

CHAPTER 60

TOWNS

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60.01 Corporate powers. Each organized town is a body corporate and empowered to sue and be sued; to purchase, take and hold real and personal property for public uses and convey and dispose of the same; and to make all contracts necessary and convenient for the exercise of its corporate powers and any order for the sale or disposal of its corporate property which the inhabitants thereof may deem expedient. It shall be designated in all actions and proceedings by its name as "Town of"

Civil rights actions against municipalities discussed. *Starstead v. City of Superior*, 533 F Supp. 1365 (1982).

60.015 Population, use of federal census. Where the census of a town is required the last federal census, including a special federal census, if any, shall be used.

60.02 County, when a town. Whenever any organized county shall not be divided into towns it shall, for the purposes of town government, be considered as one town, and may elect town officers, including municipal judges, at the same time and in the same manner as they are elected in towns, whose powers and duties shall be the

same as town officers and municipal judges in other towns.

History: 1977 c. 305 s. 64.

60.025 Menominee county to be one town. The county of Menominee shall consist of one town, known as the town of Menominee.

60.03 Conveyances to towns. All real and personal estate conveyed or which shall be conveyed to any town or to the inhabitants thereof, or to any person for the use of the town or its inhabitants, shall be deemed the property of such town; and all such conveyances shall have the same force and effect as if they had been made directly to the town by name.

60.04 Sale of realty. Whenever any real estate belonging to a town shall be sold in pursuance of any order of the town the conveyance thereof shall be executed by the town clerk in his official capacity, under his hand and seal, and such conveyance, duly witnessed and acknowledged, shall convey to the grantee therein named all the right, title, interest and estate which the town may then have in and to the real estate so conveyed.

60.05 Organization of new towns, division, dissolution. (1) **CONDITION, NOTICE.** When fifty or more freeholders, residents of any town, and at least one-third of the electors thereof, shall petition the county board to divide, or to dissolve such town, and shall, at least twenty days before the next annual meeting, file a copy of such petition with the town clerk, he shall, at least ten days before such town meeting, give notice that the question of division, or of dissolution, as the case may be, of such town will be voted upon by ballot at such meeting, by posting, upon the question of division, notice thereof, showing the manner in which it is proposed to divide such town, in four public places in each proposed subdivision thereof, and upon the question of dissolution, notice thereof in four public places in such town.

(2) **VOTE HOW TAKEN; DUTY OF TOWN CLERK.** The ballot upon the question of division shall contain the words "For Division" and "Against Division". The electors residing in each proposed subdivision shall vote separately. The ballot upon the question of dissolution shall contain the words "For Dissolution" and "Against Dissolution". If a majority of the votes cast in either subdivision shall be in favor of division, or if a majority of the votes cast upon the question of dissolution shall be in favor thereof, the town clerk shall certify the fact to the county clerk, and thereupon the county

board shall have power to divide or dissolve such town accordingly.

(3) **DIVISION, WHEN PROHIBITED.** (a) No town shall be divided so as to constitute or leave any town of less than 36 sections in area unless each such town after division has 75 electors and real estate valued at the last preceding assessment at \$200,000 or more.

(b) In counties containing a city of the second class no new towns containing less than 36 sections shall be created except as a result of proceedings under s. 60.065.

(4) **VALIDITY; HOW TESTED; WHEN PRESUMED.** The validity of the proceedings to constitute or divide any town shall not be questioned in any manner, except by certiorari, or proceeding brought directly for that purpose by the proper officer or some person owning taxable property in any such town within the time provided by s. 893.73 (1), and every town which shall have exercised the powers and functions of a town for a period of one year shall be conclusively presumed to have been duly organized.

(6) **PLAT AND RECORD.** Whenever any county board shall organize a new town or alter the boundaries of any town, they shall cause a plat and record thereof to be made by the county clerk, specifying the name and boundaries of such town, which plat and record shall be kept in the office of such clerk.

History: 1979 c. 323.

60.06 Organization of towns in special cases. (1) **REQUISITE CONDITIONS.** Any government township, or any contiguous territory, being part of any town or towns, equal in area to more than one government township and to not more than 2 government townships, lying within the same county, having at least 300 resident freeholders, at least 150 of whom are electors who have resided within such territory for at least one year prior to the verification of the petition referred to in this section, and an assessed valuation of at least \$200,000, according to the last preceding assessment, may be organized into a town, where the remaining area of any town of which such proposed town forms a part is not less than 36 square miles, and has not less than 75 resident electors and an assessed value of not less than \$200,000, according to the last preceding assessment.

(2) **PETITION; PUBLICATION.** A petition signed by a majority of the electors and a majority of the residents of a proposed town showing the existence of facts entitling that territory to be organized as a town and containing an accurate description of the territory, the name of the town of which it forms a part, the names of the electors, and the proposed name of the new town verified by at least 3 signers, shall

be presented to the circuit court of the county in which the territory is located. The judge shall thereupon by order fix the time and place for the hearing of the petition by the court, and direct that a copy of the petition and order be served upon the clerk of the town of which the territory forms a part, at least 20 days before the hearing, and that notice of the hearing be published in the territory as a class 3 notice, under ch. 985. No formal answer to the petition need be filed.

(3) **EXPENSE; HEARING.** The court shall hear any elector or taxpayer of such territory, or of any town of which such territory is a part who may appear at the hearing and may adjourn the hearing from time to time and refer any issue of fact. The fees and expenses of the referee shall be fixed and apportioned by the court after the trial of any such issue and paid by the town or towns of which such territory is a part as apportioned thereto by the court.

(4) **ORDER CREATING.** If the court after such hearing shall find the facts necessary for the organization of such territory into a town, it shall enter an order creating such territory into a town under the name proposed in the petition and providing for the place of holding the first annual meeting. The clerk of court shall immediately file certified copies of such order with the secretary of state and the county clerk.

(5) **INDEBTEDNESS; APPORTIONMENT OF.** The credits and indebtedness as between the town so created and the town or towns of which it was formerly a part shall be apportioned according to s. 66.03.

(6) **REMAINDERS OF OLD TOWN.** Whenever the remaining territory of any town out of which a new town is organized, shall be divided into 2 detached parts by the organization of the new town, that part thereof with the least number of electors shall be attached to and become a part of the new town.

History: 1977 c. 449.

60.065 Division where town has unincorporated village. (1) **REQUISITE CONDITIONS.** Where any town contains any area with the population specified in s. 66.015 (1) and (3) which would be entitled to incorporate as a village, the rural portion of the town outside of such urban area may be organized into a new town.

(2) **PETITION; PUBLICATION.** A petition signed by a majority of the electors and a majority of the residents of the rural portion containing an accurate description of the urban area and showing the existence of facts that the urban area is entitled to become a village under ch. 66 and entitling the rural area to be organized as a new town and containing an accurate

description of the rural area, the name of the town of which it forms a part, the names of the electors and the proposed name of the new town verified by at least 3 signers, shall be presented to the circuit court of the county in which the territory is located. The judge shall thereupon by order fix the time and place for the hearing of the petition by the court, and direct that a copy of the petition and order be served upon the clerk of the town of which the territory forms a part, at least 20 days before the hearing, and that notice of the hearing be published in the territory as a class 3 notice, under ch. 985. A formal answer to the petition need not be filed. Section 60.05 (3) shall not apply to this section.

(3) **EXPENSE; HEARING.** The court shall hear any elector or taxpayer of either area who may appear at the hearing and may adjourn the hearing from time to time and refer any issue of fact. The fees and expenses of the referee shall be fixed and apportioned by the court after the trial of any such issue and paid by the town or by either or both such areas as apportioned thereto by the court.

(4) **ORDER CREATING.** If the court after such hearing shall find the facts necessary for the organization of such rural area into a town, it shall enter an order creating such rural area into a new town under the name proposed in the petition and provide for the place of holding the first annual meeting. The clerk of court shall immediately file certified copies of such order with the secretary of state and the county clerk. The officers of the old town shall continue to function as such in both areas until new officers are elected and qualified in the respective areas.

(5) **INDEBTEDNESS; APPORTIONMENT OF.** The credits and indebtedness as between the town so created and the town of which it was formerly a part shall be apportioned according to s. 66.03.

(6) **PARTIES IN INTEREST.** Any taxpayer residing in any portion of the town outside the area proposed to be incorporated under this section shall be entitled to intervene as a party in interest in said corporation proceeding.

(8) **COUNTIES APPLICABLE.** This section shall apply only in counties having a population of less than 500,000 and containing a city of the second class.

History: 1977 c. 449.

60.067 Town fiscal year. The town fiscal year shall be the calendar year.

History: 1977 c. 29.

60.07 Annual town meeting. (1) Except when changed under sub. (2), there shall be an annual town meeting of each town on the first Tuesday of April at which all business shall be transacted which is by law required or permitted

to be transacted at such meeting; no notice of holding any annual town meeting need be given. The hour for holding succeeding annual town meetings may be fixed at any such meeting. Any annual or special town meeting may be held in the town or in any village or city within or adjoining the town.

(2) At the annual town meeting, the electors may set the date of the next annual town meeting; however this date shall be within 10 days after the first Tuesday in April and notice shall be given of the meeting under s. 60.13. At any annual town meeting held in April of a year when the office of town chairman is filled by election, the person holding that office on the day prior to the date of the election held to fill said office shall be the presiding officer at the annual town meeting for that year and shall be entitled to receive the same per diem which is regularly paid to such officer. If such person is absent or refuses to serve, the meeting shall be conducted in accordance with s. 60.14.

(3) The location of the annual town meeting and all elections shall be held at the same place as the last town meeting unless changed at that meeting or as designated by the supervisors when more than one ward is established. Newly organized towns shall have their first meeting at the place designated in the documents which established the town. The meeting place designated need not be within the town, but shall be convenient to the town within an incorporated city or village within the county. Not more than 6 nor less than 4 weeks before the meeting date the town board, by recorded resolution, or a number of electors of the town equal to not less than 5% of the votes cast in the town for governor at the last general election, by a filed petition, may have the question of whether to change the meeting place submitted to a vote at the regular town meeting. The resolution or petition shall designate a qualified alternative place with reasonable certainty. Notice of the proposed question shall be given at the same time as the notice of the town meeting. The change shall be made if a majority vote in favor of the change.

History: 1971 c. 304 s. 29 (2); 1979 c. 134.

60.08 Adjournment from place to place. Whenever it shall become impossible or inconvenient to hold a town meeting at the place designated therefor the town board of inspectors or a majority of them, after having assembled at or as near as practicable to such place and opened the meeting, and before receiving any votes, may adjourn such meeting to the nearest convenient place for holding the same, and at such adjourned place forthwith proceed with the meeting. Upon such adjournment the board of

inspectors shall cause proclamation thereof to be made and shall station a constable or some other proper person at the place where such meeting was opened to notify all electors arriving at such place that the meeting has been adjourned and the place to which it has been adjourned.

60.09 Adjournment from time to time. Any annual or special town meeting may be adjourned to any other day and from time to time for the purpose of transacting any business of the town except for the election of town officers.

60.10 First meeting in new town. The first town meeting in any newly-organized town shall be held on the day of the annual town meeting next after its organization; but if the inhabitants of any such town shall fail to hold their first town meeting on the day of the annual town meeting any three qualified voters of such town may call a town meeting for such town at any time thereafter by posting up notices thereof at not less than three public places therein at least ten days previous to the holding of such meeting.

60.11 First meeting; proceedings. The qualified electors present at such first town meeting between the hours of nine and ten o'clock in the forenoon shall choose one of their number as chairman, two others as inspectors and one as clerk, who shall severally take and subscribe the oath required of inspectors and clerks of general elections; such oath may be administered by the chairman chosen to the other inspectors and clerk, and either of the other inspectors may thereafter administer the oath to the chairman. They shall thereupon conduct the proceedings of such meeting; and the electors shall possess the same powers as at other annual town meetings.

60.12 Special town meetings. Special town meetings may be held for the purpose of transacting any lawful business which might be done at the annual meeting, on a request being made to the town clerk in writing signed by a number of electors equal to not less than 10% of the votes cast in the town for governor at the last general election or by action of the town board, specifying the purposes for which such meeting is to be held. No matter voted upon or decided at any such special town meeting shall be acted upon in any subsequent special town meeting held in such town prior to the time for holding the next annual town meeting.

History: 1979 c. 134.

60.13 Notice of special town meetings. The town clerk with whom the request is left

shall record it, set the date and place for the meeting, and not sooner than 20 nor less than 15 days before the date of the meeting, publish a class 2 notice, under ch. 985. The notice shall state the purpose, date and place for the meeting. If notice is posted, the same time and content requirements shall apply.

60.14 Who to preside. The chairman of the town shall be chairman of the town meetings when present, but if absent one of the other supervisors of the town shall serve as chairman; but if no one of the supervisors be present the qualified electors at such meeting may choose a chairman.

60.15 Chairman's powers. The chairman of each town meeting shall regulate its proceedings, decide all questions of order and make public declaration of all votes passed; he shall possess authority to enforce obedience to his lawful requirements; and if any person at such meeting shall conduct himself in a disorderly manner, and after notice from the chairman shall persist therein, the chairman may order him to withdraw from the meeting, and on his refusal may order any constable or other person to take him into custody until the meeting shall be adjourned. He shall have the same authority to preserve order and enforce obedience as is possessed by the inspectors of election at a general election.

Chairman's powers discussed. *Schwaab v. Town of Summit*, 98 W (2d) 511, 297 NW (2d) 62 (Ct. App. 1980).

60.16 Clerk of meeting. The town clerk shall be clerk of such town meetings and keep faithful minutes of the proceedings and a correct poll list containing the names of all persons voting thereat; but if he be absent then such person as shall be appointed by the inspectors shall act as clerk of such meetings. The minutes of the town meeting shall be subscribed by the clerk and filed in the office of the town clerk within five days after such meeting.

60.17 Order of business. At the opening of every town meeting the chairman thereof shall state the business to be transacted and the order in which such business will be entertained; and no proposition to vote a tax, except for the relief of the poor and for defraying the necessary town charges, shall be acted upon out of the order of business as stated by the chairman, and no reconsideration of any vote shall be had at any town meeting unless it be taken by a majority vote within one hour from the time such vote shall have been passed, or, if taken later than one hour, unless it be sustained by a number of votes equal to a majority of all the names entered on

the poll list at such election up to the time the motion therefor shall be made. All other questions upon motions at a town meeting shall be determined by a majority of the electors voting.

60.175 Limitation on levies. (1) Tax levies of towns in 1981, payable in 1982, and subsequent years for town purposes shall not exceed the greater of the maximum allowable levy calculated for the prior year or the actual levy for the prior year, including any portion allowed by referendum, by a greater percentage than the percentage of the increase, if any, of the equalized value of all general property assessed in the entire state in 1981 and in subsequent years over the equalized value of all general property assessed in the entire state in 1980 and in subsequent years, respectively, except as provided in subs. (2), (5), (8), (9) and (10) and except that levies for the payment of principal and interest on general obligation bonds and notes issued for an original term of more than one year shall not be affected by this section. In determining the levies to be limited by this section, an amount equal to principal and interest on general obligation bonds and notes issued for an original term of more than one year included in the prior year's levy shall be excluded from the prior year's levy. In determining levies of 1976 and in subsequent years there shall be an additional exclusion from the prior year's levy of all nonlevy receipts for the retirement of general obligation bonds and notes issued for an original term of more than one year.

(1m) If the amount of levy increase determined under sub. (1) is zero, the town may increase its levy by an amount equal to the levy increase it would have been certified if it had had a levy resulting from a tax rate of .75 of a mill.

(2) In addition to the increase allowed under sub. (1), a town may increase its levy for town purposes in the amount that estimated shared revenues distributable to it under subch. I of ch. 79 in the year of the levy exceed the estimated shared revenues distributable to it in the subsequent year. For the 1981 levy, payable in 1982, the estimated shared revenues distributable in the year of the levy shall include the estimates of payments under ss. 79.996 and 79.16 (3), 1979 stats. In this subsection, "estimated shared revenues distributable" in 1982, 1983, 1984 and 1985 means the net amount indicated on the statement of estimated payments under s. 79.015, as affected by special adjustment repayments under s. 79.085 (3) and repayments of amounts withheld under s. 79.085 (5).

(4) The department of revenue shall make the estimates of 1976, 1977 and 1978 shared

taxes referred to under sub. (2). It shall notify each town of its 1976 estimate for the town on or before October 24, 1975; of its 1977 estimate for the town on or before October 22, 1976; and of its 1978 estimate for the town on or before October 21, 1977. The estimates of the department of revenue shall be final.

(4m) The amount of increase allowed under this subsection may be further increased by an amount representing the difference between the amount of surplus funds used to reduce the prior year's levy and the amount of surplus funds available to reduce the current year's levy, if the latter is the lesser.

(5) In any town where the population has increased at a rate greater than the statewide rate of population growth, the amount of increase allowed may be further increased by an amount equal to the previous year's levy divided by the previous year's population multiplied by the difference between the actual town population increase and the amount by which the town's population would have increased if the town's population had increased at the statewide rate of population growth. Population growth shall be measured between the year of levy and the previous year. Population estimates determined under s. 16.96 (2) (c) shall be used in this subsection.

(5m) The amount of the levy allowed under this section may be further increased by the following amounts:

(a) The amount needed for increased costs of court judgments and out of court settlements.

(b) The amount needed for increased operating and debt service cost of compliance with written lawful orders by this state, an adjoining state, the United States, or any agency or subdivision thereof, for air and water pollution abatement, solid waste or waste treatment facilities. Copies of such orders shall be filed with the department of revenue.

(c) The amount needed for repairing the effects of natural disasters.

(d) An amount not to exceed the estimated amount of any decrease in federal general revenue sharing funds from the current year to the following year, if such estimates are available from the U.S. office of federal revenue sharing.

(f) The amount needed to defray the unreimbursed costs incurred in assuming ownership of a service or function previously owned and administered by the private sector.

(g) The cost of any local bridge project for which the town is liable under s. 84.18.

(6) If the town levies taxes in excess of the maximum allowed by this section without receiving approval of the electors under sub. (7), the excess amount, if it is more than \$100, shall

be subtracted from subsequent distributions of shared revenue under subch. I of ch. 79 until fully recovered, and the levy shall be reduced by the amount of the excess, regardless of the amount, in determining the maximum allowable levy for the next year.

(7) If the town board desires to increase its tax levy above the limitations specified in this section, it shall publish such intent in a class 1 notice under ch. 985 in the official town newspaper. The question of the proposed increase in levy above the limitations specified in this section shall be submitted to a referendum at a spring election, general election or special election. If the increase is approved at the referendum, the town may increase its levy above the limitations specified in this section and shall notify the department of revenue of such increase, on a form provided by the department.

(a) The question presented to the electors shall be in substantially the following form: "Should the town board be authorized to adopt a property tax levy for town purposes for this year which is in excess of the maximum levy allowed by the state?"

(b) The authorization by referendum shall pertain only to the levy next following the referendum.

(c) The clerk of the town shall notify the department of revenue of the result of any such referendum no later than 10 days thereafter.

(8) In the case of the county newly assuming functions formerly performed by the town, the levy of the town shall be reduced by the amount of unreimbursed expenses that the town formerly incurred in performing those functions. In the case of the town newly assuming functions formerly performed by the county, the levy of the town shall be increased by the amount of the unreimbursed expenses that will be incurred in performing those functions.

(9) The amount allowed under this section shall not be applied to cause the general property tax rate to exceed the maximum rate otherwise provided by statute.

(10) If the amount of an assessment is lowered pursuant to s. 70.995 (8) (a) so as to require a refund of property taxes, an amount not to exceed the amount of the refund may be added to the next levy. Any amount added to the next levy under this subsection shall be excluded from the base in determining the following levy. If, pursuant to s. 70.995 (8) (d), the town receives property taxes in excess of the levy amount allowed under this section, an equivalent amount shall be subtracted from the next levy. Any amount subtracted from the next levy under this subsection may be added to the following levy.

(11) The department of revenue may promulgate rules to ensure the implementation of this section.

(13) For levies of towns in 1979, the percentage increase provided for under sub. (1) shall be the same as that for levies in 1978.

History: 1975 c. 39, 80, 200, 224; 1977 c. 113 ss. 1, 6; 1977 c. 203 s. 101; 1977 c. 418 ss. 381 to 385, 929 (42); 1981 c. 20, 61, 93.

60.18 Powers of town meeting. The qualified electors of each town shall have power at any annual town meeting by vote:

(1) **RAISING MONEY; LIMITATIONS.** To raise money for the repair and building of roads or bridges; for the support of the poor and defraying all other charges and expenses of the town, not exceeding in the aggregate, exclusive of taxes for schools and liabilities theretofore lawfully incurred and not including income taxes in the treasury, one per cent of the assessed valuation of such town for the preceding year as equalized by the town board of review; except as provided in pars. (a) and (b):

(a) In the town in counties containing only one town, such aggregate shall not exceed one-half of one per cent of said valuation;

(b) An additional sum not exceeding one-fourth of one per cent of said valuation may be raised for the repair of highways and bridges in any town.

(4) **NOTICE; PUBLICATION OF.** No order or by-law shall take effect before the same shall be published by posting up copies in three of the most public places in the town; and such by-laws and orders, when so published, shall be binding upon all persons coming within the town as well as upon the inhabitants thereof, and shall be in force until altered or repealed at some subsequent town meeting.

(7) **TOWN BONDS.** To authorize the town board to issue town bonds in the manner and for the purposes provided by law.

(8) **LANDMARKS.** To provide for the erection of landmarks at section corners and quarter stakes when notice of proposed action shall have been previously given as required by law for holding special town meeting.

(9) **BUILDINGS.** To raise money to purchase, lease or build a town hall or other building for the use of the town, or to unite the same with the money of any corporation or society doing business or located in such town, for the purpose of building, leasing or purchasing such hall or building; but no such vote shall be taken except by ballot nor unless a request in writing signed by at least twelve freeholders of such town shall have been delivered to the town clerk twenty days before the holding of such meeting, asking that such proposition be submitted to a vote of

the electors of the town at such town meeting, and setting forth the amount of money which they desire shall be raised by the town for that purpose and whether the same shall be raised by a direct tax or the issue of bonds, and if the proposition be to issue bonds it shall state the denomination thereof, the time and place of the payment of the principal and interest, and the manner in which and by whom the same shall be negotiated; and if to be raised for the purpose of uniting the same with the money of some corporation or society, the name of such corporation or society; nor unless the town clerk shall have given notice as is required in the case of a special town meeting that such proposition would be voted upon at such meeting. Whenever the voters of any town shall have voted money to purchase, lease or build a town hall in the manner provided by law, the board of supervisors of such town or towns are authorized to accept in the name of the town, any contributions offered of money, labor or locations.

(10) **SALE OF PROPERTY.** To authorize the town board to sell and convey any real or personal property belonging to the town not donated to and required to be held by the town for a special purpose.

(10m) **CONSTABLE.** To abolish the office of town constable and recreate the office. The abolition of such office shall be effective at the end of the term of the existing town constable.

(11) **COMPENSATION OF CONSTABLE.** To set the total annual compensation of the town constable in lieu of all fees and mileage or any portion of such fees and mileage. The compensation established shall not be increased nor diminished during the officer's term and shall remain the same unless changed by further action of an annual town meeting. Any constable on a salary basis or part fees and part salary shall collect all fees appertaining to his office and file with the town clerk a complete record of all fees received, annually or at such times as the town board may require, and shall remit all such fees not specifically reserved to him to the town treasurer at least once each month.

(12) **TOWN BOARD TO EXERCISE POWERS OF VILLAGE BOARDS; WHEN.** To direct, by resolution, the town board to exercise all powers relating to villages and conferred on village boards by ch. 61, except such power, the exercise of which would conflict with the statutes relating to towns and town boards. Any such resolution heretofore adopted pursuant to existing law or hereafter adopted pursuant to this law shall remain in force until rescinded.

(14) **PURCHASE OF LAND ACCESS TO WHICH MAY BE COSTLY.** To authorize the purchase of any lands within such town lying in such a

position that the cost to the town of constructing and maintaining roads, bridges and other means of access thereto will in the near future exceed the purchase price of such lands; and to provide how the money necessary for such purchase shall be raised, and to authorize the town board to issue bonds or obligations of such town in an amount not exceeding such purchase price.

(15) WATER FRONTS, GROVES, OUTLOOKS, HISTORIC SITES AND WOOD LOTS. To authorize the town board to acquire by gift, grant, devise, donation, purchase or condemnation or otherwise a sufficient tract or tracts of land for the reservation for public use of river fronts, lake shores, picnic groves, fine outlooks from hilltops or places of special historic interest and to use and maintain as a wood lot and to preserve and reforest the same under regulations approved by the department of natural resources. The sale of such wood lot may be authorized or directed in like manner. The town board may maintain or erect and maintain dams within such tracts used or intended to be used for public recreational purposes and to that end may acquire the necessary rights and in the name of the town prosecute proceedings to obtain permission to maintain or erect and maintain such dams.

(16) CONTROL OF INSECT PESTS, ETC. To appropriate money for the control of insect pests, weeds, or plant or animal diseases within the town. The town clerk shall within 10 days notify the department of agriculture, trade and consumer protection at the state capital of such appropriation.

(18) BAND; MUSICAL ENTERTAINMENTS. To provide for the organization, equipment, and maintenance of a municipal band or for the employment of another band to give concerts and musical entertainments in the town.

(18m) RECREATION AUTHORITY. To levy a tax for the purposes specified in s. 66.527.

(20) ADVANCE PAYMENT ON SCHOOL DISTRICT TAX LEVY. To authorize and direct the town treasurer to pay out of any funds available the balance due any common school district on its tax levy after settlement by the local treasurer under s. 74.03 (5) (d). When payment is made to any school district pursuant to this subsection the amount otherwise payable to such school district under s. 74.03 (9) (f) shall be retained by the town treasurer for the use of the town.

(20m) ASSESSOR AND CLERK. To determine by resolution that the offices of assessor and clerk may be held by the same person; and revoke such resolution.

(21) WATERSHED PROTECTION AREAS. To raise money to assist in creating and developing watershed protection areas or projects beneficial

to the town, which would include or benefit all or a portion of such town, and to authorize the town board to expend said money for such purposes, or to pay all or part of said money to any agency of the federal or state government or to a county land conservation committee to be expended for such purposes.

(22) ASSISTING SOIL AND WATER CONSERVATION. To raise money to assist in soil and water conservation benefiting all or a portion of the town, and to authorize the town board to expend money for these purposes or to pay all or part of the money to the county land conservation committee to be expended by it for these purposes.

(23) RURAL NUMBERING SYSTEMS. To raise money to post signs and otherwise co-operate with the county in the establishment of a rural numbering system under s. 59.07 (65).

(24) ASSESSOR APPOINTMENT. To authorize the town board to select assessors by appointment. If such authorization is made at a town meeting, the referendum procedure under s. 60.19 (2) and (3) (a) need not be complied with.

History: 1973 c. 12; 1975 c. 188; 1977 c. 29 s. 1650m (4); 1977 c. 210; 1981 c. 346 ss. 26, 38.

Towns, including those of over 6,000 population, do not have authority to have a police and fire commission. 58 Atty. Gen. 115.

Mill rate limitations on local taxing authorities provided in 60.18 (1), 61.46 (1), 62.12 (4) and 65.07 (1) (a) and (f) apply to assessed values which do not exceed full values. 62 Atty. Gen. 49.

A town board, granted village powers under (12), is not required to petition its county board prior to adopting a town zoning ordinance. See 60.74 (1) (am) and (7). However, where the county has adopted a zoning ordinance under 59.97, such town zoning ordinance will not become effective and cannot be enforced unless and until the county takes positive action approving such town ordinance. 62 Atty. Gen. 139.

A town board not operating a sewage system cannot make special assessments on property located within the corporate limits of the town but outside the corporate limits of a town sanitary district for benefits claimed to accrue from the system operated by the district and pay the same to the district. 63 Atty. Gen. 343.

Towns exercising village powers under (12) can zone shorelands concurrently with counties, provided that the town ordinance is in conformance with or more restrictive than the county ordinance. 65 Atty. Gen. 108.

60.181 Town park commission. The qualified electors of each town may at any annual town meeting by vote provide for a town park commission consisting of seven members. Such commissioners shall be appointed by the town board in writing, and such appointments shall be filed with the town clerk. The term of each member shall be the seven years next following the first day of July of the year in which his appointment is made and until the appointment and qualification of his successor, except that the first seven members shall be appointed respectively for such terms that on the first day of July in each of the seven years next following the year in which they are appointed the term of one

member will expire. After such original appointments one commissioner shall be appointed annually in the month of June to succeed the member whose term will expire on July first then next following. Each of said commissioners shall take and file the official oath.

60.182 Commission, organization, powers. (1) Within thirty days after their appointment and qualifications the said commissioners shall convene at the town hall and perfect an organization; and thereupon such park commission shall have the usual powers of such bodies in addition to those hereinafter enumerated, shall use a common seal, make by-laws and choose annually from its members all necessary officers.

(2) It may also appoint such other agents and employes as may be necessary to carry out its functions, and may remove them at pleasure, and make all rules and regulations concerning its work.

(3) The town board shall provide suitable offices where the maps, plans, documents and records of the commission shall be kept, subject to public inspection at all reasonable hours and under such reasonable regulations as it may prescribe.

60.183 Park planning, report to town meeting. The commission shall make a thorough study of the town with reference to making reservations of lands therein for public uses and laying out ample open spaces, parks, highways, roads and boulevards; make plans and maps of a comprehensive town highway and park system; gather such information in relation thereto as it may deem expedient; and report the same to the town meeting within two years from the date of its organization. It shall make such other reports, from time to time, as may be requested by the town board.

60.184 Park supervision and control, and acquisition. The said commission shall have charge and supervision of all lands heretofore or hereafter acquired by the town for park or reservation purposes, and shall have power:

(1) To lay out, improve, maintain and govern all such parks and open spaces; to lay out, grade, construct, improve and maintain highways, roads, parkways, boulevards and bridges therein or connecting the same with any other park or open spaces or with any municipality, using such methods and materials as it may deem expedient; to determine and prescribe building lines along the same; and to make rules for the regulation of the use and enjoyment thereof by the public;

(2) To accept, in the name of the town, grants, conveyances and devises of land and bequests and donations of money to be used for park purposes;

(3) To acquire, in the name of the town, by purchase, land contract, lease, condemnation, or otherwise, with the approval and consent of the town board, such tracts of land or public ways as it may deem suitable for park purposes; but no land so acquired shall be disposed of by the town without the consent of said commission, and all moneys received for any such lands, or any materials, so disposed of, shall be paid into a town park fund.

60.19 Election of officers; special provisions. (1) (a) Biennially, in the odd-numbered years, each town shall elect the following officers: 3 supervisors except when the number of supervisors has been increased under par. (am), one of whom shall be designated on the ballots as chairman, a town clerk, a treasurer, or, under s. 60.60 (2) (b), a person to serve in the combined office of town clerk and town treasurer, an assessor (the number of assistant assessors for which the town board before the election made provisions), if election of the assessor is provided, and so many constables, not exceeding 3, as were ordered by the last preceding annual town meeting. No person who is not an elector of the town may hold any town office, except that the town may appoint a corporation as an assistant to the assessor under s. 70.05 (2), or employ a corporation or the department of revenue as expert help under s. 70.055, or the town board may appoint a person who is not an elector of the town under sub. (2) or (5). No person may hold the offices of treasurer and assessor at the same time. The electors may at a referendum held at the time of any regular or special election, vote to combine the offices of assessor and clerk to take effect at the expiration of the current terms of such officers. No assessor may be elected in towns appointing such officers under civil service under subs. (2) and (3) and no assessor may be elected in any town after the town comes within the jurisdiction of a county assessor under s. 70.99. The corporation or the department of revenue appointed under s. 70.055 shall designate the person who shall serve with the assessor as the assessment board. The designee shall file the official oath as prescribed in s. 19.01, and sign the affidavit of the assessor attached to the assessment roll under s. 70.49. No person may be designated by any corporation or the department of revenue unless the person has been granted the appropriate certification under s. 73.09.

(am) Any town board authorized to exercise village powers may, by ordinance, increase the number of supervisors to no more than 5. If the number of supervisors is increased to 4, the town shall elect 2 supervisors each year. If the number is increased to 5, the town shall elect 3 supervisors in odd-numbered years and 2 supervisors in even-numbered years.

(b) In the town in any county containing one town only, in place of 3 members a town board of not more than 7 members shall be elected, consisting of one or more members chosen from the town at large and one member chosen from each town board ward, of which there shall be not less than 2 nor more than 5. A majority of such members shall constitute a quorum. The number and boundaries of the town board wards and the number of members to be elected from the town at large shall be designated by the legislature when the town is first established, but thereafter such wards shall be subject to reapportionment and increase or decrease in number and the number of members at large shall be subject to increase or decrease by majority vote of the town board in order to provide that all inhabitants will be adequately represented, each ward will have substantially the same number of inhabitants, the ward, insofar as is practicable, will consist of contiguous territory and will be in compact form. The total number of town board members may not be changed from the number initially fixed by the legislature. The member elected from the town at large who has the highest number of votes shall become the town chairman. Such members and a town clerk, a treasurer, an assessor and one or more constables, shall be elected by ballot biennially in the odd-numbered years on the first Tuesday in April, and shall hold office for 2 years except as provided in s. 60.60 (3), but no assessor shall be elected or appointed after such town comes within the jurisdiction of a county assessor under s. 70.99. This paragraph shall not apply to the office of constable if the office has been abolished and has not been recreated by an annual town meeting under s. 60.18 (10m).

(c) Increases or reductions in membership of town boards take effect from January 1 of the first odd-numbered year following the most recent federal decennial or special census, but do not create any vacancy on a town board prior to the spring election. At any spring election the town board of any town having a population of 2,500 or more may, subject to the authorization of the majority of the electors voting at an annual or special town meeting, consist of 5 supervisors elected at large. If the electors authorize expanding the town board to 5 supervisors and if the seats of the town board are numbered, the board may by ordinance stagger

the terms of its supervisors, so that the chairperson and 2 supervisors running for even-numbered seats on the town board serve 2-year terms and the other 2 supervisors serve one-year terms, with each subsequent election for 2-year terms so that elections occur in both odd- and even-numbered years. If the electors authorize expanding the town board to 5 supervisors but the seats of the board are not numbered, the board may by ordinance stagger the terms of its supervisors, so that the chairperson and 2 supervisors receiving the highest number of votes in the next election serve 2-year terms and the other 2 supervisors serve one-year terms, with each subsequent election for 2-year terms so that elections occur in both odd- and even-numbered years. An ordinance to stagger the terms of supervisors may be adopted to apply to the initial election of 5 supervisors or to any subsequent election. Three members shall constitute a quorum of 5-member town boards.

(2) The electors of any town may request a referendum under sub. (3) to select assessors by appointment, except where the town has come within the jurisdiction of a county assessor under s. 70.99. Selection shall be under any one of the following 3 options: a) If the town has a civil service system, the assessor may be chosen in accordance therewith; b) If the town has no civil service system, the town board may by ordinance adopt one under s. 66.19 (2) for the selection of assessors; c) If the town does not adopt a civil service system for selection of assessors, the town board shall appoint them on the basis of merit, experience and general qualifications, and fix the salary and the term of office which shall not exceed 3 years. A corporation or an independent contractor may be appointed as the town assessor. The corporation or independent contractor so appointed shall designate the person responsible for the assessment. The designee shall file the official oath under s. 19.01, and sign the affidavit of the assessor attached to the assessment roll under s. 70.49. No person may be designated by any corporation or independent contractor unless he or she has been granted the appropriate certification under s. 73.09. For purposes of this subsection, "independent contractor" means a person who either is under contract to furnish appraisal and assessment services or is customarily engaged in an independently established trade, business or profession in which the services are offered to the general public.

(2m) Commencing with the 1977 elections and appointments made on or after January 1, 1977, no person may assume the office of town assessor unless certified by the department of revenue under s. 73.09, as qualified to perform the functions of the office of assessor. If a

person who has not been so certified is elected to the office, the office shall be vacant and the appointing authority shall fill the vacancy from a list of persons so certified by the department of revenue.

(3) (a) The request for a referendum to select town assessors under sub. (2) shall be by petition signed by at least 15 per cent of the whole number of electors voting therein for governor at the last preceding general election. When such petition is filed with the town clerk at least 20 days prior to a general or special town election, the question shall be submitted to the electors as a referendum at such election, proper notice shall be given, and the question shall abide the majority vote of the electors of such town.

(b) The town board may determine the number of assessors or assistant assessors required and the salaries to be paid, except where such town has come within the jurisdiction of a county assessor under s. 70.99. If the assessors and assistant assessor are appointed under civil service, the salaries shall be within the civil service salary schedule and appointments shall be from the civil service lists. The initial appointees shall take office at the expiration of the terms of the last elected assessors.

(c) The town board shall on or before March 15 prior to the commencement of the term of such officers and of each year thereafter, certify to the town treasurer the name or names of such assessor and assistants and the salaries to be paid to said persons, and the town treasurer shall periodically issue a check on the town treasury for the payment of such salaries on a semi-monthly basis.

(4) When any town has established a system for the selection of assessors and assistant assessors under sub. (3), such system shall not be repealed for a period of 6 years after the initial appointees take office thereunder and thereafter it may be repealed only by a referendum initiated and conducted by like proceedings as provided in sub. (3) for the adoption thereof. This subsection shall not apply where the town has come within the jurisdiction of a county assessor under s. 70.99.

(5) In lieu of the referendum procedure under subs. (2) and (3) (a), the electors at a town meeting may authorize the town board to select assessors by appointment. The authorizing resolution shall prescribe the minimum time period during which the town board's authority shall not be terminated and the method by which the authority may be terminated. The selection and determination of the number of assessors

and assistant assessors shall be in the manner prescribed in subs. (2) and (3) (b) and (c).

History: 1971 c. 40, 42, 155, 248; 1971 c. 304 s. 29 (2); 1973 c. 90; 1975 c. 39, 188, 199; 1977 c. 29, 210, 263; 1979 c. 130, 221, 260, 355; 1981 c. 11.

Sub. (1) (c) does not violate the uniformity requirement of Art. IV, sec. 23. State ex rel. Wolf v. Town of Lisbon, 75 W (2d) 152, 248 NW (2d) 450.

Offices of town clerk and town treasurer are probably incompatible. 60 Atty. Gen. 276.

Offices of county assessor and town supervisor are compatible. 63 Atty. Gen. 599.

60.195 Menominee town; election of board members. Menominee town in Menominee county, unless and until changed as provided in s. 60.19 (1) (b), shall elect 2 town board members from the town at large, and shall elect 5 town board members from town board wards, which town board wards shall be as follows:

WARD 1: All of Townships 29 and 30 North in Range 13 East.

WARD 2: All of Township 30 North Range 14 East and that portion of Township 29 North Range 14 East lying North of the West Branch of the Wolf River.

WARD 3: That portion of Township 29 North Range 14 East lying South of the West Branch of the Wolf River.

WARD 4: All of Townships 28, 29 and 30 North Range 15 East.

WARD 5: All of Townships 28, 29 and 30 North Range 16 East.

History: 1971 c. 304 s. 29 (2).

60.20 Notice of election; official oath. Within 5 days after the election of any town officer the town clerk shall transmit a notice of election to the person elected, unless the person voted at the meeting. Every person elected or appointed to any town office, except municipal judges, shall, within 5 days after election or appointment, or notification thereof, if required, take and file the official oath. The neglect to file the oath, or an official bond when required, within the time prescribed shall be deemed a refusal to serve in office. Elected assessors shall take and file the official oath or bond within 5 days before June 1.

History: 1977 c. 29; 1977 c. 305 s. 64.

60.21 Official bonds. Every official bond required of a town officer shall be in such sum, when no other provision is made, as shall be fixed by the town board therefor, and if none be fixed, then in the sum of the bond of the last incumbent of the office; shall have at least two sufficient sureties to be approved by the chairman in writing thereon, and whenever the town board shall deem any bond insufficient they may require an additional bond to be made and filed

in a sum, and within a time not less than ten days, to be fixed by them.

60.22 Term of office. Every elected town officer shall hold the office for 2 years, and until a successor is elected and qualified.

History: 1979 c. 260, 355.

60.225 Town officers residing in new villages. Any town officer, except a municipal judge, who resides within the territory embraced within any village hereafter organized, shall continue to be such town officer and discharge all the duties thereof until 10 days after the next annual town meeting in the town unless the successor qualifies sooner.

History: 1977 c. 305.

60.23 Failure to give bond or to act. If any person elected to a town office, of whom an oath or bond is required, shall enter upon the duties of such office before he shall have filed such oath or bond he shall forfeit not less than ten nor more than fifty dollars; and if any person so elected, except he be unable from disease or other infirmity to discharge the duties of such office, shall refuse or neglect to serve therein he shall forfeit ten dollars, unless he shall have served in some town office for the term next preceding such election and shall have given written notice of refusal to the town clerk within the time prescribed for filing his oath.

60.28 Refusals to serve; temporary disability. If the treasurer-elect refuses to serve or the office becomes vacant, or if he or she is unable to perform official duties, the town board shall forthwith appoint a treasurer for the remainder of the term; and the appointment shall not exonerate the former treasurer or his or her sureties from any liability incurred. If the incumbent of any other town office, except that of municipal judge, is unable to perform official duties, the town board may appoint a suitable person to discharge the duties of the office until the disability is removed. The appointee shall file an oath of office and give the like bond required of the officer in whose place he or she is appointed and within the time prescribed in this section.

History: 1977 c. 305.

60.29 Town boards; powers. The supervisors of each town shall constitute a board to be designated the "Town Board of ...", any 2 of whom shall constitute a quorum, except when otherwise provided by law, and the chairman may administer oaths and affidavits in all matters pertaining to the affairs of the town. Meetings of the board shall be held in the town or in

any village or city within or adjoining the town. Such board is empowered and required:

(1) CHARGE OF TOWN AFFAIRS. To have charge of all the affairs of the town not by law committed to other officers.

(1m) PUBLIC CONTRACTS. To let pursuant to s. 66.29 all public contracts, as defined in s. 66.29 (1) (c), the estimated cost or amount involved of which shall exceed \$2,500, except that the town board may determine that any class of public work or any part thereof shall be done directly by the town without submitting the same for bids. The town board may also enter into arrangements with its county to do any type of work without the requirement of competitive bidding regardless of the amount involved. County highway departments are authorized to enter into such agreements on a cost basis.

(1x) EXCEPTION AS TO PUBLIC EMERGENCY. The provisions of sub. (1m) are not mandatory for the repair and reconstruction of public facilities when damage or threatened damage thereto creates an emergency, as determined by resolution of the town board, in which the public health or welfare of the town is endangered. Whenever the town board by majority vote at a regular or special meeting declares that an emergency no longer exists, this subsection no longer applies.

(2) ORDERS ON TREASURY. To draw all orders for the payment of money out of the town treasury for purposes allowed by law, except for the support of schools.

(3) LEGAL ADVICE, OTHER HELP. To procure legal advice when needed in the conduct of town affairs and employ counsel for that purpose; also such stenographic, clerical and expert help as may from time to time be necessary in the conduct of the affairs of the town and the promotion of the financial welfare; to enter into the necessary contracts for the performance of such services; and to determine the qualifications, including the residence of the persons so employed.

(4) CHARGE OF ACTIONS. To have charge of all actions to which the town is a party.

(5) COLLECT DEMANDS DUE TOWN. To demand payment into the town treasury of all penalties and forfeitures recoverable by the town, and all damages suffered by the town by breaches of official bonds, by injuries to its property or by other injuries; and, in case of failure to comply with such demand, to bring and prosecute proper actions or proceedings to recover the same.

(6) BOUNDARIES OF UNINCORPORATED VILLAGE. To designate and cause to be recorded by

the town clerk the boundaries of any unincorporated village located within the town.

(7) **VILLAGE POLICE.** To appoint, when the public good requires it, not exceeding three policemen, one superintendent of police and one night watchman, for service in the village.

(8) **POLICE.** To appoint policemen, a superintendent of police and a night watchman for service at any other place in the town when needed to protect persons or property or to preserve order at any assemblage for moral, religious or educational purposes. A town board may create a joint police department with a village acting under s. 61.65 (1) (a) 3. A town board that elects to create a joint police department shall create a joint board of police commissioners with the village under s. 61.65 (1) (b) 2. b. The organization and operation of any joint board or joint department created by a town and a village is subject to s. 61.65 (3g) (d).

(8m) **JAILS.** To have charge of the town jail, if any, which it shall conduct in the manner provided in s. 62.09 (13) (c). The town board may delegate this duty to the constable or any police officer of the town.

(9) **BYLAWS, PUBLICATIONS.** To adopt bylaws, when needed, to regulate the conduct of police personnel, superintendents of police and night watchers and to restrain disorderly conduct and the careless use of firearms; and fix a forfeiture not exceeding \$10 for each violation thereof; but such bylaws shall be published in the manner prescribed for the publication of bylaws adopted by town meetings and shall have the same effect as such bylaws.

(11) **LIGHTING HIGHWAYS.** To provide, by contract or otherwise, for the lighting, when necessary to facilitate public travel, of the principal improved highways of the town, and of bridges located thereon.

(12) **MANUALS FOR OFFICERS.** To purchase for the use of town officials such handbooks or manuals relating to their powers and duties as the board shall deem of material assistance to such officers in the performance of their duties.

(13) **POWERS LIKE VILLAGE BOARDS.** To exercise powers relating to villages and conferred on village boards when lawfully authorized so to do by resolution of the town meeting adopted under s. 60.18 (12).

(14) **FAKERS.** To suppress mountebanks.

(15) **BILLIARDS, BOWLING, ETC.** To suppress, or license and regulate the keeping of billiard tables, pool tables, pigeonhole tables and bowling alleys for hire or gain, the term of any such license not to extend beyond the date of the next town meeting, fix the license fee, and to revoke any such license for cause, and any person operating without a license or violating

any regulation made by the town board shall forfeit to the town not exceeding fifty dollars nor less than ten dollars, or, in default of payment thereof, be imprisoned in the county jail for a term not exceeding six months.

(16) **WATER MAINS AND SEWERS OF ADJOINING MUNICIPALITY.** To grant to any adjoining city or village permission, in the extension of its water or sewage systems, subject to s. 62.175 (1) and the rights of abutting property owners, to lay and maintain water mains and sewers in any street or highway in the town, and no abutting property owner who is permitted to connect with and use any such water main shall be deprived of the use thereof, except as to the use of water for nonpayment of water charges, without the consent of the town board.

(17) **PULMOTORS, RESUSCITATORS, INHALATORS, AMBULANCE SERVICE.** To purchase pulmotors, resuscitators, inhalators and all other equipment that may be needed for any emergency calls and to contract for ambulance services or to operate and maintain such services.

(17a) **WISCONSIN TOWNS ASSOCIATION.** To appropriate money by a two-thirds vote to purchase membership in an association of town boards for the protection of town interests and the furtherance of better town government.

(18) **FIRE DEPARTMENT, FIRE LIMITS, EXPLOSIVES, FIREWORKS, FIRE WARDEN.** (a) To establish fire departments in any town or any part of the town, or join the town or a part thereof with a neighboring town, group of towns, parts of towns, cities or villages in establishing joint fire departments, and to join the town or a part thereof with a group of towns, parts of towns, cities or villages in the joint acquisition and ownership of fire fighting equipment and to appropriate the proportionate share of the town or parts of a town of the cost of purchasing and maintaining such equipment, when authorized by resolution adopted at any town meeting; to appoint the officers and members thereof, and prescribe and regulate their duties; to provide such compensation for the members of the fire departments as the town board determines; to purchase worker's compensation insurance covering such firemen; to provide protection from fire by the purchase, use and maintenance of fire engines and other necessary apparatus for the extinguishment of fire and by the erection and construction of cisterns and reservoirs; to erect fire engine houses; to enter into agreements with any town, group of towns, part of a town, city or village in which a fire department is established, or with any fire association, corporation or individual for the maintaining, housing and manning of the fire fighting equipment of such fire departments; and to levy tax upon all real and

personal property in the town, or that part of the town receiving protection from the contract, or equipment or jointly owned equipment for the purpose of purchasing and maintaining or manning the same; to compel the inhabitants of the town to aid in the extinguishment of fire, and to pull down and raze such buildings in the vicinity of fire as shall be directed by them or any 2 of them who may be at the fire, for the purpose of preventing its communication to other buildings; to establish fire limits or the limits within which wooden or other combustible buildings shall not be erected; to require the owners or occupants of buildings to provide and keep suitable ladders and fire buckets which shall be appurtenances to the realty and exempted from seizure and forced sale; and after reasonable notice to the owner or occupant and refusal or neglect by the owner or occupant to procure and deliver the same to owner and occupant, and in default of payment, to levy the cost as a special tax upon such real estate, to be assessed and collected as other taxes in such town; to regulate the storage of gun powder and other dangerous materials; to require the construction of safe places for the deposit of ashes; to regulate the manner of putting up stove pipes and the construction and cleaning of chimneys; to prevent bonfires and the use of fireworks in the town or any part thereof; to authorize fire wardens, at all reasonable times, to enter and examine all dwelling houses, lots, yards, inclosures and buildings of every description in order to discover whether any of them are in a dangerous condition and to cause such as may be dangerous to be put in safe condition.

(b) Whenever such fire department is established or such town board contracts for such protection for a part only of a town, or becomes part of a joint fire department under par. (a), the cost or proportionate part of the cost of purchasing, maintaining and manning the fire fighting equipment of such fire department shall be paid by the town out of the general fund and the town board shall thereupon levy a tax upon all real or personal property in that part of the town receiving protection from such equipment, in order to reimburse said town.

(c) A town board that establishes a joint fire department with a village acting under s. 61.65 (2) (a) 3 shall create a joint board of fire commissioners with the village under s. 61.65 (2) (b) 2. The organization and operation of a joint board or joint department created by a town and a village is subject to s. 61.65 (3g) (d).

(18m) TOWN WITHOUT FIRE PROTECTION LIABLE FOR FIRE FIGHTING SERVICE. Any town failing to provide under sub. (18) or otherwise for a fire department and fire fighting apparatus

and equipment for extinguishing fires in such towns shall be liable for the services of any fire department in fighting fire and appearing to fight fire in such town upon request.

(19) WATER MAINS, SEWERS, POPOULOUS COUNTIES. The town board of every town in counties having a population of 150,000 or more are hereby authorized upon petition of two-thirds of the property owners in any block, or of two-thirds of the owners of property fronting or abutting upon any street or portion of street, to build and construct water mains and sewers along the street or streets on which such blocks or property abut or front, and to assess property abutting and fronting upon such streets for the cost thereof.

(20) FIRE DEPARTMENT, EMPLOY, HOUSING EQUIPMENT. (a) The supervisors of any town may make deposit and payment out of the general fund to any city, incorporated village, or duly organized volunteer or private fire company, in said county or in an adjoining county to secure and pay for fire department service in said town, and for the prevention and extinguishment of fires as may be necessary and proper, and in connection therewith may contract for or purchase fire extinguishing apparatus, which may be housed in such city or village and may be manned by its fire department. If the governing body of such city or village gives its approval, the town may, instead of contracting for fire protection with such city or village, contract for such protection with any private corporation or individual equipped to furnish the same.

(b) Whenever, upon petition of two-thirds of the resident freeholders of a contiguous district described in such petition, of any town to the town board of such town that such district desires fire protection from a nearby city, village or town department, specifying the kind of protection desired and the amount that such protection will cost yearly, or whenever it becomes necessary to provide protection as demanded under s. 60.29 (18m), such town board shall contract with the council of such city, the board of such village or the board of such town or any duly established volunteer or private fire company as specified in such petition, and such contract shall be executed by resolution of both governing bodies. The town board shall yearly appropriate and pay to such village, city or town, or duly established volunteer or private fire company the sum agreed upon for such protection and shall yearly levy a tax upon all the real and personal property in said contiguous district in order to reimburse said town; and any such village, city or town is hereby authorized to enter into such contract.

(c) Any town, part of a town or persons residing therein may join with a neighboring town, part of a neighboring town, city or village in establishing and maintaining a joint volunteer fire department or in obtaining fire service from any corporation, association or individual equipped to furnish adequate protection, by contract or otherwise, the proportionate expense of establishing and maintaining such joint volunteer department, or contract for such service shall be paid as provided in par. (b) by each town or part of a town, city or village which has joined in the establishing of the department or contracting for such service. Nothing herein shall obligate a town to pay for fire-fighting services in territories located within districts under the supervision and control of fire wardens.

(d) The town board of any town may enter into agreements with any neighboring town, part of a town, or any neighboring city or village, or with any joint fire department, created under s. 60.29 (18) (a), firemen's association, corporation, or individual equipped to furnish adequate fire protection, for obtaining fire protection service for any town, or part of a town; to make payment out of the general fund of the town of the cost thereof; and to levy a tax upon all the real and personal property of that part of the town receiving protection under such agreement sufficient to reimburse the town for the cost thereof.

(e) Any town board providing fire protection shall be reimbursed for fire calls occasioned by fires on public highways as follows:

1. The cost not to exceed \$100, for a fire call for a vehicle on a county trunk highway shall be reimbursed by the county maintaining that portion of the highway where the vehicle is located at the time of the fire;

2. The cost not to exceed \$100, for any fire call on a state trunk highway or any highway that is a part of the national system of interstate highways and maintained by the department of transportation shall be reimbursed by such department of transportation.

(21) OFFICERS HAVE POWERS OF VILLAGE OFFICERS. Each officer appointed under the provisions of this section shall possess and may exercise all the powers possessed by the same officer in villages incorporated under general law.

(22) PEST AND DISEASE PREVENTION. When an emergency arises within a town due to insect pests, weeds or plant or animal diseases, and when it is the judgment of the board that the delay incident to calling a special town meeting would result in severe injury to the general welfare, to appropriate not to exceed \$100 from the town treasury for the control of such insect

pests, weeds or plant or animal diseases. The town clerk shall within 10 days notify the department of agriculture, trade and consumer protection at Madison of such appropriation.

(24) OFFICE HELP, POPULOUS COUNTY. The town board of every town in counties having a population of 150,000 or more, and maintaining an office of the town clerk, may employ clerical or stenographic help in the work in such office.

(25) PUBLIC DEPOSITORY. To designate the public depository or depositories where the money belonging to the town shall be deposited. When the money is deposited in such depository in the name of the town, the treasurer and bondsmen shall not be liable for such losses as are defined by s. 34.01 (6). The interest arising therefrom shall be paid into the town treasury.

(26) STREET IMPROVEMENTS, SPECIAL ASSESSMENTS. (a) The town board of any town may cause any highway, street or alley, or any part thereof, to be graded, paved or otherwise improved, including the construction of curbs and gutters, upon a petition therefor in writing signed by at least a majority of all owners of real estate bounding both sides. If such highway, street or alley abuts on platted property the board shall assess benefits and damages against such platted property as provided in s. 66.60. There is imposed upon the towns all of the powers vested in villages by said section. All of the duties imposed upon village boards or villages, their several committees, village clerk, village treasurer and street commissioner by said section, shall be performed in such towns by the town boards, the town clerks, town treasurers and the superintendent of highways. Where notice is required to be published, and there is no newspaper published in said town, such notices shall be given by posting 5 copies thereof in 5 public places in said town.

(b) Whenever a contract is let or is about to be let for the grading, paving or other improvement of any highway, street or alley, the total assessments levied to defray the costs thereof, and also each individual assessment may be divided into equal instalments of not more than 10 in number, and for the purpose of anticipating the collection of any assessments it is lawful and the town board is authorized to issue bonds payable out of such instalments as provided in s. 66.54.

(c) There is imposed upon all towns in which, under this subsection, highways, streets or alleys are to be graded, paved or otherwise improved, all of the powers vested in cities under s. 66.54, and all of the duties by such section imposed upon the common council and board of public works, mayor, city clerk and city treasurer, shall be performed by the town board, town chair-

man, town clerk and town treasurer, and such bonds shall be signed by the town chairman and attested by the town clerk; and where notice is required to be published such notices may be given as provided in par. (a).

(27) ACQUIRE LANDS FOR STREETS. To acquire land to lay out and open, change, widen or extend any street, lane or alley and to exercise all powers relative thereto as are conferred on village boards by ch. 61.

(29) LAKE IMPROVEMENTS BY TOWN. The town board of any town may cause improvements to be made in any lake situated in such town. The expense of such work or improvement may be paid in whole or in part by the town or by the property to be benefited thereby as the town board may determine, but in no case shall the amount assessed to any parcel of real estate exceed the benefits accruing thereto by such improvement. Or whenever there is presented to the town board of any town a petition in writing signed by at least a majority of the owners of riparian property on any lake situated in said town, praying that said lake be improved as set forth in said petition, the town board shall make or cause to be made such improvements and shall assess benefits and damages against such riparian property in the manner provided in sub. (26), and the provisions of said subsection, so far as applicable, shall govern.

(30) IMPROVEMENTS IN VILLAGE. Whenever the town board is authorized by resolution of the town meeting adopted pursuant to s. 60.18 (12) to exercise the powers relating to villages and conferred on village boards, and in the exercise of such powers determines to provide in any unincorporated village in said town any convenience or public improvement, including the lighting of streets, then the cost thereof shall be assessed upon all property within the boundaries of the unincorporated village.

(31) TOWN BOARD MAY BRING ACTIONS. The town board of any town is authorized to institute an action to test the validity of an ordinance attaching or detaching its territory or a part thereof to or from any town, village or city, and any expense incurred by the town board, its agents, attorneys or representatives in such action or proceedings shall be paid by the town.

(32) EXCHANGE TOWN TAXES FOR COUNTY LANDS. The town board is empowered to authorize the town treasurer to exchange the town delinquent real estate tax credit existing with the county for county-owned lands.

(33) TOWN LOANS TO SCHOOL DISTRICTS. The town board of any town may loan money to the board of any common or union high school district operating under the district system wholly or partly located within the town in such

sums as are needed to meet the immediate expenses of maintaining the schools of such district, and such district board may borrow accordingly and give their note therefor. No such loans shall be made to extend beyond August 30 nor in an amount exceeding one-half of the estimated receipts as certified by the state superintendent of public instruction and the local school clerk, at a rate of interest to be determined by the town board.

(35) RESIDENT PHYSICIANS AND NURSE PRACTITIONER. The town board of any town comprised entirely of one or more islands may annually appropriate such sums as the board determines, to pay as a retainer, for the purpose of maintaining a physician or if no physician is available, a nurse practitioner as a resident within the town.

(38) JOINT PARTICIPATION. To join with the state, counties and other municipalities in a cooperative arrangement as provided by s. 66.30, including the acquisition, development, remodeling, construction, equipment, operation and maintenance of land, buildings and facilities for regional projects, whether or not such projects are located within the town.

(39) CEMETERY FENCES. To provide for fences to inclose cemeteries that have been abandoned or neglected when the board by majority vote shall so determine. Any person who destroys or carries away any such fence shall be punished by a fine of not to exceed \$25 or by imprisonment for not more than 30 days or both.

(40) VACATION OF ALLEYS. The town board of any town may by ordinance adopted by a majority of the members thereof and in conformity with s. 66.296 vacate alleys located in such town, provided that no alleys immediately in the rear of lands fronting on a state or county trunk highway shall be vacated without the prior approval of the county board of supervisors.

(41) ENTER REGIONAL PLANNING PROGRAMS. To act jointly with other municipalities in the area to establish and maintain a regional planning program to protect the health, safety and general welfare of the town as part of the region, and to make payments out of the general fund for the proportional share of the cost of such program.

(42) FENCES IN SUBDIVISIONS. If the town board is authorized by resolution of the town meeting under s. 60.18 (12) to exercise the powers relating to villages and conferred on village boards, the town board may by ordinance require a subdivider to construct a legal fence under s. 90.02 on the boundary of a subdivision, as defined under s. 236.02 (8), as a condition of plat approval by the town. For purposes of

maintenance, such a fence shall be partitioned between the adjoining owners under s. 90.05 (2). Compulsory repair of the fence shall be as provided under ss. 90.10 and 90.11.

(43) CO-OPERATE IN COUNTY PLANNING. To co-operate with the county in rural planning under ss. 27.015, 59.07 (65) and 59.97.

(44) CONSERVATION OF NATURAL RESOURCES. (a) To appropriate, when authorized at the annual town meeting or at any special meeting by a majority vote of the qualified electors present at the meeting, an appropriate annual sum of money, to be used by the town for conservation of natural resources or for payment to bona fide nonprofit organizations for conservation of natural resources within the town limits or beneficial to the town, however, no portion of the appropriation may be turned over to a nonprofit organization unless the organization has filed plans and details of the work to be done and discloses the owner of the property on which the improvements are to be made and the plans are first approved by the town board. No work of this nature may be undertaken on any of the lakes and streams of the town without the consent and approval of the department of natural resources.

(b) For the purpose of this subsection only the town clerk shall cause to be posted in 3 public places in the town, giving at least 15 days' and not more than 20 days' notice of any annual or special town meeting at which the appropriations provided under par. (a) are to be considered and acted upon. The town clerk shall also cause to be published as a class 1 notice, under ch. 985, in the town, a copy of such notice at least 5 days prior to the time appointed for such meeting. Such notice shall specify particularly the purpose for which the appropriation is to be used if approved at the meeting.

(45) TOWN INDUSTRIAL DEVELOPMENT AGENCY. May appropriate money for and create a town industrial development agency or to any nonprofit agency organized to engage or engaging in activities hereinafter enumerated, appoint an executive officer and provide a staff and facilities to promote and develop the resources of the town. To this end the agency may, without restriction because of enumeration, develop data regarding the industrial needs, advantages and sites in the town, acquaint the purchaser with the products of the town by promotional activities, coordinate its work with that of the county planning commission, the department of development and private credit development corporations and to do all things necessary to provide for the continued improvement of the industrial climate of the town.

(46) REIMBURSE SCHOOL DISTRICTS FOR TRANSPORTATION IN HAZARDOUS AREAS. Upon adoption of an ordinance by a majority of the members of the town board, to reimburse a school district for costs incurred in providing transportation in hazardous areas under s. 121.54 (9) for pupils who reside in the town.

History: 1971 c. 40, 154, 164; 1973 c. 107; 1975 c. 39; 1975 c. 147 s. 54; 1975 c. 180, 188, 199, 421, 428; 1977 c. 18; 1977 c. 29 ss. 1650m (4), 1654 (8) (c); 1977 c. 229; 1979 c. 110 s. 60 (11); 1979 c. 361 s. 112; 1981 c. 171, 281.

Cross Reference: See 118.105 for control of traffic on school premises.

A city is not liable for failure to respond to a fire in a town in the absence of contract or assumed liability. (18) and (18m) do not create a liability on the town when the city fails to respond to a call and it has no fire department of its own or contract with another. *Kramer v. Hayward*, 57 W (2d) 302, 203 NW (2d) 871.

Only officially convened meeting of the town board will suffice to authorize the town to commence an action. *Town of Naseweaupe v. City of Sturgeon Bay*, 77 W (2d) 110, 251 NW (2d) 845.

See note to 66.30, citing *Village of McFarland v. Town of Dunn*, 82 W (2d) 469, 263 NW (2d) 167.

Under (20), each town board providing fire protection and whose fire fighting facility responds to a fire call occasioned by a motor vehicle fire on a county trunk highway maintained by the county is entitled to reimbursement by the county an amount not to exceed \$100. 63 Atty. Gen. 326.

See note to 66.29, citing 66 Atty. Gen. 284.

Town having fire department must provide protection for county-owned property such as a landfill site. 67 Atty. Gen. 6.

Gratuitous payments by railroad, a foreign corporation, to responding fire companies in the past did not create legal obligation to pay volunteer fire department for costs of extinguishing fires in township involving railroad's trains. *Alenton Volunteer Fire Dept. v. Soo Line Railroad Co.* 372 F Supp. 422.

60.295 Street name changed by board. The town board may whenever it may deem necessary, change the name of any street in the township not located in an incorporated village therein.

60.30 Town sanitary districts; definition, purposes. (1) Town sanitary districts may be created for the purpose of purchasing, establishing or constructing surface or storm water sewers, drainage improvements, sanitary sewers, or a system or systems of waterworks, sewerage, garbage or refuse disposal or all of such improvements or any combination thereof, within a town or towns or portions thereof; and to that end may sue and be sued. The definitions in s. 144.01 are applicable hereto. A sanitary district may sell any of its services to users outside its corporate limits. The term "sewerage" as used in ss. 60.30 to 60.309 shall be considered a comprehensive word, including all constructions for collection, transportation, pumping, treatment and final disposition of sewage.

(2) Town sanitary districts may be created, governed and maintained as hereinafter provided in any town, towns or part thereof, provided that no such town sanitary district shall include any territory included within an incor-

60.30 TOWNS

porated village or city at the time of organization of such district. The fact that any of such territory shall be contained in a metropolitan sewerage district or contained in any other district shall not operate to preclude the valid organization of such town sanitary district, it being the intention of the legislature to permit auxiliary sewer construction by such town sanitary districts, in addition to the main sewers and intercepting sewers constructed or to be constructed by such metropolitan sewerage districts.

A town board may restrict the authority of a town sanitary district to engage in one or more of the activities which are the purposes for which such districts may be created. When the town board order contains no limitation, the sanitary district created thereby may exercise all of the powers contained in ch. 60. 61 Atty. Gen. 431.

60.301 Town board may establish sanitary district. The town board of any town in this state is vested with jurisdiction, power and authority when the conditions stated in s. 60.303 (3) are found to exist, to establish town sanitary districts. Where the proposed district is in more than one town, the town board of the town containing the largest assessed valuation of taxable property within the proposed district shall have jurisdiction.

60.302 Petition. (1) WHO TO MAKE. Except as provided in sub. (6), before any town board shall establish a district under s. 60.301, a petition requesting such establishment shall be filed with the town clerk, addressed to the town board and signed by at least 51% of the persons owning real estate or the owners of at least 51% of the land, within the limits of the territory proposed to be organized into such district.

(2) AMENDMENTS, PRESUMPTIONS. No petition with the requisite signatures shall be declared null and void on account of alleged defects, but the town board may at any time permit the petition to be amended in form and substance to conform to the facts, by correcting any errors in such petition. Several similar petitions or duplicate copies of the same petition for the organization of the same district may be filed prior to the time of the hearing of the first petition, and shall be considered the same as though filed with the first petition. Every such petition shall be presumed to have been signed and executed by the persons whose signatures appear thereon, until proof to the contrary shall have been made.

(3) CONTENTS. The petition shall set forth: (a) the proposed name of said town sanitary district; (b) the necessity for the proposed work; (c) that the public health, comfort, convenience, necessity or public welfare will be promoted by the establishment of such district and

that the property to be included therein will be benefited by such establishment; (d) the boundaries of the territory to be included in the proposed work; and (e) a general outline of the proposed improvement.

(4) VERIFICATION, PLAT. The petition shall be verified by one of the petitioners, and shall be accompanied by a plat or sketch indicating the approximate area and boundaries of the district.

(5) BOND. At the time of filing the petition, or at any time subsequent thereto and prior to the time of the hearing on said petition, a bond shall be filed by the petitioners, with security approved by the town board, sufficient to pay all the expenses connected with the proceedings in case the town board refuses to organize the district. If at any time during the proceedings the town board shall deem the bond first executed to be insufficient, it may by order require the execution of an additional bond within a time fixed, but not less than ten days from the date of such order. Upon failure of the petitioners to execute the same, the petition may be dismissed by the town board.

(6) LARGE TOWNS. In any town which, at the time of the proposed creation of a town sanitary district, contains an area of at least 180 square miles, a town sanitary district may be formed by resolution of the town board if, at the time of adopting the resolution, the town board is empowered under s. 60.18 (12) to exercise the powers of village boards.

History: 1973 c. 109.

60.303 Hearings, time, notice, boundaries, approval, limitations. (1) Upon receipt of the petition the town board shall arrange a hearing to be held not later than thirty days from the date of presentation of the petition, at which time all interested property owners may be present and offer objections, criticisms or suggestions to the necessity of the proposed district as outlined and to the question whether their property will be benefited by the establishment of such district. Any person wishing to object to the organization of such district may, before the date set for the hearing, file his objections to the formation of such district with the town clerk.

(2) Notice announcing the hearing and stating the boundaries of the proposed district, shall be published in the county in which the district or some part thereof is located as a class 2 notice, under ch. 985.

(3) Upon the hearing, if it shall appear to the town board after consideration of all objections, that the petition is signed by the requisite owners of real estate as provided in s. 60.302 (1), and that the proposed work is necessary, and that the

public health, comfort, convenience, necessity or public welfare will be promoted by the establishment of such district, and the property to be included in the district will be benefited by the establishment thereof, the town board, by formal order, shall declare its findings and shall establish the boundaries and shall declare the district organized and give it a corporate name by which in all proceedings it shall thereafter be known, and thereupon the district shall be a body corporate with the powers of a municipal corporation for the purposes of carrying out ss. 60.30 to 60.309.

(4) If the town board finds that the territory set out in the petition should not be incorporated into a town sanitary district, it shall dismiss said proceedings and tax the cost against the signers of the petition. If the district is established, certified bills covering the reasonable cost and disbursements of the petitioners may be presented to the commissioners provided for in s. 60.305 and paid out of the funds of the district.

(5) The department of health and social services and the department of natural resources shall be notified of the hearing to be held for the creation of such district, by mailing notice addressed to them, such notice to be deposited in the mail not less than 10 days prior to the date set for such hearing, and the department of health and social services and the department of natural resources shall be represented at the hearing and shall advise with the town board.

(6) Should it appear to the town board at said hearing that other territory not included in the original petition should be included within the town sanitary district, the property owners in such additional territory shall be duly notified in like manner as provided in connection with the original hearing on the organization of such district, and a subsequent hearing shall be held at the time and place fixed by the town board. In establishing the town sanitary district, the town board shall eliminate territory represented in the petition, if it shall find that such territory will not be benefited by the establishment of the district.

(7) Copies of the order by the town board establishing such town sanitary district shall be filed with the department of natural resources and with the register of deeds in each county in which the district is situated. In counties having a population in excess of 250,000, the register of deeds shall provide an index for such orders, shall number such orders in consecutive numerical order and shall be entitled to a fee of 50 cents for each such filing.

(8) In the case of additions to any such district, the petition requesting such addition shall be signed by at least 51% of the persons

owning real estate or the owners of at least 51% of the land within the limits of the territory proposed to be added to such district. All additions heretofore made to town sanitary districts under petitions as set forth in this subsection are validated.

(9) (a) Any town sanitary district may be consolidated with a contiguous town sanitary district by resolution passed by a two-thirds vote of all the commissioners of each district, fixing the terms of the consolidation and ratified by the qualified electors of each district at a referendum held in each district. The ballots shall bear the words "for consolidation," and "against consolidation," and if a majority of the votes cast thereon in each town sanitary district shall be for consolidation, the resolutions shall then be in effect and shall have the force of a contract. Certified copies of the resolutions, and the results of the referendum shall be filed with the secretary of the department of natural resources, and similar copies shall be filed with the register of deeds in the county or counties in which the consolidated districts are situated. Consolidation shall not affect the preexisting rights or liabilities of any town sanitary district and actions thereon may be commenced or completed as though no consolidation had been effected.

(b) Within 60 days after the date of a referendum effecting consolidation, the appropriate town board shall appoint or provide for an election for the purpose of selecting 3 town sanitary district commissioners for the district resulting from such consolidation, and the provisions of s. 60.305 (1) shall be applicable thereto.

History: 1971 c. 164 s. 87.

60.304 Review. Any party aggrieved by any act of the town board in the establishment of a town sanitary district may bring action in the circuit court of the county in which his or her lands are located, to set aside the action of the board, within the time after the final determination by the board provided by s. 893.73 (2). Unless action is so taken within such period, the determination by the town board shall be conclusive.

History: 1979 c. 323.

60.305 Commissioners, appointment, qualifications, terms, pay; contracts, malfeasance. (1) (a) When a town sanitary district is situated in territory lying within 2 or more towns, or when the district has been created in territory in one or more towns and a portion thereof is incorporated as or annexed to a city or village, the town board of the town containing the largest assessed valuation of taxable property of the district lying in 2 or more

towns, or the town board of a town in which the major portion of the patrons reside when a portion of the district is incorporated as a city or village, shall within 60 days after December 1, 1955, or of the creation of a new district having territory in 2 or more towns, or of incorporation or annexation of part of the district, appoint or provide for an election for the purpose of selecting 3 town sanitary district commissioners. Commissioners shall be so appointed or elected by the qualified electors of the district for a term of 2 years. Successor commissioners shall be appointed in the same manner or elected by the qualified electors of the district for like terms at the regular spring election in such towns and villages held in odd-numbered years. The terms of all commissioners appointed or elected in 1955 shall expire on the first Monday of April 1957. If the commissioners have been appointed and a change to election of the commissioners is requested by a petition submitted to the town board of the town containing the largest assessed valuation of taxable property or the major portion of the patrons in the district it shall call a special election for the election of commissioners within 60 days from the date of receipt of the petition. The petition shall be signed by at least 20% of the qualified electors of the district. Commissioners elected at a special election shall take office 30 days after the election and shall serve until the first Monday of April of the next year in which a regular town election is held. Successor commissioners shall be elected at such election or at the regular spring election of such year or both. Any vacancy may be filled by appointment for the remainder of the unexpired term. The salary, if any, of the commissioners and the treasurer shall be fixed by the town board of the town having the largest assessed valuation of taxable property or the major portion of the patrons in the district. Where all the territory of a town sanitary district lies within one town, the town board may by a two-thirds vote constitute itself as the commissioners of the town sanitary district. If the town board does not constitute itself as the commissioners of the town sanitary district, then the town shall within 60 days provide for appointment or election of 3 sanitary commissioners as provided in this section. All sanitary district commissioners shall be property owners and residents of the sanitary district, except that where the sanitary district is composed primarily of summer resort property only one of the commissioners is required to be a resident of the district. The requirements of this section for appointment or provision for election of commissioners within 60 days after December 1, 1955, shall not apply to districts wherein commissioners were elected in 1955 prior to December 1, 1955. So far as applicable ss. 5.01

(2), 5.60, 7.15 (2) (d) and 8.50 shall apply to special elections of commissioners under this section.

(b) Notwithstanding any provision in par. (a) to the contrary, after July 12, 1961, of the commissioners first appointed or elected in a newly established sanitary district one shall be appointed or elected for a term of 2 years, one for a term of 4 years and one for a term of 6 years and their successors shall be appointed or elected for terms of 6 years each; and of the commissioners appointed or elected to succeed commissioners whose terms expire after July 12, 1961, and prior to July 1, 1963, one shall be appointed or elected for a term of 2 years, one for a term of 4 years and one for a term of 6 years and thereafter successor commissioners shall be appointed or elected for terms of 6 years each; and of the commissioners appointed or elected to succeed commissioners whose terms expire after July 1, 1963, one shall be appointed or elected for a term of 2 years, one for a term of 4 years and one for a term of 6 years and thereafter successor commissioners shall be appointed or elected for staggered 6-year terms. This paragraph does not apply to members of a town board constituted as the commissioners of the town sanitary district.

(2) No commissioner of any town sanitary district shall be in any manner, directly or indirectly interested in any contract with or work or labor done for or material furnished to the sanitary district or to anyone on its behalf. In case of a violation of this section such commissioner or officer shall forfeit not less than \$50 nor more than \$500; but this section shall not apply to the publication of legal notices required to be published by any sanitary district or a commissioner thereof, at a rate not higher than that prescribed by law nor to any contract not exceeding \$1,000 in any one year.

(3) All contracts in excess of \$2,500 for the performance of any work or the purchase of any materials for the sanitary district shall be let by the commissioners to the lowest bidder in the manner they prescribe.

History: 1975 c. 333; 1977 c. 391; 1979 c. 110.

60.306 Commission; powers, duties. (1)

The town sanitary district commission shall have charge of all affairs of the town sanitary district. Such commission shall organize by electing one of its members president and another secretary, and may provide a corporate seal of the town sanitary district. The secretary shall keep a separate record of all proceedings and minutes of meetings and hearings. The secretary shall at the end of each fiscal year, such year to correspond with the fiscal year of the town in which the sanitary district is located,

submit to such town board a report showing a complete audit of the financial transactions covered by this fiscal period and the report shall be incorporated in the annual report of the town containing the largest assessed valuation of taxable property in the district. The treasurer of the town having the largest assessed valuation of taxable property within the district shall act as treasurer of the district, and shall furnish such additional bond as the commission may require. Where the town board constitutes the sanitary district commission the chairman of the town shall act as president and the town clerk shall act as secretary.

(2) The commission shall project, plan, construct and maintain a system or systems of waterworks, garbage or refuse disposal or sewerage, including sanitary sewers, surface sewers or storm water sewers, provide for sewage collection, provide chemical treatment of waters for the suppression of swimmers' itch, algae and other nuisance-producing aquatic growths, or all of such improvements or any combination thereof necessary for the promotion of the public health, comfort, convenience or public welfare of such district, and such commission is authorized to enter into contracts and take any or all proceedings necessary to carry out such powers and duties. The commission may require the installation of private sewage systems.

(2m) The commission may make rules and regulations and issue orders to promote and preserve public sanitation. Such rules, regulations and orders shall be published in the district as a class 1 notice, under ch. 985.

(3) (a) On or before November 1 of each year, the commission shall levy a tax upon all the taxable property in the district, apportioned among the municipalities on the basis of equalized full value as determined by the department of revenue to carry out the provisions and perform the duties required under ss. 60.30 to 60.309. The amount of this tax in excess of that required for maintenance and operation and for principal and interest on bonds or promissory notes may not exceed, in any one year, one mill on each dollar of the equalized full value of all taxable property in the district. The commission shall certify in writing to the clerks of the municipalities having territory in the district the total amount of tax levied against the taxable property in each municipality lying in whole or in part within the district.

(b) As used in this subsection "equalized full value" means the assessed value adjusted to reflect full value as determined under s. 70.57.

(4) The commission may provide an office, fix and collect charges for garbage disposal and sewage collection, and collect water rentals in

the manner provided by law which charges and rentals shall constitute a general fund for the operation and maintenance of the garbage or waterworks systems the same as for any public utility.

(5) Any such town sanitary district may proceed under s. 66.076 to establish sewer rentals or sewerage service charges for all or any of the purposes provided under said section together with all subsequent amendments thereto, and all provisions of s. 66.076 so far as applicable shall apply to such town sanitary districts.

History: 1975 c. 17; 1981 c. 20, 282.

60.307 Powers to borrow money and issue bonds.

(1) Every such district may issue bonds for the construction or extension of surface or storm water sewers, drainage improvements, sanitary sewers, or a system or systems of waterworks, sewerage, garbage or refuse disposal, or all of same or any combination thereof, or for the purpose of procuring rights of way or appurtenances. The commission in any such district about to issue bonds shall adopt a resolution stating the amount of the proposed issue, the purpose or purposes of said issue and such other and further information as the commission may deem necessary or useful.

(2) Every such resolution shall be offered and read at a meeting of the commission at which all the commissioners are present, and shall be published within said district as a class 2 notice, under ch. 985, within the 30 days next following such reading and in order to be effective such resolution shall be passed at a meeting of the commissioners at which all members are present. When any such resolution shall be passed, it shall be recorded by being copied at length in a record book kept for that purpose.

(3) Such resolution shall be submitted to a vote of the electors of said district, if within thirty days after the recording thereof there shall be filed in the office of the secretary of the commission a petition requesting said submission, signed by electors numbering at least ten per cent of the votes cast for governor in the district at the last general election. When any such petition shall have been filed, the commission shall call a special election for the purpose of submitting the resolution for the proposed bond issue to the electors of the district for approval, and shall designate the polling place or places and direct the secretary of the commission to give notice thereof as hereinafter provided. Such notice of election shall be posted in three public places in the district not less than ten days prior to the date of the election. The proceedings in connection with said special election shall conform as near as may be with s. 67.05 (5), together with all subsequent amend-

ments thereto. The votes shall be counted by the inspectors and a return made thereof to the commission, which shall canvass the results of such election and certify the results thereof to the clerks of the several towns having territory within such district, and such certificates shall be filed in the official town records of such towns.

(4) The commission shall, at the time of or after the adoption of said resolution, and before the issuance of any of the contemplated bonds, levy by resolution a direct annual tax sufficient in amount to pay, and for the express purpose of paying, the interest on such bonds as it falls due, and also to pay and discharge the principal thereof at maturity.

(5) After the issue of the bonds, the commission shall, on or before November 1 in each year, certify in writing to the clerks of the towns having territory in the district the total amount of the tax to be raised by each municipality, and upon receipt of the certificate the clerk of each town shall place the certificate on the tax rolls, to be collected as other taxes are collected, and the moneys, when collected, shall be paid to the treasurer of the district.

(6) Every bond so issued by a town sanitary district shall be a negotiable instrument, payable to bearer, but may be registered as to principal, and shall mature in a period not exceeding 20 years from the date thereof and bear interest. It shall contain a statement of the equalized value of all of the taxable property in the district, the aggregate amount of the existing bonded indebtedness of such district, and that a direct annual irrevocable tax has been levied by the district sufficient to pay the interest thereon when it falls due and also to pay and discharge the principal thereof at maturity.

(7) The bonds shall be executed in the name of the town sanitary district, by the president and secretary, and shall be sealed with the seal of the district, provided that such district has a seal. The bonds shall be negotiated and sold, or otherwise disposed of, for not less than par and accrued interest, by the commission, and such negotiation and sale or other disposition may be effected by disposition from time to time of portions only of the entire issue, when the purpose for which the bonds have been authorized does not require an immediate realization upon all of them.

(8) Any such town sanitary district, when in temporary need, is authorized to borrow money pursuant to the provisions and limitation applicable to cities of s. 67.12, together with all subsequent amendments thereto.

(9) Any such town sanitary district, in lieu of levying a direct annual irrevocable tax for the

express purpose of paying the interest on such bonds and of discharging the principal thereof at maturity, is authorized to borrow money and issue mortgage bonds in the manner provided by s. 198.14 (10). Any such town sanitary district may provide in the ordinance or resolution authorizing the issuance of such mortgage bonds that the mortgage bonds, or such ones thereof as may be specified, shall, to the extent and in the manner prescribed, be subordinated and be junior in standing, with respect to the payment of principal and interest and the security thereof, to such other mortgage bonds of the town sanitary district which are payable in whole or in part from the revenue of the same waterworks, sewerage, garbage or refuse disposal system or from the same combined system as are specified in such ordinance or resolution.

(10) Any such town sanitary district is authorized to provide for the operation as a single enterprise of its waterworks, sewerage, garbage and refuse disposal systems, or of any part or combination thereof. When any town sanitary district shall issue any new mortgage bonds under this subsection, which are payable from the revenue of the combined waterworks, sewerage, garbage or refuse disposal system, or any part thereof, if there shall be outstanding mortgage bonds payable solely from the same combined waterworks, sewerage, garbage and refuse disposal systems, or any part thereof, then such new mortgage bonds may be issued subject to such outstanding mortgage bonds, with respect to the payment of principal and interest and the security thereof, or may include an amount sufficient to retire such outstanding bonds.

History: 1979 c. 110 s. 60 (13); 1981 c. 20, 282.

60.308 Validation of town sanitary districts. (1) Whenever any town board, by resolution entered upon its records, created a district before March 16, 1935 for the purpose of sanitary improvements and described the territory included therein, pursuant to a petition reciting that it is signed by 60 per cent of the persons owning real estate not used for agricultural purposes, and constituting 60 per cent of the land area within the proposed district, such district and the proceedings had in connection with the organization thereof are hereby legalized and validated, and it is expressly found and determined that such district is for the promotion of the public health, comfort, convenience, necessity and public welfare, and that the property included therein is benefited by the formation thereof. From and after March 16, 1935, such district shall be subject to and shall operate under ss. 60.30 to 60.309, and commissioners shall be appointed to carry out the provisions of

said sections in the manner hereinbefore provided.

(2) All election proceedings before March 16, 1935, in such district for the authorization and issuance of bonds for the purpose of constructing improvements of a sanitary nature, within the district, such bonds being payable from taxes based on the value of the taxable property within the district, are hereby legalized and validated, if the bonds do not exceed any constitutional debt limitation, and the commission of such district appointed and acting, or to be appointed under ss. 60.30 to 60.309 shall, without further referendum, complete the issuance and delivery of the bonds under ss. 60.30 to 60.309, and the bonds, when delivered to the purchaser and paid for at a price of not less than par and accrued interest to date of delivery, shall constitute the legal and binding obligations of the town sanitary district, payable from taxes based on the value of the taxable property in the district.

History: 1979 c. 110.

60.309 Special assessments. (1) The commission may levy special assessments to finance the activities of the district, using the procedures specified for a city that levies special assessments under s. 66.60 and assuming the powers and duties of a city under that section.

(4) All special assessments heretofore levied by town sanitary districts and all special assessment B bonds heretofore issued by town sanitary district commissioners in accordance with this section are hereby validated.

History: 1981 c. 282.

60.31 Alteration of sanitary districts. (1)

(a) When any territory which includes an entire town sanitary district shall be incorporated as a city or village, or when such territory shall be annexed to any city or village, such sanitary district shall thereupon be dissolved.

(b) The property of such district shall pass to the city or village and all assets and liabilities of any such district shall be assumed by such city or village. If any mortgage bonds or mortgage certificates are outstanding the transfer of the property shall be subject to such bonds or certificates. If any general obligation bonds are outstanding the city or village shall cause to be levied and collected upon all taxable property in such city or village in one sum or in annual instalments an irrevocable tax in an amount necessary to pay the interest and principal of such bonds when due.

(c) Special assessments levied by the former district shall continue to be collected by the city or village and shall be applied to the purpose for which the original assessment was made.

(2) (a) When any territory served by the town sanitary district with water or sewerage service which includes less than an entire town sanitary district is incorporated as a city or village or when such territory is annexed to a city or village then pars. (b) and (c) shall apply as of the date of incorporation or annexation as to future incorporations and annexations and as of June 12, 1951 as to incorporations or annexations which have previously occurred. However, in the event that any territory which includes less than an entire town sanitary district is incorporated as a city or village or when such territory is annexed to a city or village, and such territory is not served with water or sewer by the town sanitary district and the sanitary district has no obligations which require payment for longer than one year following the incorporation or annexation, such incorporation or annexation shall act to detach such territory from the town sanitary district.

(b) There shall be a division of assets and liabilities in accordance with s. 66.03, except that the ownership of any water or sewerage system shall be determined as provided by par. (c).

(c) Any water or sewerage system, including all mains and all property of the system, shall belong to and be operated by the sanitary district or the city or village, in whichever the major portion of the patrons shall reside on the date specified in par. (a), unless other provision shall be made by agreement of the governing body of the city or village and the sanitary district commission. Express power is hereby granted to the governing body of the city or village and the sanitary district commission to contract with each other relative to the operation and property of any water or sewerage system. Special assessments levied theretofore shall continue to be collected by the district or city or village which is operating the facilities and shall be applied to the purpose for which the original assessment was made.

(d) In determining the major portion of the patrons each location served shall be considered as one patron irrespective of the manner in which the title to the property may be held.

(e) When the responsibility for continuing the operation is vested in the sanitary district it shall continue, except by agreement, until the proportion of users changes so that a majority of the patrons shall reside in the city or village, at which time the property and the responsibility shall shift to the city or village.

(3) No city or village which secures a system pursuant to this section shall be required to serve an area outside its corporate limits greater than that included in the district at the time of annexation or incorporation, but shall continue

to serve the area previously included within the sanitary district.

(4) Any city or village which obtains a water or sewerage system under this section may:

(a) Continue, alter or discontinue operation by a sanitary district commission.

(b) Continue or discontinue existing methods of financing construction and operation of the system.

(c) Finance or refinance the system under s. 66.066 including issuance of refunding bonds authorized in s. 66.066 (2) (b), and s. 67.04 including issuance of refunding bonds authorized in s. 67.04 (2) (r) and s. 67.12 (12) for purposes therein stated or for refunding purposes.

(d) Levy special assessments within the district under s. 66.60 regardless of residence of the patron. Such special assessments may be levied, regardless of the time when the improvement was commenced or completed, when used for refunding purposes in conjunction with issuance of general obligation-local improvement bonds under s. 66.54 (9) or special assessment bonds under s. 66.54 (10).

(e) Towns shall aid cities and villages and villages and cities shall aid towns in the levy and collection of special assessments, property taxes and all service charges hereunder by entering same, applicable to town, city or village residents, on town, city or village assessment and tax rolls and collecting and forwarding such moneys to the levying municipality.

History: 1973 c. 73, 243; 1975 c. 355

Where city annexed an area within town sanitary district, city had right to install new sewer to service properties in area. *Washington Heights S. Dist. v. Eau Claire*, 64 W (2d) 330, 219 NW (2d) 317.

60.315 Town board or department of natural resources may establish sanitary district.

(1) When the department of natural resources (referred to in this section as "the department") through public hearing finds that private sewage disposal systems or private water supply systems or both, in towns are so located and operated that they cause or tend to cause a menace to health or comfort, or pollution of surface waters, and determines that there is no local action to correct the situation, it shall certify such fact to the towns in which such area is located and specify the proposed work which is necessary and the property which is to be included in the district. The town clerks of the area to be affected shall be given at least 30 days' notice by mail of the hearing and the town board shall publish a class 2 notice, under ch. 985, of the hearing.

(2) Upon receipt of such certification from the department of natural resources the town board may order the establishment of a sanitary

district pursuant to ss. 60.302 to 60.305 without the necessity of a petition requesting the establishment of such a district as is provided for in s. 60.302, subject to review proceedings under sub. (4).

(3) If the town board fails to proceed under sub. (2) for a period of 45 days following receipt of the certification provided for in sub. (1), the department shall issue an order establishing the district, which order shall describe the district. A copy of the order shall be filed with the register of deeds in the county or counties in which the district is situated and a copy shall be filed with the town clerk or clerks in which the district is situated. Making and filing the order shall establish the district without any further action by the town board or boards, subject to review proceedings under sub. (4).

(4) (a) Substantially as provided in s. 144.025 (7) (a), 10% of the persons owning real estate within the district or the owners of 10% of the land therein may upon petition secure a review by the town board or department of the necessity and reasonableness of such order or the town board or boards in which the district is situated may upon petition secure a review by the department.

(b) The determination of the department shall be subject to judicial review in the manner provided by ch. 227.

(5) After the district has been established the provisions of s. 60.305 relating to commissioners shall apply. If no review proceedings are brought under sub. (4) (a) within 60 days after the establishment of the district, or if review proceedings under sub. (4) are had resulting in the affirmance of the order establishing the district and no steps are taken to appoint commissioners within 60 days after final affirmance the department may appoint 3 commissioners residing within the district for 2-year terms. Thereafter if the commissioners are elected or appointed other than by the department the commissioners shall serve staggered terms as provided in s. 60.305. But if at any time there is a failure to appoint or elect commissioners or to fill vacancies as provided in s. 60.305 and such failure continues for a period of more than 60 days the department may make the appointments and fill the vacancies by appointment of persons residing within the district. The department shall make appointments and fill vacancies so the commissioners serve staggered terms as provided in s. 60.305. Notice of all appointments of commissioners by the department shall be filed with the town clerk or clerks in which the district is situated.

(6) Except as otherwise provided in this section and unless clearly inapplicable all other

statutes relating to town sanitary districts shall apply to town sanitary districts created by order of the town board or department.

(7) In lieu of establishing a sanitary district pursuant to sub. (2), a town board may create a utility district as specified in s. 66.072 following certification by the department as to necessity for community action.

(8) The town board, upon request of the commissioners of a sanitary district, may after public hearing increase the territory of a sanitary district to include lands contiguous to and benefited by the sanitary district. The town board of the area to be affected shall publish notice of the hearing in a newspaper of general circulation in the proposed area being considered for addition to the district at least 10 days prior to the hearing.

History: 1975 c. 333; 1979 c. 34 s. 2102 (39) (g); 1981 c. 374 s. 150.

60.316 Dissolution of sanitary districts.

An existing sanitary district created pursuant to s. 60.301 to 60.315 may be dissolved by a procedure similar to that by which it was created. Review proceedings, similar to those that may be utilized following creation of a district, may be initiated by 10% of the property owners of the area comprising a district.

60.32 Auditing accounts; meetings for; vacancies in board.

The town board shall meet on the 2nd Tuesday of January, and at such other times as they deem necessary to audit and settle all charges against the town and if the 3 supervisors are not present, the chairman, or in his or her absence, either of the other supervisors attending, shall fill the vacancy by selecting a qualified elector of the town. The elector if so chosen shall take and file the usual oath of office, so as to make a board of audit composed of 3. No such special meeting may be held unless notice is given to each supervisor at least 2 days prior to the time fixed, and no one but supervisors may act on the board of audit at the special meetings.

History: 1977 c. 305, 418, 447.

60.33 Duties of board of audit. It shall be the duty of such board of audit:

(1) To examine and audit the accounts separately of each town officer authorized by law to receive or disburse money for all moneys received and disbursed.

(2) To examine and audit every account, or demand for which a money judgment only is demandable, presented against the town, and to indorse thereon the amount allowed and disallowed, stating the items; and no allowance shall be made on any account which does not specifi-

cally state each item, with the date, amount and nature thereof separately. Such statement shall be verified by the affidavit of the claimant, his agent or attorney and filed with the town clerk; and no such claim against any town shall be acted upon or considered by any town board unless such statement shall have been so made and filed.

(3) To examine into the character and circumstances of every other demand presented against the town which they are not authorized to audit, and in their report give a summary thereof, with such recommendation as they think fit.

(4) To draw up a report stating in detail the items of accounts audited and allowed, the nature of each and the person to whom allowed; the same in respect to accounts disallowed, and also setting forth a statement of the fiscal affairs of the town, with an estimate of the sum necessary to be raised for the current expenses for the support of the poor or for any other authorized purpose for the ensuing year, and adding such recommendations as they see fit, and to cause a sufficient number of copies of the report to be typewritten, multigraphed or printed to insure a reasonable distribution thereof in the town, or in lieu thereof, to cause such report to be published as a class 1 notice, under ch. 985.

60.34 Report to be read. Such report shall be produced and publicly read by the town clerk at the next ensuing town meeting; and the whole or any portion of such report may be referred, by the order of such meeting, to a committee, whose duty it shall be to examine the same and report thereon to such meeting.

60.35 Numbering and contents of town orders.

(1) The amount of any account audited and allowed by the town board shall be paid as provided in s. 66.042 insofar as said section applies to towns. No town board shall authorize payment of a sum in excess of the amount which the town is authorized to appropriate for the purpose for which such payment is to be made. Any person whose claim has been allowed in part may receive payment for the part so allowed without prejudice to his right of action against such town as to the part disallowed.

(2) All order checks issued by a town shall be numbered consecutively as drawn.

Cross Reference: As to judgments on town orders, see 67.26.

60.36 Filing claims. No action may be brought or maintained against a town upon a

claim or cause of action unless the claimant complies with s. 893.80.

History: 1977 c. 285; 1979 c. 323 s. 33.

60.37 Landmarks. Whenever a town meeting shall have lawfully ordered the erection of landmarks the town board shall procure a sufficient number of monuments of stone or other durable material, each not less than three feet in length and six inches square, and either all dressed, with perpendicular sides and a square, flat top having engraved therein a cross formed by lines connecting the corners of said top, or having engraved on the top of such as shall be set at section corners the number of each section for which such monument forms a landmark in figures, and those set for quarter posts "1/4S.," as the board shall order; or, when authorized by resolution adopted by the town meeting, of three inch iron pipes not less than one-quarter inch in thickness, and three feet long, either galvanized or coal charred to prevent rust, and having screwed to the top thereof a flat plate likewise engraved, with a suitable plate or anchor at the lower end, and shall also contract with the county surveyor or any competent surveyor for the survey of all the sections of said town and the erection of such monuments, at such corners in said town as the board shall order; each to be set two and one-half feet in the ground except when in highways, when the top shall be made even with or below the surface. Such surveyor shall, before the signing and delivery of such contract, give a bond to the town in the sum of three thousand dollars, with sufficient sureties to be approved by the board, conditioned that he will make a correct and true survey of all the sections in said town and cause landmarks to be set permanently at the section and quarter-section corners as established by United States survey, and faithfully perform such work and the duties imposed upon him according to law.

60.38 Minutes of survey; location of landmarks. Such surveyor shall make in all cases a certificate setting forth correct and full minutes of the survey, and giving exact bearings and distances of each monument from each other monument nearest it on any line in such town; and such statement shall be recorded in the office of the register of deeds. Such landmarks shall in all cases be set on section corners and quarter posts established by the United States survey; but if there be a clerical error or omission in the government field notes or the bearing trees, mounds or other locating evidences specified therein be destroyed or lost, and there be no other reliable evidence by which said corners can be identified, said surveyor shall reestablish said corners under the rules

adopted by the general government in the survey of the public lands. Such surveyor shall, in all cases, set forth such action in his certificate of the survey.

Resurveys of the public lands discussed. 66 Atty. Gen. 126.

60.39 Location of section corners. Whenever any section corners upon the public highways cannot be identified the town board may, without previous vote of the town meeting, have such corners located by a competent surveyor and cause landmarks similar to those above provided for to be erected at such corners so established.

60.40 Relocation and perpetuation of section corners. All expense and cost incurred under and pursuant to s. 59.63 shall be apportioned by the town clerk and collected as therein directed.

60.41 Landmarks evidence. All landmarks set under authority of ss. 60.37 to 60.40 shall be presumptively deemed to be at the section and quarter-section corners, as originally established by the United States survey, at which they respectively purport to be set.

60.42 Expense, how paid. In case any town shall vote in favor of the erection of permanent landmarks the town board shall ascertain the amount of money requisite for such purpose and deliver a statement of such amount to the town clerk, who shall add said amount to the other amounts to be raised for town purposes for the current year, and insert the same in the tax roll, and it shall be collected and paid into the treasury in like manner as other town taxes.

60.43 Town clerk's bond. Every town clerk shall execute and file an official bond.

60.44 Deputy; duties. Each town clerk may appoint one or more deputies for whom the town clerk shall be responsible. A deputy shall take and file the official oath. In case of the absence, sickness or other disability of the clerk, a deputy shall perform the clerk's duties and receive the same compensation unless the town board appoints a person to act as clerk.

History: 1981 c. 196

60.45 Duties of clerk. It shall be the duty of the clerk:

(1) To act as clerk of all town meetings, perform all the duties of clerk of election and keep faithful minutes of all the proceedings, and record such minutes and enter at length every order, resolution or direction and all rules and regulations made by the meeting in the book of

town records; and if in his absence another person shall have acted in his stead, to record the minutes taken by him of the proceedings.

(2) To transmit to the county clerk within ten days after any town meeting a certified statement of all town officers elected at the same, showing the post-office address of the chairman, treasurer, assessor and town clerk, and promptly to notify him of any subsequent changes in either of said last-named offices, and to notify the persons elected when required by s. 60.20.

(3) To forthwith notify the county treasurer of the appointment by the town board of any town treasurer.

(4) To transmit to the clerk of the circuit court, immediately after the election or appointment of any municipal judge in the town, a written notice, stating the name of each such municipal judge and the term for which elected or appointed, and when to fill vacancy, who was the last incumbent of the office, and likewise the name of every constable after he or she has qualified.

(5) To record every request for any special vote or any special meeting, and to properly post the requisite notices thereof as required by law.

(6) To post up, in at least three of the most public places in the town, fair copies of all by-laws made by the town, and enter over his hand in the town records, in connection with such by-laws, the time when and the places where the same were posted.

(7) To act as clerk of the town board, to keep and record faithful minutes of their proceedings, and to enter at length every vote, order, direction, resolution or regulation made by the board or by the supervisors in their official capacity, and to file all accounts audited by the board or allowed at town meeting and enter a statement thereof in the book of records.

(8) To furnish to the town board of audit at the annual meeting every statement received from the county treasurer of money paid to the town treasurer and all other information respecting the fiscal affairs of the town in his possession, and all accounts, claims and demands against the town filed with him.

(9) To have the custody and to safely keep all accounts, oaths of office, bonds, records, files, papers and property received from his predecessor or other persons and required by law to be deposited in his office, and all books, records and papers of the town not otherwise provided for by law, and to deliver all the same to his successor; and if the town board has provided a fireproof safe for his use, to keep therein all bonds, records, books, papers and documents in his custody as clerk which the capacity of such safe

will permit, and securely lock such safe at all times when it is not necessary that it be unlocked, and for each failure to so use and lock the same he shall forfeit to the town not less than \$10 nor more than \$100; he shall also permit any person with proper care to examine any such books, records and papers and make and certify a copy of any thereof when required, on payment of his fees therefor.

(11) To demand and obtain the official books and papers of any municipal judge when his or her office becomes vacant and his or her successor is not elected or appointed and qualified, or when any municipal judge dies, and dispose of the same as required by law.

(12) To post copies of the report of the town board to the annual town meeting on the morning of the day of such meeting in three public places as convenient as possible for the examination thereof by the electors.

(13) To report to the people assembled at the annual town meeting, at the time fixed for the transaction of town business, the provisions of these statutes relating to the protection of life and property against forest fires, and relating to the destruction of noxious weeds as required by s. 66.96.

(14) To report to the co-ordinator of the co-operative educational service agency which contains the largest proportion of the county's equalized valuation within 10 days after his election or appointment his name and post-office address, and likewise the name and post-office address of each district clerk within 10 days after the same are filed in his office.

(15) To record such description of school districts, and such orders concerning the organization, alteration or dissolution thereof as shall be made by the town board.

(16) To make and keep in his office a map of the town, showing the exact boundaries of all the school districts therein as appear from the records on file, and when a new district is formed to make and furnish a map thereof to the district clerk.

(17) To apportion the school money collected by the town and that received from the state for the several school districts of the town on the third Monday of March each year, or as soon as the same shall be collected or received by the town treasurer, to the several districts and parts of districts within the town as provided in these statutes.

(18) To make and transmit on or before August 1 in each year, to the co-ordinator of the co-operative educational service agency in which the largest proportionate amount of equalized valuation of his town is situated 2 copies of a report, stating the whole number of

school districts separately set off within the town, and the number of parts of joint districts in which the schoolhouses belonging thereto are located in his town.

(19) To issue licenses, when granted by the town board, upon the presentation to him of the town treasurer's receipt for the prescribed fee.

(20) To perform the duties required in chs. 5 to 12 respecting elections; in chs. 115 to 121, respecting public instruction; and chs. 80 to 92, respecting highways, bridges and drains, and such other duties as may be required by law.

History: 1975 c. 394 s. 27; 1977 c. 305; 1979 c. 89.

60.46 Delivery of papers to clerk of new town. When a new town is organized embracing any part of an old town the clerk of the new town shall receive all the papers and files removable and copy all records, papers and files not so removable, in the office of the clerk of such old town, which belong or pertain to such new town or any of the inhabitants thereof or lands therein; and the clerk of such old town shall deliver such papers and files and shall certify such copies; and the same, being deposited in the office of the clerk of the new town, shall have the same effect as if originals and originally filed there.

60.47 Clerk's fees. Every town clerk shall be entitled to receive from any person requiring services the following fees therefor:

For recording any mark or brand, twelve cents.

For giving a certificate thereof, the same.

For making copies of any records or papers or any part thereof, when required, seven cents for each folio and twelve cents for a certificate that the same is a correct copy of said record or papers or the part thereof required.

History: 1975 c. 41 s. 51; 1975 c. 199.

60.48 Town treasurer's bond. Every town treasurer and every deputy of a town treasurer shall execute and file an official bond which may be furnished by a surety company under s. 632.17 (2) in a sum to be fixed at not less than the whole amount of money estimated to come into his hands during his term, except in towns where the town board is authorized to exercise village powers the amount of such bond shall be set by the town board.

History: 1971 c. 248; 1975 c. 375 s. 44; 1981 c. 196.

60.49 Duties of treasurer. It shall be the duty of the town treasurer:

(1) To receive and take charge of all moneys belonging to the town, or which are required by law to be paid into the town treasury, and to pay

out the same only in the manner provided by s. 66.042.

(2) To preserve all books, papers and property appertaining to or filed in his office.

(3) To keep a true itemized account of all moneys whatsoever received by him upon any account by virtue of his office and of the disbursement thereof, and to exhibit such account and all moneys in his custody or under his control as such treasurer, and to make oath, if so required, that such moneys are the funds of the town, and deliver all his vouchers to the town board of audit at its annual meeting.

(4) To collect and pay over taxes, making return of delinquents, and to perform all the duties appertaining thereto required of the town treasurer by chs. 70 to 79.

(5) To apply for and receive from the county treasurer all moneys apportioned for the use of common schools in his town and to pay the same, together with all moneys collected in the town for the support of the schools, to the treasurers of the districts entitled to receive them upon the order or apportionment of the town clerk.

(6) (a) To pay to the district treasurer on demand all school district taxes raised in each district and collected by him, and the amount of all school district taxes returned to the county treasurer of his county as delinquent, whenever the same shall have been paid to him by said county treasurer or whenever he shall receive credit from the county treasurer for such delinquent tax or any part thereof on account of any demand or claim due from such town to such county.

(b) To make partial apportionment of levies by school districts out of any funds available in the town treasury prior to the tax apportionment provided by s. 74.03 (5) within 5 days after the filing of a written request by the school district board. The town board may not deny such a request.

(6m) (a) To pay to the treasurer of the vocational, technical and adult education district, on demand, all taxes raised under s. 38.16 (1) in each such district and collected by him, and the amount of all such taxes returned to the county treasurer of his county as delinquent, whenever the same are paid to him by the county treasurer or whenever he receives credit from the county treasurer for such delinquent tax or any part thereof on account of any demand or claim due from such town to such county.

(b) To make partial apportionment of levies by vocational, technical and adult education districts out of any funds available in the town treasury prior to the tax apportionment provided by s. 74.03 (5), upon the filing of a written

request by the vocational, technical and adult education district board.

(7) To certify to the town clerk on or before the second Monday of March in each year the amount of school money in his hands to be apportioned by said clerk, and immediately upon the receipt of any money from the school fund income to certify the same to the said clerk for apportionment.

(8) To make and forward on the second Monday of June in each year to the clerk of each school district, in whole or in part in his town, a certified statement of the amount of money paid by the town treasurer during the year next preceding to such district treasurer, specifying the date and amount of and the account upon which each such payment was made.

(9) If the town treasurer shall neglect or refuse to pay over the school money which by law should be paid to the town treasurer, he shall commence and prosecute an action on the official bond of such county treasurer for the recovery of such money.

(10) To perform all the duties required of the town treasurer under chs. 115 to 121, relating to public instruction.

(11) To make the statements required in s. 60.51 and perform all other duties required by law.

(12) To deposit immediately upon receipt thereof the funds of the town in the name of the town in the public depository designated by the board. Failure to comply with the provisions hereof shall be prima facie grounds for removal from office. When the money is so deposited, the treasurer and his bondsmen shall not be liable for such losses as are defined by s. 34.01 (6). The interest arising therefrom shall be paid into the town treasury.

History: 1971 c. 154; 1979 c. 34, 89.

60.491 Deputy; duties. Each town treasurer may appoint a deputy for whom the treasurer shall be responsible. The deputy shall take and file the official oath. In case of the absence, sickness or other disability of the treasurer, the deputy shall perform the treasurer's duties and receive the same compensation unless the town board appoints a person to act as treasurer.

History: 1981 c. 196.

60.50 Annual audit of town treasury. If a town combines the office of town clerk and town treasurer under s. 60.60 (2) (b), the town board shall appoint at least once every fiscal year a certified public accountant not otherwise employed by the town to audit the town records.

History: 1979 c. 130.

60.51 Statements as to receipts. Every town treasurer shall, on the Saturday next preceding the annual session of the county board, make out in duplicate a written statement of the whole amount of moneys received by him as treasurer during the year preceding that day which he has paid or ought by law to pay to the county treasurer, showing particularly the several amounts thereof, the dates and persons or officers respectively, when and from whom received and for what the same was so paid to him; also showing the amounts which he has paid the county treasurer and the dates thereof. He shall also, at the expiration of his term of office or whenever he vacates the same, make a like statement of moneys received and payments made of which he has not previously filed such a statement. He shall verify by affidavit or officially certify all such statements to be true and correct and to contain the full amount of moneys received during the period of time included therein and immediately file the same with the town clerk. One of each such statements shall be annually filed by the chairman at the time of the annual session of the county board with the county clerk.

60.52 Penalty. Every town treasurer who shall refuse or neglect to make and file any such statement as required in s. 60.51 shall forfeit not less than \$20 nor more than \$200, one-half for the benefit of the prosecutor.

60.53 Constables' bonds. Every constable shall execute and file an official bond.

60.54 Constables' duties. The constable shall:

(1) Serve within his county any writ, process, order or notice, and execute any order, warrant or execution lawfully directed to or required to be executed by him by any court or officer.

(2) Attend upon sessions of the circuit court in his county when required by the sheriff.

(3) Inform the district attorney of all trespasses on public lands of which he has knowledge or information.

(5) Impound cattle, horses, sheep, swine and other animals at large on the highways in violation of any duly published order or bylaw adopted at an annual town meeting.

(6) Cause to be prosecuted all violations of law of which he has knowledge or information.

(6m) Keep his office in the town, village or city for which he was elected or appointed. No constable who keeps his office outside the limits of such municipality shall receive fees for any service performed during the period such office is maintained.

(7) Perform all other duties required by any law.

See note to 946.41, citing *State v. Christensen*, 100 W (2d) 507, 302 NW (2d) 448 (1981).

See note to 968.04, citing *State v. Monje*, 105 W (2d) 66, 312 NW (2d) 827 (Ct. App. 1981).

Town constable may make arrests for violations of state traffic laws and enforce town traffic ordinances. 68 Atty. Gen. 254.

60.55 Constables' fees. Constables shall collect the same fees prescribed for sheriffs in s. 814.70 for similar services.

History: 1981 c. 317.

60.555 Constable abolished, cities of first class. The office of constable is abolished in cities of the first class. The duties of the constable in such cities shall be performed by the sheriff of the county in which the city is located. Any constable in a city of the first class now holding office shall remain in office until his term expires.

60.56 Acting constable; no fees, when. When the services of constables are performed by any other person except a party to the action, the same fees shall be allowed as constables are entitled to receive and no more. No constable may serve or execute any summons, writ or process in any action or proceeding wherein he or she is agent or attorney for the plaintiff or interested in the collection of the claim sought to be recovered, nor recover any costs, fees or expenses, nor may any costs or fees be taxed for any services rendered in violation of this section.

History: 1981 c. 317.

60.60 Compensation of town officers; combination of offices. (1) (a) The compensation of town supervisors, treasurers and town clerks shall be fixed by the annual town meeting. The compensation may be:

1. An annual salary.

2. A per diem compensation for each day or parts of a day necessarily devoted to the service of the town in the discharge of duties.

3. An annual salary and a per diem compensation under subd. 2.

(b) Except as provided under sub. (2) (b), no town officer may be compensated by the town for acting in more than one official capacity or office at the same time.

(2) (a) In the town in any county containing one town only, the town board may, by resolution, designate any town office a part-time position, combine 2 or more town offices, including the offices of town clerk and assessor, and, if concurred in by the county board, combine the offices of town clerk and county clerk and any other town and county offices if the offices combined are not incompatible and the combi-

nation is not expressly forbidden by law. If the town and county boards agree to combine a county and town office, the election shall be for the combined office under s. 59.12 and no separate election for the town office may be held until the county board, by resolution, abandons such combination and the town board, by resolution, concurs.

(b) Any annual town meeting may combine the offices of town clerk and town treasurer or designate the office of town clerk, the office of town treasurer or the combined office of town clerk and town treasurer part-time. The election for a combined office shall be under s. 60.19. No separate election for town clerk or town treasurer, if combined, may be held unless the annual town meeting abandons the combination. Under sub. (1), the annual town meeting may provide for compensation for any office combined or designated part-time under this paragraph.

(4) No salary or compensation rate may be increased or reduced during the term of any elected town official.

History: 1975 c. 39, 188; 1979 c. 127, 130, 355.

A town official is entitled to repayment of expenses when traveling on town business, but payment for lost wages cannot be made without authorization by the town meeting. *State v. Kort*, 54 W (2d) 129, 194 NW (2d) 682.

60.61 Compensation, town assessors. In all towns having an assessed valuation of \$4,000,000 or more, town assessors shall be paid such compensation for their services as may be allowed them by the annual town meeting. In all other towns a per diem compensation shall be fixed by the annual town meeting. This section shall not apply in towns selecting assessors and assistant assessors under s. 60.19 (2) and (3), or where a town has come within the jurisdiction of a county assessor under s. 70.99.

History: 1975 c. 39.

60.62 Erection and control of buildings. Whenever any town shall have legally voted in favor of raising money for the purpose of purchasing or building a town hall or other buildings for the use of such town, the town board shall have power to make all necessary contracts for the purchase or building of the same, and shall have the care, control and management of the same when purchased or built; and whenever any town shall have legally voted in favor of uniting the money of the town with the money of any other corporation or society for such purpose, the town board shall enter into a written contract with such corporation or society to pay all extra expense by reason of such building being built larger or more expensive for the benefit of such corporation or society, and provide that in any case said corpo-

ration or society shall pay one-half the cost of such building; and such town board shall not in either case incur any liability on the part of the town for such building in excess of the sum voted for that purpose. The supervisors and town clerk of such town and three directors or trustees of such corporation or society shall be a board of directors, who shall have the control and management of such building, make all contracts for the purchase or erection thereof, and all rules and regulations as to the occupancy, keeping in repair and insurance of the same. The town board shall, if the vote was to raise the money by tax, cause the sum so voted to be levied and collected as other town taxes; and if the vote was to raise the money by issuing the bonds of the town, then said town board shall have power to issue and negotiate such bonds in the manner set forth in the resolution adopted for that purpose.

60.63 Waterworks; special assessments for deficiency. (1) When the electors of any township shall, as provided by law, have ordered or authorized the building and construction of a waterworks system, and the town board shall, pursuant to such authorization, have ordered the laying of any water main or lateral, forming part of such system owned by the town, the town board shall, before laying the same, in any case where the funds available for the construction of the same authorized by general taxation or bond issue shall be officially determined by such town board to be insufficient to complete such construction, make an assessment upon the property benefited as provided in this section.

(2) The board shall assess against the several lots, parts of lots or parcels of land which abut upon the proposed line of any water main, or which may be contiguous to and used in connection with any such lot or parcel of land, such sum as the board shall determine such lot or parcel of land will be specially benefited thereby, not exceeding one-half of the cost of furnishing and laying a water main of not more than six inches in diameter.

(3) No lot or parcel of land shall be assessed for more than one water main laid in the same street or alley.

(4) Before a water service lateral is laid the town board shall assess as special benefits against the lots, parts of lots or parcels of land to be served by any such lateral a sum equal to the average cost of laying such lateral.

(5) Whenever any lot or parcel of land shall be subdivided by sale or contract or by use or occupation in severalty, after the assessment of special benefits as herein provided, said town board may, after ascertaining such facts, at any time before the special assessment shall have

been entered in the tax roll, make an equitable apportionment of the benefit taxed against such lot or parcel of land among the different subdivisions thereof.

(6) The town board shall file in the office of the town clerk a schedule of the assessments so made, and thereupon such proceedings shall be had before the town board as are required with respect to assessments on account of street improvements under s. 66.60 of the statutes and the provisions of said section, so far as applicable shall apply to the assessments made pursuant to this section, including the provisions made relating to the remedy by appeal from the final determination of the board.

60.64 Waterworks; construction cost, payment. (1) When any contract is let for street improvements, for the construction of any sanitary sewer or sewage works, or surface or storm water sewers, or the laying of any water or heat main or lateral, or the laying or repair of any sidewalk, and such work or a portion thereof is chargeable to the real estate to be benefited thereby, it may provide that the amount so chargeable may be paid with certificates against the parcels of real estate so benefited, or special improvement bonds or the proceeds of the sale of such bonds, or that payment may be in part made in certificates or in part in special improvement bonds or the proceeds of the certificates or special improvement bonds.

(2) Section 66.54, relative to payment for public work and special improvement bonds issued therefor in cities shall apply to towns, so far as applicable thereto, and the town board shall have all powers therein conferred, and to perform all duties assigned to boards of public works in cities, and the town clerk and town treasurer shall perform all duties therein assigned to the city clerk and city treasurer respectively.

60.65 Sidewalks. (1) The town board may cause sidewalks to be constructed upon a petition of a majority of the owners of frontage on either side of any part of a highway who own one half or more of the frontage of property abutting upon that portion of the highway on which it is proposed to build such sidewalks and may cause any sidewalk to be repaired or replaced without any petition pursuant to s. 66.615. The provisions of said section are made applicable to towns except that the superintendent of highways shall serve the required notice upon the abutting property owners.

(2) Any person residing in any town may build and construct sidewalks along the line of any street or highway, of any suitable material,

not exceeding 8 feet wide, upon premises owned or occupied by him, and keep the same in repair; and any person who shall pile timber, wood, posts or lumber, or lead or drive any team or animal, or place any offal upon, or otherwise obstruct the travel on any sidewalk built as aforesaid or otherwise, or wilfully injure the same shall be liable to a fine of \$2 for every such offense, and shall also be liable to the owner thereof for all damages. Whenever the public convenience or safety requires any such sidewalk to be repaired, the board of supervisors shall give written notice to the parties owning the property in front of which such sidewalk is laid, if known and residing in said town, and if unknown or not residents thereof, shall post written notices in 3 or more public places in said town requiring such repairs to be made, and also prescribing that unless such sidewalk therein specified be repaired, to the satisfaction of such board within 3 days thereafter, they will repair the same at the expense of the property; and if the same be not in such time repaired, the board shall repair it and certify to the town clerk the cost of the repairs, together with a description of the property in front of which the repairs are made, and said town clerk shall add such cost to the next tax roll, opposite to the description of said property, and the said cost shall be collected as other taxes.

(3) If any sidewalk be built in a town in front of farming property to connect a village with a railroad station or wharf, such sidewalk shall be maintained and kept in repair by the town board, and the board is hereby authorized to assess the expense thereof as a part of the highway tax in their town.

60.68 Obstructions in nonnavigable waters. Whenever any nonnavigable creek or other nonnavigable stream becomes obstructed so that the natural flow of water along the same is prevented, the supervisors of the town in which such obstruction is located may at the expense of the town remove such obstruction, and in so doing may enter upon any land or lands necessary to be entered upon for the carrying out of such purpose.

60.70 Rubbish in roads. Any person who throws or deposits any weeds, sod, brush, cans, machinery or other waste or rubbish in any highway located in any town, without the written permission of the town board may be fined not less than \$10 nor more than \$200 or imprisoned for not more than 30 days or both.

60.71 Reassessments. The provisions of s. 66.635, relating to reassessments of special assessments, shall apply also to towns.

60.72 Solid waste transportation. (1) The town board may by order, ordinance or resolution designate any town highway which provides reasonable access to a solid waste disposal site or facility licensed under s. 144.44 as appropriate for the transportation of solid waste into, within or through the town for the purpose of disposing of the same at such site or facility, and may in such order, ordinance or resolution prohibit the use of other town highways for that purpose.

(2) Any person or municipality who shall violate any provision of this section shall be punished by a fine of not less than \$5 nor more than \$100, or by imprisonment in the county jail for not more than 6 months, or by both such fine and imprisonment.

History: 1971 c. 42; 1977 c. 377.

60.74 Zoning power. (1) (a) In a county which has not adopted a county zoning ordinance as provided by s. 59.97 any town may by ordinance:

1. Regulate, restrict and determine the areas within which agriculture, forestry, mining and recreation may be conducted, the location of roads, schools, trades and industries, the location, height, bulk, number of stories and size of buildings and other structures, the percentage of lot which may be occupied, size of yards, courts and other open spaces, the density and distribution of population, and the location of buildings designed for specified uses, and establish districts of such number, shape and area as may be necessary for these purposes;

2. Establish setback building lines;

3. Regulate, restrict and determine the areas in or along natural watercourses, channels, streams and creeks in which trades and industries, filling or dumping, erection of structures and the location of buildings may be prohibited or restricted;

4. Adopt an official map or maps which will show areas, outside the limits of incorporated villages and cities, which the town board deems best suited to carry out the purposes of this section;

5. For each such district, impose regulations designating the location, height, bulk, number of stories and size of buildings and other structures, percentage of lot which may be occupied, the size of yards, courts and other open spaces, density and distribution of population, the trades, industries or purposes that shall be included or subjected to special regulations and the uses for which buildings may not be erected or altered.

6. As an exercise of its zoning and police powers for the purpose of promoting the health, safety and general welfare of the community and of the state, regulate any place, structure or object with a special character, historic interest, aesthetic interest or other significant value, for the purpose of preserving the place, structure or object and its significant characteristics. The town may create a landmarks commission to designate historic landmarks and establish historic districts. The town may regulate all historic landmarks and all property within each historic district to preserve the historic landmarks and property within the district and the character of the district.

(am) A town board may not proceed as provided in this section unless it petitions the county board, at any regular or special meeting to adopt a county zoning ordinance as provided by s. 59.97. If the county board fails or refuses at that meeting to direct its zoning agency to proceed as provided by s. 59.97; or, if such directions to proceed are given but the report of the zoning agency and the tentative ordinance pursuant thereto are not presented to the county board within one year; or if so presented and the county board at its next meeting thereafter fails to adopt the ordinance, a town board may proceed under this section. The provisions of this subsection shall be applicable in every respect to regulating and restricting trailer camps or tourist camps or both.

(b) Any such town board may by ordinance regulate, restrict and determine the location, height, bulk, number of stories and size of buildings and other structures and objects of natural growth, in any territory in the town in the vicinity of any airport owned by the town or privately owned, and may divide the territory into several areas and impose different restrictions with respect to each area which restrictions may be applicable to the entire town or only a portion thereof. In the exercise of its power under this paragraph, the town board may, by eminent domain, remove or alter any buildings, structures or objects of natural growth which are contrary to the restrictions imposed in the area in which they are located, except railroad buildings, bridges or facilities, provided that telegraph, telephone and overhead signal system poles and wires may not be exempt from the operation of this section.

(2) If such town has a town park commission organized as provided by law, such commission shall recommend boundaries of such districts and appropriate regulations and restrictions to be imposed therein. If the town has no town park commission, the town board may appoint a town zoning committee of 5 members to perform the duties of the town park commission under

this section. The town park commission or zoning committee shall first formulate a tentative report and shall hold public hearings thereon before submitting a final report to the town board. After such final report is submitted, and the ordinance pursuant thereto adopted, the town board may alter, supplement or change the boundaries or regulations contained in such ordinance as herein set forth, but a class 2 notice, under ch. 985, of any such proposed changes shall first be published in the town prior to the hearing. A hearing shall be granted to any person interested, at a time and place to be specified in the notice.

(3) In case a protest against a proposed amendment, supplement or change be presented, duly signed and acknowledged by the owners of 20 per cent or more of the frontage proposed to be altered, or by the owners of at least 20 per cent of the frontage immediately in the rear thereof, or by the owners of at least 20 per cent of the frontage directly opposite the frontage proposed to be altered, such amendment shall not be passed unless recommended by a majority vote of the town park commission or town zoning committee.

(4) The town board shall prescribe such rules and regulations as it may deem necessary for the enforcement of the provisions of all ordinances enacted in pursuance of this section. Such rules and regulations and the districts, setback building lines and regulations specified in sub. (1) shall be prescribed by ordinances which shall be designed to promote the public health, safety and general welfare. Such ordinances shall be enforced by appropriate fines and penalties. Compliance with such ordinances may be also enforced by injunctive order at the suit of such town or the owner or owners of real estate within the district affected by such regulation. Such ordinances shall not prohibit the continuance of the use of any building or premises for any trade or industry for which such building or premises are used at the time such ordinances take effect, but the alteration of, or addition to, any existing building or structure for the purpose of carrying on any prohibited trade or new industry within the district where such buildings or structures are located may be prohibited.

(5) The powers herein granted shall be liberally construed in favor of the town exercising them, and this section shall not be construed to limit or repeal any powers now possessed by any such town.

(6) (a) Immediately after the publication of a town zoning ordinance, it shall be the duty of the board of supervisors of such town to cause to be made a record of the present use of all buildings and premises used for purposes not in

conformity with the regulations of the district in which such buildings and premises are situated, such record to contain the names and addresses of the owner or owners of such nonconforming use, and of any occupant other than the owner, the legal description or descriptions of land and the nature and extent of land use. Such record shall be published in the town as a class 1 notice, under ch. 985. Within 60 days after such final publication, upon presentation of proof to the town board, errors or omissions may be corrected in such record. On expiration of such 60-day period such record shall be filed in the office of the town clerk and a certified copy thereof in the office of the register of deeds. Such record shall constitute prima facie evidence of the extent and number of nonconforming uses existing at the time the ordinance became effective. Errors or omissions in such record shall be corrected by the town board upon the petition by any citizen or by the board on its own motion. Its decision in such matters shall be final.

(b) The town clerk shall furnish to the town assessor, immediately after the filing of the record of nonconforming uses, a record of the nonconforming uses lying within the town. After the assessment of the following year and after each succeeding assessment thereafter the town assessor shall file a written report certified by the board of review with the town clerk listing all nonconforming uses which have been discontinued between the assessment periods. If a nonconforming use has been discontinued any future use of such building, land or premises shall be in conformity with the ordinance regulating land uses in the district. The town clerk shall record discontinued nonconforming uses as soon as reported by the assessors. In this paragraph, "town assessor" includes a county assessor assessing a town under s. 70.99.

(c) The provisions of this subsection shall not apply to those towns issuing building permits as a means of enforcing the zoning ordinance or of checking nonconforming uses or to towns which have instituted other devices for this purpose.

(7) Town boards granted village powers by resolution adopted pursuant to s. 60.18 (12) shall have power to adopt town zoning ordinances in the manner provided in s. 61.35 notwithstanding any provision of this section or s. 60.75 provided, however, that in counties which have adopted a zoning ordinance under s. 59.97 the exercise of the power to adopt a town zoning ordinance shall be subject to approval by a referendum vote of the electors of the town held at the time of any regular annual town meeting. Any zoning ordinance adopted by a town board and any amendment thereof under this subsection shall be subject to the approval of the

county board in counties having a county zoning ordinance.

(8) Town boards acting under s. 60.29 (41) to participate in a regional planning program may adopt town zoning ordinances in the manner provided in s. 61.35 notwithstanding any provision of this section or s. 60.75 provided that:

(a) Such adopted ordinance conforms to the regional plan.

(b) Such ordinance is approved by the county board in counties having a county ordinance.

(c) The electors of the town have had an opportunity to approve or disapprove such ordinance at a regular annual meeting and have not disapproved it.

(9) For purposes of this section, the location of a community living arrangement, as defined in s. 46.03 (22), in any town shall be subject to the following criteria:

(a) No community living arrangement may be established after March 28, 1978 within 2,500 feet, or any lesser distance established by an ordinance of the town, of any other such facility. Agents of a facility may apply for an exception to this requirement, and such exceptions may be granted at the discretion of the local township. Two community living arrangements may be adjacent if the town authorizes that arrangement and if both facilities comprise essential components of a single program.

(b) Community living arrangements shall be permitted in each town without restriction as to the number of facilities, so long as the total capacity of the community living arrangements does not exceed 25 or one percent of the town's population, whichever is greater. If the capacity of the community living arrangements in the town reaches such total, the town may prohibit additional community living arrangements from locating in the township. Agents of a facility may apply for an exception to this requirement, and such exceptions may be granted at the discretion of the town.

(bm) A foster family home which is the primary domicile of a foster parent, which is for 4 or fewer children and which is licensed under s. 48.62 shall be permitted use in all residential areas and is not subject to pars. (a) and (b) except that foster homes operated by corporations, child welfare agencies, churches, associations or public agencies shall be subject to pars. (a) and (b).

(c) If the community living arrangement has capacity for 8 or fewer persons being served by the program, meets the criteria listed in pars. (a) and (b), and is licensed, operated or permitted under the authority of the department of health and social services, the community living arrangement is entitled to locate in any residen-

tial zone, without being required to obtain special zoning permission except as provided under par. (i).

(d) In all cases where the community living arrangement has capacity for 9 to 15 persons being served by the program, meets the criteria listed in pars. (a) and (b), and is licensed, operated or permitted under the authority of the department of health and social services, that facility is entitled to locate in any residential area except areas zoned exclusively for single-family or 2-family residences except as provided in par. (i), but is entitled to apply for special zoning permission to locate in those areas. The town may grant such special zoning permission at its discretion and shall make a procedure available to enable such facilities to request such permission.

(e) In all cases where the community living arrangement has capacity for serving 16 or more persons, meets the criteria listed in pars. (a) and (b), and is licensed, operated or permitted under the authority of the department of health and social services, that facility is entitled to apply for special zoning permission to locate in areas zoned for residential use. The town may grant such special zoning permission at its discretion and shall make a procedure available to enable such facilities to request such permission.

(f) The department of health and social services shall designate a single subunit within the department to maintain appropriate records indicating the location and the capacity of each community living arrangement, and such information shall be available to the public.

(g) In this subsection, "special zoning permission" includes but is not limited to the following: special exception, special permit, conditional use, zoning variance, conditional permit and words of similar intent.

(h) The attorney general shall take all necessary action, upon the request of the department of health and social services, to enforce compliance with this subsection.

(i) Not less than 11 months nor more than 13 months after the first licensure of a community living arrangement and every year thereafter, the town board of a town in which a community living arrangement is located may make a determination as to the effect of the community living arrangement on the health, safety or welfare of the residents of the town. The determination shall be made according to the procedures provided under par. (j). If the town board determines that a community living arrangement's existence in the town poses a threat to the health, safety or welfare of the residents of the town, the town board may order the community living arrangement to cease operation unless special zoning permission is obtained. The order is

subject to judicial review under s. 68.13, except that a free copy of the transcript may not be provided to the community living arrangement. The community living arrangement must cease operation within 90 days after the date of the order, or the date of final judicial review of the order, or the date of the denial of special zoning permission, whichever is later.

(j) A determination made under par. (i) shall be made after a hearing before the town board. The town shall provide at least 30 days' notice to the community living arrangement that such a hearing will be held. At the hearing, the community living arrangement may be represented by counsel and may present evidence and call and examine witnesses and cross-examine other witnesses called. The town board may call witnesses and may issue subpoenas. All witnesses shall be sworn by the town board. The town board shall take notes of the testimony and shall mark and preserve all exhibits. The town board may, and upon request of the community living arrangement shall, cause the proceedings to be taken by a stenographer or by a recording device, the expense thereof to be paid by the town. Within 20 days after the hearing, the town board shall deliver to the community living arrangement its written determination stating the reasons therefor. The determination shall be a final determination.

History: 1977 c. 205, 418; 1981 c. 341, 374.

See note to 62.23, citing 63 Atty. Gen. 34.

Zoning authority of towns in which a countywide zoning ordinance is effective, discussed. 65 Atty. Gen. 288.

60.75 Adjustment board; appointment; powers and duties.

(1) The town board may provide for the appointment of a board of adjustment, and in the regulations and restrictions adopted pursuant to s. 60.74 may provide that such board of adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purpose and intent and in accordance with general or specific rules therein contained. Nothing in this subsection shall preclude the granting of special exceptions by the town zoning agency designated under s. 60.74 (2) or the town board in accordance with regulations and restrictions adopted pursuant to s. 60.74 which were in effect on July 7, 1973 or adopted after that date.

(2) The board of adjustment shall consist of 3 members, who shall be appointed by the town board, but not more than one supervisor shall be a member of the board of adjustment, for terms of 1, 2 and 3 years, respectively, dating from the first day of the month next following the appointment. Successors shall be appointed or elected in like manner at the expiration of each term and their terms of office shall be 3 years in

all cases and until their successors are appointed or elected. The members of the board shall all reside within the town. The board shall choose its own chairman. The town board may compensate the members of such board. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

(3) The town board shall adopt rules for the conduct of the business of the board of adjustment, in accordance with the provisions of any ordinance or ordinances adopted pursuant to s. 60.74. The board of adjustment may adopt further rules as necessary to carry into effect the regulations of the town board. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Such chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

(4) Boards of adjustment under town zoning ordinances shall have the powers and duties provided for boards of adjustment by s. 59.99 and shall carry out their duties in the manner provided for boards of adjustments by s. 59.99.

History: 1973 c. 60.

60.756 Destruction of obsolete town records. Whenever deemed necessary to gain filing space, town officers may subject to the provisions of s. 44.09 destroy obsolete records in their custody as follows:

(1) Notices of tax apportionment received from the county clerk, after 3 years.

(2) Copies of lists of town officers certified to the county clerk by the town clerk, after the date of expiration of the term listed.

(3) Copies of crop reports made to the county clerk by the town assessor, after 3 years.

(4) Records of illegal tax certificates charged back to the town, 3 years after date of charging back the same.

(5) Official bonds, after 6 years.

(6) Claims filed against or paid by the town and papers supporting such claims, after 7 years.

(7) Contracts, notices of taking bids, and insurance policies to which the town is a party, 7 years after the last effective date thereof.

(8) Election notices, and proofs of publication and correspondence filed in connection with such notices, one year after the date of the election, except in cases where an election is

contested, in which case such records shall be retained until one year after the contest has been settled.

(9) Copies of reports of the town treasurer to the county clerk on dog licenses sold and records of dog licenses issued, after 3 years.

(10) Town clerk's copies of receipts issued by the town treasurer, 4 years or until after being competently audited, whichever date is earlier.

(11) Notices given by the county clerk to the town assessors setting out lands owned and sold by the county, after 3 years.

(12) Tax receipts, after 15 years.

(13) All other receipts of the county treasurer, after 7 years.

(14) Canceled checks and town orders, after 7 years.

(15) Oaths of office, 7 years.

(16) Notices for which no other provision is made, after 7 years.

(17) County treasurer's receipts received under s. 74.16, after 15 years.

(18) Correspondence, after 6 years, except correspondence had in connection with records which may be destroyed only after a longer period shall not be destroyed until after such longer period, and except that correspondence had in connection with records which may be destroyed after less than 6 years may be destroyed after such lesser period.

(19) Blanks and papers used by the town assessor in the discharge of his duties, after 7 years. No assessment roll containing forest crop acreage may be destroyed without prior approval of the secretary of revenue.

History: 1971 c. 215.

60.80 Appropriations for civic functions.

The town board may, if authorized by the electors at the annual town meeting, appropriate reasonable sums of money for purposes of gifts or donations to be used in the furtherance of civic functions, agricultural societies, advertising the attractions, advantages and natural resources of said town; attraction of industry to the town; establishment of industrial complexes; establishment, maintenance and repair of ecological areas within the town.

History: 1975 c. 188.

60.81 Towns may become cities. (1) PETITION. Whenever the resident population of any town exceeds 5,000 as shown by the last federal census or by a census herein provided for and is adjacent to a city of the first class and contains an equalized valuation in excess of \$20,000,000 and a petition has been presented and signed by 100 or more persons, each an elector and taxpayer of said town, and, in addition thereto, said petition contains the signa-

tures of at least one-half of the owners of real estate in said town which petition requests submission of the question to the electors of the town and is filed with the clerk of the town, the procedure for becoming a fourth class city is initiated.

(2) REFERENDUM. At the next regular meeting of the town board, said town board by resolution shall provide for a referendum by the electors of said town. The resolution shall observe the requirements of s. 5.15 (1) and (2) and shall determine the numbers and boundaries of each ward of the proposed city, the time of voting, which shall not be earlier than 6 weeks after the adoption of said resolution and said resolution may direct that a census be taken of the resident population of such territory as it may be on some day not more than 10 weeks previous to the date of the election, exhibiting the name of every head of a family and the name of every person a resident in good faith of such territory on such day, and the lot or quarter section of land on which he resides, which shall be verified by the affidavit of the person taking the same affixed thereto.

(3) NOTICE OF REFERENDUM. Notice of the referendum shall be given by publication of the resolution in a newspaper published in such town, if there be one, otherwise in a newspaper designated in the resolution, once a week for 4 successive weeks, the first publication to be not more than 4 weeks before the referendum.

(4) VOTING PROCEDURE. The referendum shall be conducted in the same manner as elections for supervisors of the town board. The question appearing on the ballot shall be "Shall the town of become a 4th class city?". Below the question shall appear 2 squares. To the left of one square shall appear the words "For a city" and to the left of the other square shall appear the words "Against a city". The inspectors shall make a return to the clerk of such town.

(5) CERTIFICATE OF INCORPORATION. If a majority of the votes are cast in favor of a city the clerk shall certify the fact to the secretary of state, together with the result of the census if any, and 4 copies of a description of the legal boundaries of the town and 4 copies of a plat thereof, whereupon the secretary of state shall issue a certificate of incorporation, and record the same in a book kept for that purpose. Two copies of the description and plat shall be forwarded by the secretary of state to the department of transportation and one copy to the department of revenue.

(6) CITY POWERS. Every city thus incorporated shall thenceforth be a body corporate and politic, with the powers and privileges of a municipal corporation at common law and conferred by ch. 62.

(7) EXISTING ORDINANCES. Ordinances in force in the territory or any part thereof, so far as not inconsistent with ch. 62, shall continue in force until altered or repealed.

(8) INTERIM OFFICERS. All officers of the town embracing the territory thus incorporated as a city shall continue in their powers and duties as theretofore until the first meeting of the common council at which a quorum is present. Until a city clerk shall have been chosen and qualified all oaths of office and other papers shall be filed with the clerk, with whom the petition was filed, who shall deliver them with the petition to the city clerk when he shall have qualified.

(9) FIRST CITY ELECTION. Within 10 days after incorporation of the city, the board with the clerk of which the petition was filed shall fix a time for the first city election, designate the polling place or places, and name 3 inspectors of election for each place. Ten days' previous notice of the election shall be given by the clerk by publication in the newspapers selected under sub. (3) and by posting notices in 3 public places in the city. Failure to give such notice does not invalidate the election. The election shall be conducted as is prescribed by chs. 5 to 12, except that no registration of voters shall be required. The inspectors shall make returns to the board which shall, within one week after the election, canvass the returns and declare the result. The clerk shall notify the officers-elect and issue certificates of election. If the first election is on the first Tuesday in April the officers so elected shall commence and hold their offices as for a regular term, as shall also their appointees. Otherwise they shall commence within 10 days and hold until the regular city election and the qualification of their successors, and the term of their appointees shall expire as soon as successors qualify.

History: 1971 c. 304; 1977 c. 29 s. 1654 (8) (c); 1979 c. 89; 1981 c. 4 s. 19; 1981 c. 377.

See note to 808.03, citing *In re Incorporation of Town of Fitchburg*, 98 W (2d) 635, 299 NW (2d) 199 (1980).

60.82 Library theft. The town board may enact and enforce an ordinance to prohibit conduct which is the same as or similar to that prohibited by s. 943.61 and provide a forfeiture for a violation of the ordinance.

History: 1979 c. 245; 1979 c. 355 s. 241.