WISCONSIN LEGISLATIVE COUNCIL
REPORT TO THE LEGISLATURE

Legislation Recommended by the Special Committee on the Historic Building Code

- 2001 Assembly Bill 276 and Senate Bill 122, Relating to Exempting Certain Barns and Agricultural Outbuildings From Property Taxation
- 2001 Assembly Bill 277 and Senate Bill 123, Relating to the Regulation of Historic Buildings, the Historic Building Code, and Income Tax Credits for Historic Buildings
- 2001 Assembly Joint Resolution 51 and Senate Joint Resolution 30, Relating to Memorializing the U.S. Congress to Provide Funding for Research on Recycled Lumber by the Forest Products Laboratory of the U.S. Department of Agriculture Forest Service

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LEGISLATION RECOMMENDED BY THE
SPECIAL COMMITTEE ON THE HISTORIC BUILDING CODE

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PART I

KEY PROVISIONS OF LEGISLATION

The proposals recommended by the Special Committee on the Historic Building Code do the following:

A. 2001 ASSEMBLY BILL 276 AND SENATE BILL 122

- Creates a property tax exemption for certain barns and agricultural outbuildings that meet criteria for age and use established in the bill. The owner must request the exemption.

B. 2001 ASSEMBLY BILL 277 AND SENATE BILL 123

Historic Building Code

- Requires the Department of Commerce (referred to hereafter as Commerce), in cooperation with the State Historical Society, to develop a pamphlet to inform owners of historic buildings about the scope and applicability of the Historic Building Code.

- Requires Commerce to interpret the Historic Building Code liberally to facilitate the preservation and restoration of historic buildings.

- Creates a process for Commerce to review decisions by local governments regarding compliance with a local ordinance or regulation, to determine if the local ordinance or regulation is in conflict with the Historic Building Code. Also, this bill provides an informal process for the State Historical Society to review decisions of Commerce and local units of government regarding historic buildings and to negotiate possible changes in those decisions.

- Allows local governments by ordinance to establish alternate standards for handrails and guardrails of historic buildings that are converted from single-family to multifamily use.

- Requires Commerce to waive plan review and inspection fees for a preservation or restoration project affecting a building that is more than 100 years old and is listed or eligible for listing on the National or State Register of Historic Places.

Other Structural Regulations

- Requires consistency under state law with current federal law for certain housing accessibility requirements for physically disabled persons in certain historic buildings.

- Requires local units of government to interpret liberally the local regulations that apply to historic structures in order to facilitate the preservation and restoration of historic buildings and structures.

Demolition of Historic Buildings

- Provides that a municipal order to raze a historic building may be appealed by representatives of a local historical society or by the owner of a historic building that is within 200 yards of the building subject to the order.

- Requires additional notice and the opportunity to request a public hearing with respect to municipal orders, permits or actions to raze historic buildings or buildings that are more than 50 years old.

Income Tax Credits for Historic Buildings

- Makes the state income tax credit that supplements the federal income tax credit for renovation of historic buildings available earlier in the renovation process, by making it available when the state historic preservation officer approves the application, rather than upon final approval by the U.S. Secretary of the Interior.

- Allows partners who share in the costs of renovating historic buildings to allocate among themselves the state supplemental income tax credit for the renovation costs.

Rural Historic Preservation

- Requests a Joint Legislative Council study of methods to promote rural historic preservation.

- Creates a grant program for the costs of renovating historic agricultural buildings or structures, with a 50% match requirement, funded in the amount of $75,000 in each year of the biennium, to be administered by the State Historical Society.

- Makes an appropriation to the State Historical Society for the purpose of entering into a contract to conduct a survey to identify and document historic properties in rural areas.

C. 2001 ASSEMBLY JOINT RESOLUTION 51 AND SENATE JOINT RESOLUTION 30

- Memorializes the U.S. Congress to fund research on recycled lumber by the Forest Products Laboratory in Madison, for the purpose of developing data to support the development of grading standards for used lumber.

PART II

COMMITTEE ACTIVITY

A. ASSIGNMENT

The Joint Legislative Council established the Special Committee on the Historic Building Code and appointed its chairperson by a June 24, 1998 mail ballot. The Joint Legislative Council directed the Special Committee to study: (1) the Wisconsin Historic Building Code and its administration to ensure that the code effectively facilitates practical, cost-effective and safe historic rehabilitation projects; and (2) related issues.

The members of the Special Committee were appointed by an August 21, 1998 mail ballot. The membership of the Special Committee consisted of two Senators, five Representative and 12 public members.

A membership list of the Joint Legislative Council is included as **Appendix 2** A list of the members of the Special Committee is included as **Appendix 3**.

B. SUMMARY OF MEETINGS

The Special Committee held four meetings at the State Capitol in Madison on the following dates:

October 27, 1998	January 13, 1999
December 2, 1998	March 30, 1999

At the October 27, 1998 meeting, the Special Committee heard presentations by five invited speakers and engaged in a brief discussion of the substance of its assignment.

Ron Buchholz, Deputy Administrator, Division of Safety and Buildings, Commerce, described the history of legislation and regulations regarding building safety. He noted that the Historic Building Code was adopted in 1986 as an alternative to the variance process as a means of approving plans for historic buildings. He also noted that the Historic Building Code applies only to preservation or restoration of historic buildings that are public buildings or places of employment. The Historic Building Code does not apply to one- and two-family dwellings.

Jim Sewell, Senior Preservation Architect, Division of Historic Preservation, State Historical Society, Madison, described the benefits that accrue from using the Historic Building Code. He made a number of suggestions for possible improvements to the Historic Building Code.

Andy Weber, Miller Architectural Group, Milwaukee, discussed his personal experience with using the Historic Building Code and said that the code had served him well in the projects that he has completed. In particular, he noted that the point system in the Historic Building Code provides the flexibility necessary to complete projects.

Katherine Rankin, Preservation Planner, City of Madison, said that the potential complexity of using the Historic Building Code may discourage some property owners from using the code. She also suggested that many people may not be aware that the Historic Building Code exists.

Jim Mann, National Trust for Historic Preservation, Chicago, discussed some of the national efforts that are underway to develop new uniform building codes. He said that these efforts thus far have not included comprehensive provisions regarding historic buildings.

At the December 2, 1998 meeting, the Special Committee heard a presentation by Peter Godfrey, Architect and Building Recycler, Milwaukee, and Pete Gaitan, Architectural Antiques and Salvage, Grayslake, Illinois. They are in the business of removing building materials from buildings that are slated for demolition. They spoke of the advantages of recycling this material rather than disposing of it in a landfill. They noted the low cost of disposal in landfills and the resulting lack of a significant incentive to recycle these materials, even though there is a domestic and international market for old building materials. They engaged in a discussion with Special Committee members regarding possible ways the state could encourage people to use recycled building materials. The Committee concluded the meeting with a discussion of issues in Memo No. 1, Proposals to Enhance the Historic Building Code Which Could be Considered by the Special Committee (November 18, 1998).

At the January 13, 1999 meeting, the Special Committee heard a presentation by Chuck Law, Community Planning and Design Specialist and Advisor to the Wisconsin Barn Preservation Initiative, University of Wisconsin-Extension. Mr. Law described his responsibilities at University of Wisconsin-Extension related to rural preservation, including the preservation of rural structures, such as barns. He described the current barn initiative which is an ongoing effort focused on rural preservation. The Special Committee members discussed a variety of alternatives that could assist in the preservation of rural historic resources. The Committee also heard a presentation from Commerce staff regarding regulatory issues related to the ADA and the Fair Housing Act, with emphasis on how those regulations relate to the Historic Building Code and the differences between the federal and state laws. The Committee continued its discussion of Memo No. 1 and commenced its discussion of Memo No. 2, Information and Options Regarding the Historic Building Code (January 6, 1999).

The Committee agreed that Chairperson Rude send a letter to Governor Thompson urging him to allocate funding as part of his biennial budget proposal to support the efforts of Dr. Robert Falk, a research engineer with the U.S. Department of Agriculture, Forest Products Laboratory, to address issues regarding the use of recycled lumber as a structural material in new construction. The letter was sent on January 25, 1999.

At the March 30, 1999 meeting, the Committee discussed a number of individual bill drafts that were attached to Memo No. 3, Proposals for Discussion by the Special Committee (February 10, 1999). The Special Committee gave instructions to staff for modifications for these bill drafts and by consensus determined whether to include these proposals in the final drafts for approval by mail ballot.

PART III

RECOMMENDATIONS

This Part of the report provides background information on, and a description of, the proposals recommended by the Special Committee on the Historic Building Code for introduction in the 2001-02 Session of the Legislature.

[***Note:*** Each of the three proposals has been introduced in both houses. For clarity, this report refers to the proposals in singular form "the bill."]

A. 2001 ASSEMBLY BILL 276 AND SENATE BILL 122

1. Background

a. Current Law

Under current law, barns and agricultural outbuildings are subject to property taxation. The current statutes provide several exemptions for structures or real property that has historical significance or that is owned by a historical society. These current statutes are as follows:

(1) Section 70.11 (4), Stats., exempts from property taxation property owned and used exclusively by incorporated historical societies.

(2) Section 70.11 (13m), Stats., exempts from property taxation archeological sites and certain limited contiguous buffer areas that are protected by a permanent easement to protect the archeological features of the property.

(3) Section 70.11 (29m), Stats., exempts from property taxation property owned or leased by a tax-exempt organization that includes one or more theaters for performing arts and the property includes one or more buildings listed on the National Register of Historic Places.

(4) Section 70.11 (31m), Stats., exempts from property taxation the right-of-way and rolling stock owned by railroad historical societies.

(5) Section 70.11 (34), Stats., exempts from property taxation any real property that is listed on the national or state register of historic places, is owned or leased by a tax-exempt organization, is used for civic, governmental, cultural or educational purposes and is subject to an easement that protects the historic features of the property.

b. Purpose of Creating a Property Tax Exemption for Barns

In general, barns of traditional wood construction were built until approximately 1950. However, it is these traditional wood barns that give the rural landscape its unique appearance and forms the basis of our individual and collective perception and understanding of the rural landscape.

The Special Committee noted that barns which where built prior to 1950 served those agricultural operations well, but often do not fit with modern agricultural practices. Many of the old barns are now used only for storage or are not used at all. However, as long as the barns have some value, they will contribute to the value of the property and are subject to property taxation. The Special Committee believes that even a modest amount of property tax, such as a few hundred dollars per year, is a burden sufficient that a farmer may legitimately prefer to remove the barn rather than continue to pay the property taxes on it. Many of these barns are burned down for practice by volunteer fire departments.

2. Description of Bill

This bill creates a property tax exemption for certain barns and other types of agricultural outbuildings. The property tax exemption applies only to the barn or agricultural outbuilding, and not to the land where the building is located.

The owner of the barn or agricultural outbuilding must submit an affidavit to the assessor to request the property tax exemption. The owner must attest in the affidavit that the barn or outbuilding was constructed prior to 1950 and that the barn or outbuilding meets eligibility requirements of the statute. The barn or outbuilding must be either used for an agricultural purpose, unused or used for a nonagricultural commercial purpose that generates less than $2,000 in gross revenue annually. It is not necessary for the barn to be located in an area that is zoned for agriculture or even that is predominately agricultural. The State Historical Society is directed to promulgate criteria to be used by the assessor in determining eligibility. These criteria will specify the age, condition, qualities, significance and contribution to the rural landscape that is necessary in order for a barn or an agricultural outbuilding to qualify for the property tax exemption. The Special Committee expects that these criteria will be clear and objective and will be easy for assessors to use.

The Special Committee expects that this property tax exemption will encourage the preservation of barns that are now in residential, commercial or manufacturing areas. The requirements related to the use of the barn or outbuilding will assure that the property tax exemption is not available for barns that have been converted to other productive uses, such as residences or retail establishments.

The Special Committee does not have information on the number of barns that may be affected by this bill or the value that property tax assessors apply to those barns. The Special Committee believes that the property tax revenues produced by these barns is modest from the perspective of the local unit of government but will make a substantial difference to the property owner.

The bill must be referred to the Joint Survey Committee on Tax Exemptions.

B. 2001 ASSEMBLY BILL 277 AND SENATE BILL 123

1. Historic Building Code; Pamphlet to Inform Owners of Historic Buildings About the Historic Building Code

a. Background

The Historic Building Code was adopted in 1986. (Prior to that time, the variance process was used to approve plans for historic buildings.) There is a concern that owners of properties which would be eligible to use the Historic Building Code are not aware of that option in renovating their properties. In addition, Commerce suggests that there is a frequent misconception that use of the Historic Building Code is mandatory for qualified historic properties. There could be further clarification of the applicability of the three options for owners of historic properties: the prevailing building code for buildings used by the public, the Existing Building Code or the Historic Building Code.

b. The Bill

The bill creates s. 101.121 (7), Stats., which requires Commerce, in cooperation with the State Historical Society, to develop a pamphlet designed to inform owners of historic buildings of the scope and applicability of the Historic Building Code and alternatives to using the Historic Building Code. The pamphlet is also intended to increase awareness of the Historic Building Code. Commerce must update the pamphlet as statutes and rules relating to the Historic Building Code are amended. Commerce and the State Historical Society are also required to distribute the pamphlets as they deem necessary to increase awareness of the Historic Building Code.

The cost of the pamphlet is expected to be minimal.

2. Historic Building Code; Liberal Interpretation to Facilitate Historic Preservation

a. Background

Commerce is authorized to promulgate the Historic Building Code under s. 101.121, Stats. The statement of legislative purpose in the statute recognizes that both historic preservation and safety must be addressed in the rules:

> [The Historic Building Code is] intended to facilitate the restoration of historic buildings so as to preserve their original or restored architectural elements and features, to encourage energy conservation, to permit a cost-effective approach to preservation and restoration and to provide for the health, safety and welfare of occupants and visitors in historic buildings. [s. 101.121 (1), Stats.]

b. The Bill

The Special Committee determined that some decisions regarding the implementation of the Historic Building Code may be unnecessarily restrictive. The statutory language created by the bill makes an express statement of the Legislature's intent that the statute is to be interpreted liberally to facilitate the preservation and restoration of historic buildings.

The intent of this provision is not to shift the balance in the Historic Building Code between preservation and restoration of historic buildings on one hand, and public health, safety and welfare on the other hand. The intent is to favor the preservation and restoration of historic buildings in questions involving close judgments.

3. Historic Building Code; Review of Certain Decisions by Local Governments

a. Background

Current s. 101.121 (4), Stats., authorizes the owner of a "qualified historic building" to elect to be subject to the Historic Building Code. A qualified historic building is a building that is listed on the National or State Register of Historic Places or a certified local register of historic property, or is within a historic district on one of those lists and has been determined to contribute to the historic significance of the district. Under the Historic Building Code, the owner of the historic building may use alternative standards that allow preservation of the historic aspects of the building while still providing for the health, safety and welfare of occupants and visitors in the building.

The relationship between the Historic Building Code and other statutes, rules and ordinances related to buildings is established by s. Comm 70.04, Wis. Adm. Code. Specifically, a person who elects to use the Historic Building Code is not required to comply with any county or municipal building code, if the local code concerns a "matter dealt with" in the Historic Building Code. Section Comm 70.04 explicitly provides that the Historic Building Code does not affect local requirements relating to land use, zoning, fire districts or other similar requirements.

b. The Bill

The statutes contain a general procedure, in s. 101.02 (7), Stats., to resolve conflicts between local standards, decisions and ordinances and the statutes and rules enforced by Commerce. The statute provides that local units of government continue to have authority to enact and enforce regulations for the protection of public health and safety. However, rules and decisions of Commerce are deemed by the statute to amend or modify conflicting local regulations. Any person who is affected by a local regulation that is in conflict with a state regulation or an order of Commerce may petition for a hearing on whether there is a conflict, and Commerce may nullify a local order that conflicts with state regulations.

The appeal process in s. 101.02 (7), Stats., focuses on conflicts between state and local safety or health regulations. This provision of the bill makes it clear that Commerce may determine the proper scope of local regulation with respect to buildings that are subject to the Historic Building Code.

4. Historic Building Code; State Historical Society Review of Decisions of Commerce and Local Units of Government Regarding Historic Buildings

a. Background

Current s. 101.02 (7), Stats., provides a formal appeals process for decisions of Commerce and local units of government acting as agents of the department with respect to building code issues. The review process involves a review within the department, followed by judicial review. The standards for judicial review require the court to uphold the decision of the department or the local unit of government if there is "substantial evidence" to support the decision, a difficult standard for a building owner to overcome. Also, judicial review is time-consuming and expensive.

b. The Bill

This provision of the bill creates a new, informal process for review of a decision of Commerce or the local unit of government. The request for review must be submitted to the State Historical Society. The State Historical Society is then required to review all information related to the decision and render an opinion on whether the decision of Commerce or the local unit of government is consistent with the Historic Building Code and whether there are other ways to meet the requirements and objectives of the Historic Building Code. The bill authorizes the State Historical Society to negotiate with Commerce, the local unit of government and the historic building owner. Commerce or the local unit of government may modify its decision based on the negotiations.

This new procedure does not change any time limits or procedures for formal review of any decisions.

5. Historic Building Code; Local Standards for Handrails and Guardrails of Certain Multifamily Historic Buildings

a. Background

The Uniform Multifamily Dwelling Code [ch. Comm 66] applies to any building or portion of a building which is converted to a multifamily dwelling after April 1, 1995 unless the building is a qualified historic building and the owner elects to be subject to the Historic Building Code. Under s. 101.971 (2), Stats., a multifamily dwelling is defined as an apartment building, row house, town house, condominium or manufactured building that does not exceed 60 feet in height or six stories and that consists of three or more attached dwelling units.

Under the Uniform Multifamily Dwelling Code the top of a handrail must be mounted between 34 and 38 inches above the nosing of the treads on stairways or above the surface of ramps. Guardrails in dwelling units must extend to at least 36 inches above the upper surface of the floor. In nondwelling unit portions, the guardrails must extend at least 42 inches above the upper surface of the floor. Modern handrails are much higher than the handrails on old buildings.

b. The Bill

The bill creates s. 101.975 (4), Stats., which permits a political subdivision to adopt an ordinance that allows it to grant a variance to the Uniform Multifamily Dwelling Code relating to handrails and guardrails of qualified historic buildings that are converted from single-family use to multifamily use. Under the bill, the ordinance must require the owner of the building who is seeking the variance to provide the political subdivision with evidence that the type, height and design of the handrail or guardrail proposed for installation is historically appropriate for the building. Upon the provision of that evidence, the bill allows the political subdivision to grant a variance to the Uniform Multifamily Dwelling Code that permits the owner to install a handrail or guardrail that is at least as protective of public safety as the historically appropriate handrail or guardrail.

6. Historic Building Code; Waiver of State Plan Review and Inspection Fees for Restoration of Certain Historic Buildings

a. Background

Commerce is required by statute to collect fees which as closely as possible equal the cost of providing various services by the agency, including plan examination and inspection of facilities to determine that construction is in accordance with approved plans and variances. [See s. 101.19, Stats.] The annual budget of the safety and buildings function in Commerce for the 1997-98 fiscal year was approximately $16 million, most of which was derived from fees.

Specific fees are established under ch. Comm 2, Wis. Adm. Code. The fees for plan review are based on a sliding scale according to the square footage of the building. Inspection fees are set at $40 per hour. Fees for the petition for variance under the Historic Building Code are set at $300 per petition.

The plan review and inspection fees are the same for historic buildings as for any other building. The variance fee of $300 is less than the normal variance fee of $490, on the grounds that most variances for historic buildings are already addressed under ch. Comm 70, Wis. Adm. Code, and that any additional variances are expected to be less complex. Section 101.19, Stats., does not include authority for Commerce to waive the requirement to collect fees for the services that it provides.

b. The Bill

The bill requires Commerce to waive the fees for a preservation or restoration project affecting a building or structure that is more than 100 years old. To qualify for the waiver of fees, the State Historic Preservation Officer must certify to Commerce that the building or structure is listed on or eligible for listing on the National or State Register of Historic Places and the plans for the preservation or restoration comply with the standards that are applicable to projects that qualify for the income tax credit for historic property renovations.

The Special Committee expects that very few projects will qualify for this fee waiver, so the fiscal effect on Commerce will be minimal. However, the benefit to a historic building

owner, particularly an owner of modest means, will be significant and will encourage the preservation of the oldest buildings in the state.

7. Structural Regulations Other Than the Historic Building Code; Structural Additions to a Bed and Breakfast

a. Background

The current statutes define "bed and breakfast establishment" for the purposes of determining the applicability of environmental health regulations, building code requirements and other regulations. The basic purpose of this definition is to set limits on the kinds of establishments that are deemed to be bed and breakfast establishments and thus are subject to those regulations. Establishments that provide food and lodging beyond the scope of the definition of a bed and breakfast establishment are subject to regulation as hotels, restaurants or other similar types of establishments, which in general means that the establishments are subject to the commercial building code and the commercial restaurant regulations.

b. The Bill

One requirement of the current statute is that a bed and breakfast establishment must be a place of lodging that has had completed, before May 11, 1990, any structural additions to the dimensions of the original structure, including by renovation.

The May 11, 1990 date is the date that this provision first took effect. An exception is provided for structural additions made to a structure that is more than 50 years old, if no other use than as a bed and breakfast establishment is proposed and if the structural addition complies with the uniform one- and two-family dwelling code. "Including a renovation" is added to make this provision consistent with the rest of the definition.

8. Structural Regulations Other Than the Historic Building Code; Housing Accessibility Requirements for Physically Disabled Persons in Certain Historic Buildings

a. Background

Commerce has adopted the Federal Americans with Disabilities Act (ADA) Accessibility Guidelines as the basic technical requirements for the Wisconsin Building Code with only a few deviations. The differences between current Wisconsin standards and the federal standards are typically rules that have been in effect in Wisconsin for a significant period of time prior to the passage of the ADA.

The Wisconsin Fair Housing Law and administrative rules are more restrictive than federal fair housing laws in several respects. The Wisconsin law applies to existing buildings in proportion to the amount of remodeling being done, while the federal law applies only to buildings first occupied after March 31, 1991. Also, the Wisconsin law requires full compliance with current rules under the Commercial Building Code when existing buildings are changed from one occupancy classification to another, such as changing a former warehouse into an apartment building.

b. The Bill

The bill provides that all rules promulgated by Commerce relating to requirements that housing be accessible to physically disabled persons, as they relate to qualified historic buildings, must comply with and not exceed the requirements of the Federal Fair Housing Law and the ADA and any regulations adopted under those acts. Under the bill, Commerce would be required to amend its rules so that: (1) if an existing qualified historic building with mixed occupancies is remodeled or added to and the gross interior area of the building after the remodeling or addition is greater than 20,000 square feet, interior circulation between floor levels would not be required; and (2) the state fair housing law would not be applicable to existing qualified historic buildings undergoing a change of use if the building is changed to a covered multifamily housing use and the building is remodeled or expanded.

The bill further provides that s. 101.132 (2) (b), Stats., relating to making housing accessible to physically disabled persons when the housing is remodeled, does not apply to qualified historic buildings. The intent of this change is to make Wisconsin statutes, as they relate to qualified historic buildings, consistent with the Federal Fair Housing Law. The Federal Fair Housing Law applies only to buildings that are first occupied after March 31, 1991.

9. Structural Regulations Other Than the Historic Building Code; Liberal Interpretation of Local Regulations That Apply to Historic Structures

a. Background

Counties, cities, villages and towns are authorized under current statutes, as part of their zoning and police powers, to adopt regulations for the purpose of preserving historic buildings and structures and the property within historic districts. Cities that contain property on the National or State Registers of Historic Places are required to have such regulations.

b. The Bill

The bill requires a county, city, village or town to interpret liberally its regulations that apply to historic buildings and structures in order to facilitate the preservation and restoration of the historic buildings and structures.

10. Demolition of Historic Buildings; Appeal of a Municipal Order to Raze a Historic Building

a. Background

Section 66.05, Stats., relates to local orders to repair or raze dilapidated buildings. The current statute includes provisions related to historic buildings that require a delay in implementation of the order and a different presumption regarding the reasonableness of the cost of repairs.

Any order under s. 66.05, Stats., may be appealed to circuit court by an "affected person." The issue in the appeal is the reasonableness of the order. The current statute does

not define who may be an affected person. This is a matter for the court to decide and there have not been any appellate court decisions on this issue. It is possible that a court would allow a person with a demonstrated interest in historic preservation to appeal a local order requiring demolition of a historic building, although there is no assurance of this under the current statute.

b. The Bill

The bill does not define "affected person," but rather provides that the term "affected person," for purposes of appealing a municipal order to raze a historic building, includes representatives of a local historical society and owners of historic buildings located within 200 yards of the historic building that is subject to the order.

The definition of "historic building" that is cross-referenced in this provision is "any building or object listed on, or any building or object within and contributing to a historic district listed on, the national register of historic places in Wisconsin, the state register of historic places or a list of historic places maintained by a municipality."

11. Demolition of Historic Buildings; Additional Notice and Opportunity for a Public Hearing With Respect to Municipal Orders, Permits or Actions to Raze Historic Buildings or Buildings That Are More Than 50 Years Old

a. Background

Section 66.05, Stats., applies to orders by a municipality (city, village or town) to demolish any building or part of a building that is so old, dilapidated or out of repair that it would be unreasonable to repair the building. If the building can be made safe by repairs, the municipality can give the owner the option to either repair the building or raze it. The order must specify the time period in which the owner must comply with the order. The statute provides that if the cost of repairs exceeds 50% of the assessed value of the building, that repairs are presumed to be unreasonable and the building is presumed to be a public nuisance.

This statute currently includes a special provision for historic buildings, which includes any building listed on or in a district listed on the National or State Register of Historic Places or a municipal list of historic places. If a municipality issues an order to raze a historic building, notice must be given to the State Historical Society and the building may not be razed for 30 days after the notice is given. During this 30-day period, the State Historical Society may have access to the building to create or preserve historic records. For historic buildings, the presumption under the statute is that any cost of repairs that is less than 85% of the assessed value of the building is presumed to be reasonable. The statute on razing buildings does not provide a requirement for public participation in the decision, either for buildings generally or for historic buildings. Under the current statute, a first class city (the City of Milwaukee) may adopt alternate or additional provisions regarding orders to demolish buildings.

Section 66.037 (4), Stats., relates to the razing of historic property owned by a city, village, town or county. Each of those political subdivisions is required to determine if any proposed action of the political subdivision will involve the razing of listed historic property

if the property is owned by the political subdivision. The political subdivision is required to notify the State Historic Preservation Officer of any proposed action, including razing, that would affect historic property owned by the political subdivision, and the political subdivision is required to negotiate with the State Historical Society under s. 44.42, Stats. This negotiation relates to efforts to reduce the effect of the action on historic property. A comparable procedure applies to property owned by school boards under s. 120.12 (21), Stats.

b. The Bill

The bill creates a new requirement related to an order or permit issued by a political subdivision (city, village, town, county or housing authority) to raze a building, or a decision by a political subdivision to raze a building that it owns, if the building is a historic building or is more than 50 years old. A political subdivision must notify the State Historical Society of the order or permit or of its intent. The bill requires a delay in razing the property to allow time for the State Historical Society to document the property and create a suitable historic record of it. Also, this delay will give time for public review of the decision to raze the building.

If the State Historical Society does not waive further review, the political subdivision must provide notice to any person who requests notice by mail and by publishing a class 1 notice (a one-time newspaper notice) under ch. 985, Stats. Thereafter, five or more residents of the political subdivision may request a hearing and the political subdivision is required either to hold a public hearing or to make written findings setting forth the reasons for denying the request for a hearing and responding to issues raised in the request for a hearing.

The time periods specified in this provision do not affect the provisions for judicial review. Under s. 68.13, Stats., any party to a proceeding that results in a final determination may seek review by a court within 30 days of receipt of the final determination.

Also, the new statute requires reuse of building materials, to the maximum extent feasible, following demolition of the building.

The bill also makes these provisions applicable to first class cities.

12. <u>Demolition of Historic Buildings; Criterion for Municipal Order to Raze a Historic Building</u>

a. Background

Current s. 66.05, Stats., authorizes a municipality (city, village or town) to order the owner of a building to either raze or repair the building if, in the judgment of the municipality, the building is "so old, dilapidated or has become so out of repair" that it is "dangerous, unsafe, unsanitary or otherwise unfit for human habitation, occupancy or use."

b. The Bill

The bill deletes "old" as one of the conditions on which a municipality may base its order to raze a building. The age of a building above does not determine the condition of the

building. Municipal decisions to order the razing of a building are appropriately based on the remaining conditions included in the statute: "dilapidated" and "out of repair."

13. Income Tax Credit for Historic Buildings; Earlier Availability of the State Income Tax Credit for Renovation of Historic Buildings

a. Background

Under the U.S. Internal Revenue Code, the owner of an income-producing historic building is eligible for a federal income tax credit equal to 20% of certain specified costs of rehabilitating the historic building. The building must be listed on the National Register of Historic Places or eligible for listing or located in certain national, state or local historic districts. The rehabilitation work must comply with standards that have been established by the U.S. Secretary of the Interior. Wisconsin provides a supplement to the federal income tax credit equal to 5% of the eligible costs of rehabilitation.

The property owner may commence rehabilitation work before obtaining the approval of the Secretary of Interior. The federal program requires the State Historic Preservation Officer to recommend approval of the project before the application is considered by the Secretary of Interior. Unlike the federal tax credit, the state supplement is only available if the rehabilitation was approved by the Secretary of Interior before the physical work of rehabilitation was commenced. This aspect of the state tax credit encourages developers to determine whether a project will qualify for a tax credit before beginning work, with the result that few projects are denied the federal credit.

b. The Bill

The bill makes the state supplement available upon recommendation of the State Historic Preservation Officer, rather than final approval by the Secretary of Interior, which will allow owners to commence projects sooner. Federal approval is slow while the state can approve the credit in approximately two weeks. If, for any reason, the owner is determined not to be eligible for the federal tax credit, the owner will still be eligible for the 5% state supplement based on the approval by the State Historic Preservation Officer.

The bill would have a very slight fiscal effect due to the earlier eligibility for the credit, although earlier approval would tend to result in expenditures being made for projects sooner, which would produce taxable revenue for the state.

14. Income Tax Credit for Historic Buildings; Allocation of Tax Credit Among Partners

a. Background

This provision of the bill relates to the state supplement to the federal historic rehabilitation income tax credit, as described in the previous Section of this report. The supplement is equal to 5% of the eligible costs of historic preservation.

Under current law, each partner in a partnership is allocated a portion of any tax credit for which the partnership is eligible based on the partnership agreement. The partnership agreement cannot be adopted solely to avoid taxes; it must have economic substance.

b. The Bill

The bill creates s. 71.21 (6), Stats., to provide that the state supplemental credit for historic preservation claimed by a partnership may be allocated to the partners either as permitted under current law or pursuant to an agreement executed by the partners that establishes an alternate distribution method. This will allow partners who do not have a Wisconsin income tax liability (e.g., out-of-state investors) to transfer the credit to partners who do. The bill requires the partners to notify the Department of Revenue (DOR) of the agreement within 30 days of executing such an agreement and also requires the partners to provide any additional information requested by the DOR.

The bill provides that the new statute first applies to partnership agreements for the allocation of the state tax credit executed on the first day of the third month after the effective date of the act.

15. Rural Historic Preservation; Request for a Joint Legislative Council Study of Methods to Promote Rural Historic Preservation

a. Background

Wisconsin's agrarian landscape--its scenic beauty, productive farmlands, barns and farmsteads, history and people--is central to the character of this state. Agriculture continues as a fundamental part of the state's economy and the nation's food production. Historic rural buildings and communities provide a connection with the past and an understanding of the present. Wisconsin's rural beauty is widely appreciated and draws millions of visitors annually. However, changes in the agricultural economy and agricultural technology are disrupting and transforming rural areas, resulting in the destruction of traditional farm buildings and the loss of commercial vitality in rural communities. There is an urgent need for the state and local governments to take action to assure the viability of family farms and rural communities for the benefit of this and future generations.

b. The Bill

The bill requests a Joint Legislative Council study of rural historic preservation. Rural historic preservation can and should encompass a wide variety of issues. Therefore, the study request has purposely been drafted broadly so that the study committee may consider as many rural preservation issues as possible and determine which of those issues are most in need of legislative attention.

16. Rural Historic Preservation; Grant Program for the Costs of Renovating Historic Agricultural Buildings or Structures

a. Background

Under current law, the State Historical Society is assigned numerous responsibilities related to the preservation of historic and archaeological resources in this state.

b. The Bill

The bill creates a historic agricultural building grant program to be administered by the State Historical Society. Under the program, the State Historical Society is required to award grants to owners of historic agricultural buildings to fund the restoration of such buildings. Each grantee is required to make a matching contribution equaling the amount of the grant and to agree to use the restored building in a manner that is consistent with the statutory public policy on historic preservation, as follows:

> The legislature finds that the historic, architectural, archaeological and cultural heritage of the state is among the most important assets of the state and furthermore that the social, economic and physical development of contemporary society threatens to destroy the remaining vestiges of this heritage. It is therefore declared to be the public policy and in the public interest of this state to engage in a comprehensive program of historic preservation to promote the use and conservation of such property representative of both the rural and urban heritage of the state for education, inspiration, pleasure and enrichment of the citizens of this state. [s. 44.30, Stats.]

The bill appropriates $75,000 in fiscal year 2001-02 and $75,000 in fiscal year 2002-03 for the grants.

17. Rural historic Preservation; Survey to Identify and Document Historic Properties in Rural Areas

a. Background

Under current s. 44.34 (1), Stats., the State Historical Society is required to "conduct an ongoing statewide survey to identify and document historic properties." "Historic property" is defined in s. 44.31 (3), Stats., as "any building, structure, object, district, area or site, whether on or beneath the surface of the land or water, that is significant in the history, prehistory, architecture, archaeology or culture of this state, its rural and urban communities or the nation." The Special Committee believes that there is an urgent need to document rural resources that are rapidly disappearing.

b. The Bill

The bill increases the appropriation for the State Historical Society by $75,000 in fiscal year 2001-02 and $75,000 in fiscal year 2002-03. This appropriation is intended to provide funding for the State Historical Society to contract for a survey to identify and document historic properties in rural areas of Wisconsin.

C. 2001 ASSEMBLY JOINT RESOLUTION 51 AND SENATE JOINT RESOLUTION 30

1. Background

Dr. Robert Falk of the U.S. Forest Products Laboratory in Madison is working to address technical issues regarding used lumber as a structural material in new construction. Dr. Falk states that the primary barrier to reuse of these materials for structural purposes is that standards must be developed so that lumber can be inspected and stamped to indicate its grade. Grading will allow these materials to be used to meet requirements specified by the architect or engineer for new construction.

Dr. Falk's effort involves removing timbers from older buildings and testing them to determine the structural qualities of the timber, including such factors as damage to the timber while installing it and removing it. This program is currently not funded at a sufficient level to provide comprehensive results within a reasonable period of time. Even if the project is funded, the information provided by Dr. Falk is only the first step in a process which then requires approval of the data he develops by the American Softwood Lumber Standards Committee, which publishes national grading rules, which then must be adopted by regional lumber grading agencies.

2. Description of Joint Resolution

The joint resolution provides information regarding the availability of used lumber and briefly describes how the work of the Forest Products Laboratory will lead to grading standards for used lumber and the increased potential to incorporate used lumber into new construction. The joint resolution requests Congress to fully fund this research.

APPENDIX 1

Committee and Joint Legislative Council Votes

The bills and the joint resolution described in this report were first introduced in the 1999 Legislative Session. None of the proposals passed in the 1999 Session. On March 14, 2001, the Joint Legislative Council voted unanimously to reintroduce the bills and joint resolution into the 2001-02 Legislature. The votes by the Special Committee and the Joint Legislative Council for introduction of these proposals in the 1999 Session are listed below.

The bills and the joint resolution are essentially the same as the proposals introduced in the 1999 Session. Some changes to Assembly Bill 277 and Senate Bill 123 were necessary as the result of legislation enacted in the 1999 Session.

Votes on 2001 Assembly Bill 276 and Senate Bill 122

By a May 19, 1999 mail ballot, the Special Committee on the Historic Building Code voted to recommend LRB-3132/1 to the Joint Legislative Council for introduction in the 1999-2000 Session of the Legislature. The motion to approve LRB-3132/1 passed by a vote of Ayes, 17 (Sens. Rude and Burke; Reps. Freese, Young, Owens, Plale and Reynolds; and Public Members Aulik, Boldt, Cameron, Huelsman, Lemke, Mackenzie-Smith, Pionke, Reed, Schute and Vos); and Noes, 2 (Bullermann and Meyer).

At its September 22, 1999 meeting, the Joint Legislative Council voted to introduce 1999 Senate Bill 261 (LRB-3132/2) by a vote of Ayes, 15 (Sens. Risser, Burke, Ellis, Erpenbach, Grobschmidt, Rosenzweig and Zien; and Reps. Kelso, Bock, Freese, Huber, Jensen, Schneider, Seratti and Stone); Noes, 5 (Sens. Chvala and Cowles; and Reps. Foti, Gard and Krug); and Absent, 2 (Sens. George and Robson).

Votes on 2001 Assembly Bill 277 and Senate Bill 123

By a May 19, 1999 mail ballot, the Special Committee on the Historic Building Code voted to recommend WLCS: 0110/2 to the Joint Legislative Council for introduction in the 1999-2000 Session of the Legislature. The motion to approve WLCS: 0110/2 passed by a vote of Ayes, 18 (Sens. Rude and Burke; Reps. Freese, Young, Owens, Plale and Reynolds; and Public Members Aulik, Boldt, Bullerman, Huelsman, Lemke, Mackenzie-Smith, Meyer, Pionke, Reed, Schute and Vos); and Noes, 1 (Public Member Cameron).

At its September 22, 1999 meeting, the Joint Legislative Council voted to introduce 1999 Senate Bill 371 (WLCS: 0110/2) by a vote of Ayes, 18 (Sens. Risser, Burke, Chvala, Ellis, Erpenbach, Grobschmidt, Rosenzweig and Zien; and Reps. Kelso, Bock, Freese, Gard, Huber, Jensen, Krug, Schneider, Seratti and Stone); Noes, 2 (Sen. Cowles; and Rep. Foti); and Absent, 2 (Sens. George and Robson).

Votes on 2001 Assembly Joint Resolution 51 and Senate Joint Resolution 30

By a May 19, 1999 mail ballot, the Special Committee on the Historic Building Code voted to recommend LRB-3153/1 to the Joint Legislative Council for introduction in the 1999-2000 Session of the Legislature. The motion to approve LRB-3153/1 passed by a vote of Ayes, 19 (Sens. Rude and Burke; Reps. Freese, Young, Owens, Plale and Reynolds; and Public Members Aulik, Boldt, Bullermann, Cameron, Huelsman, Lemke, Mackenzie-Smith, Meyer, Pionke, Reed, Schute and Vos); and Noes, 0.

At its September 22, 1999 meeting, the Joint Legislative Council voted to introduce 1999 Senate Joint Resolution 23 (LRB-3153/1) by a vote of Ayes, 19 (Sens. Risser, Burke, Chvala, Cowles, Ellis, Erpenbach, Grobschmidt, Rosenzweig and Zien; and Reps. Kelso, Bock, Freese, Gard, Huber, Jensen, Krug, Schneider, Seratti and Stone); Noes, 1 (Rep. Foti); and Absent, 2 (Sens. George and Robson).

APPENDIX 2

JOINT LEGISLATIVE COUNCIL

s. 13.81, Stats.

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This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the cochairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees.

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STUDY ASSIGNMENT: The Committee is directed to study: (1) the Wisconsin Historic Building Code and its administration to ensure that the Code effectively facilitates practical, cost–effective and safe historic rehabilitation projects; and (2) related issues. The Special Committee shall report its recommendations to the Joint Legislative Council by May 1, 1999. [Based on a May 19, 1998 letter from Juli Aulik, on behalf of the Public Policy Committee of the Wisconsin Trust for Historic Preservation.]

Established and Chairperson appointed by a June 24, 1998 mail ballot; members appointed by an August 21, 1998 mail ballot.

19 MEMBERS: 2 Senators; 5 Representatives; and 12 Public Members.

LEGISLATIVE COUNCIL STAFF: Mark Patronsky, Senior Staff Attorney; Anne Sappenfield, Staff Attorney; and Kelly Mautz, Administrative Staff.

(1) Appointed Secretary by a September 4, 1998 mail ballot to replace Sen. Brian Burke, who declined the office.

(2) Appointed to the Committee by a December 10, 1998 mail ballot.

APPENDIX 4

Committee Materials List

Staff Materials

1. Staff Brief 98-8, The Historic Building Code (October 20, 1998).

2. Memo No. 1, Proposals to Enhance the Historic Building Code Which Could Be Considered by the Special Committee (November 18, 1998).

3. Memo No. 2, Information and Options Regarding the Historic Building Code (January 6, 1999).

4. Memo No. 3, Proposals for Discussion by the Special Committee (February 10, 1999).

5. Memo No. 4, Additional Bill Draft and Amendments (March 29, 1999).

6. Letter to Governor Tommy G. Thompson (January 25, 1999).

7. Letter to Ms. Brenda Blanchard, Secretary, Department of Commerce (April 21, 1999).

8. Letter to Representative Thomas W. Ryder (April 21, 1999).

9. Letter to Governor George E. Ryan, State of Illinois (April 21, 1999).

10. Letter to Ms. Marlene Cummings, Secretary, Department of Regulation and Licensing (April 21, 1999).

Other Materials

1. Publication, Preservation Information, National Trust for Historic Preservation (undated).

2. Handout, Chapter Comm 70 -- Historic Building Code, Background Information, submitted by Ron Buchholz, Deputy Administrator, Division of Safety and Buildings, Department of Commerce (October 8, 1998).

3. Proposal by Dr. Robert Falk, U.S. Forest Products Laboratory, to the U.S. Department of Housing and Urban Development, regarding the marketability of recycled lumber.

4. Handout, Wisconsin Barn Preservation Program, University of Wisconsin (UW)-Extension, Local Government Center (January 7, 1999).

5. Handout, ADA/Fair Housing and Archaic Material Fire Rating Issues, submitted by Department of Commerce (January 13, 1999).

6. Pamphlet, Barns N.O.W! (Network of Wisconsin) (undated).

7. Handout, Considerations for the Special Committee on the Historic Building Code, submitted by Charles S. Law, Ph.D., Community Planning and Design Specialist, UW-Extension (January 13, 1999).

8. Handout, Increasing the Marketability of Lumber Recycled from Deconstructed Buildings (February 6, 1998).