of the area composed of the villages of La Farge and Ontario, the towns of Stark and Whitestown and the school districts encompassing the villages of La Farge and Ontario.

2. Two members who are residents of that portion of the Kickapoo River watershed, as determined by the department of natural resources, that lies outside of the area specified in subd. 1.

3. Three members who are not residents of the watershed specified in subd. 2., one of whom shall be an advocate for the environment, one of whom shall have a demonstrated interest in education and one of whom shall represent recreation and tourism interests.

4. One member who is a resident of the area composed of the areas specified in subds. 1. and 2.

5. One member who has an interest in and knowledge of the cultural resources within the Kickapoo River watershed.

(c) *Vacancies.* If any member ceases to retain the status required for his or her appointment under par. (b), the member vacates his or her office.

(d) *Recommendations for membership.* 1. The governor shall appoint the members specified in par. (b) 1. from a list of individuals recommended by the governing bodies of the municipalities and school boards of the school districts specified in par. (b) 1.

2. The governor shall appoint the members specified in par. (b) 2. from a list of individuals recommended by the governing bodies of each town, village and city which includes territory located within the area specified in par. (b) 2.

2m. The governor shall appoint the members specified in par. (b) 4. and 5. from a list of individuals recommended by the Ho-Chunk Nation.

3. Each municipality or school district specified in this paragraph may recommend no more than 3 members. The Ho-Chunk Nation may recommend no more than 3 individuals for the membership position under par. (b) 4. and no more than 3 individuals for the membership position under par. (b) 5. At the request of the governor, a municipality, a school district or the Ho-Chunk Nation shall recommend additional members if an individual who is recommended declines to serve.

(e) *Liaison representatives.* The secretary of agriculture, trade and consumer protection, the secretary of natural resources, the secretary of transportation, the secretary of commerce, the secretary of administration, the director of the state historical society

and the chancellor of the University of Wisconsin–Extension, or their designees, shall serve as liaison representatives to the board. The board may request any federally recognized American Indian tribe or band in this state, other than the Ho–Chunk Nation, that expresses an interest in the governance of the Kickapoo valley reserve to appoint a liaison representative to the board. The liaison representatives are not board members and have no voting power.

**(3) LOWER WISCONSIN STATE RIVERWAY BOARD.** (a) There is created a lower Wisconsin state riverway board, which is attached to the department of tourism under s. 15.03.

(b) The board shall be composed of the following members appointed for 3–year terms:

1. One member from Crawford County.
2. One member from Dane County.
3. One member from Grant County.
4. One member from Iowa County.
5. One member from Richland County.
6. One member from Sauk County.
7. Three other members who represent recreational user groups and who are not residents of any of the counties listed in subs. 1. to 6.

(c) The governor shall appoint each member under par. (b) 1. to 6. from a list, of at least 2 nominees, submitted by each respective county board.

(d) Each member under par. (b) 1. to 6. shall be either of the following:

1. An elected official at the time of appointment of a city or village that abuts the lower Wisconsin state riverway, as defined in s. 30.40 (15), or of a town or a county that is located at least in part in the lower Wisconsin state riverway, as defined in s. 30.40 (15).

2. A resident at the time of appointment of a city or village that abuts the lower Wisconsin state riverway, as defined in s. 30.40 (15), or of a town that is located at least in part in the lower Wisconsin state riverway, as defined in s. 30.40 (15).

**(4) STATE FAIR PARK BOARD.** (a) There is created a state fair park board attached to the department of tourism under s. 15.03, consisting of the following members:

1. Two representatives to the assembly, one recommended by the speaker of the assembly and one recommended by the minority leader of the assembly.

2. Two senators, one recommended by the majority leader of the senate and one recommended by the minority leader of the senate.

3. Five members representing business, 3 of whom have general business experience, one of whom has experience in agriculture and one of whom has experience with technology.

4. One resident of the city of West Allis.
5. One other member who is a resident of this state.
6. The secretary of agriculture, trade and consumer protection and the secretary of tourism.

(b) The members of the state fair park board under par. (a) 3. to 5. shall be appointed for 5–year terms.

**History:** 1995 a. 27 ss. 104, 114, 166m, 192, 193, 218e, 9116 (5); 1995 a. 216, 225; 1997 a. 36, 194; 1999 a. 197; 2003 a. 27.

**15.447 Same; councils. (1) COUNCIL ON TOURISM.** There is created in the department of tourism a council on tourism consisting of 14 members serving 3–year terms, and the secretary of tourism or the secretary’s designee, one member of the majority party in each house and one member of the minority party in each house appointed as are members of standing committees in their respective houses, the executive secretary of the arts board and the director of the historical society. Nominations for appointments to the council of members, other than ex officio members, shall be sought from but not limited to multicounty regional associations engaged in promoting tourism, statewide associations of busi-

nesses related to tourism, area visitor and convention bureaus, arts organizations, chambers of commerce, the Great Lakes intertribal council and other agencies or organizations with knowledge of American Indian tourism activities, and persons engaged in the lodging, restaurant, campground, amusement establishment, recreation establishment or retail liquor or fermented malt beverages business. Nominations shall be sought from throughout this state, to ensure that council members live in different geographical areas of the state and that they reflect the tourism industry’s diversity and its distribution throughout both urban and rural areas of the state. Each council member, other than ex officio members, shall have experience in marketing and promotion strategy.

**History:** 1995 a. 27, ss. 128, 193; 1997 a. 36.

**15.46 Department of transportation; creation.** There is created a department of transportation under the direction and supervision of the secretary of transportation.

**15.465 Same; attached board. (2) RUSTIC ROADS BOARD.** There is created a rustic roads board in the department of transportation. The rustic roads board shall consist of the following members: the chairpersons of the senate and assembly standing committees having jurisdiction over transportation matters as determined by the speaker of the assembly and the president of the senate and 8 members appointed by the secretary of transportation for staggered 4–year terms of whom at least 4 members shall be selected from a list of nominees submitted by the Wisconsin Counties Association.

**History:** 1973 c. 142; 1977 c. 29; 1979 c. 34; 1981 c. 347; 1983 a. 192 s. 303 (7); 1993 a. 16.

**15.467 Same; councils. (3) COUNCIL ON HIGHWAY SAFETY.** There is created in the department of transportation a council on highway safety. The council shall consist of 15 members, as follows:

- (a) Five citizen members appointed for staggered 3–year terms.

- (b) Five state officers, part of whose duties shall be related to transportation and highway safety, appointed for staggered 3–year terms.

- (c) Three representatives to the assembly, appointed as are the members of assembly standing committees, who serve on any assembly standing committee dealing with transportation matters.

- (d) Two senators, appointed as are the members of senate standing committees, who serve on any senate standing committee dealing with transportation matters.

**(4) COUNCIL ON UNIFORMITY OF TRAFFIC CITATIONS AND COMPLAINTS.** There is created in the department of transportation a council on uniformity of traffic citations and complaints. Notwithstanding s. 15.09 (6), members of the council shall not be reimbursed for expenses incurred in the performance of their duties on the council. The council shall consist of the following members:

- (a) The secretary, or his or her designee, as chairperson.

- (b) A member of the department of transportation responsible for law enforcement.

- (c) A member of the Wisconsin Sheriffs and Deputy Sheriffs Association, designated by the president thereof.

- (d) A member of the County Traffic Patrol Association, designated by the president thereof.

- (e) A member of the Chiefs of Police Association, designated by the president thereof.

- (f) A member of the State Bar of Wisconsin, designated by the president thereof.

- (g) A member of the Wisconsin council of safety, designated by the president thereof.

- (h) A member of the Wisconsin District Attorneys Association, designated by the president thereof.

- (i) A member of the judicial conference, designated by the chairperson of the conference.

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(j) A member designated by the director of state courts.

**History:** 1977 c. 325; 1979 c. 34 s. 16; 1979 c. 361 s. 112; 1985 a. 145 ss. 1, 4; 1987 a. 27; 1991 a. 316; 1997 a. 27; 2001 a. 103.

**15.49 Department of veterans affairs; creation.** There is created a department of veterans affairs under the direction and supervision of the board of veterans affairs. The board shall consist of 7 members who shall be veterans, including at least 2 who shall be Vietnam war veterans, appointed for staggered 6-year terms.

**History:** 1975 c. 77; 1981 c. 199; 1991 a. 165.

**15.497 Same; councils. (2) COUNCIL ON VETERANS PROGRAMS.** There is created in the department of veterans affairs a council on veterans programs consisting of all of the following representatives appointed for one-year terms by the organization that each member represents:

(a) One representative each of the state departments of the American Legion, the Disabled American Veterans, the Veterans of Foreign Wars, the Marine Corps League, the Navy Club of the U.S.A., the Veterans of World War II (AMVETS), the Veterans of World War I of the U.S.A., Inc., the American Ex-prisoners of War, the Vietnam Veterans Against the War, Inc., the Vietnam Veterans of America, Inc., the Catholic War Veterans of the U.S.A., the Jewish War Veterans of the U.S.A., the Polish Legion of American Veterans, the National Association for Black Veterans, Inc., the Army and Navy Union of the United States of America, the Wisconsin Association of Concerned Veteran Organizations, the United Women Veterans, Inc., the U.S. Submarine Veterans of World War II, the Federation of Minority Veterans, Inc., the Wisconsin Vietnam Veterans, Inc., and the Military Order of the Purple Heart.

(b) One representative of the American Red Cross.

(c) One representative of the Wisconsin county veterans service officers.

(d) One representative of the Wisconsin chapter of the Paralyzed Veterans of America.

**History:** 1973 c. 90, 333; 1975 c. 316; 1981 c. 237; 1983 a. 437; 1987 a. 243; 1987 a. 403 s. 255; 1989 a. 31, 36, 359; 1995 a. 120; 2001 a. 21; 2005 a. 22.

SUBCHAPTER III

INDEPENDENT AGENCIES

**15.57 Educational communications board; creation.** There is created an educational communications board consisting of:

(1) The secretary of administration, the state superintendent of public instruction, the president of the University of Wisconsin System and the director of the technical college system board, or their designees.

(2) Two public members appointed for 4-year terms.

(3) One representative of public schools and one representative of private schools, appointed for 4-year terms.

(4) One majority and one minority party senator and one majority and one minority party representative to the assembly, appointed as are the members of standing committees in their respective houses.

(5) One member appointed by the board of regents of the University of Wisconsin System for a 4-year term.

(6g) The president of the Wisconsin Public Radio Association.

(6m) One member with a demonstrated interest in public television who resides within the coverage area of an education television channel subject to s. 39.11 (3).

(7) One member appointed by the technical college system board for a 4-year term.

**History:** 1971 c. 100 s. 4; Stats. 1971 s. 15.57; 1977 c. 325; 1983 a. 27; 1985 a. 29; 1991 a. 39; 1993 a. 399; 1995 a. 27; 1997 a. 27.

**15.58 Employment relations commission; creation.**

There is created an employment relations commission.

**15.61 Elections board; creation.** There is created an elections board consisting of persons who shall be appointed by the governor for 2-year terms as follows: one member selected by the governor; one member each designated by the chief justice of the supreme court, the speaker of the assembly, the senate majority leader, the minority leader in each house of the legislature, and the chief officer of each political party qualifying for a separate ballot under s. 5.62 (1) (b) or (2) whose candidate for governor received at least 10% of the vote in the most recent gubernatorial election.

**History:** 1973 c. 334; 1975 c. 41; 1977 c. 325; 1977 c. 427 s. 132; 1985 a. 303.

**15.617 Same; council. (1) ELECTION ADMINISTRATION COUNCIL.** There is created in the elections board an election administration council consisting of members appointed by the executive director of the elections board, including the clerk or executive director of the board of election commissioners of the 2 counties or municipalities in this state having the largest population, one or more election officials of other counties or municipalities, representatives of organizations that advocate for the interests of individuals with disabilities and organizations that advocate for the interests of the voting public, and other electors of this state.

**History:** 2003 a. 265.

**15.62 Ethics board; creation.** There is created an ethics board consisting of 6 residents of this state appointed for staggered 6-year terms subject to the following conditions:

(1) No member may hold any other office or employment in the government of this state or any political subdivision thereof or in any department.

(2) No member, when appointed, for one year immediately prior to the date of appointment or while serving on the board, may have been a member of a political party, an officer or member of a committee in any partisan political club or organization or a candidate for any partisan elective public office. No member may become a candidate for or hold any such office while serving on the board.

(3) Each member of the board shall be a U.S. citizen and a resident of this state.

**History:** 1973 c. 90.

**15.67 Higher educational aids board; creation.**

(1) There is created a higher educational aids board consisting of the state superintendent of public instruction and the following members appointed for 3-year terms, except that the members specified under pars. (a) 5. and 6. and (b) 3. shall be appointed for 2-year terms:

(a) To represent public institutions of higher education, all of the following:

1. One member of the board of regents of the University of Wisconsin System.

2. One member of the technical college system board.

3. One financial aids administrator within the University of Wisconsin System.

4. One financial aids administrator within the technical college system.

5. One undergraduate student enrolled at least half-time and in good academic standing at an institution within the University of Wisconsin System who is at least 18 years old and a resident of this state.

6. One student enrolled at least half-time and in good academic standing at a technical college who is at least 18 years old and a resident of this state.

(b) To represent private, nonprofit institutions of higher education, all of the following:

1. One member of a board of trustees of an independent college or university in this state.

2. One financial aids administrator of a private nonprofit institution of higher education located in this state.

3. One undergraduate student enrolled at least half–time and in good academic standing at a private, nonprofit institution of higher education located in this state who is at least 18 years old and a resident of this state.

(c) One member to represent the general public.

(2) If a student member under sub. (1) loses the status upon which the appointment was based, he or she shall cease to be a member of the higher educational aids board upon appointment to the higher educational aids board of a qualified successor.

**History:** 1997 a. 27, 237.

**15.70 Historical society.** There is continued the state historical society of Wisconsin initially organized under chapter 17, laws of 1853, to be known for statutory purposes as the historical society, under the direction and supervision of a board of curators. The board of curators is not subject to s. 15.07. The board of curators shall consist of:

(1) The governor, or his or her designee.

(2) The speaker of the assembly or his or her designee chosen from the representatives to the assembly.

(3) The president of the senate or his or her designee chosen from the members of the senate.

(4) Three members nominated by the governor and with the advice and consent of the senate appointed for staggered 3–year terms.

(5) Members selected as provided in the constitution and bylaws of the historical society. After July 1, 1986, the number of members on the board of curators selected under this subsection may not exceed 30.

(6) One member of the senate from the minority party in the senate and one representative to the assembly from the minority party in the assembly, appointed as are members of standing committees in their respective houses.

**History:** 1983 a. 27.

**15.705 Same; attached boards. (1) BURIAL SITES PRESERVATION BOARD.** There is created a burial sites preservation board attached to the historical society under s. 15.03, consisting of the state archaeologist, as a nonvoting member, the director of the historical society if the director is not serving as the state historic preservation officer, the state historic preservation officer, or her or his formally appointed designee, who shall be a nonvoting member unless the director of the historical society is serving as the state historic preservation officer, and the following members appointed for 3–year terms:

(a) Three members, selected from a list of names submitted by the Wisconsin archaeological survey, who shall have professional qualifications in the fields of archaeology, physical anthropology, history or a related field.

(b) Three members who shall be members of federally recognized Indian tribes or bands in this state, selected from names submitted by the Great Lakes inter–tribal council and the Menominee tribe. Each such member shall be knowledgeable in the field of tribal preservation planning, history, archaeology or a related field or shall be an elder, traditional person or spiritual leader of his or her tribe.

(2) **HISTORIC PRESERVATION REVIEW BOARD.** There is created a historic preservation review board attached to the historical society under s. 15.03, consisting of 15 members appointed for staggered 3–year terms. At least 9 members shall be persons with professional qualifications in the fields of architecture, archaeology, art history and history and up to 6 members may be persons qualified in related fields including, but not limited to, landscape architecture, urban and regional planning, law or real estate.

**History:** 1977 c. 29; 1979 c. 110; 1981 c. 237; 1985 a. 316; 1995 a. 27; 1995 a. 216 ss. 2j, 2k; s. 13.93 (1) (b).

**15.707 Same; councils. (3) HISTORICAL SOCIETY ENDOWMENT FUND COUNCIL.** There is created in the historical society a historical society endowment fund council consisting of 10 members, including at least one representative of each of the following:

(a) The historical society.

(b) The Wisconsin Humanities Council.

(c) The Wisconsin Academy of Science, Arts and Letters.

(d) The arts board.

(e) Wisconsin public radio.

(f) Wisconsin public television.

**History:** 1977 c. 29 s. 1654 (8) (h); 1977 c. 273; 1979 c. 361 s. 112; 1991 a. 39, 269; 1995 a. 27; 1997 a. 27.

**15.73 Office of commissioner of insurance; creation.**

There is created an office of the commissioner of insurance under the direction and supervision of the commissioner of insurance. The commissioner shall not:

(1) Be a candidate for public office in any election;

(2) Directly or indirectly solicit or receive, or be in any manner concerned with soliciting or receiving any assessment, subscription, contribution or service, whether voluntary or involuntary, for any political purpose whatever, from any person within or without the state; nor

(3) Act as an officer or manager for any candidate, political party or committee organized to promote the candidacy of any person for any public office.

**15.76 Investment board; creation.** There is created a state of Wisconsin investment board, to be known for statutory purposes as the investment board. The investment board shall consist of the following members:

(1) The secretary of administration, or the secretary's designee.

(1r) One member appointed for a 6–year term, who is a representative of a local government that participates in the local government pooled–investment fund under s. 25.50. The member shall be employed by the local government in a finance position and have had at least 10 years of financial experience, but may not be an elected official, an employee of a county with a population greater than 450,000 or an employee of a city, town or village with a population greater than 150,000. If the member appointed under this subsection loses the status upon which the appointment was based, he or she shall cease to be a member of the investment board.

(2) Five members appointed for staggered 6–year terms, 4 of whom shall have had at least 10 years' experience in making investments, but any person having a financial interest in or whose employer is primarily a dealer or broker in securities or mortgage or real estate investments is not eligible for appointment, and any member who acquires such an interest or accepts such appointment shall thereupon vacate his or her membership.

(3) Two participants in the Wisconsin retirement system appointed for 6–year terms, one of whom shall be a teacher participant appointed by the teacher retirement board and one of whom shall be a participant other than a teacher appointed by the Wisconsin retirement board.

**History:** 1981 c. 96; 1985 a. 29; 1991 a. 316; 1995 a. 274.

**15.78 Public defender board.** There is created a public defender board consisting of 9 members appointed for staggered 3–year terms. No member may be, or be employed on the staff of, a judicial or law enforcement officer, district attorney, corporation counsel, or the state public defender. At least 5 members shall be members of the State Bar of Wisconsin.

**History:** 1977 c. 29; 2001 a. 103.

**15.79 Public service commission; creation.** There is created a public service commission. No member of the commission may have a financial interest in a railroad, water carrier, or



## 15.79 STRUCTURE OF THE EXECUTIVE BRANCH

public utility. If any member voluntarily becomes so interested, the member's office shall become vacant. If the member involuntarily becomes so interested, the member's office shall become vacant unless the member divests himself or herself of the interest within a reasonable time. No commissioner may serve on or under any committee of a political party. Each commissioner shall hold office until a successor is appointed and qualified.

**History:** 1979 c. 171; 2005 a. 179.

A public service commissioner may attend a political party convention as a delegate. 61 Atty. Gen. 265.

**15.795 Same; attached office. (1) OFFICE OF THE COMMISSIONER OF RAILROADS.** There is created an office of the commissioner of railroads which is attached to the public service commission under s. 15.03, provided that s. 85.02 (1) does not apply to the office of the commissioner of railroads. The commissioner of railroads shall have expertise in railroad issues and may not have a financial interest in a railroad, as defined in s. 195.02 (1), or a water carrier, as defined in s. 195.02 (5). The commissioner may not serve on or under any committee of a political party. The commissioner shall hold office until a successor is appointed and qualified.

**History:** 1993 a. 123; 2003 a. 89; 2005 a. 179.

**15.91 Board of regents of the University of Wisconsin System; creation.** There is created a board of regents of the University of Wisconsin System consisting of the state superintendent of public instruction, the president, or by his or her designation another member, of the technical college system board and 14 citizen members appointed for staggered 7-year terms, and 2 students enrolled at least half-time and in good academic standing at institutions within the University of Wisconsin System who are residents of this state, for 2-year terms. The student members may be selected from recommendations made by elected representatives of student governments at institutions within the University of Wisconsin System. The governor shall appoint one student member who is at least 18 years old and one undergraduate student member who is at least 24 years old and represents the views of nontraditional students, such as those who are employed or are parents. The governor may not appoint a student member from the same institution in any 2 consecutive terms; the 2 student members who are appointed may not be from the same institution; and a student from the University of Wisconsin–Madison and a student from the University of Wisconsin–Milwaukee may not serve on the Board of Regents at the same time. If a student member loses the status upon which the appointment was based, he or she shall cease to be a member of the board of regents.

**History:** 1971 c. 100; 1977 c. 29; 1985 a. 85; 1991 a. 68; 1993 a. 399; 1995 a. 27, 78; 1997 a. 237; 2005 a. 76.

**15.915 Same; attached boards and commissions. (1) VETERINARY DIAGNOSTIC LABORATORY BOARD.** (a) There is created a veterinary diagnostic laboratory board attached to the University of Wisconsin System under s. 15.03.

(b) The veterinary diagnostic laboratory board shall consist of the following members:

1. The secretary of agriculture, trade and consumer protection or his or her designee.
2. The chancellor of the University of Wisconsin–Madison or his or her designee.
3. The dean of the school of veterinary medicine or his or her designee.
4. A veterinarian employed by the federal government, to serve at the pleasure of the governor.
5. Five other members representing persons served by the veterinary diagnostic laboratory, at least one of whom is a livestock producer, at least one of whom represents the animal agriculture industry and at least one of whom is a practicing veterinarian who is a member of the Wisconsin Veterinary Medical Association, appointed for 3-year terms.

6. The director of the veterinary diagnostic laboratory, who shall serve as a nonvoting member.

**(2) LABORATORY OF HYGIENE BOARD.** There is created in the University of Wisconsin System a laboratory of hygiene under the direction and supervision of the laboratory of hygiene board. The board shall consist of:

(a) The president of the University of Wisconsin System, the secretary of health and family services, the secretary of natural resources and the secretary of agriculture, trade and consumer protection, or their designees.

(b) A representative of local health departments who is not an employee of the department of health and family services, one physician representing clinical laboratories, one member representing private environmental testing laboratories, one member representing occupational health laboratories and 3 additional members, one of whom shall be a medical examiner or coroner, appointed for 3-year terms. No member appointed under this paragraph may be an employee of the laboratory of hygiene.

(c) The director of the laboratory, who shall serve as a nonvoting member.

**(6) ENVIRONMENTAL EDUCATION BOARD.** (a) *Creation.* There is created an environmental education board attached to the University of Wisconsin System under s. 15.03.

(b) *Members.* The environmental education board shall consist of the following members:

1. The state superintendent of public instruction.
2. The secretary of natural resources.
3. The president of the University of Wisconsin System.
4. The director of the technical college system.
5. One majority and one minority party senator and one majority and one minority party representative to the assembly, appointed as are the members of standing committees in their respective houses.
6. One member, appointed for a 3-year term by the president of the University of Wisconsin System, to represent each of the following:
  - a. Elementary and secondary school environmental educators.
  - b. Conservation and environmental organizations.
  - c. Business and industry.
  - d. Agriculture.
  - e. Labor.
  - f. Faculty of public and private institutions of higher education.
  - g. Nature centers, zoos, museums and other nonformal environmental educational organizations.
  - h. Forestry.
  - i. Energy industry.

(c) *Designees.* Members of the board under par. (b) 1. to 4. may appoint designees to serve on the board, if the designee is an employee or appointive officer of the agency who has sufficient authority to deploy agency resources and directly influence agency decision making.

**History:** 1971 c. 323; 1973 c. 335; 1975 c. 39; 1977 c. 29 s. 1650m (2); 1977 c. 203, 418; 1979 c. 34 s. 50m; 1981 c. 346; 1985 a. 29; 1989 a. 20; 1989 a. 31 ss. 60m, 95e; 1991 a. 25; 1993 a. 27; 1995 a. 27 ss. 112b, 112c, 112d, 112h, 9126 (19); 1995 a. 227; 1997 a. 27 ss. 75m, 94e to 94m; 1997 a. 237 s. 722p; 1999 a. 107; 2001 a. 16.

**15.94 Technical college system board; creation.** There is created a technical college system board consisting of 13 members. No person may serve as president of the board for more than 2 successive annual terms. The board shall be composed of:

**(1m)** The state superintendent of public instruction or the superintendent's designee.

**(2)** The secretary of workforce development or the secretary's designee.

(2m) The president, or by his or her designation another member, of the board of regents of the University of Wisconsin System.

(3) One employer of labor, one employee who does not have employing or discharging power, one person whose principal occupation is farming and who is actually engaged in the operation of farms and 6 additional members appointed for 6-year terms.

(4) One student enrolled at least half-time and in good academic standing at a technical college who is at least 18 years old and a resident of this state, for a 2-year term. The governor may not appoint a student member from the same technical college in any 2 consecutive terms. If the student member loses the status upon which the appointment was based, other than through graduation, he or she shall cease to be a member of the board.

**History:** 1971 c. 100; 1977 c. 29; 1979 c. 32; 1981 c. 269; 1985 a. 29; 1991 a. 29, 68; 1993 a. 399; 1995 a. 27 ss. 222, 9130 (4); 1995 a. 78; 1997 a. 3, 161.

A member of a vocational, technical and adult education (technical college district board) local district board cannot serve as a state board member. 60 Atty. Gen. 178.

**15.945 Same; attached board.** (1) EDUCATIONAL APPROVAL BOARD. There is created an educational approval board which is attached to the technical college system board under s. 15.03. The board shall consist of not more than 7 members, who shall be representatives of state agencies and other persons with a demonstrated interest in educational programs, appointed to serve at the pleasure of the governor.

**History:** 1997 a. 27; 1999 a. 9 s. 40g; Stats. 1999 s. 15.495; 2005 a. 25 s. 56; Stats. 2005 s. 15.945.

### 15.96 University of Wisconsin Hospitals and Clinics

**Board; creation.** There is created a University of Wisconsin Hospitals and Clinics Board. The board shall consist of the following members:

(1) Three members nominated by the governor, and with the advice and consent of the senate appointed, for 3-year terms.

(1m) Each cochairperson of the joint committee on finance or a member of the committee designated by that cochairperson.

(2) Three members of the board of regents appointed by the president of the board of regents.

(3) The chancellor of the University of Wisconsin–Madison or his or her designee.

(4) The dean of the University of Wisconsin–Madison Medical School.

(5) A chairperson of a department at the University of Wisconsin–Madison Medical School, appointed by the chancellor of the University of Wisconsin–Madison.

(6) A faculty member of a University of Wisconsin–Madison health professions school, other than the University of Wisconsin–Madison Medical School, appointed by the chancellor of the University of Wisconsin–Madison.

(7) The secretary of administration or his or her designee.

(8) Two nonvoting members appointed by the governor, one of whom shall be an employee or a representative of a labor organization recognized or certified to represent employees in one of the collective bargaining units specified in s. 111.05 (5) (a) and one of whom shall be an employee or a representative of a labor organization recognized or certified to represent employees in one of the collective bargaining units specified in s. 111.825 (1m).

**History:** 1995 a. 27, 216.

## **ATTACHMENT C:**

### **PLANS FOR THE UNANTICIPATED DISCOVERY OF HUMAN REMAINS OR BURIALS ON USFWS REFUGE LANDS DURING CONSTRUCTION OR MODIFICATION OF HAMPTON – ROCHESTER – LA CROSSE TRANSMISSION SYSTEM IMPROVEMENT PROJECT**

- I. For construction or modification of the proposed project on Upper Mississippi River National Wildlife and Fish Refuge lands:
  1. When an unmarked human burial or unregistered grave is encountered during construction activities, the USFWS will comply with the Native American Graves Protection and Repatriation Act (NAGPRA) of 1990 and implementing regulations, as amended.
  2. Upon encountering an unmarked human burial or unregistered grave during ground disturbing construction activities, the construction contractor for the Utilities will immediately stop work within a one-hundred (100) foot radius from the point of discovery and provide immediate telephone notification followed by written confirmation (e.g., certified letter) to the USFWS Project Manager. The construction contractor will implement interim measures to protect the discovery from vandalism and looting, but must not remove or otherwise disturb any human remains or other items in the immediate vicinity of the discovery.
  3. Immediately following receipt of such notification, USFWS will ensure that construction activities have halted within a one-hundred (100) foot radius from the point of discovery, and will assume responsibility for implementing additional measures, as appropriate, to protect the discovery from looting and vandalism until the requirements of state and federal law have been completed.
  4. The USFWS Project Manager will notify appropriate coroner or medical examiner, the appropriate SHPO and the appropriate consulting tribe, if applicable, as soon as possible but no later than three (3) working days after receipt of written confirmation of the discovery from the RUS (43 CFR 10.4(d)). After law enforcement has concurred that the human burial is archeological, USFWS will initiate consultation with the appropriate Indian tribe(s) or known lineal descendants concerning the disposition of the human remains and associated objects.
  5. The Utilities may resume construction activities in the area of the discovery thirty (30) days after certification by USFWS of receipt of the written notification of discovery, if the activity is otherwise lawful, and at any time that a written, binding agreement developed in coordination with and executed with the affiliated Indian tribe(s) that

adopts a recovery plan for the excavation or removal of the human remains, funerary objects, sacred objects, or objects of cultural patrimony.