

# WISCONSIN STATUTES

## 1985-86

### CHAPTER 1

#### SOVEREIGNTY AND JURISDICTION OF THE STATE

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**1.01 State sovereignty and jurisdiction.** The sovereignty and jurisdiction of this state extend to all places within the boundaries declared in article II of the constitution, subject only to such rights of jurisdiction as have been or shall be acquired by the United States over any places therein; and the governor, and all subordinate officers of the state, shall maintain and defend its sovereignty and jurisdiction. Such sovereignty and jurisdiction are asserted and exercised over the St. Croix river from the eastern shore thereof to the center or thread of the same, and the exclusive jurisdiction of the state of Minnesota to authorize any person to obstruct the navigation of said river east of the center or thread thereof, or to enter upon the same and build piers, booms or other fixtures, or to occupy any part of said river east of the center or thread thereof for the purpose of sorting or holding logs, is denied; such acts can only be authorized by the concurrent consent of the legislature of this state.

**History:** 1983 a. 538.

**Cross Reference:** As to sky sovereignty, see 114.02.

See note to 939.03, citing *State v. Nelson*, 92 W (2d) 855, 285 NW (2d) 924 (Ct. App. 1979).

State has no jurisdiction to prosecute traffic offenses by Menominee Indian on highway within boundaries of reservation. *State v. Webster*, 114 W (2d) 418, 338 NW (2d) 474 (1983).

Jurisdictional relationship between state and Menominee Tribe discussed. 70 Atty. Gen. 36.

**1.02 United States sites and buildings.** Subject to the conditions mentioned in s. 1.03 the legislature consents to the acquisitions heretofore effected and hereafter to be effected by the United States, by gift, purchase or condemnation proceedings, of the title to places or tracts of land within the state; and, subject to said conditions, the state grants, cedes and confirms to the United States exclusive jurisdiction over all such places and tracts. Such acquisitions are limited to the following purposes:

(1) To sites for the erection of forts, magazines, arsenals, dockyards, custom houses, courthouses, post offices, or other public buildings or for any purpose whatsoever contemplated

by the 17th clause of section 8 of article one of the United States constitution.

(2) To all land now or hereafter included within the boundaries of Fort McCoy in townships 17, 18 and 19 north, ranges 2 and 3 west, near Sparta, in Monroe county, to be used for military purposes as a target and maneuvering range and such other purposes as the department of the army deems necessary and proper.

(3) To erect thereon dams, abutments, locks, lockkeepers' dwellings, chutes, or other structures necessary or desirable in improving the navigation of the rivers or other waters within and on the borders of this state.

(4) To the SW 1/4 of the NE 1/4 of section 6, township 19 north, range 2 west of the fourth principal meridian to be used for military purposes as a target and maneuvering range and such other purposes as the department of the army deems necessary and proper.

**History:** 1985 a. 135.

**1.025 United States jurisdiction in Adams county.** The legislature consents to the conveyance by lease with option to purchase to the United States of the institution and the land on which it is located in the town of New Chester, Adams county, described as follows: The entire section 15, township 16 north, range 7 east of the fourth principal meridian, consisting of 640 acres, and upon the execution of said lease the state grants, cedes and confirms to the United States exclusive legislative jurisdiction over said place and tract, retaining concurrent jurisdiction solely to the extent that all legal process issued under the authority of the state may be served upon persons located on said place and tract. The authority granted in this section shall remain in effect for the duration of said lease and continue in effect in the event title passes to the United States at the termination of the lease.

**History:** 1973 c. 90; 1977 c. 418.

**1.026 Apostle Islands land purchase.** (1) LEGISLATIVE STATEMENT OF PURPOSE AND INTENT. (a) The legislature con-

curs with the stated purpose of Congress in authorizing the establishment of the Apostle Islands national lakeshore. It is therefor the purpose of this section to conserve and develop for the benefit, inspiration, education, recreational use, and enjoyment of the public certain significant islands and shorelands of this state and their related geographic, scenic and scientific values.

(b) It is the policy of the legislature that the Apostle Islands be managed in a manner that will preserve their unique primitive and wilderness character. The department of natural resources is directed before taking any action or making a decision concerning the Apostle Islands to make a finding that such an action or decision will ensure that the citizens of this state will be assured the opportunity for wilderness, inspirational primitive and scenic experiences in the Apostle Islands into perpetuity.

(2) **JURISDICTION CEDED TO THE UNITED STATES.** The consent of the state is given to the acquisition by the United States, in any manner authorized under an act of Congress, of lands lying within the boundaries of Apostle Islands national lakeshore, and jurisdiction is hereby ceded to the United States to all territory which is now or may be included within the lakeshore, except that the state shall retain concurrent jurisdiction in all cases, and such criminal process as may issue under the authority of the state against any persons charged with the commission of any offense within or without such areas, including, but not limited to, state laws and regulations governing hunting, fishing and trapping on those areas open to such activities, may be executed thereon in like manner as if such jurisdiction had not been ceded to the United States.

(3) **LANDS TO BE CONVEYED.** Notwithstanding any other law to the contrary, the department of natural resources, with the approval of the governor, is directed to donate and convey, upon request of the United States for purposes of the development of the lakeshore, all state-owned lands within the lakeshore boundary, as hereafter described: The state-owned lands on Basswood, Oak, Michigan and Stockton Islands in township 50 north, range 3 west; township 51 north, range 1 west; township 51 north, range 3 west, township 52 north, range 3 west, all in the town of La Pointe, Ashland county, Wisconsin. Each conveyance shall contain a provision that such lands shall revert to the state when they are no longer used for national lakeshore purposes as defined by section 7 of the Apostle Islands national lakeshore act of 1970 (P.L. 91-424; 84 stat. 880), except that such reversion does not apply to lands upon which capital improvements have been placed by the United States.

History: 1975 c. 51; 1975 c. 198 s. 62; 1979 c. 89.

**1.03 Concurrent jurisdiction over United States sites; conveyances.** The conditions mentioned in s. 1.02 are the following conditions precedent:

(1) That an application setting forth an exact description of the place or tract so acquired shall be made by an authorized officer of the United States to the governor, accompanied by a plat thereof, and by proof that all conveyances and a copy of the record of all judicial proceedings necessary to the acquisition of an unencumbered title by the United States have been recorded in the office of the register of deeds of each county in which such place or tract may be situated in whole or in part.

(2) That the ceded jurisdiction shall not vest in the United States until they shall have complied with all the requirements on their part of ss. 1.02 and 1.03, and shall continue so long only as the place or tract shall remain the property of the United States.

(3) That the state shall forever retain concurrent jurisdiction over every such place or tract to the extent that all legal and military process issued under the authority of the state may be served anywhere thereon, or in any building situated in whole or in part thereon.

**1.031 Retrocession of jurisdiction.** The governor may accept on behalf of the state, retrocession of full or partial jurisdiction over any roads, highways or other lands in federal enclaves within the state where such retrocession has been offered by appropriate federal authority. Documents concerning such action shall be filed in the office of the secretary of state and recorded in the office of the register of deeds of the county wherein such lands are located.

History: 1977 c. 26.

**1.035 Wildlife and fish refuge by United States.** (1) The state of Wisconsin consents that the government of the United States may acquire in this state, in any manner, such areas of land, or of land and water, as the United States deems necessary for the establishment of the "Upper Mississippi River Wildlife and Fish Refuge," in accordance with the act of congress approved June 7, 1924; provided, that the states of Illinois, Iowa and Minnesota grant a like consent, and all rights respectively reserved by said states, in addition to the reservation herein made, are hereby reserved to this state; and provided, further, that any acquisition by the government of the United States of land, or of land and water, shall first be approved by the governor, on the advice of the department of natural resources.

(2) The consent hereby given is upon the condition that the United States shall not, by an act of congress or by regulation of any department, prevent the state and its agents from going upon the navigable waters within or adjoining any area of land, or land and water, so acquired by the United States, for the purpose of rescuing or obtaining fish therefrom; and the state shall have the right to construct and operate fish hatcheries and fish rescue stations adjacent to the areas so acquired by the United States; and the navigable waters leading into the Mississippi and the carrying places between the same, and the navigable lakes, sloughs and ponds within or adjoining such areas, shall remain common highways for navigation and portaging, and the use thereof, as well to the inhabitants of this state as to the citizens of the United States, shall not be denied.

(3) The legal title to and the custody and protection of the fish in the navigable waters leading into the Mississippi river and in the navigable lakes, sloughs and ponds within or adjoining such areas in this state, is vested in the state, for the purpose of regulating the enjoyment, use, disposition and conservation thereof.

(4) The state retains jurisdiction in and over such areas so far that civil process in all cases, and such criminal process as may issue under the authority of the state against any persons charged with the commission of any offense within or without such areas, may be executed thereon in like manner as if this consent had not been given.

(5) Subject to the conditions specified in s. 1.02, the United States commissioner of fisheries may establish fish hatcheries within Wisconsin and may take fish or fish eggs from the waters of this state for propagation in such hatcheries. The United States commissioner of fisheries and his duly authorized agents may conduct fish culture operations, rescue work, and all fishing and other operations necessary therefor in connection with such hatcheries in such manner and at such times as is considered necessary and proper by the said commissioner and his agents.

**1.036 Bird reservations, acquisition by United States.**

Consent of this state is given to the acquisition by the United States by purchase, gift, devise, or lease of such areas of land or water, or of land and water, in Wisconsin, by and with the consent of the governor of the state, as the United States deems necessary for the establishment of migratory bird reservations in accordance with the act of congress approved February 18, 1929, entitled "An Act to more effectively meet the obligations of the United States under the migratory bird treaty with Great Britain by lessening the dangers threatening migratory game birds from drainage and other causes by the acquisition of areas of land and of water to furnish in perpetuity reservations for the adequate protection of such birds; and authorizing appropriations for the establishment of such areas, their maintenance and improvement and for other purposes," reserving, however, to this state full and complete jurisdiction and authority over all such areas not incompatible with the administration, maintenance, protection, and control thereof by the United States under the terms of said act of congress.

**1.04 United States sites exempt from taxation.** Upon full compliance by the United States with ss. 1.02 and 1.03, relating to the acquisition of any place or tract within the state the governor shall execute in duplicate, under the great seal, a certificate of such consent given and of such compliance with ss. 1.02 and 1.03, one of which shall be delivered to such officer of the United States and the other filed with the secretary of state. Such certificate shall be sufficient evidence of such consent of the legislature and of such compliance with the conditions specified. All such places and tracts after such acquisition and while owned by the United States, shall be and remain exempt from all taxation and assessment by authority of the state.

History: 1981 c. 314 s. 146

**1.05 United States sites for aids to navigation.** Whenever the United States shall desire to acquire title to any land belonging to the state and covered by the navigable waters of the United States, for sites for lighthouses, beacons, or other aids to navigation, the governor may, upon application therefor by any authorized officer of the United States, setting forth an exact description of the place desired, and accompanied by a plat thereof, grant and convey to the United States, by a deed executed by him in the name of the state and under the great seal, all the title of the state thereto; and such conveyance shall be evidence of the consent of the legislature to such purchase upon the conditions specified in s. 1.03.

**1.055 National forest. (1)** Consent of this state is given to the acquisition by the United States by purchase, gift, lease or condemnation, with adequate compensation therefor, of such areas of land not exceeding 2,000,000 acres as the United States deems necessary for the establishment of national forests in the state, in accordance with the act of congress approved June 7, 1924, and the board of commissioners of public lands are authorized to sell and convey for a fair consideration to the United States any state lands included within such areas; provided, that this state shall retain concurrent jurisdiction with the United States in and over such areas so far that civil process, in all cases, and such criminal process as may issue under the authority of this state against any persons charged with the commission of any crime within or without said areas, may be executed thereon in like manner as if this consent had not been given. Provided, further, that the boundaries of any areas so selected shall be first approved by the governor, the board of commis-

sioners of public lands, the department of natural resources, and the county board of each county in which any such area is located.

(2) Power is conferred upon the congress of the United States to pass such laws and to make or provide for the making of such rules and regulations, of both a civil and criminal nature and provide punishment therefor, as in its judgment may be necessary for the administration, control and protection of such lands as may be acquired by the United States under sub. (1).

**1.056 State conservation areas.** Consent of this state is given to the United States to acquire by purchase, gift, lease or condemnation, with adequate compensation therefor, areas of land and water within boundaries approved by the governor and the county board of the county in which the land is located, for the establishment of state forests, state parks or other state conservation areas to be administered by the state under long-term leases, treaties or cooperative agreements, which the department of natural resources is hereby authorized to enter into on behalf of the state with the federal government.

**1.06 Surveys by United States; adjustment of damages.**

Any person charged under the laws of the United States with the execution of a survey or any part thereof, may enter upon any lands in this state for the purpose of doing any act necessary to the performance of the survey. The person may erect on the lands any signals, temporary observatories or other small frame structures, establish permanent marks of stations, and encamp on the land. The person is liable for all actual damages done thereby. If the amount of the damages cannot be agreed upon by the person, or any representative of the federal government, and the owner or occupant of the lands entered upon, either of them may petition the circuit court for the county in which the lands, or any part of them, are situated for the appointment of a day for the hearing of the parties and their witnesses and the assessment of the damages. The hearing shall be held at the earliest practicable time after 14 days' notice of the time and place is given to all the parties interested in the manner the court orders. The damages may be assessed by the court with or without a view of the premises. If the damages assessed do not exceed the sum tendered the occupant or owner of the land, the person who made the tender shall recover costs; if they are in excess of that sum, the other party shall recover costs, which shall be allowed and taxed in accordance with the rules of the court.

History: 1977 c. 449

**1.07 State coat of arms.** The coat of arms of the state of Wisconsin is declared to be as follows:

**ARMS.**—Or, quartered, the quarters bearing respectively a plow, a crossed shovel and pick, an arm and held hammer, and an anchor, all proper; the base of shield resting upon a horn of plenty and pyramid of pig lead, all proper; over all, on fesse point, the arms and motto of the United States, namely: Arms, palewise of 13 pieces argent and gules; a chief azure; motto (on garter surrounding inescutcheon), "E pluribus unum".

**CREST.**—A badger, passant, proper.

**SUPPORTIERS.**—Dexter, a sailor holding a coil of rope, proper; sinister, a yeoman resting on a pick, proper.

**MOTTO.**—Over crest, "Forward".

History: 1975 c. 41

**1.08 State flag. (1)** The Wisconsin state flag consists of the following features:

(a) Relative dimensions of 2 to 3, hoist to fly.

(b) A background of royal blue cloth.

(c) The state coat of arms, as described under s. 1.07, in material of appropriate colors, applied on each side in the center of the field, of such size that, if placed in a circle whose diameter is equal to 50% of the hoist, those portions farthest from the center of the field would meet, but not cross, the boundary of the circle.

(d) The word "WISCONSIN" in white, capital, condensed Gothic letters, one-eighth of the hoist in height, centered above the coat of arms, midway between the uppermost part of the coat of arms and the top edge of the flag.

(e) The year "1848" in white, condensed Gothic numbers, one-eighth of the hoist in height, centered below the coat of arms, midway between the lowermost part of the coat of arms and the bottom edge of the flag.

(f) Optional trim on the edges consisting of yellow knotted fringe.

(2) The department of administration shall ensure that all official state flags that are manufactured on or after May 1, 1981 conform to the requirements of this section. State flags manufactured before May 1, 1981 may continue to be used as state flags.

History: 1979 c. 286.

**1.09 Seat of government.** Be it enacted by the council and house of representatives of the territory of Wisconsin, that the seat of government of the territory of Wisconsin, be and the same is located and established at the town of Madison, between the 3rd and 4th of the 4 lakes, on the corner of sections 13, 14, 23 and 24 in township 7, north, of range 9, east.

**1.10 State song and state symbols.** The Wisconsin state song is "On, Wisconsin", music written by W. T. Purdy, the words to which are as follows: "On, Wisconsin! On, Wisconsin! Grand old badger state! We, thy loyal sons and daughters, Hail thee, good and great. On, Wisconsin! On, Wisconsin! Champion of the right, 'Forward', our motto—God will give thee might!" The state symbols are as follows: The mourning dove (*zenaidura macroura corolinensis linnaus*) is the symbol of peace; the Wisconsin state tree is the sugar maple (*acer saccharum*); the Wisconsin state flower is the wood violet (*viola papilionacea*); the Wisconsin state bird is the robin (*turdus migratorius*); the Wisconsin state fish is the muskellunge (*Esox masquinongy masquinongy Mitchell*); the Wisconsin state animal is the badger (*taxidea taxus*); the Wisconsin domestic animal is the dairy cow (*bos taurus*); the Wisconsin wildlife animal is the white-tailed deer (*odocoileus virginianus*); the Wisconsin state dog is the American water spaniel; the Wisconsin state insect is the honey bee (*apis mellifera*); the Wisconsin state fossil is the trilobite (*calymene celebra*); the Wisconsin state mineral is the galena (lead sulfide); the Wisconsin state rock is the red granite; and the Wisconsin state soil is the Antigo silt loam (typic glosoboralf). The Wisconsin Blue Book shall include the information contained in this section concerning the state song, tree, flower, bird, fish, animal, domestic animal, wildlife animal, insect, fossil, mineral, rock and soil.

History: 1971 c. 14, 129, 167, 228, 307; 1977 c. 326; 1983 a. 33; 1985 a. 162, 295, 332.

**1.11 Governmental consideration of environmental impact.** The legislature authorizes and directs that, to the fullest extent possible:

(1) The policies and regulations shall be interpreted and administered in accordance with the policies set forth in this section and chapter 274, laws of 1971, section 1; and

(2) All agencies of the state shall:

(c) Include in every recommendation or report on proposals for legislation and other major actions significantly affecting the quality of the human environment, a detailed statement, substantially following the guidelines issued by the United States council on environmental quality under P.L. 91-190, 42 U.S.C. 4331, by the responsible official on:

1. The environmental impact of the proposed action;
  2. Any adverse environmental effects which cannot be avoided should the proposal be implemented;
  3. Alternatives to the proposed action;
  4. The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and
  5. Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented;
6. Such statement shall also contain details of the beneficial aspects of the proposed project, both short term and long term, and the economic advantages and disadvantages of the proposal.

NOTE: Sub. (2) (intro.) is shown as amended by 1985 Wis. Act 29, eff. 7-1-87. Prior to that date, sub. (2) (intro.) reads:

"(2) Except as provided in s. 145.023, all agencies of the state shall:"

(d) Prior to making any detailed statement, the responsible official shall consult with and obtain the comments of any agency which has jurisdiction or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate agencies, which are authorized to develop and enforce environmental standards shall be made available to the governor, the department of natural resources and to the public. Every proposal other than for legislation shall receive a public hearing before a final decision is made. Holding a public hearing as required by another statute fulfills this section. If no public hearing is otherwise required, the responsible agency shall hold the hearing in the area affected. Notice of the hearing shall be given by publishing a class 1 notice, under ch. 985, at least 15 days prior to the hearing in a newspaper covering the affected area. If the proposal has state-wide significance, notice shall be published in the official state newspaper;

(e) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(h) Initiate and utilize ecological information in the planning and development of resource-oriented projects.

(4) Nothing in this section affects the specific statutory obligations of any agency:

(a) To comply with criteria or standards of environmental quality;

(b) To coordinate or consult with any other state or federal agency; or

(c) To act, or refrain from acting contingent upon the recommendations or certification of any other state or federal agency.

(5) The policies and goals set forth in this section are supplementary to those set forth in existing authorizations of agencies.

History: 1971 c. 274; 1973 c. 204; 1979 c. 89, 262; 1985 a. 29, 332.

The Wisconsin Environmental Protection Act, while not creating a public trust analogous to the public trust in the state's navigable waters, does recognize an interest sufficient to grant a person standing to question compliance with its provisions where it is alleged that agency action will harm the environment in the area where the person resides. Wisconsin's Environmental Decade, Inc. v. PSC, 69 W (2d) 1, 230 NW (2d) 243.

Counties are not "agencies of the state" within meaning of (2) (c). *Robinson v. Kunach*, 76 W (2d) 436, 251 NW (2d) 449.

Sub. (2) (e) is applicable to proceedings involving authorization of priority systems for the curtailment of natural gas service. *Wis. Environmental Decade v. Public Service Comm.* 79 W (2d) 161, 255 NW (2d) 917.

On judicial review of state agency's decision not to prepare environmental impact statement, agency has burden of producing reviewable record reflecting a preliminary factual investigation into relevant areas of environmental concern and of showing a reasonable determination based on same. Wis. Environmental Decade v. Pub. Service Comm. 79 W (2d) 409, 256 NW (2d) 149.

Lack of DNR prepared environmental impact statement did not invalidate DNR order to close landfill site. Holtz & Krause, Inc. v. DNR, 85 W (2d) 198, 270 NW (2d) 409 (1978).

DNR's decision to limit scope of threshold decision to consideration of impact of segment of proposed sewer interceptor was reasonable where segment had independent utility, had main purpose of fulfilling local need, had logical termini, and where construction of first segment did not compel construction of second segment. Wis. Environmental Decade, Inc. v. DNR, 94 W (2d) 263, 288 NW (2d) 168 (Ct. App. 1979).

Agency determination that EIS was adequately prepared is reviewed under 227.20. Wis. Environmental Decade v. Public Service Comm. 98 W (2d) 682, 298 NW (2d) 205 (Ct. App. 1980).

Court erred in finding that this section applied to department's code compliance review procedure. Environmental Decade v. DILHR, 104 W (2d) 640, 312 NW (2d) 749 (1981).

See note to 196.09, citing Wis. Environmental Decade v. Public Serv. Comm. 105 W (2d) 457, 313 NW (2d) 863 (Ct. App. 1981).

Standing to challenge FEIS discussed. Fox v. DHSS, 112 W (2d) 514, 334 NW (2d) 532 (1983).

EIS was not required where project will have minor impacts on environment, but will have possible socio-economic impacts. Wisconsin's Environmental Decade v. DNR, 115 W (2d) 381, 340 NW (2d) 722 (1983).

Increased traffic congestion was sufficient allegation of injury to acquire standing to challenge FEIS. Milwaukee Brewers v. DH&SS, 130 W (2d) 56, 387 NW (2d) 245 (1986).

Agency decisionmaking under the Wisconsin environmental policy act. 1977 WLR 111.

**1.12 Alleviation of energy shortages.** All agencies of the state shall, to the fullest extent possible, investigate and consider the conservation of energy resources as an important factor when making any major decision which would significantly affect energy usage.

History: 1977 c. 29