

## CHAPTER 66

### GENERAL MUNICIPALITY LAW

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**66.01 Home rule; manner of exercise. (1)** Under article XI, section 3, of the constitution, the method of determination of the local affairs and government of cities and villages shall be as prescribed in this section.

**(2)** (a) A "charter ordinance" is any ordinance which enacts, amends or repeals the whole or any part of the charter of a city or village, or makes the election mentioned in sub. (4). Such charter ordinance shall be so designated, shall require a two-thirds vote of the members-elect of the legislative body of such city or village, and shall be subject to referendum as hereinafter prescribed.

(b) Every charter ordinance which amends or repeals the whole or any part of a city or village charter shall designate specifically the portion of the charter so amended or repealed, and every charter ordinance which makes the election mentioned in sub. (4) shall designate specifically each enactment of the legislature or portion thereof, made inapplicable to such city or village by the election mentioned in sub. (4).

**(3)** Every enactment, amendment or repeal of the whole or any part of the charter of any city or village shall be published as a class 1 notice, under ch. 985, shall be recorded by the clerk in a permanent book kept for that purpose, with a statement of the manner of its adoption, and a certified copy thereof shall be filed by said clerk with the secretary of state. The secretary of state shall keep a separate index of all charter ordinances, arranged alphabetically by

city and village and summarizing each ordinance, and annually shall issue such a list of charter ordinances filed during the 12 months prior to July 1.

**(3a)** Every charter ordinance enacted under s. 66.01, 1943 stats., which was adopted by the governing body prior to December 31, 1944, and which also was published prior to that date in the official newspaper of the city or village, or, if there was none, in a newspaper having general circulation in the city or village, shall be valid as of the date of the original publication notwithstanding the failure to publish the ordinance under s. 10.43 (5) and (6), 1943 stats.

**(4)** Any city or village may elect in the manner prescribed in this section that the whole or any part of any laws relating to the local affairs and government of such city or village other than such enactments of the legislature of statewide concern as shall with uniformity affect every city or every village shall not apply to such city or village, and thereupon such laws or parts thereof shall cease to be in effect in such city or village.

**(5)** Any city or village by charter ordinance may make the election mentioned in sub. (4) of this section, or enact, amend or repeal the whole or any part of its charter; but such ordinance shall not take effect until 60 days after its passage and publication. If within such 60 days a petition conforming to the requirements of s. 8.40 signed by a number of electors of the city or village equal

to not less than 7% of the votes cast therein for governor at the last general election shall be filed in the office of the clerk of said city or village demanding that such ordinance be submitted to a vote of the electors it shall not take effect until submitted to a referendum and approved by a majority of the electors voting thereon. Said petition and the proceedings for its submission shall be governed by s. 9.20 (2) to (6).

(6) Any charter ordinance may be initiated in the manner provided in s. 9.20 (1) to (6), but alternative adoption thereof by the legislative body shall be subject to referendum as provided in sub. (5) of this section.

(7) Any charter ordinance may be submitted to a referendum by the legislative body, in the manner prescribed in s. 9.20 (4) to (6), without initiative petition, and shall become effective when approved by a majority of the electors voting thereon.

(8) Every charter, charter amendment or charter ordinance enacted or approved by a vote of the electors shall control and prevail over any prior or subsequent act of the legislative body of the city or village. Whenever the electors of any city or village by a majority vote have adopted or determined to continue to operate under either ch. 62 or 64, or have determined the method of selection of members of the governing board, the question shall not again be submitted to the electors, nor action taken thereon within a period of 2 years. Any election to change or amend the charter of any city or village, other than a special election as provided in s. 9.20 (4), shall be held at the time provided by statute for holding the spring election.

(9) The legislative body of any city or village, by resolution adopted by a two-thirds vote of its members—elect may, and upon petition complying with s. 9.20 shall, submit to the electors in the manner prescribed in s. 9.20 (4) to (6) the question of holding a charter convention under one or more plans proposed in said resolution or petition.

(10) The ballot shall be in substantially the following form:  
Shall a charter convention be held?

YES  NO

If a charter convention be held what plan do you favor?

PLAN 1  PLAN 2

[Repeat for each plan proposed.]

Mark an [X] in the square to the RIGHT of the plan you select.

If a majority of the electors voting thereon vote for a charter convention, such convention shall be held pursuant to the plan favored by a majority of the total votes cast for all plans. If no plan receives a majority, the 2 plans receiving the highest number of votes shall be again submitted to the electors and a convention shall thereupon be held pursuant to the plan favored by a majority of the votes cast.

(11) Such charter convention shall have power to adopt a charter or amendments to the existing charter. Such charter or charter amendments adopted by such convention shall be certified, as soon as may be, by the presiding officer and secretary thereof to the city or village clerk and shall thereupon be submitted to the electors in the manner prescribed in s. 9.20 (4) to (6), without the alternative mentioned therein, and shall take effect only when approved by a majority of the electors voting thereon.

(12) Nothing in this section shall be construed to impair the right of cities or villages under existing or future authority to enact ordinances or resolutions other than charter ordinances.

(14) All laws relating to public instruction, under article X, sections 1 to 5, of the constitution, remain and shall continue in force for the establishment, administration and government of the district schools as heretofore, until amended or repealed by the legislature. The term "district schools" as here used, in addition to common schools includes, among others, any and all public high schools, trade or technical college schools, auxiliary departments for instruction of pupils who are deaf or of impaired speech or blind, and trunacy or parental schools.

(15) Sections 62.13 and 62.50 and chapter 589, laws of 1921, and chapter 423, laws of 1923, shall be construed as enactments of statewide concern for the purpose of providing uniform regulation of police and fire departments.

(16) Any village having a population of 1,000 or more may proceed under this section to organize as a city of the appropriate class. The village may by charter or charter ordinance adopted under this section elect not to be governed by ch. 62 or this chapter in whole or in part or may create such system of government as is deemed by the village to be most appropriate for its situation. The charter or charter ordinance may include provision for the following, without limitation because of enumeration: method of election of members of the council by districts, at-large or by a combination of methods, procedure for election of the first common council, creation and selection of all administrative officers, departments, boards and commissions, powers and duties of all officers, boards and commissions and terms of office. The charter or charter ordinance shall not alter those provisions of ch. 62 dealing with police and fire departments or chs. 115 to 121 dealing with education. Any village incorporated after August 12, 1959, may not become a city under this subsection unless it meets the standards for incorporation in ss. 66.015 and 66.016.

**History:** 1971 c. 211; 1977 c. 83 s. 26; 1979 c. 89; 1981 c. 377; 1981 c. 390 s. 252; 1983 a. 36, 192, 538; 1989 a. 192; 1993 a. 213, 399

Charter ordinance must be legislative in character before it can be validly initiated by direct legislation. *Save Our Paramedics v. Appleton*, 131 W (2d) 366, 389 NW (2d) 43 (Ct. App. 1986).

The city of Milwaukee cannot, by charter ordinance, adopt 62.13 (5) (b), Stats. 1967, since 62.13 deals with a subject of state-wide concern; it cannot do so under 62.03 since that requires the adoption of whole sections. 58 Atty. Gen. 59.

#### 66.012 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 signatures 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 that person 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 secre-

tary 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** (a) 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.

(b) A county shoreland zoning ordinance enacted under s. 59.971 that is in force in any part of the territory shall continue in force until altered under s. 59.971 (7) (ad).

(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 the city clerk 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; 1983 a. 532 s. 11; Stats. 1983 s. 66.012; 1991 a. 316; 1993 a. 329.

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

See note to 62.05 citing City of Madison v. Town of Fitchburg, 112 W (2d) 224, 332 NW (2d) 782 (1983).

"Adjacent" under (1) means "contiguous", not "near". City of Waukesha v. Salbahian, 128 W (2d) 334, 382 NW (2d) 52 (1986).

**66.013 Incorporation of villages and cities; purpose and definitions.** (1) **PURPOSE** It is declared to be the policy of this state that the development of territory from town to incorporated status proceed in an orderly and uniform manner and that toward this end each proposed incorporation of territory as a village or city be reviewed as provided in ss. 66.013 to 66.019 to assure compliance with certain minimum standards which take into account the needs of both urban and rural areas.

(2) **DEFINITIONS** As used in ss. 66.013 to 66.019 unless the context requires otherwise:

(a) "Department" means the department of administration.

(b) "Population" means the population of a local unit as shown by the last federal census or by any subsequent population estimate certified as acceptable by the department.

(c) "Metropolitan community" means the territory consisting of any city having a population of 25,000 or more, or any 2 incorporated municipalities whose boundaries are within 5 miles of each other whose populations aggregate 25,000, plus all the con-

tiguous area which has a population density of 100 persons or more per square mile, or which the department has determined on the basis of population trends and other pertinent facts will have a minimum density of 100 persons per square mile within 3 years.

(d) "Metropolitan municipality" means any existing or proposed village or city entirely or partly within a metropolitan community.

(e) "Isolated municipality" means any existing or proposed village or city entirely outside any metropolitan community at the time of its incorporation.

**History:** 1977 c. 29; 1979 c. 361 s. 112; 1991 a. 39.

**66.014 Procedure for incorporation of villages and cities.** (1) **NOTICE OF INTENTION** At least 10 days and not more than 20 days before the circulation of an incorporation petition, a notice setting forth that the petition is to be circulated and including an accurate description of the territory involved shall be published within the county in which said territory is located as a class 1 notice, under ch. 985.

(2) **PETITION** (a) The petition for incorporation of a village or city shall be in writing signed by 50 or more persons who are both electors and freeholders in the territory to be incorporated if the population of the proposed village or city includes 300 or more persons; otherwise by 25 or more such electors and freeholders.

(b) The petition shall be addressed to and filed with the circuit court of a county in which all or a major part of the territory to be incorporated is located; and the incorporation petition shall be void unless filed within 6 months of the date of publication of the notice of intention to circulate.

(c) The petition shall designate a representative of the petitioners, and an alternate, who shall be an elector or freeholder in the territory, and state that person's address; describe the territory to be incorporated with sufficient accuracy to determine its location and have attached thereto a scale map reasonably showing the boundaries thereof; specify the current resident population of the territory by number in accordance with the definition given in s. 66.013 (2) (b); set forth facts substantially establishing the standards for incorporation required herein; and request the circuit court to order a referendum and to certify the incorporation of the village or city when it is found that all requirements have been met.

(d) No person who has signed a petition shall be permitted to withdraw his or her name therefrom. No additional signatures shall be added after a petition is filed.

(e) The circulation of the petition shall commence not less than 10 days nor more than 20 days after the date of publication of the notice of intention to circulate.

(f) **HEARING; COSTS.** (a) Upon the filing of the petition the circuit court shall by order fix a time and place for a hearing giving preference to such hearing over other matters on the court calendar.

(b) The court may in its discretion by order allow costs and disbursements as provided for actions in circuit court in any proceeding under this subsection.

(c) The court may in its discretion, upon notice to all parties who have appeared in the hearing and after a hearing thereon, order the petitioners or any of the opponents to post bond in such amount as it deems sufficient to cover such disbursements.

(4) **NOTICE** (a) Notice of the filing of the petition and of the date of the hearing thereon before the circuit court shall be published in the territory to be incorporated, as a class 2 notice, under ch. 985, and given by certified or registered mail to the clerk of each town in which the territory is located and to the clerk of each metropolitan municipality of the metropolitan community in which the territory is located. The mailing shall be not less than 10 days prior to the time set for the hearing.

(b) The notice shall contain:

1. A description of the territory sufficiently accurate to determine its location and a statement that a scale map reasonably



showing the boundaries of the territory is on file with the circuit court.

2. The name of each town in which the territory is located.

3. The name and post-office address of the representative of the petitioners.

(5) **PARTIES** Any governmental unit entitled to notice pursuant to sub. (4), any school district which lies at least partly in the territory or any other person found by the court to be a party in interest may become a party to the proceeding prior to the time set for the hearing.

(6) **ANNEXATION RESOLUTION** Any municipality whose boundaries are contiguous to the territory may also file with the circuit court a certified copy of a resolution adopted by a two-thirds vote of the elected members of the governing body indicating a willingness to annex the territory designated in the incorporation petition. The resolution shall be filed at or prior to the hearing on the incorporation petition, or any adjournment granted for this purpose by the court.

(7) **ACTION** (a) No action to contest the validity of an incorporation on any grounds whatsoever, whether procedural or jurisdictional shall be commenced after 60 days from the date of issuance of the charter of incorporation by the secretary of state.

(b) An action contesting an incorporation shall be given preference in the circuit court.

(8) **FUNCTION OF THE CIRCUIT COURT** (a) After the filing of the petition and proof of notice, the circuit court shall conduct a hearing at the time and place specified in the notice, or at a time and place to which the hearing is duly adjourned.

(b) On the basis of the hearing the circuit court shall find if the standards under s. 66.015 are met. If the court finds that the standards are not met, the court shall dismiss the petition. If the court finds that the standards are met the court shall refer the petition to the department and thereupon the department shall determine whether or not the standards under s. 66.016 are met.

(9) **FUNCTION OF THE DEPARTMENT** (a) Upon receipt of the petition from the circuit court the department shall make such investigation as may be necessary to apply the standards under s. 66.016.

(b) Within 20 days after the receipt by the department of the petition from the circuit court, any party in interest may request a hearing. Upon receipt of the request, the department shall schedule a hearing at a place in or convenient to the territory sought to be incorporated.

(c) Notice of the hearing shall be given in the territory to be incorporated by publishing a class 2 notice, under ch. 985, and by mailing the notice to the designated representative of the petitioners or any 5 petitioners and to all town and municipal clerks entitled to receive mailed notice of the petition under sub. (4).

(d) Unless the court sets a different time limit, the department shall prepare its findings and determination citing the evidence in support thereof within 90 days after receipt of the reference from the court. The findings and determination shall be forwarded by the department to the circuit court. Copies of the findings and determination shall be sent by certified or registered mail to the designated representative of the petitioners, and to all town and municipal clerks entitled to receive mailed notice of the petition under sub. (4).

(e) The determination of the department made in accordance with the standards under ss. 66.015, 66.016 and 66.021 (1) (c) shall be either:

1. The petition as submitted shall be dismissed;

2. The petition as submitted shall be granted and an incorporation referendum held;

3. The petition as submitted shall be dismissed with a recommendation that a new petition be submitted to include more or less territory as specified in the department's findings and determination.

(f) If the department determines that the petition shall be dismissed, the circuit court shall issue an order dismissing the petition. If the department grants the petition the circuit court shall order an incorporation referendum as provided in s. 66.018.

(g) The findings of both the court and the department shall be based upon facts as they existed at the time of the filing of the petition.

(h) Except for an incorporation petition which describes the territory recommended by the department under s. 66.014 (9) (e) 3., no petition for the incorporation of the same or substantially the same territory may be entertained for one year following the date of the denial of the petition or the date of any election at which incorporation was rejected by the electors.

(10) **EXISTING ORDINANCES** A county shoreland zoning ordinance enacted under s. 59.971 that is in force in any part of the territory shall continue in force until altered under s. 59.971 (7) (ad).

**History:** 1973 c. 37; 1977 c. 29; 1977 c. 187 s. 134; 1983 a. 219; 1991 a. 316; 1993 a. 329.

Denial referred to in (9) (h) is denial by the department under (9) (e), not dismissal of subsequent court appeal. In re Petition of Tp. of Campbell, 78 W (2d) 246, 254 NW (2d) 241.

Sub. (5) does not empower court to compel joinder. In re Incorporation of Town of Fitchburg, 98 W (2d) 635, 299 NW (2d) 199 (1980).

Discussion of incorporation petition's precedence over a competing annexation proceeding. Town of Delavan v. City of Delavan, 176 W (2d) 516, 500 NW (2d) 268 (1993).

#### 66.015 Standards to be applied by the circuit court.

Before referring the incorporation petition as provided in s. 66.014 (2) to the department, the court shall determine whether the petition meets the formal and signature requirements and shall further find that the following minimum requirements are met:

(1) **ISOLATED VILLAGE** Area, one-half square mile; resident population, 150.

(2) **ISOLATED CITY** Area, one square mile; resident population, 1,000; density, at least 500 persons in any one square mile.

(3) **METROPOLITAN VILLAGE** Area, 2 square miles; resident population, 2,500; density, at least 500 persons in any one square mile.

(4) **METROPOLITAN CITY** Area, 3 square miles; resident population, 5,000; density, at least 750 persons in any one square mile.

(5) **STANDARDS WHEN NEAR FIRST, SECOND OR THIRD CLASS CITY** Where the proposed boundary of a metropolitan village or city is within 10 miles of the boundary of a city of the first class or 5 miles of a city of the second or third class, the minimum area requirements shall be 4 and 6 square miles for villages and cities, respectively.

**History:** 1977 c. 29

Four square mile requirement of (5) was met where 4.2 square miles of village land were proposed for annexation, although 2.5 square miles of that were within floodway lines. In re Petition of Tp. of Campbell, 78 W (2d) 246, 254 NW (2d) 241.

#### 66.016 Standards to be applied by the department.

(1) The department may approve for referendum only those proposed incorporations which meet the following requirements:

(a) **Characteristics of territory** The entire territory of the proposed village or city shall be reasonably homogeneous and compact, taking into consideration natural boundaries, natural drainage basin, soil conditions, present and potential transportation facilities, previous political boundaries, boundaries of school districts, shopping and social customs. An isolated municipality shall have a reasonably developed community center, including some or all of such features as retail stores, churches, post office, telecommunications exchange and similar centers of community activity.

(b) **Territory beyond the core** The territory beyond the most densely populated one-half square mile specified in s. 66.015 (1) or the most densely populated square mile specified in s. 66.015 (2) shall have an average of more than 30 housing units per quarter section or an assessed value, as defined in s. 66.021 (1) (a) for real estate tax purposes, more than 25% of which is attributable to existing or potential mercantile, manufacturing or public utility

uses. The territory beyond the most densely populated square mile as specified in s. 66.015 (3) or (4) shall have the potential for residential or other urban land use development on a substantial scale within the next 3 years. The department may waive these requirements to the extent that water, terrain or geography prevents such development.

(2) In addition to complying with each of the applicable standards set forth in sub. (1) and s. 66.015, any proposed incorporation in order to be approved for referendum must be in the public interest as determined by the department upon consideration of the following:

(a) *Tax revenue.* The present and potential sources of tax revenue appear sufficient to defray the anticipated cost of governmental services at a local tax rate which compares favorably with the tax rate in a similar area for the same level of services.

(b) *Level of services.* The level of governmental services desired or needed by the residents of the territory compared to the level of services offered by the proposed village or city and the level available from a contiguous municipality which files a certified copy of a resolution as provided in s. 66.014 (6).

(c) *Impact on the remainder of the town.* The impact, financial and otherwise, upon the remainder of the town from which the territory is to be incorporated.

(d) *Impact on the metropolitan community.* The effect upon the future rendering of governmental services both inside the territory proposed for incorporation and elsewhere within the metropolitan community. There shall be an express finding that the proposed incorporation will not substantially hinder the solution of governmental problems affecting the metropolitan community.

*History:* 1977 c. 29; 1983 a. 189 s. 329 (14); 1985 a. 297 s. 76

Delegation of legislative power under (2) (d) is constitutional. *Westring v. James*, 71 W (2d) 462, 238 NW (2d) 695.

See note to 66.015, citing *In re Petition of Tp. of Campbell*, 78 W (2d) 246, 254 NW (2d) 241.

Incorporation of town in metropolitan area discussed *Pleasant Prairie v. Local Affairs Dept.* 113 W (2d) 327, 334 NW (2d) 893 (1983).

**66.017 Review of the action.** (1) The order of the circuit court made under s. 66.014 (8) or (9) (f) may be appealed to the court of appeals.

(2) The decision of the department made under s. 66.014 (9) shall be subject to judicial review under ch. 227.

(3) Where a proceeding for judicial review is commenced under sub. (2), appeal under sub. (1) may not be taken and the time in which the appeal may be taken does not commence to run until judgment is entered in the proceeding for judicial review.

(4) Where an incorporation referendum has been ordered by the circuit court under s. 66.014 (9) (f), the referendum shall not be stayed pending the outcome of further litigation, unless the court of appeals or the supreme court, upon appeal or upon the filing of an original action in supreme court, concludes that a strong probability exists that the order of the circuit court or the decision of the department will be set aside.

*History:* 1977 c. 29, 187; Sup. Ct. Order, 146 W (2d) xiii (1988).

Where a petition to incorporate is dismissed due to DOA disapproval under s. 66.014 (9), sub. (2) prevents appellate court review prior to judicial review under ch. 227. *Petition to Incorporate Powers Lake Village*, 171 W (2d) 659, 492 NW (2d) 342 (Ct. App. 1992).

**66.018 Referendum procedure.** (1) **ORDER.** The circuit court's order for an incorporation referendum shall specify the voting place and the date of the referendum, which shall be not less than 6 weeks from the date of the order, and name 3 inspectors of election. If the order is for a city incorporation referendum the order shall further specify that 7 alderpersons shall be elected at large from the proposed city. The city council at its first meeting shall determine the number and boundaries of wards in compliance with s. 5.15 (1) and (2), and the combination of wards into aldermanic districts. The number of alderpersons per aldermanic district shall be determined by charter ordinance.

(2) **NOTICE OF REFERENDUM.** Notice of the referendum shall be given by publication of the order of the circuit court in a newspa-

per having general circulation in the territory. Such publication shall be once a week for 4 successive weeks, the first publication to be not more than 4 weeks before the referendum.

(3) **RETURN.** An incorporation referendum shall be conducted in the same manner as an annexation referendum under s. 66.021 (5) insofar as applicable except that the ballot shall contain the words "For a city [village]" and "Against a city [village]". The inspectors shall make a return to the circuit court.

(4) **COSTS.** If the referendum is against incorporation, the costs of the election shall be borne by the towns involved in the proportion that the number of electors of each town within the territory proposed to be incorporated, voting in the referendum, bears to the total number of electors in the territory voting in the referendum. If the referendum is for a village or city, the costs shall be charged against the municipality in the apportionment of town assets.

(5) **CERTIFICATION OF INCORPORATION.** If a majority of the votes in an incorporation referendum are cast in favor of a village or city, the clerk of the circuit court shall certify the fact to the secretary of state and supply the secretary of state with a copy of a description of the legal boundaries of the village or city and the associated population and a copy of a plat thereof. Within 10 days of receipt of the description and plat, the secretary of state shall forward 2 copies to the department of transportation, one copy to the department of administration, one copy to the department of revenue and one copy to the department of development. The secretary of state shall issue a certificate of incorporation and record the same.

*History:* 1971 c. 304; 1973 c. 37, 90; 1977 c. 29 s. 1654 (8) (c); 1977 c. 273; 1979 c. 361 s. 112; 1981 c. 4 s. 19; 1981 c. 377; 1993 a. 184

Referendum is effective immediately if majority of votes are for incorporation 70 Atty. Gen. 128.

**66.019 Powers of new village or city: elections; adjustment of taxes; reorganization as village.** (1) **VILLAGE OR CITY POWERS.** Every village or city incorporated under this section shall be a body corporate and politic, with powers and privileges of a municipal corporation at common law and conferred by these statutes.

(2) **EXISTING ORDINANCES.** (a) Ordinances in force in the territory incorporated or any part thereof, insofar as not inconsistent with chs. 61 and 62, shall continue in force until altered or repealed.

(b) A county shoreland zoning ordinance enacted under s. 59.971 that is in force in any part of the territory shall continue in force until altered under s. 59.971 (7) (ad).

(3) **INTERIM OFFICERS.** All officers of the village or town embracing the territory thus incorporated as a village or city shall continue in their powers and duties until the first meeting of the board of trustees or common council at which a quorum is present. Until a village or city clerk is chosen and qualified all oaths of office and other papers shall be filed with the circuit court, with whom the petition was filed, who shall deliver them with the petition to the village or city clerk when that clerk qualifies.

(4) **FIRST VILLAGE OR CITY ELECTION.** (a) Within 10 days after incorporation of the village or city, the clerk of the circuit court with whom the petition was filed shall fix a time for the first election, and where appropriate designate the polling place or places, and name 3 inspectors of election for each place. The time for the election shall be fixed no less than 40 nor more than 50 days after the date of the certificate of incorporation issued by the secretary of state, irrespective of any other provision in the statutes. Nomination papers shall conform to ch. 8 insofar as applicable. Such papers shall be signed by not less than 5% nor more than 10% of the total votes cast at the referendum election, and be filed no later than 15 days before the time fixed for the election. Ten days' previous notice of the election shall be given by the clerk of the circuit court by publication in the newspapers selected under s. 66.018 (2) and by posting notices in 3 public places in such village or city, but failure to give such notice shall not invalidate the election.

(b) The election shall be conducted as prescribed by ch. 6, except that no registration of voters shall be required. The inspectors shall make returns to the clerk of the circuit court who shall, within one week after such 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 and their appointees shall commence and hold their offices as for a regular term. Otherwise they shall commence within 10 days and hold their offices until the regular village or city election and the qualification of their successors and the terms of their appointees shall expire as soon as successors qualify.

**(5) TAXES LEVIED BEFORE INCORPORATION; HOW COLLECTED AND DIVIDED.** Whenever a village or city is incorporated from territory within any town or towns, after the assessment of taxes in any year and before the collection of such taxes, the tax so assessed shall be collected by the town treasurer of the town or the town treasurers of the different towns of which such village or city formerly constituted a part, and all moneys collected from the tax levied for town purposes shall be divided between the village or city and the town or the towns, as provided by s. 66.03, for the division of property owned jointly by towns and villages.

**(6) REORGANIZATION AS VILLAGE.** If the population of the city falls below 1,000 as determined by the United States census, the council may upon filing of a petition conforming to the requirements of s. 8.40 containing the signatures of at least 15% of the electors submit at any general or city election the question whether the city shall reorganize as a village. If three-fifths of the votes cast on the question are for reorganization the mayor and council shall record the return in the office of the register of deeds and file a certified copy with the clerk of the circuit court, and shall immediately call an election, to be conducted as are village elections, for the election of village officers. Upon the qualification of such officers, the board of trustees shall declare the city reorganized as a village, and the reorganization shall be effected. The clerk shall certify a copy of the declaration to the secretary of state who shall file the declaration and endorse a memorandum thereof on the record of the certificate of incorporation of the city. Rights and liabilities of the city shall continue in favor of or against the village. Ordinances, so far as within the power of the village, shall remain in force until changed.

*History:* 1977 c. 203 s. 106, 1989 a. 192; 1991 a. 32, 316; 1993 a. 301, 329

**66.02 Consolidation.** Subject to s. 66.023 (7), any town, village or city may be consolidated with a contiguous town, village or city, by ordinance, passed by a two-thirds vote of all the members of each board or council, fixing the terms of the consolidation and ratified by the electors at a referendum held in each municipality. The ballots shall bear the words, "for consolidation", and "against consolidation", and if a majority of the votes cast thereon in each municipality are for consolidation, the ordinances shall then be in effect and have the force of a contract. The ordinance and the result of the referendum shall be certified as provided in s. 66.018 (5); if a town the certification shall be preserved as provided in ss. 60.03 and 66.018 (5), respectively. Consolidation shall not affect the preexisting rights or liabilities of any municipality and actions thereon may be commenced or completed as though no consolidation had been effected. Any consolidation ordinance proposing the consolidation of a town and another municipality shall, within 10 days after its adoption and prior to its submission to the voters for ratification at a referendum, be submitted to the circuit court and the department of administration for a determination whether such proposed consolidation is in the public interest. The circuit court shall determine whether the proposed ordinance meets the formal requirements of this section and shall then refer the matter to the department of administration, which shall find as prescribed in s. 66.014 whether the proposed consolidation is in the public interest in accordance with the standards in s. 66.016. The department's findings shall

have the same status as incorporation findings under ss. 66.014 to 66.019.

*History:* 1977 c. 29; 1979 c. 361 s. 112; 1983 a. 532 s. 36; 1991 a. 39, 269.

**66.021 Annexation of territory. (1) DEFINITIONS.** In this section, unless the context clearly requires otherwise:

(a) "Assessed value" means the value for general tax purposes as shown on the tax roll for the year next preceding the filing of any petition for annexation.

(am) "Legal description" means a complete description of land to be annexed without internal references to any other document, and shall be described in one of the following ways:

1. By metes and bounds commencing at a monument at the section or quarter section corner or at the end of a boundary line of a recorded private claim or federal reservation in which the annexed land is located and in one of the following ways:

- a. By government lot.
- b. By recorded private claim.
- c. By quarter section, section, township and range.

2. If the land is located in a recorded subdivision or in an area subject to a certified survey map, by reference as described in s. 236.28 or s. 236.34 (3).

(b) "Owner" means the holder of record of an estate in possession in fee simple, or for life, in land or real property, or a vendee of record under a land contract for the sale of an estate in possession in fee simple or for life but does not include the vendor under a land contract. A tenant in common or joint tenant shall be considered such owner to the extent of his or her interest.

(c) "Petition" includes the original petition and any counterpart thereof.

(d) "Real property" means land and the improvements thereon.

(e) "Scale map" means a map that accurately reflects the legal description of the property to be annexed and the boundary of the annexing city or village, and that includes a graphic scale on the face of the map.

**(2) METHODS OF ANNEXATION.** Subject to s. 66.023 (7), territory contiguous to any city or village may be annexed thereto in the following ways:

(a) *Direct annexation.* A petition for direct annexation may be filed with the city or village clerk signed by:

1. A number of qualified electors residing in such territory equal to at least the majority of votes cast for governor in the territory at the last gubernatorial election, and either a. the owners of one-half of the land in area within such territory, or b. the owners of one-half of the real property in assessed value within such territory; or

2. If no electors reside in such territory, by a. the owners of one-half of the land in area within such territory, or b. the owners of one-half of the real property in assessed value within such territory.

(b) *Annexation by referendum.* A petition for a referendum on the question of annexation may be filed with the city or village clerk signed by a number of qualified electors residing in the territory equal to at least 20% of the votes cast for governor in the territory at the last gubernatorial election, and the owners of at least 50% of the real property either in area or assessed value. The petition shall conform to the requirements of s. 8.40.

**(2m) ELECTOR DETERMINATION.** Whenever a number of electors cannot be determined on the basis of reported election statistics, the number shall be determined in accordance with s. 60.74 (6).

**(3) NOTICE.** (a) The annexation shall be initiated by publishing in the territory proposed for annexation a class 1 notice, under ch. 985, of intention to circulate an annexation petition. The notice shall contain:

1. A statement of intention to circulate an annexation petition.

2. A legal description of the territory proposed to be annexed and a copy of a scale map.

3. The name of the city or village to which the annexation is proposed.

4. The name of the town or towns from which the territory is proposed to be detached.

5. The name and post-office address of the person causing the notice to be published who shall be an elector or owner in the area proposed to be annexed.

(b) The person who causes the notice to be published shall serve a copy of the notice, within 5 days after its publication, upon the clerk of each municipality affected, upon the clerk of each school district affected and upon each owner of land in a town if that land will be in a city or village after the annexation. Such service may be either by personal service or by registered mail with return receipt requested.

(4) **PETITION** (a) The petition shall state the purpose of the petition, contain a legal description of the territory proposed to be annexed and have attached thereto a scale map. The petition shall also specify the population, as defined in s. 66.013 (2) (b), of the territory.

(b) No person who has signed a petition shall be permitted to withdraw his or her name therefrom. No additional signatures shall be added after a petition is filed.

(c) The circulation of the petition shall commence not less than 10 days nor more than 20 days after the date of publication of the notice of intention to circulate. The annexation petition shall be void unless filed within 6 months of the date of publication of the notice.

(5) **REFERENDUM** (a) *Notice.* Within 60 days after the filing of the petition, the common council or village board may accept or reject the petition and if rejected no further action shall be taken thereon. Acceptance may consist of adoption of an annexation ordinance. Failure to reject the petition shall obligate the city or village to pay the cost of any referendum favorable to annexation. If the petition is not rejected the clerk of the city or village with whom the annexation petition is filed shall give written notice thereof by personal service or registered mail with return receipt requested to the clerk of any town from which territory is proposed to be detached and shall give like notice to any person who files a written request therefor with the clerk. Such notice shall indicate whether the petition is for direct annexation or whether it requests a referendum on the question of annexation. If the notice indicates that the petition is for a referendum on the question of annexation, the town clerk shall give notice as provided in par. (c) of a referendum of the electors residing in the area proposed for annexation to be held within 30 days after the date of personal service or mailing of the notice required under this paragraph. If the notice indicates that the petition is for direct annexation, no referendum shall be held unless within 30 days after the date of personal service or mailing of the notice required under this paragraph, a petition conforming to the requirements of s. 8.40 requesting a referendum is filed with the town clerk signed by at least 20% of the electors residing in the area proposed to be annexed. If such a petition is filed, the clerk shall give notice as provided in par. (c) of a referendum of the electors residing in the area proposed for annexation to be held within 30 days of the receipt of the petition and shall mail a copy of such notice to the clerk of the city or village to which the annexation is proposed. Any referendum shall be held at some convenient place within the town to be specified in the notice.

(b) *Clerk to act.* If more than one town is involved, the city or village clerk shall determine as nearly as is practicable which town contains the most electors in the area proposed to be annexed and shall indicate in the notice required under par. (a) such determination. The clerk of the town so designated shall perform the duties required hereunder and the election shall be conducted in such town as are other elections conducted therein.

(c) *Publication of notice.* The notice shall be published in a newspaper of general circulation in the area proposed to be annexed on the publication day next preceding the referendum election and one week prior to such publication.

(d) *How conducted.* The referendum shall be conducted by the town election officials but the town board may reduce the number of such officials for that election. The ballots shall contain the words "For annexation" and "Against annexation" and shall otherwise conform to the provisions of s. 5.64 (2). The election shall be conducted as are other town elections in accordance with chs. 6 and 7 insofar as applicable.

(e) *Canvass; statement to be filed.* The election inspectors shall make a statement of the holding of the election showing the whole number of votes cast, and the number cast for and against annexation, attach thereto their affidavit and immediately file it in the office of the town clerk. They shall file a certified statement of the results in the office of the clerk of each other municipality affected.

(f) *Costs.* If the referendum is against annexation, the costs of the election shall be borne by the towns involved in the proportion that the number of electors of each town within the territory proposed to be annexed, voting in the referendum, bears to the total number of electors in such territory, voting in the referendum.

(g) *Effect.* If the result of the referendum is against annexation, all previous proceedings shall be nullified. If the result of the referendum is for annexation, failure of any town official to perform literally any duty required by this section shall not invalidate the annexation.

(6) **QUALIFICATIONS.** Qualifications as to electors and owners shall be determined as of the date of filing any petition, except that all qualified electors residing in the territory proposed for annexation on the day of the conduct of a referendum election shall be entitled to vote therein. Residence and ownership must be bona fide and not acquired for the purpose of defeating or invalidating the annexation proceedings.

(7) **ANNEXATION ORDINANCE** (a) An ordinance for the annexation of the territory described in the annexation petition may be enacted by a two-thirds vote of the elected members of the governing body not less than 20 days after the publication of the notice of intention to circulate the petition and not later than 120 days after the date of filing with the city or village clerk of the petition for annexation or of the referendum election if favorable to the annexation. If the annexation is subject to sub. (11) the governing body shall first review the reasons given by the department of administration that the proposed annexation is against the public interest. Subject to s. 59.971 (7), such an ordinance may temporarily designate the classification of the annexed area for zoning purposes until the zoning ordinance is amended as prescribed in s. 62.23 (7) (d). Before introduction of an ordinance containing such temporary classification, the proposed classification shall be referred to and recommended by the plan commission. The authority to make such temporary classification shall not be effective when the county ordinance prevails during litigation as provided in s. 59.97 (7).

(b) The ordinance may annex the territory to an existing ward or may create an additional ward.

(d) The annexation shall be effective upon enactment of the annexation ordinance. The board of school directors in any city of the first class shall not be required to administer the schools in any territory annexed to any such city until July 1 following such annexation.

(8) **FILING REQUIREMENTS; SURVEYS** (a) The clerk of a city or village which has annexed territory shall file immediately with the secretary of state a certified copy of the ordinance, certificate and plat, and shall send one copy to each company that provides any utility service in the area that is annexed. The clerk shall also record the ordinance with the register of deeds and file a signed copy of the ordinance with the clerk of any affected school district.

Failure to file, record or send shall not invalidate the annexation and the duty to file, record or send shall be a continuing one. The ordinance that is filed, recorded or sent shall describe the annexed territory and the associated population. The information filed with the secretary of state shall be utilized in making recommendations for adjustments to entitlements under the federal revenue sharing program and distribution of funds under ch. 79. The clerk shall certify annually to the secretary of state and record with the register of deeds a legal description of the total boundaries of the municipality as those boundaries existed on December 1, unless there has been no change in the 12 months preceding.

(b) Within 10 days of receipt of the ordinance, certificate and plat, the secretary of state shall forward 2 copies of the ordinance, certificate and plat to the department of transportation, one copy to the department of administration, one copy to the department of revenue, one copy to the department of public instruction, one copy to the department of development, one copy to the department of natural resources, one copy to the department of agriculture, trade and consumer protection and 2 copies to the clerk of the municipality from which the territory was annexed.

(c) Any city or village may direct a survey of its present boundaries to be made, and when properly attested the survey and plat may be filed in the office of the register of deeds in the county in which the city or village is located, whereupon the survey and plat shall be prima facie evidence of the facts therein set forth.

(9) **VALIDITY OF PLATS.** Where any annexation is declared invalid but prior to such declaration and subsequent to such annexation a plat has been submitted and has been approved as required in s. 236.10 (1) (a), such plat shall be deemed validly approved despite the invalidity of the annexation.

(10) **ACTION.** (a) An action on any grounds whatsoever, whether denominated procedural or jurisdictional, to contest the validity of an annexation shall be commenced within the time after adoption of the annexation ordinance provided by s. 893.73 (2).

(b) An action contesting an annexation shall be given preference in the circuit court.

(11) **REVIEW OF ANNEXATIONS.** (a) *Annexations within populous counties.* No annexation proceeding within a county having a population of 50,000 or more shall be valid unless the person causing a notice of annexation to be published under sub. (3) shall within 5 days of the publication mail a copy of the notice, legal description and a scale map of the proposed annexation to the clerk of each municipality affected and the department of administration. The department may within 20 days after receipt of the notice mail to the clerk of the town within which the territory lies and to the clerk of the proposed annexing village or city a notice that in its opinion the annexation is against the public interest. No later than 10 days after mailing the notice, the department shall advise the clerk of the town in which the territory is located and the clerk of the village or city to which the annexation is proposed of the reasons the annexation is against the public interest as defined in par. (c). The annexing municipality shall review the advice before final action is taken.

(c) *Definition of public interest.* For purposes of this subsection public interest is determined by the department of administration after consideration of the following:

1. Whether the governmental services, including zoning, to be supplied to the territory could clearly be better supplied by the town or by some other village or city whose boundaries are contiguous to the territory proposed for annexation which files with the circuit court a certified copy of a resolution adopted by a two-thirds vote of the elected members of the governing body indicating a willingness to annex the territory upon receiving an otherwise valid petition for the annexation of the territory.

2. The shape of the proposed annexation and the homogeneity of the territory with the annexing village or city and any other contiguous village or city.

(12) **UNANIMOUS APPROVAL.** If a petition for direct annexation signed by all of the electors residing in the territory and the owners of all of the real property in the territory is filed with the city or village clerk, and with the town clerk of the town or towns in which the territory is located, together with a scale map and a legal description of the property to be annexed, an annexation ordinance for the annexation of the territory may be enacted by a two-thirds vote of the elected members of the governing body of the city or village without compliance with the notice requirements of sub. (3). In such annexations, subject to sub. (11), the person filing the petition with the city or village clerk and the town clerk shall, within 5 days of the filing, mail a copy of the scale map and a legal description of the territory to be annexed to the department of administration and the governing body shall review the advice of the department, if any, before enacting the annexation ordinance.

(13) **REVIEW REQUIREMENTS.** The provisions of sub. (12) do not eliminate the necessity for review as required by sub. (11).

(15) **ANNEXATION OF TOWN ISLANDS.** Upon its own motion, a city or village by a two-thirds vote of the entire membership of its governing body may enact an ordinance annexing territory which comprises a portion of a town or towns and which was completely surrounded by territory of the city or village on December 2, 1973. The ordinance shall include all surrounded town areas except those exempt by mutual agreement of all of the governing bodies involved. The annexation ordinance shall contain a legal description of the territory and the name of the town or towns from which the territory is detached. Upon enactment of the ordinance, the city or village clerk immediately shall file 6 certified copies of the ordinance in the office of the secretary of state, together with 6 copies of a scale map. The secretary of state shall forward 2 copies of the ordinance and scale map to the department of transportation, one copy to the department of natural resources, one copy to the department of revenue and one copy to the department of administration. This subsection does not apply if the town island was created only by the annexation of a railroad right-of-way or drainage ditch. This subsection does not apply to land owned by a town government which has existing town government buildings located thereon. No town island may be annexed under this subsection if the island consists of over 65 acres or contains over 100 residents. After December 2, 1973, no city or village may, by annexation, create a town area which is completely surrounded by the city or village.

(16) **EFFECTIVE DATE OF ANNEXATIONS.** Because the creation of congressional, legislative, supervisory and aldermanic districts of equal population is a matter of statewide concern, any annexation action that affects a tract of land that is the subject of an ordinance enacted or resolution adopted by any city during the period from January 1, 1990, to April 1, 1991, or any later date, expressing an intent to not exercise the city's authority to annex territory before April 1, 1991, or the specified later date, taken by a municipality during the period beginning on April 1 of the year commencing after each federal decennial census of population and ending on June 30 of the year commencing after that census, is effective on July 1 of the year commencing after that census or at such later date as may be specified in the annexation ordinance. This subsection first applies to annexations effective after March 31, 1991.

**History:** 1973 c. 37, 90, 143, 333; 1977 c. 29 ss. 698, 1654 (8) (c); 1977 c. 187 s. 134; 1977 c. 315, 447; 1979 c. 323; 1979 c. 361 s. 112; 1983 a. 29, 189, 219; 1985 a. 225; 1987 a. 391; 1989 a. 192; 1991 a. 5, 39, 269, 316; 1993 a. 16, 247, 301, 329, 491.

**Cross-reference:** See s. 62.071 for special provision for annexations to cities of the first class.

In ascertaining whether a petition for annexation pursuant to (2) (a) has been signed by the "owners of one half of the land" in the proposed area of attachment, acreage within the territory constituting public streets and alleys is not to be taken into account in determining the sufficiency of the petition, no matter how owned or by whom, whether in fee simple, right-of-way, or easement for public benefit or reverter (*Language in Town of Menasha v. City of Menasha*, 42 W (2d) 719, to the contrary is withdrawn) *International Paper Co. v. Fond du Lac*, 50 W (2d) 529, 184 NW (2d) 834.

Where an owner petitions for annexation of a sizable block of land it is not void simply because it divides the town into 2 parts. *Town of Waukechon v. Shawano*, 53 W (2d) 593, 193 NW (2d) 661.



Where a city owned a road but the city limits did not extend the full width of the road, property on the other side is still contiguous. Where the boundaries of the parcel to be annexed are drawn by the petitioning landowners the city cannot be charged with arbitrary action. *Town of Lyons v. Lake Geneva*, 56 W (2d) 331, 202 NW (2d) 228.

Where property owners, in petitioning for annexation, divide a tract so as to control one parcel by property owners and the other by population, the 2 resulting annexations are valid. *Town of Waukesha v. City of Waukesha*, 58 W (2d) 525, 206 NW (2d) 585.

Abundant benefits to the state from the annexation under review, including the provision of police, fire and solid waste disposal services and library and recreational facilities satisfied the need factor of the rule of reason, since absent unfair inducement or pressures upon the petitioners for annexation, a showing of benefits to the annexed land can be considered on the question of need under the rule of reason. *Town of Lafayette v. City of Chippewa Falls*, 70 W (2d) 610, 235 NW (2d) 435.

A town from which 2 town islands were detached by annexation pursuant to (15) had no standing to challenge the constitutionality of the statute. *Town of Germantown v. Village of Germantown*, 70 W (2d) 704, 235 NW (2d) 486.

Sub (15) is a clear and unambiguous provision allowing with certain exceptions for the annexation by a city or village in a single ordinance of all town islands meeting the statutorily defined criteria. Annexation by a city of 7 separate town islands via 7 separate municipal ordinances was impermissible under (15), since the power to annex must be exercised by a municipality in strict conformity with the statute conferring it. *Town of Blooming Grove v. City of Madison*, 70 W (2d) 770, 235 NW (2d) 493.

An eligible elector and a qualified elector are identical. Ch. 6 applies to annexation referendum elector qualifications under (6). *Washington v. Altoona*, 73 W (2d) 250, 243 NW (2d) 404.

Direct annexation not otherwise in conflict with "rule of reason" was not invalidated because petitioners were motivated by desire to obtain change in zoning of their land. Rule discussed. *Town of Pleasant Prairie v. City of Kenosha*, 75 W (2d) 322, 249 NW (2d) 581.

Where action challenging annexation was filed before (10) (a) limitation ran, and plaintiff town board had given no explicit authorization for commencement of action, subsequent attempt to ratify commencement of action was a nullity. *Town of Nasewaupsee v. City of Sturgeon Bay*, 77 W (2d) 110, 251 NW (2d) 845.

Sub (5) (d) ballot language requirement is directory and substantial compliance is adequate. *Town of Nasewaupsee v. Sturgeon Bay*, 146 W (2d) 492, 431 NW (2d) 699 (Ct. App. 1988).

Under (5) (g), annexation fails in cases of tie vote. *Town of Nasewaupsee v. Sturgeon Bay*, 146 W (2d) 492, 431 NW (2d) 699 (Ct. App. 1988).

See note to 893.73, citing *Town of Sheboygan v. City of Sheboygan*, 150 W (2d) 210, 441 NW (2d) 752 (Ct. App. 1989).

A functional town island created when an annexation results in a portion of the town being cut off from the remainder of the town partially by the annexing city and partially by a natural or man-made feature, such as a lake or municipal boundary, is prohibited by (15). *Town of Sheboygan v. City of Sheboygan*, 168 W (2d) 268, 483 NW (2d) 306 (Ct. App. 1992).

Annexation ordinance must meet "rule of reason" requirements. Application of rule discussed. *Town of Menasha v. City of Menasha*, 170 W (2d) 181, 488 NW (2d) 128 (Ct. App. 1992).

City could not reach across a lake to annex noncontiguous property. *Town of Delavan v. City of Delavan*, 176 W (2d) 516, 500 NW (2d) 268 (1993).

The prohibition in sub (4) of the withdrawal of names from a petition prevents the withdrawal of the entire petition. *Town of De Pere v. City of De Pere*, 184 W (2d) 278, 516 NW (2d) 1 (Ct. App. 1994).

The legislature can constitutionally provide for the annexation of territory without referendum. 60 Atty. Gen. 294.

The rule of reason in Wisconsin annexations. Knowles, 1972 WLR 1125.

**66.022 Detachment of territory.** Subject to s. 66.023 (7), territory may be detached from any city or village and be attached to any city, village or town, to which it is contiguous, in the following manner:

(1) A petition signed by a majority of the owners of three-fourths of the taxable land in area within such territory or, if there is no taxable land therein, by all owners of such land, shall be filed with the clerk of the city or village from which detachment is sought, within 120 days after the date of publication of a class 1 notice, under ch. 985, of intention to circulate a petition of detachment.

(2) An ordinance detaching such territory may be enacted within 60 days after the filing of such petition, by vote of three-fourths of all the members of the governing body of the detaching city or village and its terms accepted within 60 days after such enactment, by an ordinance enacted by a vote of three-fourths of all the members of the governing body of the city, village or town to which such territory shall be annexed. The failure of any governing body to adopt the ordinance as provided herein shall be deemed a rejection of the petition and all proceedings thereunder shall be void.

(3) The governing body of any city, village or town involved may, or if a petition conforming to the requirements of s. 8.40

signed by a number of qualified electors thereof equal to at least 5% of the votes cast for governor in the city, village or town at the last gubernatorial election, demanding a referendum thereon, is presented to it within 30 days after the passage of either of the ordinances herein provided for shall, cause the question to be submitted to the electors of the city, village or town whose electors petitioned therefor, at a referendum election called for such purpose within 30 days after the filing of such petition, or after the enactment of either ordinance. Whenever a number of electors cannot be determined on the basis of reported election statistics, the number shall be determined in accordance with s. 60.74 (6). The governing body of the municipality shall appoint 3 election inspectors who shall be resident electors to supervise the referendum. The ballots shall contain the words "For Detachment" and "Against Detachment". The inspectors shall certify the results of the election by their affidavits annexed thereto and file a copy with the clerk of each town, village or city involved, and none of the ordinances so provided for shall take effect nor be in force unless a majority of the electors shall approve the same. The referendum election shall be conducted in accordance with chs. 6 and 7 insofar as applicable.

(4) Whenever any area which has been subject to a city or village zoning ordinance is detached from one municipality and attached to another in accordance with this section, the regulations imposed by such zoning ordinance shall continue in effect and shall be enforced by the attaching city, village or town until changed by official action of the governing body of such municipality, except that if the detachment or attachment is contested in the courts, the zoning ordinance of the detaching municipality shall prevail, and such city or village shall have jurisdiction over the zoning in the area affected until ultimate determination of the court action.

(5) The ordinance, certificate and plat shall be filed and recorded in the same manner as for annexations under s. 66.021 (8) (a). The requirements for the secretary of state shall be the same as in s. 66.021 (8) (b).

(6) Because the creation of congressional, legislative, supervisory and aldermanic districts of equal population is a matter of statewide concern, any detachment action that affects a tract of land that is the subject of an ordinance enacted or resolution adopted by any city during the period from January 1, 1990, to April 1, 1991, or any later date, expressing an intent to not exercise the city's authority to annex territory before April 1, 1991, or the specified later date, taken by a municipality during the period beginning on April 1 of the year commencing after each federal decennial census of population and ending on June 30 of the year commencing after that census, is effective on July 1 of the year commencing after that census or at such later date as may be specified in the detachment ordinance. This subsection first applies to detachments effective after March 31, 1991.

History: 1973 c. 90; 1983 a. 29; 1987 a. 391; 1989 a. 192; 1991 a. 5, 269; 1993 a. 301.

Cross-reference: See s. 62.075 for special provision for detachment of farm lands from cities.

**66.023 Boundary change pursuant to approved cooperative plan.** (1) DEFINITIONS. In this section:

- (a) "Department" means the department of administration.
- (b) "Municipality" means a city, village or town.

(2) BOUNDARY CHANGE AUTHORITY. Any combination of municipalities may determine the boundary lines between themselves under a cooperative plan that is approved by the department under this section. No boundary of a municipality may be changed or maintained under this section unless the municipality is a party to the cooperative agreement. The cooperative plan shall provide one or more of the following:

- (a) That specified boundary line changes shall occur during the planning period and the dates by which the changes shall occur.
- (b) That specified boundary line changes may occur during the planning period and the dates by which the changes may occur.



(c) That a required boundary line change under par. (a) or an optional boundary line change under par. (b) shall be subject to the occurrence of conditions set forth in the plan.

(d) That specified boundary lines may not be changed during the planning period.

**(3) COOPERATIVE PLAN** (a) *Who may prepare plan.* The municipalities that propose to set the boundary lines between themselves under this section shall prepare a cooperative plan.

(b) *Purpose of plan.* The cooperative plan shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the territory covered by the plan which will, in accordance with existing and future needs, best promote public health, safety, morals, order, convenience, prosperity or the general welfare, as well as efficiency and economy in the process of development.

(c) *Content of plan; physical development of territory.* The cooperative plan, and any accompanying maps, plats, charts and descriptive and explanatory materials, shall show the plan agreed upon for the physical development of the territory covered by the plan. The plan may include, without limitation because of enumeration, any of the following:

1. The general location, character and extent of streets, highways, freeways, street grades, roadways, walks, bridges, viaducts, parking areas, tunnels, public places and areas, parks, parkways and playgrounds.

2. Sites for public buildings and structures, airports, pierhead and bulkhead lines and waterways.

3. Routes for railroads and buses.

4. The general location and extent of sewers, water conduits and other public utilities, whether privately or publicly owned.

5. The acceptance, widening, narrowing, extension, relocation, removal, vacation, abandonment or change of use of any of the public ways, grounds, places, spaces, buildings, properties, utilities, routes or terminals described in subds. 1. to 4.

6. Historic districts.

7. The general location, character and extent of community centers and neighborhood units.

8. The general character, extent and layout of the replanning of blighted districts and slum areas.

9. A comprehensive zoning plan.

(d) *Content of plan; boundaries and services.* The cooperative plan shall:

1. Identify any boundary change and any existing boundary that may not be changed during the planning period.

2. Identify any conditions that must be met before a boundary change may occur.

3. Include a schedule of the period during which a boundary change shall or may occur.

4. Include a statement explaining how any part of the plan related to the location of boundaries meets the approval criteria under sub. (5) (c) 4. and 5.

5. Describe the services to be provided to the territory covered by the plan, identify the providers of those services and indicate whether the provision of any service has received preliminary approval of any relevant governmental regulatory authority.

6. Include a schedule for delivery of the services described under subd. 5.

7. Include a statement explaining how provision under the plan for the delivery of necessary municipal services to the territory covered by the plan meets the approval criterion under sub. (5) (c) 3.

8. Designate the municipalities that are participating in the cooperative plan and that are required to ratify any boundary changes by enacting an ordinance under sub. (10).

(dm) *Content of plan; environmental consequences and housing needs.* The cooperative plan shall:

1. Identify any significant adverse consequences to the natural environment, including air and water pollution, energy use, development outside compact urban areas and contribution to urban sprawl, that may be caused by the proposed physical development of the territory covered by the plan.

2. Demonstrate that each participating municipality has considered alternatives to the proposed physical development of the territory covered by the plan, in order to minimize or avoid significant adverse environmental consequences, including those under subd. 1., and include in the plan a description of the alternatives considered.

3. If the physical development of the territory covered by the plan is subject to federal environmental laws or regulations, state laws or state environmental rules, describe how compliance with the laws, regulations or rules will be achieved.

4. Address the need for safe and affordable housing to meet the needs of diverse social and income groups in each municipality that is participating in the preparation of the plan.

5. Include a statement of why the cooperative plan meets the approval criterion under sub. (5) (c) 5m.

(e) *Content of plan; compatibility with existing law.* The cooperative plan shall describe how the plan is consistent with current state and federal laws, county shoreland zoning ordinances under s. 59.971, municipal regulations and administrative rules that apply to the territory affected by the plan.

(f) *Content of plan, planning period.* The cooperative plan shall specify the duration of the proposed planning period, which shall be for a period of 10 years, except that the duration of the proposed planning period may be for a period greater than 10 years, but not for a period greater than 20 years, if a duration greater than 10 years is approved by the department.

(h) *Existing plans may be used.* A cooperative plan may be based on, contain elements of or duplicate any existing plan for the same territory.

**(4) PROCEDURE FOR ADOPTING COOPERATIVE PLAN** (a) *Authorizing resolution.* Each municipality that intends to participate in the preparation of a cooperative plan under this section shall adopt a resolution authorizing participation in the preparation of the plan. Notice of each resolution shall be given in writing, within 5 days after the resolution is adopted, to all of the following:

1. The department, the department of natural resources and the department of transportation.

2. The clerks of any municipality, school district, technical college district, sewerage district or sanitary district which has any part of its territory within 5 miles of a participating municipality.

3. The clerk of each county in which a participating municipality is located.

4. Any county zoning agency under s. 59.97 (2) or regional planning commission whose jurisdiction includes a participating municipality.

(b) *Public hearing.* At least 120 days after adoption under par. (a) of the last resolution by a participating municipality and at least 60 days before submitting a cooperative plan to the department for review and approval under sub. (5), the participating municipalities shall hold a joint hearing on the proposed plan. Notice of the hearing shall be given by each participating municipality by class 3 notice under ch. 985.

(c) *Comment on plan.* Any person may comment on the plan during the hearing and may submit written comments at any time. All comments shall be considered by each participating municipality. Any county zoning agency under s. 59.97 (2) or regional planning commission whose jurisdiction includes any participating municipality shall comment in writing on the plan's effect on the master plan adopted by the regional planning commission under s. 66.945 (9), or development plan adopted by the county board or county planning agency under s. 59.97 (3), and on the delivery of municipal services, and may comment on any other aspect of the plan. Any county in the regional planning commis-

sion's jurisdiction may submit comments on the effect of the cooperative plan on the master plan adopted under s. 66.945 (9) and on the delivery of county services or on any other matter related to the plan.

(d) *Adoption of final plan*. 1. Subject to subd. 2., after the public hearing under par. (b) and consideration of comments made on the proposed cooperative plan, the plan participants may revise the plan in response to the comments and may, by resolution adopted by each participating municipality, adopt a final version of the plan.

2. If within 30 days after the public hearing under par. (b) a petition opposing the plan, signed by a number of qualified electors equal to at least 10% of the votes cast for governor in the municipality at the last gubernatorial election, is filed with the clerk of a participating municipality, the final version of the plan may be adopted in that municipality only by an affirmative vote of three-fourths of the members of the municipality's governing body who are present and voting. The petition shall conform to the requirements of s. 8.40.

(e) *Advisory referendum*. 1. Within 30 days after adoption of a final plan under par. (d), the governing body of a participating municipality may adopt a resolution calling for an advisory referendum on the plan. An advisory referendum shall be held if, within 30 days after adoption of the final plan under par. (d), a petition, signed by a number of qualified electors equal to at least 10% of the votes cast for governor in the municipality at the last gubernatorial election, is filed with the clerk of a participating municipality, requesting an advisory referendum on the cooperative plan. The petition shall conform to the requirements of s. 8.40.

2. The advisory referendum shall be held within 30 days after adoption of the resolution under subd. 1. calling for the referendum or within 30 days after receipt of the petition by the municipal clerk. The municipal clerk shall give notice of the referendum by publishing a notice in a newspaper of general circulation in the municipality, both on the publication day next preceding the advisory referendum election and one week prior to that publication date.

3. The advisory referendum shall be conducted by the municipal election officials. The governing body of the municipality may specify the number of election officials for the referendum. The ballots shall contain the words "For the cooperative plan" and "Against the cooperative plan" and shall otherwise conform to the provisions of s. 5.64 (2). The election shall be conducted as are other municipal elections in accordance with chs. 6 and 7, insofar as applicable.

4. The election inspectors shall report the results of the election, showing the total number of votes cast and the numbers cast for and against the cooperative plan. The election inspectors shall attach their affidavit to the report and immediately file the report in the office of the municipal clerk. The election inspector shall file a certified report of the results in the office of the clerk of each municipality that is a party to the cooperative plan.

5. The costs of the advisory referendum election shall be borne by the municipality that holds the election.

(f) *Submittal of final plan to department*. If no advisory referendum is held under par. (e), the plan participants may submit the final version of the cooperative plan to the department for approval under sub. (5) at least 60 days but not more than 180 days after the public hearing under par. (b). If an advisory referendum is held under par. (e), each participating municipality shall determine, by resolution, whether to submit the final version of the cooperative plan to the department for approval under sub. (5). The resolution shall be adopted within 60 days after the last advisory referendum is held. If any of the plan participants fails or refuses to approve submittal of the cooperative plan to the department, the plan may not be submitted. Any written comment received by a participating municipality on any version of the cooperative plan shall be submitted to the department at the time that the cooperative plan is submitted. If the cooperative plan is

not submitted to and approved by the department, it may not be implemented under this section by any of the participating municipalities.

(5) **DEPARTMENT REVIEW AND APPROVAL OF LOCAL OR COOPERATIVE PLAN**. (a) *Generally*. The department shall make a written determination of whether to approve a cooperative plan within 90 days after receiving the plan unless the department and the parties to the plan agree to a longer determination period. The department shall consider written comments on the plan received by a municipality under sub. (4) (c) that is submitted to the department under sub. (4) (f) or from any other source. The department may request information relating to the cooperative plan, including any comprehensive plan or land use plan currently being utilized by any participating municipality, from that municipality, and from any county or regional planning commission. The department may seek and consider comments from any state agency on whether the cooperative plan is consistent with state laws and administrative rules under the agency's jurisdiction. Any state agency requested to comment on a cooperative plan shall comply with the request. The department shall issue its determination of whether to approve the cooperative plan in writing, supported by specific findings based on the criteria under par. (c). The approval or disapproval of a cooperative plan by the department under this section is not a contested case, as defined in s. 227.01 (3), for purposes of ch. 227.

(b) *Hearing*. Any person may request a public hearing before the department on a cooperative plan submitted to the department for approval. A request for a public hearing shall be in writing and shall be submitted to the department within 10 days after the cooperative plan is received by the department. If requested, the department shall, and on its own motion the department may, hold a public hearing on the cooperative plan. If requested to hold a public hearing, the department is required to hold only one hearing, regardless of the number of requests for a hearing. Any public hearing under this paragraph shall be held in a municipality that is a party to the cooperative plan.

(c) *Approval of cooperative plan*. A cooperative plan shall be approved by the department if the department determines that all of the following apply:

1. The content of the plan under sub. (3) (c) to (e) is sufficient to enable the department to make the determinations under subsd. 2. to 5m.

2. The cooperative plan is consistent with current state laws, municipal regulations and administrative rules that apply to the territory affected by the plan.

3. Adequate provision is made in the cooperative plan for the delivery of necessary municipal services to the territory covered by the plan.

4. Any boundary maintained or any boundary change under the cooperative plan is reasonably compatible with the characteristics of the surrounding community, taking into consideration present and potential transportation, sewer, water and storm drainage facilities and other infrastructure, fiscal capacity, previous political boundaries, boundaries of school districts and shopping and social customs.

5. The shape of any boundary maintained or any boundary change under the cooperative plan is not the result of arbitrariness and reflects due consideration for compactness of area. Considerations relevant to the criteria under this subdivision include quantity of land affected by the boundary maintenance or boundary change and compatibility of the proposed boundary maintenance or boundary change with natural terrain including general topography, major watersheds, soil conditions and such features as rivers, lakes and major bluffs.

5m. The cooperative plan adequately identifies and addresses the significant adverse environmental consequences to the natural environment that may be caused by the proposed physical development of the territory covered by the plan, the municipalities submitting the plan have adequately identified and considered

alternatives to minimize or avoid the significant adverse environmental consequences, the proposals in the plan for compliance with federal environmental laws or regulations and state environmental laws or rules are adequate and the need for safe and affordable housing for a diversity of social and income groups in each community has been met.

6. Any proposed planning period exceeding 10 years is consistent with the plan.

(d) *Return and resubmittal of plan.* The department may return a cooperative plan, with comments, if the department determines that the cooperative plan, if revised, may constitute a plan that can be approved by the department. If a cooperative plan is returned under this paragraph, each participating municipality may revise the plan, as directed by the department, adopt the revised plan by resolution and resubmit the plan to the department within 90 days after the plan is returned. After receiving a resubmitted cooperative plan, the department shall make a determination on approval within 30 days.

(6) **BINDING ELEMENTS OF COOPERATIVE PLAN** If a cooperative plan is approved by the department under sub. (5) or an amended plan is approved under sub. (8), provisions in the plan to maintain existing boundaries, the boundary changes in the plan, the schedule for those changes, the plan for delivery of services and the schedule for those services are binding on the parties to the plan and have the force and effect of a contract.

(7) **APPLICABILITY OF OTHER BOUNDARY PROCEDURES** During the planning period specified under sub. (3) (f), no other procedure for altering a municipality's boundaries may be used to alter the boundary of a municipality that is a party to the cooperative plan, except if an annexation is conducted under s. 144.07 (1m), regardless of whether the boundary is proposed to be maintained or changed or is allowed to be changed under the plan. After the planning period has expired, the boundary may be altered.

(8) **AMENDMENTS TO COOPERATIVE PLAN.** (a) *Authority to amend plan.* A cooperative plan may be amended during the planning period if all the parties to the plan agree to the amendment and if the amendment is approved by the department.

(b) *When full procedure required.* An amendment to a cooperative plan that proposes to change a municipality's boundary or to change the approved planning period shall follow the same procedure as that required for an original plan.

(c) *When expedited procedure may occur.* An amendment to a cooperative plan that does not propose to change a boundary or the planning period shall follow the same procedure as that required for an original plan except that the hearing under sub. (4) (b) is not required unless objection to the amendment is made in writing by any person to the clerk of a participating municipality. An amendment under this paragraph shall be adopted by resolution of each of the participating municipalities. Notice of the amendment and adopting resolution shall follow the procedures specified in sub. (4) (a). Notice that the amendment will be submitted directly to the department unless objection is made in writing shall be given by each participating municipality by a class 3 notice under ch. 985. If no written objection to the amendment is received within 7 days after the last required notice is published, the amendment may be submitted directly to the department for approval. If written objection is timely made, the public hearing and other requirements under sub. (4) (b) and (c) apply.

(9) **COURT REVIEW OF DEPARTMENT DECISION.** The decision of the department under sub. (5) (c) or (d) or (8) to approve or not to approve a cooperative plan or an amendment to a plan is subject to judicial review under ch. 227.

(10) **BOUNDARY CHANGE ORDINANCE; FILING AND RECORDING REQUIREMENTS** A boundary change under a cooperative plan shall be accomplished by the enactment of an ordinance by the governing body designated to do so in the plan. The filing and recording requirements under s. 66.021 (8) (a), as they apply to cities and villages under s. 66.021 (8) (a), apply to municipalities

under this subsection. The requirements for the secretary of state shall be the same as those required in s. 66.021 (8) (b).

(11) **TIME FOR BRINGING ACTION** No action to contest the validity of a cooperative plan under this section or an amendment to a cooperative plan, regardless of the grounds for the action, may be commenced after 60 days from the date on which the department approves the cooperative plan under sub. (5) or the amendment under sub. (8), respectively. No action relating to compliance with a binding element of a cooperative plan may be commenced later than 180 days after the failure to comply.

*History:* 1991 a. 269; 1993 a. 213, 301, 329, 399.

**66.024 Annexation by referendum; court order.** As a complete alternative to any other annexation procedure, and subject to s. 66.023 (7), unincorporated territory which contains electors and is contiguous to a city or village may be annexed thereto in the manner hereafter provided. The definitions in s. 66.021 (1) shall apply to this section.

(1) **PROCEDURE FOR ANNEXATION.** (a) The governing body of the city or village to which it is proposed to annex territory shall, by resolution adopted by two-thirds of the members—elect, declare its intention to apply to the circuit court for an order for an annexation referendum, and shall publish the resolution in a newspaper having general circulation in the area proposed to be annexed, as a class 1 notice, under ch. 985, and shall cause to be made a scale map of such territory showing it in relation to the annexing city or village. The resolution shall contain a description of the territory to be affected, sufficiently accurate to determine its location, the name of the municipalities directly affected and the name and post-office address of the municipal official causing the resolution to be published. The person who causes the resolution to be published shall serve a copy of the resolution together with the scale map upon the clerk of the town or towns from which the territory is to be detached within 5 days of the date of publication of the resolution. Such service may be either by personal service or by registered mail and if by registered mail an affidavit must be on file with the annexing body indicating the date said resolution was mailed. The annexation shall be deemed commenced upon publication of the resolution.

(b) Application to the circuit court shall be by petition subscribed by the officers designated by the governing body, and shall have attached as a part thereof: the scale map, a certified copy of the resolution of the governing body and an affidavit of the publication and filing required under par. (a). Such petition shall be filed in the circuit court not less than 30 days but no more than 45 days after the publication of the notice of intention.

(2) **PROTEST TO COURT BY ELECTORS; HEARING.** (a) If prior to the date set for hearing upon such application, there is filed with the court a petition signed by a number of qualified electors residing in the territory equal to at least a majority of the votes cast for governor in the territory at the last gubernatorial election or the owners of more than one-half of the real property in assessed value in such territory, protesting against the annexation of such territory, the court shall deny the application for an annexation referendum. Whenever a number of electors cannot be determined on the basis of reported election statistics, the number shall be determined in accordance with s. 60.74 (6).

(b) If a petition protesting the annexation is found insufficient the court shall proceed to hear all parties interested for or against the application. The court may in its discretion adjourn such hearing from time to time, direct a survey to be made and refer any question for examination and report thereon. Any town whose territory is involved in the proposed annexation shall, upon application, be a party and entitled to be heard on any matter pertaining thereto.

(3) **DISMISSAL.** If for any reason the proceedings are dismissed, the court may, in its discretion, order entry of judgment against the city or village for such disbursements or any part

thereof as have been incurred by the parties opposing the annexation.

(4) **REFERENDUM ELECTION; WHEN ORDERED AND HELD** (a) If the court, after such hearing, is satisfied as to the correctness of the description of the territory or any survey and that the provisions of this section have been complied with, it shall make an order so declaring and shall direct a referendum election within the territory which shall be described in the order, on the question, whether such area should be annexed. Such order shall direct 3 electors named therein residing in the town in which the territory proposed to be annexed lies, to perform the duties of inspectors of election.

(b) The referendum election shall be held within 30 days after the entry of the order, in the territory proposed for annexation, by the electors of such territory as provided in s. 66.021 (5), so far as applicable. The ballots shall contain the words "For Annexation" and "Against Annexation". The certification of the election inspectors shall be filed with the clerk of the court, and the clerk of any municipality involved, but need not be filed or recorded with the register of deeds.

(c) All costs of the referendum election shall be borne by the petitioning city or village.

(5) **DETERMINATION BY VOTE** (a) If a majority of the votes cast at such referendum election is against annexation, no other proceeding under this section affecting the same territory or part thereof, shall be commenced by the same municipality, until 6 months after the date of the referendum election.

(b) If a majority of the votes cast at such referendum election is for annexation, the territory shall be annexed to the petitioning city or village upon compliance with s. 66.021 (8).

(5m) **TEMPORARY ZONING OF AREA PROPOSED TO BE ANNEXED.** An interim zoning ordinance to become effective only upon approval of the annexation at the referendum election may be enacted by the governing body of the city or village. Subject to s. 59.971 (7), the ordinance may temporarily designate the classification of the annexed area for zoning purposes until the zoning ordinance is amended as prescribed in s. 62.23 (7) (d). The proposed interim zoning ordinance shall be referred to and recommended by the plan commission prior to introduction. Authority to make such temporary classification shall not be effective when the county zoning ordinance prevails during litigation as provided in s. 59.97 (7).

(6) **APPEAL.** Any appeal from the order of the circuit court shall be limited to contested issues determined by such court. Such appeal shall not stay the conduct of the referendum election provided herein, if one is ordered, but the statement of the election results and the copies of the certificate and plat shall not be filed with the secretary of state until the appeal has been determined.

(7) **LAW APPLICABLE.** Section 66.021 (10) shall apply to annexations under this section.

(8) **TERRITORY EXCEPTED.** This section shall not apply to any territory located in an area for which a certificate of incorporation was issued prior to February 24, 1959, by the secretary of state, even if the incorporation of the territory is later held to be invalid by a court.

**History:** 1979 c. 89; 1987 a. 391; 1991 a. 269; 1993 a. 301, 329

**Cross-reference:** See s. 144.07 (1m) for provision authorizing use of this section when the DNR orders sewer service to areas outside municipal limits

Finding of the trial court that no facts evinced a need of the city to acquire the proposed territory, thereby violating the rule of reason, would not be disturbed where it could be reasonably concluded from the adjudicative facts that (a) the irregular shape and boundaries of the territory were designed arbitrarily and capriciously solely to assure success of the annexation and overcome the opposition of a majority of the electors residing in the towns; (b) reasonable need for the annexation based on the claimed growth of the city and overflow of population into adjoining areas was not established; and (c) aside from a nursing home some 2 miles distant from the city boundary, there was no showing that the proposed annexation area was in need of the city's services which were adequately supplied by the towns. *City of Beloit v. Town of Beloit*, 47 W (2d) 377, 177 NW (2d) 361.

The term "disbursements" in (3) does not include attorney's fees. *City of Beloit v. Town of Beloit*, 47 W (2d) 377, 177 NW (2d) 361.

**66.025 Annexation of owned territory.** In addition to other methods provided by law and subject to ss. 59.971 (7) and 66.023 (7), territory owned by and lying near but not necessarily contiguous to a village or city may be annexed to a village or city by ordinance enacted by the board of trustees of the village or the common council of the city, provided that in the case of noncontiguous territory the use of the territory by the city or village is not contrary to any town or county zoning regulation. The ordinance shall contain the exact description of the territory annexed and the names of the towns from which detached, and shall operate to attach the territory to the village or city upon the filing of 6 certified copies thereof in the office of the secretary of state, together with 6 copies of a plat showing the boundaries of the territory attached. Two copies of the ordinance and plat shall be forwarded by the secretary of state to the department of transportation, one copy to the department of natural resources, one copy to the department of revenue and one copy to the department of public instruction.

**History:** 1973 c. 90; 1977 c. 29 s. 1654 (8) (c); 1991 a. 269; 1993 a. 329.

Challenge to annexation under this section is not subject to time limit under 66.021 (10). *Kaiser v. City of Mauston*, 99 W (2d) 345, 299 NW (2d) 259 (Ct. App. 1980)

**66.026 Notice of litigation.** Whenever any proceedings under ss. 61.187, 61.189, 61.74, 62.075, 66.012, 66.013 to 66.019, 66.021, 66.022, 66.023, 66.025 or other sections relating to an incorporation, annexation, consolidation, dissolution or detachment of territory of a city or village are contested by instigation of legal proceedings, the clerk of the city or village involved in such proceedings shall forthwith file with the secretary of state 4 copies of a notice of the commencement of such action. The clerk shall also file with the secretary of state 4 copies of any judgments rendered or appeals taken in such cases. The notices or copies of judgments as herein required may also be filed by an officer or attorney of any party of interest. The secretary of state shall forward to the department of transportation 2 copies and to the department of revenue one copy of any notice of action or judgment filed with the secretary of state pursuant to this section.

**History:** 1977 c. 29 s. 1654 (8) (c); 1977 c. 273; 1979 c. 355; 1983 a. 532 s. 36; 1991 a. 269

#### **66.027 Municipal boundaries, fixed by judgment.**

Any 2 municipalities whose boundaries are immediately adjacent at any point and who are parties to any action, proceeding or appeal in court for the purpose of testing the validity or invalidity of any annexation, incorporation, consolidation or detachment, may enter into a written stipulation, compromising and settling any such litigation and determining the common boundary line between the municipalities. The court having jurisdiction of the litigation, whether it is a circuit court, the court of appeals or the supreme court, may enter a final judgment incorporating the provisions of the stipulation and fixing the common boundary line between the municipalities involved. Any stipulation changing boundaries of municipalities shall be approved by the governing bodies of the detaching and annexing municipalities and s. 66.021 (8) and (10) shall apply. Any change of civil municipal boundaries under this section is subject to a referendum of the electors residing within the territory annexed or detached, if within 30 days after the publication of the stipulation to change boundaries in a newspaper of general circulation in the area proposed to be annexed or detached, a petition for a referendum conforming to the requirements of s. 8.40 signed by at least 20% of the electors of the area to be annexed or detached, is filed with the clerk of the municipality from which the area is proposed to be detached. The referendum shall be conducted as are annexation referenda. If the referendum election is opposed to detachment from the municipality, all proceedings under this section are void. For the purposes of this section "municipalities" includes cities, villages and towns.

**History:** 1977 c. 187; 1989 a. 192; 1991 a. 269

**66.029 Town boundaries, actions to test alterations.**

In proceedings whereby territory is attached to or detached from any town, the town is an interested party, and the town board may institute, maintain or defend an action brought to test the validity of such proceedings, and may intervene or be impleaded in any such action.

**66.03 Adjustment of assets and liabilities on division of territory. (1) DEFINITION.**

In this section, "municipality" includes town sanitary districts, school districts, technical college districts, towns, villages and cities.

(2) BASIS (a) Except as otherwise provided in this section when territory is transferred, in any manner provided by law, from one municipality to another, there shall be assigned to such other municipality such proportion of the assets and liabilities of the first municipality as the assessed valuation of all taxable property in the territory transferred bears to the assessed valuation of all the taxable property of the entire municipality from which said territory is taken according to the last assessment roll of such municipality. The clerk of any municipality to which territory is transferred as aforesaid, within 30 days of the effective date of such transfer, shall certify to the clerk of the municipality from which such territory was transferred and to the clerk of the school district in which such territory is located a metes and bounds description of the land area involved and upon receipt of such description the clerk of the municipality from which such territory was transferred shall certify to the department of revenue and to the clerk of the school district in which such territory is located the latest assessed value of the real and personal property located within the transferred territory, and shall make such further reports as may be needed by the department of revenue in the performance of duties required by law.

(b) When the transfer of territory from one municipality to another results from the incorporation of a new city or village, the proportion of the assets and liabilities assigned to such city or village shall be based on the average assessed valuation for the preceding 5 years of the property transferred in proportion to the average assessed valuation for the preceding 5 years of all the taxable property of the entire municipality from which said territory is taken, according to the assessment rolls of such municipality for said years. In any such case the certification by the clerk of the municipality from which territory was transferred shall include the assessed value of the real and personal property within the territory transferred for each of the last 5 years. The preceding 5 years shall include the assessment rolls for the 5 calendar years prior to the incorporation.

(2c) SCHOOL DISTRICTS (a) *Standard procedure.* 1. When territory is transferred in any manner provided by law from one school district to another, there shall be assigned to each school district involved such proportion of the assets and liabilities of the school districts involved as the equalized valuation of all taxable property in the territory transferred bears to the equalized valuation of all taxable property of the school district from which the territory is taken. The equalized valuation shall be certified by the department of revenue upon application by the clerk of the school district to which the territory is transferred.

2. The clerk of any school district to which territory is transferred, within 30 days of the effective date of the transfer, shall certify to the clerk of the municipality from which the territory was transferred a metes and bounds description of the land area involved. Upon receipt of the description the clerk of the municipality from which the territory was transferred shall certify to the department of revenue the latest assessed value of the real and personal property located within the transferred territory, file one copy of the certification with the school district clerk and one copy with the department of public instruction and make such further reports as are needed by the department of revenue in the performance of duties required by law.

(b) *Alternative procedure.* Two or more school districts may, by identical resolutions adopted by a three-fourths vote of the

members of each school board concerned, establish an alternative method to govern any adjustment of their assets and liabilities. The authority of this paragraph applies wherever the boards find that the adoption of the resolution is necessary to provide a more equitable method than is provided in par. (a). The resolutions shall be adopted no later than 120 days after the effective date of the transfer of territory and may be adopted prior to the transfer. The resolutions adopted shall be recorded in the office of the register of deeds.

(2m) ATTACHMENT AND DETACHMENT WITHIN 5 YEARS Whenever territory is attached to or consolidated with a school district, and the territory or any part thereof is detached therefrom within 5 years after the attachment or consolidation, the school district to which it is transferred shall be entitled, in the apportionment of assets and liabilities, only to the assets or liabilities or proportionate part thereof apportioned to the school district as the result of the original attachment or consolidation.

(3) REAL ESTATE (a) The title to real estate shall not be transferred except by agreement, but the value thereof shall be included in determining the assets of the municipality owning the same and in making the adjustment of assets and liabilities.

(b) The right to possession and control of school buildings and sites shall pass to the school district in which they are situated immediately upon the attachment or detachment of any school district territory becoming effective, except that in 1st class city school districts the right to possession and control of school buildings and sites shall pass on July 1 following the adoption of the ordinance authorized by s. 66.021 (7). The asset value of school buildings and sites shall be the value of the use thereof, which shall be determined at the time of adjustment of assets and liabilities.

(c) When as a result of any annexation whereby a school district is left without a school building, any moneys are received by such school district as a result of the division of assets and liabilities required by s. 66.03, which are derived from values that were capital assets, such moneys and interest thereon shall be held in trust by such school district and dispensed only for procuring new capital assets or remitted to an operating district as the remainder of the suspended district becomes a part of such operating district, and shall in no case be used to meet current operating expenditures. This shall include any funds in the hands of any district officers on July 1, 1953, resulting from such action previously taken under s. 66.03. The boards involved shall, as part of their duties in division of assets and liabilities in school districts, make a written report of the allocation of assets and liabilities to the state superintendent of public instruction and any local superintendent of schools whose territory is involved in the division of assets.

(4) PUBLIC UTILITIES Any public utility plant, including any dam, power house, power transmission line and other structures and property operated and used in connection therewith shall belong to the municipality in which the major portion of the patrons of such utility reside. The value of such utility, unless fixed by agreement of all parties interested shall be determined and fixed by the public service commission upon notice to the municipalities interested, in the manner provided by law. The commission shall certify the amount of the compensation to the clerks of each municipality interested and said amount shall be used by the apportionment board or boards in adjusting assets and liabilities.

(5) APPORTIONMENT BOARD The boards or councils of the municipalities, or committees, thereof selected for that purpose, acting together, shall constitute an apportionment board. When any municipality is dissolved by reason of all of its territory being so transferred the board or council thereof existing at the time of such dissolution shall, for the purpose of this section, continue to exist as the governing body of such municipality until there has been an apportionment of assets by agreement of the interested municipalities or by an order of the circuit court. After an agreement for apportionment of assets has been entered into between the interested municipalities, or an order of the circuit court becomes final, a copy of such apportionment agreement, or of



such order, certified to by the clerks of the interested municipalities, shall be filed with the department of revenue, the department of natural resources, the department of transportation, the state superintendent of public instruction, the department of administration, and with any other department or agency of the state from which the town may be entitled by law to receive funds or certifications or orders relating to the distribution or disbursement of funds, with the county treasurer, with the treasurer of any municipality, or with any other entity from which payment would have become due if such dissolved municipality from which such territory was transferred had continued in existence. Thereafter payments from the shared revenue account made pursuant to ch. 79, payments of forest crop taxes under s. 77.05, of transportation aids under s. 20.395, of state aids for school purposes under ch. 121, payments for managed forest land under subch. VI of ch. 77 and all payments due from a department or agency of the state, from a county, from a municipality, or from any other entity from which payments would have become due if such dissolved municipality from which such territory was transferred had continued in existence, shall be paid to the interested municipality as provided by such agreement for apportionment of assets or by any order of apportionment by the circuit court and such payments shall have the same force and effect as if made to the dissolved municipality from which such territory was transferred.

(6) **MEEING** The board or council of the municipality to which the territory is transferred shall fix a time and place for meeting and cause a written notice thereof to be given the clerk of the municipality from which such territory is taken at least five days prior to the date of the meeting. The apportionment may be made only by a majority of the members from each municipality who attend, and in case of committees, the action must be affirmed by the board or council so represented.

(7) **ADJUSTMENT, HOW MADE** (a) The apportionment board shall determine, except for public utilities, such assets and liabilities from the best information obtainable and shall assign to the municipality to which the territory is transferred its proper proportion thereof by assigning the excess of liabilities over assets, or by assigning any particular asset or liability to either municipality, or in such other manner as will best meet the requirements of the particular case.

(b) If a proportionate share of any indebtedness existing by reason of municipal bonds or other obligations outstanding is assigned to any municipality, that municipality shall cause to be levied and collected upon all its taxable property, in one sum or in annual instalments, the amount necessary to pay the principal and interest thereon when due, and shall pay the amount so collected to the treasurer of the municipality which issued the bonds or incurred the obligations. The treasurer shall apply the moneys so received strictly to the payment of such principal and interest.

(c) If the asset apportioned consists of an aid or tax to be distributed in the future according to population, the apportionment board shall certify to the officer, agency or department responsible for making the distribution each municipality's proportionate share of such asset as determined in accordance with sub. (2). The officer, agency or department shall thereafter distribute such aid or tax directly to the several municipalities according to such certification until the next federal census.

(8) **APPEAL TO COURT** In case the apportionment board is unable to agree, the circuit court of the county in which either municipality is situated, may, upon the petition of either municipality, make the adjustment of assets and liabilities pursuant to this section, including review of any alternative method provided for in sub. (2c) (b) and the correctness of the findings thereunder.

(9) **TRANSCRIPT OF RECORDS** When territory shall be detached from a municipality by creation of a new municipality or otherwise, the proper officer of the municipality from which the territory was detached shall furnish, upon demand by the proper officer of the municipality created from the detached territory or to which it is annexed, authenticated transcript of all public records

in that officer's office pertaining to the detached territory. The municipality receiving the transcript shall pay therefor.

(10) **STATE TRUST FUND LOANS** When territory transferred in any manner provided by law from one municipality to another is liable for state trust fund loans secured under subch. II of ch. 24, the clerk of the municipality to which territory is transferred shall within 30 days of the effective date of such transfer certify a metes and bounds description of the transferred area to the clerk of the municipality from which the land was transferred. Thereupon, the clerk of the municipality from which such territory was transferred shall certify to the board of commissioners of public lands: (a) the effective date of such transfer of territory; (b) the last preceding assessed valuation of the territory liable for state trust fund loans prior to transfer of a part of such territory; (c) the assessed valuation of the territory so transferred. Thereafter, the board shall in making its annual certifications of the amounts due on account of state trust fund loans distribute annual charges for interest and principal on any such outstanding loans in the proportion that the assessed valuation of the territory so transferred shall bear to the assessed valuation of the area liable for state trust fund loans as constituted immediately before the transfer of territory, provided, however, that any transfer of territory effective subsequent to January 1 of any year shall not be considered until the succeeding year.

(10a) **CORRECTIONS** The provisions of sub. (10) are applicable to school districts. Any errors, omissions or other defects in the tax certifications and levies in connection with the repayment of state trust fund loans by school districts for the year 1950 and all subsequent years may be corrected by the school district clerk in the tax levy certifications for following years.

(11) **DESIGNATING DISTRICTS** (a) Whenever a transfer of territory from one school district to another results in a change in the name of a school district which is liable for one or more state trust fund loans secured under subch. II of ch. 24, the clerk of the school district to which the territory was transferred shall, within 30 days of the effective date of such transfer, certify to the board of commissioners of public lands and the county clerk:

1. The name of the school district from which territory was transferred;
2. The effective date of such transfer;
3. The name of the school district to which the transfer was made immediately prior to the effective date of the transfer;
4. The name of the school district to which the transfer was made immediately after the effective date of such transfer.

(b) Thereafter, in making their annual certifications of the amounts due on account of state trust fund loans the board of commissioners of public lands shall use the new name of the school district, provided that any transfer of territory effective subsequent to January 1 of any year shall not be considered by it until the succeeding year.

(12) **TIME OF TRANSFER** When the governmental classification of a school district is changed, all of the assets and liabilities and the title to all school property shall vest in the new district by operation of law upon the effective date of the change.

(13) **TAXES AND ASSESSMENT** (a) *General property taxes.* Whenever any territory is annexed, detached or incorporated in any year, general property taxes levied against the territory shall be collected by the treasurer of the municipality in which the territory was located on January 1 of such year, and all moneys collected from the tax levied for local municipal purposes shall be allocated to each of the municipalities on the basis of the portion of the calendar year the territory was located in each of the municipalities, and paid accordingly.

(aa) *Apportionment when town is nonexistent.* If the town in which territory was located on January 1 is nonexistent when the city or village determines its budget, any taxes certified to the town or required by law to be levied against such territory shall be included in the budget of the city or village and levied against such



territory, together with the city or village tax for local municipal purposes.

(b) *Special taxes and assessments.* Whenever territory is transferred from one municipality to another by annexation, detachment, consolidation or incorporation, or returns to its former status by reason of court determination, any special tax or assessment outstanding against any property in the territory shall be collected by the treasurer of the municipality wherein the property is located, according to the terms of the ordinance or resolution levying such tax or assessment. Such special tax or assessment, when collected, shall be paid to the treasurer of the municipality which levied the special tax or assessment, or if the municipality is nonexistent, the collecting treasurer shall apply the collected funds to any obligation for which purpose the tax or assessment was levied and which remains outstanding; provided that if no such obligation is outstanding, the collected funds shall be paid into the school fund of the school district in which the territory is located.

(bb) *Apportionment when court returns territory to former status.* Whenever territory which has been annexed, consolidated, detached or incorporated returns to its former status by reason of a final court determination, there shall be an apportionment of general property taxes and current aids and shared revenues to adjust such assets between the municipalities, and no other apportionment of assets and liabilities. The basis of the apportionment shall be determined by the apportionment board subject to appeal to the circuit court, but the apportionment shall insofar as practicable equitably adjust such assets between the municipalities involved on the basis of the portion of the calendar year the territory was located in the respective municipalities.

(c) *Certification by clerk.* The clerk of the municipality which assessed such special and general tax and special assessment shall certify to the clerk of the municipality to which the territory was attached or returned, a list of all the property located therein to which is charged any uncollected taxes and assessments. The certification shall be made within 30 days after the effective date of the transfer of the property, but failure to so certify shall not affect the validity of the claim.

*History:* 1971 c. 125 s. 521; 1971 c. 154; 1973 c. 90; 1975 c. 41; 1977 c. 29 ss. 699, 700, 1646 (3), 1648 (1), 1654 (2), (8) (c); 1981 c. 169; 1985 a. 29; 1985 a. 225 ss. 32 to 38, 100; 1987 a. 399; 1989 a. 31; 1991 a. 39, 316; 1993 a. 399

Method of division of assets and liabilities set forth is exclusive. *Sheboygan v. Sheboygan Sanit. Dist.*, 145 W (2d) 424, 427 NW (2d) 390 (Ct. App. 1988)

Sewerage systems are not public utilities valued by the public service commission under sub. (4). *Town of Beloit v. Public Service Commission*, 180 W (2d) 610, 510 NW (2d) 140 (Ct. App. 1993)

**66.031 Regulation of solar and wind energy systems.** No county, city, town or village may place any restriction, either directly or in effect, on the installation or use of a solar energy system, as defined in s. 13.48 (2) (h) 1. g., or a wind energy system, as defined in s. 66.032 (1) (m), unless the restriction satisfies one of the following conditions:

- (1) Serves to preserve or protect the public health or safety.
- (2) Does not significantly increase the cost of the system or significantly decrease its efficiency.
- (3) Allows for an alternative system of comparable cost and efficiency.

*History:* 1981 c. 354; 1983 a. 27 s. 2202 (57); 1985 a. 120; 1993 a. 414.

**66.032 Solar and wind access permits. (1) DEFINITIONS.** In this section:

- (a) "Agency" means the governing body of a municipality which has provided for granting a permit or the agency which the governing body of a municipality creates or designates under sub. (2).
- (2) "Agency" includes an officer or employe of the municipality.
- (b) "Applicant" means an owner applying for a permit under this section.
- (c) "Application" means an application for a permit under this section.

(d) "Collector surface" means any part of a solar collector that absorbs solar energy for use in the collector's energy transformation process. "Collector surface" does not include frames, supports and mounting hardware.

(e) "Collector use period" means 9 a.m. to 3 p.m. standard time daily.

(f) "Impermissible interference" means the blockage of wind from a wind energy system or solar energy from a collector surface or proposed collector surface for which a permit has been granted under this section during a collector use period if such blockage is by any structure or vegetation on property, an owner of which was notified under sub. (3) (b). "Impermissible interference" does not include:

1. Blockage by a narrow protrusion, including but not limited to a pole or wire, which does not substantially interfere with absorption of solar energy by a solar collector or does not substantially block wind from a wind energy system.

2. Blockage by any structure constructed, under construction or for which a building permit has been applied for before the date the last notice is mailed or delivered under sub. (3) (b).

3. Blockage by any vegetation planted before the date the last notice is mailed or delivered under sub. (3) (b) unless a municipality by ordinance under sub. (2) defines impermissible interference to include such vegetation.

(g) "Municipality" means any county with a zoning ordinance under s. 59.97, any town with a zoning ordinance under s. 60.61, any city with a zoning ordinance under s. 62.23 (7), any 1st class city or any village with a zoning ordinance under s. 61.35.

(h) "Owner" means at least one owner, as defined under s. 66.021 (1) (b), of a property or the personal representative of at least one owner.

(i) "Permit" means a solar access permit or a wind access permit issued under this section.

(j) "Solar collector" means a device, structure or a part of a device or structure a substantial purpose of which is to transform solar energy into thermal, mechanical, chemical or electrical energy.

(k) "Solar energy" means direct radiant energy received from the sun.

(L) "Standard time" means the solar time of the ninetieth meridian west of Greenwich.

(m) "Wind energy system" means equipment that converts and then stores or transfers energy from the wind into usable forms of energy.

(2) **PERMIT PROCEDURE.** The governing body of every municipality may provide for granting a permit. A permit may not affect any land except land which, at the time the permit is granted, is within the territorial limits of the municipality or is subject to an extraterritorial zoning ordinance adopted under s. 62.23 (7a), except that a permit issued by a city or village may not affect extraterritorial land subject to a zoning ordinance adopted by a county or a town. The governing body may appoint itself as the agency to process applications or may create or designate another agency to grant permits. The governing body may provide by ordinance that a fee be charged to cover the costs of processing applications. The governing body may adopt an ordinance with any provision it deems necessary for granting a permit under this section, including but not limited to:

- (a) Specifying standards for agency determinations under sub. (5) (a).

- (b) Defining an impermissible interference to include vegetation planted before the date the last notice is mailed or delivered under sub. (3) (b), provided that the permit holder shall be responsible for the cost of trimming such vegetation.

(3) **PERMIT APPLICATIONS.** (a) In a municipality which provides for granting a permit under this section, an owner who has

installed or intends to install a solar collector or wind energy system may apply to an agency for a permit.

(b) An agency shall determine if an application is satisfactorily completed and shall notify the applicant of its determination. If an applicant receives notice that an application has been satisfactorily completed, the applicant shall deliver by certified mail or by hand a notice to the owner of any property which the applicant proposes to be restricted by the permit under sub. (7). The applicant shall submit to the agency a copy of a signed receipt for every notice delivered under this paragraph. The agency shall supply the notice form. The information on the form may include, without limitation because of enumeration:

1. The name and address of the applicant, and the address of the land upon which the solar collector or wind energy system is or will be located.

2. That an application has been filed by the applicant.

3. That the permit, if granted, may affect the rights of the notified owner to develop his or her property and to plant vegetation.

4. The telephone number, address and office hours of the agency.

5. That any person may request a hearing under sub. (4) within 30 days after receipt of the notice, and the address and procedure for filing the request.

(4) **HEARING.** Within 30 days after receipt of the notice under sub. (3) (b), any person who has received a notice may file a request for a hearing on the granting of a permit or the agency may determine that a hearing is necessary even if no such request is filed. If a request is filed or if the agency determines that a hearing is necessary, the agency shall conduct a hearing on the application within 90 days after the last notice is delivered. At least 30 days prior to the hearing date, the agency shall notify the applicant, all owners notified under sub. (3) (b) and any other person filing a request of the time and place of the hearing.

(5) **PERMIT GRANT.** (a) The agency shall grant a permit if the agency determines that:

1. The granting of a permit will not unreasonably interfere with the orderly land use and development plans of the municipality;

2. No person has demonstrated that she or he has present plans to build a structure that would create an impermissible interference by showing that she or he has applied for a building permit prior to receipt of a notice under sub. (3) (b), has expended at least \$500 on planning or designing such a structure or by submitting any other credible evidence that she or he has made substantial progress toward planning or constructing a structure that would create an impermissible interference; and

3. The benefits to the applicant and the public will exceed any burdens.

(b) An agency may grant a permit subject to any condition or exemption the agency deems necessary to minimize the possibility that the future development of nearby property will create an impermissible interference or to minimize any other burden on any person affected by granting the permit. Such conditions or exemptions may include but are not limited to restrictions on the location of the solar collector or wind energy system and requirements for the compensation of persons affected by the granting of the permit.

(6) **RECORD OF PERMIT.** If an agency grants a permit:

(a) The agency shall specify the property restricted by the permit under sub. (7) and shall prepare notice of the granting of the permit. The notice shall include the identification required under s. 706.05 (2) (c) for the owner and the property upon which the solar collector or wind energy system is or will be located and for any owner and property restricted by the permit under sub. (7), and shall indicate that the property may not be developed and vegetation may not be planted on the property so as to create an impermissible interference with the solar collector or wind energy system which is the subject of the permit unless the permit affecting

the property is terminated under sub. (9) or unless an agreement affecting the property is filed under sub. (10).

(b) The applicant shall record with the register of deeds of the county in which the property is located the notice under par. (a) for each property specified under par. (a) and for the property upon which the solar collector or wind energy system is or will be located.

(7) **REMEDIES FOR IMPERMISSIBLE INTERFERENCE.** (a) Any person who uses property which he or she owns or permits any other person to use the property in a way which creates an impermissible interference under a permit which has been granted or which is the subject of an application shall be liable to the permit holder or applicant for damages, except as provided under par. (b), for any loss due to the impermissible interference, court costs and reasonable attorney fees unless:

1. The building permit was applied for prior to receipt of a notice under sub. (3) (b) or the agency determines not to grant a permit after a hearing under sub. (4).

2. A permit affecting the property is terminated under sub. (9).

3. An agreement affecting the property is filed under sub. (10).

(b) A permit holder is entitled to an injunction to require the trimming of any vegetation which creates or would create an impermissible interference as defined under sub. (1) (f). If the court finds on behalf of the permit holder, the permit holder shall be entitled to a permanent injunction, damages, court costs and reasonable attorney fees.

(8) **APPEALS.** Any person aggrieved by a determination by a municipality under this section may appeal the determination to the circuit court for a review.

(9) **TERMINATION OF SOLAR OR WIND ACCESS RIGHTS.** (a) Any right protected by a permit under this section shall terminate if the agency determines that the solar collector or wind energy system which is the subject of the permit is:

1. Permanently removed or is not used for 2 consecutive years, excluding time spent on repairs or improvements.

2. Not installed and functioning within 2 years after the date of issuance of the permit.

(b) The agency shall give the permit holder written notice and an opportunity for a hearing on a proposed termination under par. (a).

(c) If the agency terminates a permit, the agency may charge the permit holder for the cost of recording and record a notice of termination with the register of deeds, who shall record the notice with the notice recorded under sub. (6) (b) or indicate on any notice recorded under sub. (6) (b) that the permit has been terminated.

(10) **WAIVER.** A permit holder by written agreement may waive all or part of any right protected by a permit. A copy of such agreement shall be recorded with the register of deeds, who shall record such copy with the notice recorded under sub. (6) (b).

(11) **PRESERVATION OF RIGHTS.** The transfer of title to any property shall not change the rights and duties under this section or under an ordinance adopted under sub. (2).

(12) **CONSTRUCTION.** (a) This section may not be construed to require that an owner obtain a permit prior to installing a solar collector or wind energy system.

(b) This section may not be construed to mean that acquisition of a renewable energy resource easement under s. 700.35 is in any way contingent upon the granting of a permit under this section.

**History:** 1981 c. 354; 1983 a. 189 s. 329 (14); 1983 a. 532 s. 36; 1993 a. 414.  
Common law right to solar access discussed. *Prah v. Maretti*; 108 W (2d) 223, 321 NW (2d) 182 (1982).

Wisconsin recognizes the power of the sun: *Prah v. Maretti* and the solar access act. 1983 WLR 1263.

**66.033 Municipal control of vegetation blocking solar or wind energy systems.** Any county, city, village or town may provide by ordinance for the trimming of vegetation

which blocks solar energy, as defined in s. 66.032 (1) (k), from a collector surface, as defined under s. 700.41 (2) (b) or which block wind from a wind energy system, as defined in s. 66.032 (1) (m). The ordinance may include, but is not limited to, a designation of responsibility for the costs of the trimming. The ordinance may not require the trimming of vegetation that was planted by the owner or occupant of the property on which the vegetation is located before the installation of the solar or wind energy system.

History: 1981 c. 354; 1981 s. 391 s. 210; 1993 a. 414.

**66.035 Code of ordinances.** The governing body of any city, village, town or county may authorize the preparation of a code, or part thereof, of general ordinances of such municipality. Such code, or part thereof, may be adopted by an ordinance referring thereto and may be published in book or pamphlet form and such publication shall be sufficient even though the ordinances contained therein were not published in accordance with ss. 59.09, 60.80, 61.50 (1) and 62.11 (4) (a). A copy of such code, or part thereof, shall be permanently on file and open to public inspection in the office of the clerk after its adoption and for a period of not less than 2 weeks before its adoption. A code adopted by a county in accordance with the procedure provided in this section prior to April 30, 1965 shall be valid notwithstanding failure to comply with s. 59.09.

History: 1983 a. 532 s. 36; 1993 a. 246

Codification and publication of ordinances discussed. 70 Atty Gen 124.

**66.036 Building on unsewered property.** (1) No county, city, town or village may issue a building permit for construction of any structure requiring connection to a private domestic sewage treatment and disposal system unless a system satisfying all applicable regulations already exists to serve the proposed structure or all permits necessary to install such a system have been obtained.

(2) Before issuing a building permit for construction of any structure on property not served by a municipal sewage treatment plant, the county, city, town or village shall determine that the proposed construction does not interfere with a functioning private domestic sewage treatment and disposal system. The county, city, town or village may require building permit applicants to submit a detailed plan of the owner's existing private domestic sewage treatment and disposal system.

History: 1977 c. 258

NOTE: Chapter 258, laws of 1977, which created this section, contains a prefatory note.

Onsite inspection of existing private sewage system must be made before building permit may be issued for any type of construction requiring a connection to that system. 75 Atty Gen 38

**66.037 Historic properties.** (1) DEFINITIONS. In this section:

(a) "Historic property" has the meaning given under s. 44.31 (3).

(b) "Political subdivision" means a city, village, town or county.

(2) ACQUISITION OF PROPERTY. A political subdivision may acquire by gift, purchase or condemnation any property right in historic property, whether the property is real or personal.

(3) OWNERSHIP, USE AND DISPOSITION OF PROPERTY. (a) A political subdivision may preserve or rehabilitate any historic property which it owns, construct buildings on that property, own and maintain that property for public purposes or lease or convey that property.

(b) If a political subdivision leases to another person historic property, the political subdivision shall include provisions in the lease which protect the historic character and qualities of that property. If the political subdivision conveys historic property, the political subdivision shall obtain a conservation easement under s. 700.40 to protect the historic character and qualities of the property.

(4) CONSIDERATION OF EFFECTS ON HISTORIC PROPERTIES. (a) In the earliest stage of planning any action related to the following, a political subdivision shall determine if its proposed action will affect any historic property which is a listed property, as defined under s. 44.31 (4), or which is on the list of locally designated historic places under s. 44.45:

1. Long-range planning for facilities development.
2. Any action under sub. (3).
3. Razing any historic property which it owns.

(b) A political subdivision shall notify the state historic preservation officer of any proposed action which it determines under par. (a) would affect any historic property.

(5) GRANTS. A political subdivision may make grants of funds to any public or private entity for the purpose of preserving or rehabilitating historic property.

History: 1987 a. 395; 1989 a. 31.

**66.038 Nonmetallic mining reclamation.** (1) DEFINITIONS. As used in this section:

(a) "Environmental pollution" has the meaning specified under s. 144.01 (3).

(b) "Nonmetallic mining" or "nonmetallic mining operation" means operations or activities for the extraction from the earth for sale or use by the operator of mineral aggregates such as stone, sand and gravel and nonmetallic minerals such as asbestos, beryl, clay, feldspar, peat and talc, related operations or activities such as excavation, grading or dredging if the purpose of those operations or activities is the extraction of mineral aggregates and nonmetallic minerals and related processes such as crushing, screening, scalping, dewatering and blending.

(c) "Nonmetallic mining refuse" means waste soil, rock, mineral, liquid, vegetation and other waste material resulting from a nonmetallic mining operation. This term does not include merchantable by-products resulting directly from or displaced by the nonmetallic mining operation.

(d) "Nonmetallic mining site" or "site" means the location where a nonmetallic mining operation is proposed or conducted including all surface areas from which materials are removed, related storage and processing areas, areas where nonmetallic mining refuse is deposited and areas disturbed by the nonmetallic mining operation by activities such as the construction or improvement of roads or haulageways.

(e) "Operator" means any person who is engaged in a nonmetallic mining operation or nonmetallic mining site reclamation or who applies for or holds a nonmetallic mining permit issued under a nonmetallic mining reclamation ordinance whether individually, jointly or through subsidiaries, agents, employees, contractors or subcontractors.

(f) "Reclamation" means the rehabilitation of a nonmetallic mining site including but not limited to removal of nonmetallic mining refuse, grading of the site, replacement of topsoil, stabilization of soil conditions, establishment of vegetative cover, control of surface water and groundwater, prevention of environmental pollution, construction of fences and, if practical, restoration of plant, fish and wildlife habitat.

(g) "Replacement of topsoil" means the replacement of the topsoil which was removed or disturbed by a nonmetallic mining operation or the provision of soil which is at least as adequate as the topsoil which was removed or disturbed for the purposes of providing adequate vegetative cover and stabilization of soil conditions.

(2) AUTHORITY TO ADOPT ORDINANCE. The governing body of a county, city, village or town may adopt by ordinance regulations for the reclamation of nonmetallic mining sites.

(3) APPLICABILITY OF ORDINANCE. (a) County ordinances. 1. Except as provided under subd. 2., a county nonmetallic mining reclamation ordinance is applicable to each town within that

county and does not require approval of the town board under s. 59.97 (5) (c).

2. A county nonmetallic mining ordinance is not applicable to a town with a town nonmetallic mining ordinance which is at least as restrictive as the county ordinance.

3. A county nonmetallic mining reclamation ordinance supersedes all less restrictive town nonmetallic mining reclamation ordinances and any less restrictive town nonmetallic mining reclamation ordinance becomes invalid upon the effective date of the superseding county ordinance.

4. A town may not adopt or enforce a less restrictive town nonmetallic mining reclamation ordinance after the effective date of a county nonmetallic mining reclamation ordinance.

(am) *Multiple county mining operations.* A county nonmetallic mining reclamation ordinance is not applicable to a nonmetallic mining reclamation site located in more than one county unless:

1. That nonmetallic mining reclamation ordinance is less restrictive than any other nonmetallic mining reclamation ordinance for a county within which the site is located;

2. No other county within which the site is located has a nonmetallic mining reclamation ordinance; or

3. All counties within which the site is located have nonmetallic mining ordinances which are identical with respect to the site.

(b) *Existing nonmetallic mining operations.* A nonmetallic mining reclamation ordinance may apply to any portion of a nonmetallic mining site, including unreclaimed portions of a site which were mined prior to the effective date of the ordinance.

(c) *Nonmetallic mining in or near navigable waterways.* A nonmetallic mining reclamation ordinance may not apply to any nonmetallic mining site or portion of a site which is subject to permit and reclamation requirements of the department of natural resources under ss. 30.19, 30.195 and 30.20.

(cm) *Nonmetallic mining in connection with highway construction.* A nonmetallic mining reclamation ordinance may apply to a nonmetallic mining operation which is subject to permit and reclamation requirements of the department of transportation. An operator shall comply with both the nonmetallic mining reclamation ordinance and the permit and reclamation requirements of the department of transportation except that if a conflict exists, the operator shall comply with the most restrictive requirement.

(d) *Public nonmetallic mining operations.* A nonmetallic mining reclamation ordinance may not exempt from the permit requirements and reclamation standards a nonmetallic mining operation conducted by or on behalf of the state or a county, city, village or town. Notwithstanding s. 13.48 (13), a nonmetallic mining operation or facility operated or constructed for the benefit or use of the state or any state agency, board, commission or department shall comply with the permit requirements and reclamation standards of any applicable reclamation ordinance. A nonmetallic mining reclamation ordinance may exempt from the financial assurance requirements a nonmetallic mining operation conducted by or on behalf of the state or a county, city, village or town.

(e) *Exempt activities.* A nonmetallic mining reclamation ordinance may not apply to the following activities:

1. Excavations or grading by a person solely for domestic use at his or her residence.

1m. Excavations or grading conducted for highway construction purposes within the highway right-of-way.

2. Grading conducted for farming, preparing a construction site or restoring land following a flood or natural disaster.

3. Excavations for building construction purposes.

4. Any mining operation, the reclamation of which is required in a permit obtained under ss. 144.80 to 144.94.

5. Any activities conducted at a solid or hazardous waste disposal site required to prepare, operate or close a solid waste

disposal facility under ss. 144.435 to 144.445 or a hazardous waste disposal facility under ss. 144.60 to 144.74 but a nonmetallic mining reclamation ordinance may apply to activities related to solid or hazardous waste disposal which are conducted at a nonmetallic mining site separate from the solid or hazardous waste disposal facility such as activities to obtain nonmetallic minerals to be used for lining, capping, covering or constructing berms, dikes or roads.

(4) **CONTENTS OF NONMETALLIC MINING RECLAMATION ORDINANCE.** A nonmetallic mining reclamation ordinance may:

(a) *Reclamation standards.* Establish nonmetallic mining site reclamation standards which may be applicable both during nonmetallic mining operations and after the termination of nonmetallic mining operations. A nonmetallic mining reclamation ordinance may establish different nonmetallic mining site reclamation standards for sites which were mined prior to the effective date of the ordinance and for sites which are mined on or after the effective date of the ordinance. These standards may include but are not limited to requirements related to the removal of nonmetallic mining refuse, construction of haulageways and roads, grading of the site, replacement of topsoil, stabilization of soil conditions, establishment of vegetative cover, control of surface water and groundwater, prevention of environmental pollution, construction of fences and, if practical, protection or restoration of plant, fish and wildlife habitat.

(b) *Operation plan.* Require submission of a nonmetallic mining operation plan including maps, information about the site, a description of the proposed nonmetallic mining operation including methods and procedures to be used and a proposed timetable for completion of various stages of the nonmetallic mining operation.

(c) *Reclamation plan.* Require submission of a nonmetallic mining reclamation plan including maps, information about the site, a description of the proposed reclamation including methods and procedures to be used and a proposed timetable for completion of various stages of the reclamation of the nonmetallic mining site.

(d) *Permit; standards; hearing; inspection; fee.* Require a person to obtain a nonmetallic mining permit in order to engage in nonmetallic mining operations or in reclamation of a nonmetallic mining site, establish standards for the issuance, renewal, modification, suspension or revocation of this permit, require a public hearing prior to issuance or revocation of this permit and charge a nonmetallic mining permit fee sufficient to cover the cost of administering and enforcing the nonmetallic mining reclamation ordinance.

(e) *Financial assurance.* Require a bond, a deposit of funds or other form of financial assurance conditioned on the faithful performance of all of the requirements of the nonmetallic mining reclamation ordinance.

(f) *Restrictions.* Restrict nonmetallic mining operations or restrict, regulate or require certain activities in connection with nonmetallic mining operations or reclamation of a nonmetallic mining site in order to ensure compliance with reclamation standards, operation plans, reclamation plans, licensing standards, financial assurance requirements and other requirements of the nonmetallic mining reclamation ordinance. These restrictions, regulations and requirements may include but are not limited to specifications for separations between excavations and property boundaries, depth of excavations and segregation of topsoil.

(g) *Prohibitions and orders.* Prohibit nonmetallic mining operations if the proposed nonmetallic mining site cannot be reclaimed in compliance with reclamation standards and may provide procedures for the issuance and enforcement of compliance orders, suspension orders and termination orders to ensure compliance with reclamation standards, operation plans, reclamation plans, licensing standards, financial assurance requirements and

other provisions of the nonmetallic mining reclamation ordinance.

(h) *Exemptions and variances.* Establish standards and procedures for granting exemptions and variances from the requirements of the nonmetallic mining reclamation ordinance.

(i) *Other provisions.* Contain other provisions not enumerated under pars. (a) to (h) necessary to ensure adequate reclamation of nonmetallic mining sites.

(5) **INSPECTION** An agent of a county, city, village or town which has a valid nonmetallic mining reclamation ordinance may enter the premises of a nonmetallic mining operation in the performance of his or her official duties by permission of the property owner or operator or pursuant to a special inspection warrant issued under s. 66.122 in order to inspect those premises and to ascertain compliance with the nonmetallic mining reclamation ordinance.

(6) **ENFORCEMENT AND PENALTIES** The governing body of a county, city, village or town which has a valid nonmetallic mining reclamation ordinance or an agent designated by that governing body may issue a compliance order, suspension order or termination order as authorized in the nonmetallic mining reclamation ordinance as provided under sub. (4) (g) and may suspend or revoke the nonmetallic mining permit as authorized in the nonmetallic mining reclamation ordinance as provided under sub. (4) (d). A nonmetallic mining reclamation ordinance may include a schedule of forfeitures to be imposed for violations of that ordinance.

(7) **APPLICABILITY** This section does not apply after December 31, 1996.

History: 1983 a 176; 1993 a 464.

**66.04 Appropriations. (1) BONUS TO STATE INSTITUTION.** No appropriation or bonus of any kind shall be made by any town, village, or city, nor any municipal liability created nor tax levied, as a consideration or inducement to the state to locate any public educational, charitable, reformatory, or penal institution.

(m) *Subsidy of abortions restricted.* No city, village or town or agency or subdivision of a city, village or town may authorize funds for or pay to a physician or surgeon or a hospital, clinic or other medical facility for the performance of an abortion except those permitted under and which are performed in accordance with s. 20.927.

(2) **INVESTMENTS** (a) Any county, city, village, town, school district, drainage district, technical college district or other governing board as defined by s. 34.01 (1) may invest any of its funds not immediately needed in any of the following:

1. Time deposits in any credit union, bank, savings bank, trust company or savings and loan association which is authorized to transact business in this state if the time deposits mature in not more than 3 years.

2. Bonds or securities issued or guaranteed as to principal and interest by the federal government, or by a commission, board or other instrumentality of the federal government.

3. Bonds or securities of any county, city, drainage district, technical college district, village, town or school district of this state.

3m. Bonds issued by a local exposition district under subch. II of ch. 229.

4. Any security which matures or which may be tendered for purchase at the option of the holder within not more than 7 years of the date on which it is acquired, if that security has a rating which is the highest or 2nd highest rating category assigned by Standard & Poor's corporation, Moody's investors service or other similar nationally recognized rating agency or if that security is senior to, or on a parity with, a security of the same issuer which has such a rating.

5. Securities of an open-end management investment company or investment trust, if the investment company or investment trust does not charge a sales load, if the investment company or

investment trust is registered under the investment company act of 1940, 15 USC 80a-1 to 80a-64, and if the portfolio of the investment company or investment trust is limited to the following:

a. Bonds and securities issued by the federal government or a commission, board or other instrumentality of the federal government.

b. Bonds that are guaranteed as to principal and interest by the federal government or a commission, board or other instrumentality of the federal government.

c. Repurchase agreements that are fully collateralized by bonds or securities under subd. 5. a. or b.

(b) Any town, city or village may invest surplus funds in any bonds or securities issued under the authority of the municipality, whether the bonds or securities create a general municipality liability or a liability of the property owners of the municipality for special improvements, and may sell or hypothecate the bonds or securities. Funds of any employer, as defined by s. 40.02 (28), in a deferred compensation plan may also be invested and reinvested in the same manner authorized for investments under s. 881.01 (1).

(c) Any local government, as defined under s. 25.50 (1) (d), may invest surplus funds in the local government pooled-investment fund. Cemetery care funds, including gifts where the principal is to be kept intact, may also be invested under ch. 881.

(d) Any county, city, village, town, school district, drainage district, technical college district or other governing board as defined by s. 34.01 (1) may engage in financial transactions in which a public depository, as defined in s. 34.01 (5), agrees to repay funds advanced to it by the local government plus interest, if the agreement is secured by bonds or securities issued or guaranteed as to principal and interest by the federal government.

(2m) **DELEGATION OF INVESTMENT AUTHORITY** Any county, city, village, town, school district, drainage district, technical college district or other governing board, as defined in s. 34.01 (1), may delegate the investment authority over any of its funds not immediately needed to a state or national bank, or trust company, which is authorized to transact business in this state if all of the following conditions are met:

(a) The institution is authorized to exercise trust powers under s. 221.04 (6) or ch. 223.

(b) The governing board renews annually the investment agreement under which it delegates its investment authority, and reviews annually the performance of the institution with which its funds are invested.

(3) **CELEBRATION OF HOLIDAYS** A town, county, school board or school district may appropriate money for the purpose of initiating or participating in appropriate celebrations of any legal holiday listed in s. 895.20.

(4) **INVESTED FUND PROCEEDS IN POPULOUS CITIES, USE** In any city of the first class, all interest derived from invested funds held by the city treasurer in a custodial capacity on behalf of any political entity, except for pension funds, shall be deemed general revenues of such city and shall revert to the city's general fund, conditioned upon the approval by such political entity evidenced by a resolution adopted for that purpose.

History: 1971 c. 41 s. 12; 1971 c. 154, 211; 1975 c. 164, 180, 422; 1977 c. 29, 182; 1977 c. 187 s. 135; 1977 c. 245, 272, 367, 447; 1979 c. 221, 293, 355; 1981 c. 187; 1983 a 189 s. 329 (21); 1983 a. 192 s. 304; 1983 a 368; 1987 a 27; 399; 1989 a 307; 1991 a 39; 1993 a 203, 263, 399.

**Cross-reference:** See also s. 157.50 (6) as to investment of municipal care funds. See note to 219.05, citing 62 Atty. Gen. 312, as to investments in savings and loan associations.

Municipalities may only invest in certain specifically authorized bonds, securities, deposits, etc., and may not invest in mutual funds, even if assets of such funds consist solely of statutorily-allowed bonds and securities. 77 Atty. Gen. 274.

**66.041 Local government audits and reports.** Notwithstanding any other statute, the governing body of any county, city, village or town may require or authorize a financial audit of any municipal or county officer, department, board, commission,



function or activity financed in whole or part from municipal or county funds, or if any portion of the funds thereof are the funds of such county, city, village or town. The governing body may likewise require submission of periodic financial reports by any such officer, department, board, commission, function or activity

History: 1977 c. 29.

**66.042 Withdrawal or disbursement from local treasury.** (1) Except as otherwise provided in subs. (2) to (5), in every county, city, village, town and school district, all disbursements from the treasury shall be made by the treasurer thereof upon the written order of the county, city, village, town or school clerk after proper vouchers have been filed in the office of the clerk; and in all cases where the statutes provide for payment by the treasurer without an order of the clerk, it shall hereafter be the duty of the clerk to draw and deliver to the treasurer an order therefor before or at the time when such payment is required to be made by the treasurer. The provisions of this section shall apply to all special and general provisions of the statutes relative to the disbursement of money from the county, city, village, town or school district treasury except s. 67.10 (2).

(2) Notwithstanding other law, a county having a population of 500,000 or more may, by ordinance, adopt any other method of allowing vouchers, disbursing funds, reconciling outstanding county orders, reconciling depository accounts, examining county orders, and accounting therefor consistent with accepted accounting and auditing practices, provided that the ordinance shall prior to its adoption be submitted to the department of revenue, which shall submit its recommendations on the proposed ordinance to the county board of supervisors.

(3) Except as provided in subs. (2), (3m) and (5), disbursements of the county, city, village, town or school district funds from demand deposits shall be by draft or order check and withdrawals from savings or time deposits shall be by written transfer order. Written transfer orders may be executed only for the purpose of transferring deposits to an authorized deposit of the public depositor in the same or another authorized public depository. The transfer shall be made directly by the public depository from which the withdrawal is made. No draft or order check issued under this subsection may be released to the payee, nor is the draft or order check valid, unless signed by the clerk and treasurer. No transfer order is valid unless signed by the clerk and the treasurer. Unless otherwise directed by ordinance or resolution adopted by the governing body, a certified copy of which shall be filed with each public depository concerned, the chairperson of the county board, mayor, village president, town chairperson or school district president, as the case may be, shall countersign all drafts or order checks and all transfer orders. The governing body may also, by ordinance or resolution, authorize additional signatures. In lieu of the personal signatures of the clerk and treasurer and such other signature as may be required, the facsimile signature adopted by the person and approved by the governing body concerned may be affixed to the draft, order check or transfer order. The use of a facsimile signature does not relieve any official from any liability to which the official is otherwise subject, including the unauthorized use of the facsimile signature. Any public depository shall be fully warranted and protected in making payment on any draft or order check or transferring pursuant to a transfer order bearing a facsimile signature affixed as provided by this subsection notwithstanding that the facsimile signature may have been placed thereon without the authority of the designated persons.

(3m) Any county, city, village, town or school district may process periodic payments through the use of money transfer techniques, including direct deposit, electronic funds transfer and automated clearinghouse methods. The county, municipal or school district treasurer shall keep a record of the date, payee and amount of each disbursement made by a money transfer technique.

(4) Except as provided in sub. (3m), if any board, commission or committee of any county, city, village, town or school district is vested by statute with exclusive control and management of a fund, including the audit and approval of payments therefrom, independently of the governing body, such payments shall be made by drafts or order checks issued by the county, city, village, town or school clerk upon the filing with him or her of certified bills, vouchers or schedules signed by the proper officers of such board, commission or committee, giving the name of the claimant or payee, and the amount and nature of each payment.

(5) In cities of the 1st class, municipal disbursements of public moneys shall be by draft, order, check, order check or as provided under sub. (3m). Checks or drafts shall be signed by the treasurer and countersigned by the comptroller. Orders shall be signed by the mayor and clerk and countersigned by the comptroller, as provided in the charter of such city. Disbursements of school moneys shall be as provided by s. 119.50.

(6) Withdrawal or disbursement of moneys deposited in a public depository as defined in s. 34.01 (5) by a treasurer as defined in s. 34.01 (7), other than the elected, appointed or acting official treasurer of a county, city, village, town or school district, shall be by endorsement, written order, draft, share draft, check or other draft signed by the person or persons designated by written authorization of the governing board as defined in s. 34.01 (1). The authorization shall conform to any statute covering the disbursement of the funds. Any public depository shall be fully warranted and protected in making payment in accordance with the latest authorization filed with it.

(7) No order may be issued by the county, city, village, town, special purpose district, school district, cooperative education service agency or technical college district clerk in excess of funds available or appropriated for the purposes for which the order is drawn, unless authorized by a resolution adopted by the affirmative vote of two-thirds of the entire membership of the governing body.

History: 1971 c. 154; 1971 c. 211 s. 124; 1977 c. 142, 225; 1979 c. 318; 1981 c. 20; 1983 a. 145; 1983 a. 189 s. 329 (21); 1983 a. 192 s. 303 (2); 1983 a. 368, 538; 1985 a. 91, 225; 1989 a. 56 s. 258; 1993 a. 399.

**66.044 Financial procedure; alternative system of approving claims.** (1) The governing body of any village or of any city of the 2nd, 3rd or 4th class may by ordinance enact an alternative system of approving financial claims against the municipal treasury other than claims subject to s. 893.80. The ordinance shall provide that payments may be made from the city or village treasury after the comptroller or clerk of the city or village audits and approves each claim as a proper charge against the treasury, and endorses his or her approval on the claim after having determined that the following conditions have been complied with:

(a) That funds are available therefor pursuant to the budget approved by the governing body.

(b) That the item or service covered by such claim has been duly authorized by the proper official, department head or board or commission.

(c) That the item or service has been actually supplied or rendered in conformity with such authorization.

(d) That the claim is just and valid pursuant to law. The comptroller or clerk may require the submission of such proof and evidence to support the foregoing as in that officer's discretion may be deemed necessary.

(2) Such ordinance shall require that the clerk or comptroller shall file with the governing body not less than monthly a list of the claims approved, showing the date paid, name of claimant, purpose and amount.

(3) The ordinance shall provide that the governing body of the city or village shall authorize an annual detailed audit of its financial transactions and accounts by a public accountant licensed under ch. 442 and designated by the governing body.



(4) Such system shall be operative only if the comptroller or clerk is covered by a fidelity bond of not less than \$5,000 in villages and cities of the fourth class, of not less than \$10,000 in cities of the third class, and of not less than \$20,000 in cities of the second class.

(5) If an alternative procedure is adopted by ordinance in conformity with this section, the claim procedure required by ss. 61.25 (6), 61.51, 62.09 (10), 62.11 and 62.12 and other relevant provisions, except s. 893.80, is not applicable in the city or village.

History: 1971 c. 108 ss. 5, 6; 1971 c. 125 s. 523; 1977 c. 285 s. 12; 1979 c. 323; 1985 a. 29; 1991 a. 316.

**66.045 Privileges in streets.** (1) Privilege for an obstruction or excavation beyond the lot line, or within a highway in any town, village, or city, other than by general ordinance affecting the whole public, shall be granted only as provided in this section.

(2) Application therefor shall be made to the board or council, and the privilege shall be granted only on condition that by its acceptance the applicant shall become primarily liable for damages to person or property by reason of the granting of the privilege, be obligated to remove the same upon 10 days' notice by the state or the municipality and waive right to contest in any manner the validity of this section or the amount of compensation charged and that the applicant file such bond as the board or council require, not exceeding \$10,000 running to the town, village, or city, and such third parties as may be injured, to secure the performance of these conditions. But if there is no established lot line and the application is accompanied by a blue print, the board or council may make such conditions as they deem advisable.

(3) Compensation for the special privilege shall be paid into the general fund and shall be fixed, in towns by the chairperson, in villages by the president, and in cities by a board consisting of the board or commissioner of public works, city attorney and mayor.

(4) The holder of such special privilege shall be entitled to no damages for removal of the obstruction or excavation, and if the holder shall not remove the same upon due notice, it shall be removed at the holder's expense.

(5) Third parties whose rights are interfered with by the granting of such privilege shall have right of action against the holder of the special privilege only.

(6) Subsections (1) to (5) do not apply to public service corporations, or to cooperative associations organized under ch. 185 to render or furnish telecommunications service, gas, light, heat or power, but such corporations shall secure permit from the proper official for temporary obstructions or excavation in a highway and shall be liable for all injuries to person or property thereby.

(7) This section does not apply to such obstruction or excavation for not longer than 3 months, and for which permit has been granted by the proper official.

(8) Obstruction or excavation by a city, village or town in any street, alley, or public place belonging to any other municipality is included in this section.

(9) Anyone causing any obstruction or excavation to be made contrary to subs. (1) to (8) shall be liable to a fine of not less than \$25 and not more than \$500, or to imprisonment in the county jail for not less than 10 days nor more than 6 months, or to both such fine and imprisonment.

History: 1985 a. 297; 1991 a. 316; 1993 a. 184, 246.

See note to 81.15, citing *Webster v Klug & Smith*, 81 W (2d) 334, 260 NW (2d) 686.

**66.046 Street barriers; neighborhood watch signs.**

(1) The governing body of a city, village or town may set aside streets or roads that are not a part of any federal, state or county trunk highway system for the safety of children in coasting or other play activities, and may obstruct or barricade such streets or roads to safeguard the children from accidents. The governing body of the city, village or town shall erect and maintain thereon

barriers or barricades, lights, or warning signs therefor and shall not be liable for any damage caused thereby.

(2) A city or village which has a neighborhood watch program authorized by the law enforcement agency of the city or village and in which the residents of the city or village participate may, in a manner approved by the city council or village board, place within the right-of-way of a street or highway within its limits a neighborhood watch sign of a uniform design approved by the department of transportation. No sign under this subsection may be placed within the right-of-way of a highway designated as part of the national system of interstate and defense highways.

(3) (a) The governing body of a city may monitor or limit access to streets that are not part of any federal, state or county trunk highway system or connecting highway, as described in s. 84.02 (11), for the purposes of security or public safety. The governing body of a city may authorize gates or security stations, or both, to be erected and maintained to monitor traffic or limit access on such streets. The restriction of access to streets that is authorized under this subsection may not affect a city's eligibility for state transportation aids.

(b) This subsection applies only to the city of Arcadia.

History: 1985 a. 194; 1987 a. 205; 1993 a. 113, 246.

**66.047 Interference with public service structure.**

No contractor having a contract for any work upon, over, along or under any public street or highway shall interfere with, destroy or disturb the structures of any public utility as defined under s. 196.01 (5), and including a telecommunications carrier as defined in s. 196.01 (8m), encountered in the performance of such work so as to interrupt, impair or affect the public service for which such structures may be used, without first procuring written authority from the commissioner of public works, or other properly constituted authority. It shall, however, be the duty of every public utility, whenever a temporary protection of, or temporary change in, its structures, located upon, over, along or under the surface of any public street or highway is deemed by the commissioner of public works, or other such duly constituted authority, to be reasonably necessary to enable the accomplishment of such work, to so temporarily protect or change its said structures; provided, that such contractor shall give reasonable notice of such required temporary protection or temporary change to the public utility, and shall pay or assure to the public utility the reasonable cost thereof, except when the public utility is properly liable therefor under the law, but in all cases where such work is done by or for the state or by or for any county, city, village, town sanitary district, metropolitan sewerage district created under ss. 66.20 to 66.26 or 66.88 to 66.918 or town, the cost of such temporary protection or temporary change shall be borne by the public utility.

History: 1973 c. 277; 1983 a. 296, 538; 1993 a. 496.

Interference without written authority is prohibited only if parties cannot agree that requested changes are reasonably necessary. Town sanitary district is not a town within meaning of statute for cost provision. *Wis. Gas Co. v Lawrenz & Asso* 72 W (2d) 389, 241 NW (2d) 384.

**66.048 Viaducts in cities, villages and towns.**

(1) VIADUCTS, PRIVATE IN CITIES, VILLAGES AND TOWNS. The privilege of erecting a viaduct above a public street, road or alley, for the purpose of connecting buildings on each side thereof, may be granted by the city council, village board or town board upon the written petition of the owners of all the frontage of the lots and lands abutting upon the portion thereof sought to be connected, and the owners of more than one-half of the frontage of the lots and lands abutting upon that portion of the remainder thereof which lies within 2,650 feet from the ends of the portion proposed to be so connected. Whenever any of the lots or lands aforesaid is owned by the state, or by a county, city, village or town, or by a minor or incompetent person, or the title thereof is held in trust, as to all lots and lands so owned or held, said petition may be signed by the governor, the chairperson of the county board, the mayor of the city, the president of the board of trustees of the village, the chairperson of the town board, the guardian of the minor or incompetent person, or the trustee, respectively, and the signa-

ture of any private corporation may be made by its president, secretary or other principal officer or managing agent. Written notice stating when and where the petition will be acted upon, and describing the location of the proposed viaduct, shall be given by the city council, village board or town board by publication of a class 3 notice, under ch. 985.

(2) **VIADUCTS, REMOVAL OF PRIVATE.** A viaduct in any city, village or town may be discontinued by the city council, village board or town board, upon written petition of the owners of more than one-half of the frontage of the lots and lands abutting on the street or road approaching on each end of such viaduct, which lies within 2,650 feet from the ends of such viaduct. Whenever any of the lots or lands aforesaid is owned by the state, or by a county, city, village or town, or by a minor or incompetent person, or the title thereof is held in trust, as to all lots and lands so owned or held, said petition may be signed by the governor, the chairperson of the county board, the mayor of the city, the president of the board of trustees of the village, the chairperson of the town board, the guardian of the minor or incompetent person, or the trustee, respectively, and the signature of any private corporation may be made by its president, secretary or other principal officer or managing agent. Written notice stating when and where the petition will be acted upon, and stating what viaduct is proposed to be discontinued, shall be given by the city council, village board or town board by publication of a class 1 notice, under ch. 985, not less than one year before the day fixed for the hearing and a class 3 notice, under ch. 985, within the 30 days before the date of the hearing.

(3) **LEASE OF SPACE BY CITIES, VILLAGES AND TOWNS.** (a) Any city, village or town may lease space over any street, road, alley or other public place in the city, village or town which is more than 12 feet above the level of the street, road, alley or other public place for any term not exceeding 99 years to the person who owns the fee in the property on both sides of the portion of the street, road, alley or other public place to be so leased, whenever the governing body of the city, village or town is of the opinion that such place is not needed for street, road, alley or other public purpose, and that the public interest will be served by such leasing.

(b) The leasing of each space shall be authorized by ordinance. The ordinance shall set forth the proposed lease, the purpose for which the space may be used and the terms of the lease with reasonable certainty.

(c) The lease shall be signed on behalf of the city, village or town by the mayor, village president or town board chairperson and shall be attested by the city, village or town clerk under the corporate seal. The lease shall also be executed by the lessee in such manner as necessary to bind the lessee. After being duly executed and acknowledged the lease shall be recorded in the office of the register of deeds of the county in which is located the leased premises.

(d) If, in the judgment of such governing body, the public interest requires that any building erected in the leased space be removed so that a street, road, alley or public place may be restored to its original condition, the lessor city, village or town may condemn the lessee's interest in the leased space by proceeding under ch. 32. After payment of such damages as may be fixed in the condemnation proceedings, the city, village or town may remove all buildings or other structures from the leased space and restore the buildings adjoining the leased space to their original condition.

(4) **SALE OR LEASE OF SPACE.** (a) Any city, village or town may sell or lease the space over any street, road, alley or public place or municipally owned real estate or below ground level thereof to any person, if the governing body determines by resolution that such action is in the best public interest and states the reasons therefor and the prospective purchaser or lessee has provided for the removal and relocation expense for any facilities devoted to a public use where such relocation is necessary for the purposes of the purchaser or lessee. Leases shall be granted by ordinance and shall not exceed 99 years in length. No lease shall be granted nor

use authorized hereunder which substantially interferes with the public purpose for which the surface of the land is used.

(b) Leases shall specify purposes for which the leased space is to be used. If the purpose is to erect in the space a building or a structure attached to the lot, the lease shall contain a reasonably accurate description of the building to be erected and of the manner in which it shall be imposed upon or around the lot. The lease shall also provide for use by the lessee of such areas of the real estate as are essential for ingress and egress to the leased space, for the support of the building or other structures to be erected and for the connection of essential public or private utilities to the building or structure.

(c) Any building erected in the space leased shall be operated, as far as practicable, separately from the municipal use. Such structure shall conform to all state and municipal regulations.

(d) Any leases under this subsection shall be subject to sub. (3) (c) and (d).

**History:** 1971 c. 43; 1983 a. 192 s. 303 (2); 1991 a. 316; 1993 a. 246.  
A statute authorizing cities and villages to lease space over a parking lot would be constitutional. 58 Atty. Gen. 179.

**66.0485 Accident record systems.** Every city, village and town having a population of 5,000 or more shall maintain a traffic accident record system whereby traffic accidents occurring within the city, village or town may be located within 100 feet of the occurrence and shall provide a copy of the record quarterly to the county traffic safety commission under s. 83.013 (1) (a).

**History:** 1975 c. 381; 1983 a. 291; 1993 a. 246.

**66.049 Removal of rubbish.** Cities, villages and towns may cause the removal of ashes, garbage, and rubbish from such classes of places therein as the board or council shall direct. The removal may be from all such places or from those whose owners or occupants desire the service. Districts may be created and removal provided for certain of them only, and different regulations may be applied to each removal district. The cost of removal may be provided for by special assessment against the property served, by general tax upon the property of the respective districts, or by general tax upon the property of the city, village or town.

**History:** 1993 a. 246.

**66.0495 Removal of wharves and piers in navigable waters.** (1) **ORDER.** (a) *Order to remove wharves or piers.* The governing body of a city, village or town or a designated officer may order the owner of a wharf or pier which constitutes an unlawful obstruction of navigable waters under s. 30.13 (4) to remove that portion of the wharf or pier which constitutes an unlawful obstruction.

(b) *Order to repair or remove dilapidated wharves and piers in navigable waters.* The governing body of a city, village or town or a designated officer may order the owner of a wharf or pier in navigable waters which in its judgment is so old, dilapidated or in need of repair that it is dangerous, unsafe or unfit for use to repair or remove the wharf or pier. If the governing body of a city, village or town or a designated officer determines that the cost of repair is likely to exceed 50% of the equalized assessed value of the wharf or pier or, if the wharf or pier is not subject to assessment, if the cost of repair is likely to exceed 50% of the current fair market value, then repair is presumed unreasonable and the wharf or pier is presumed to be a public nuisance.

(d) *Order, service, contents.* An order under this subsection shall be served upon the owner or person responsible in the manner provided for the service of a summons in circuit court. If the owner or person responsible cannot be found, the order may be served by posting it on the wharf or pier and by publishing it as a class 3 notice under ch. 985. The order shall specify the action to be taken and the time within which it shall be complied with. At least 50 days must be allowed for compliance.

(2) **REMOVAL.** (a) *Removal by municipality.* If the owner or person responsible fails to comply with an order issued under sub. (1), the governing body of a city, village or town or a designated officer may cause the wharf or pier to be removed through any

available public agency or by a contract or arrangement by a private person. The cost of the removal may be charged against the real estate on which or adjacent to which the wharf or pier is located, constitutes a lien against that real estate and may be assessed and collected as a special tax. The governing body of the city, village or town or the designated officer may sell any salvage or valuable material resulting from the removal at the highest price obtainable. The governing body of the city, village or town or the designated officer shall remit the net proceeds of any sale, after deducting the expense of the removal, to the circuit court for use of the person entitled to the proceeds subject to the order of the court. The governing body of the city, village or town or the designated officer shall submit a report on any sale to the circuit court which shall include items of expense and the amount deducted. If there are no net proceeds, the report shall state that fact.

(b) *Court action.* If the owner or person responsible fails to comply with an order issued under sub. (1), the governing body of a city, village or town or a designated officer may commence an action in circuit court for a court order requiring the person to comply with the order issued under sub. (1). The court shall give the hearing on this action precedence over other matters on the court's calendar. Costs may be assessed in the discretion of the court.

(3) **CONTESTING ORDER FOR REMOVAL.** A person affected by an order issued under sub. (1) may apply to circuit court within 30 days after service of the order for a restraining order prohibiting the governing body of the city, village or town or the designated officer from removing the wharf or pier. The court shall conduct a hearing on the action within 20 days after application. The court shall give this hearing precedence over other matters on the court's calendar. The court shall determine whether the order issued under sub. (1) is reasonable. If the court finds that the order issued under sub. (1) is unreasonable, it shall issue a restraining order or modify it as the circumstances require and the governing body of the city, village or town or the designated officer may not issue another order under sub. (1) with respect to the wharf or pier unless its condition is substantially changed. Costs may be assessed in the discretion of the court. The remedy provided under this subsection is exclusive and no person affected by an order issued under sub. (1) may recover damages for the removal of a wharf or pier under this section.

History: 1981 c. 252

**66.05 Razing buildings; excavations.** (1) (a) The governing body or the inspector of buildings or other designated officer in every municipality may order the owner of premises upon which is located any building or part thereof within such municipality, which in its judgment is so old, dilapidated or has become so out of repair as to be dangerous, unsafe, insanitary or otherwise unfit for human habitation, occupancy or use, and so that it would be unreasonable to repair the same, to raze and remove such building or part thereof and restore the site to a dust-free and erosion-free condition, or if it can be made safe by repairs to repair and make safe and sanitary or to raze, remove and restore the site to a dust-free and erosion-free condition at the owner's option; or where there has been a cessation of normal construction of any building or structure for a period of more than 2 years, to raze and remove such building or part thereof and restore the site to a dust-free and erosion-free condition. The order shall specify a time in which the owner shall comply therewith and specify repairs, if any. It shall be served on the owner of record or the owner's agent where an agent is in charge of the building in the manner provided for service of a summons in the circuit court. If the owner and the owner's agent cannot be found, or if the owner is deceased and an estate has not been opened, the order may be served by posting it on the main entrance of the building and by publishing it as a class 1 notice, under ch. 985, before the time limited in the order commences to run. The time limited in the order commences to run from the date of service upon the owner or the agent in the manner of a summons or, if the owner and agent cannot be found, from the date that the order was posted on the build-

ing. The order shall also be served on the holder of any encumbrance of record by 1st class mail at the last-known address and by publication as a class 1 notice under ch. 985.

(b) Except as provided in sub. (9), if a municipal governing body, inspector of buildings or designated officer determines that the cost of such repairs would exceed 50 per cent of the assessed value of such building divided by the ratio of the assessed value to the recommended value as last published by the department of revenue for the municipality within which such building is located, such repairs shall be presumed unreasonable and it shall be presumed for the purposes of this section that such building is a public nuisance.

(c) Acts of municipal authorities under this section shall not increase the liability of an insurer.

(d) If a raze order issued under par. (a) is recorded with the register of deeds in the county in which the building is located, the order is considered to have been served, as of the date the raze order is recorded, on any person claiming an interest in the building or the real estate as a result of a conveyance from the owner of record unless the conveyance was recorded before the recording of the raze order.

(2) (a) If the owner fails or refuses to comply within the time prescribed, the inspector of buildings or other designated officer may cause such building or part thereof to be razed and removed and may restore the site to a dust-free and erosion-free condition either through any available public agency or by contract or arrangement with private persons, or closed if unfit for human habitation, occupancy or use. The cost of such razing, removal and restoration of the site to a dust-free and erosion-free condition or closing may be charged in full or in part against the real estate upon which such building is located, and if that cost is so charged it is a lien upon such real estate and may be assessed and collected as a special tax. Any portion of the cost charged against the real estate that is not reimbursed under s. 632.103 (2) from funds withheld from an insurance settlement may be assessed and collected as a special tax. When any building has been ordered razed and removed and an order has been issued to restore the site to a dust-free and erosion-free condition, the governing body or other designated officer under said contract or arrangement aforesaid may sell the salvage and valuable materials at the highest price obtainable. The net proceeds of such sale, after deducting the expenses of such razing, removal and restoration of the site to a dust-free and erosion-free condition, shall be promptly remitted to the circuit court with a report of such sale or transaction, including the items of expense and the amounts deducted, for the use of the person who may be entitled thereto, subject to the order of the court. If there remains no surplus to be turned over to the court, the report shall so state. If the building or part thereof is insanitary and unfit for human habitation, occupancy or use, and is not in danger of structural collapse the building inspector shall post a placard on the premises containing the following words: "This Building Cannot Be Used for Human Habitation, Occupancy or Use". And it is the duty of the building inspector or other designated officer to prohibit the use of the building for human habitation, occupancy or use until the necessary repairs have been made.

(b) Any municipality, inspector of buildings or designated officer may, in his, her or its official capacity, commence and prosecute an action in circuit court for an order of the court requiring the owner to comply with an order to raze or remove any building or part thereof issued under this section if the owner fails or refuses to do so within the time prescribed in the order, or for an order of the court requiring any person occupying a building whose occupancy has been prohibited under this section to vacate the premises, or any combination of the court orders. Hearing on such actions shall be given preference. Costs shall be in the discretion of the court.

(c) Any person who rents, leases or occupies a building which has been condemned for human habitation, occupancy or use shall be fined not less than \$5 nor more than \$50 or imprisoned not more than 30 days for each week of such violation, or both.

(3) Anyone affected by any such order shall within the time provided by s. 893.76 apply to the circuit court for an order restraining the inspector of buildings or other designated officer from razing and removing the building or part thereof and restoring the site to a dust-free and erosion-free condition or forever be barred. The hearing shall be held within 20 days and shall be given preference. The court shall determine whether the order of the inspector of buildings is reasonable, and if found reasonable the court shall dissolve the restraining order, and if found not reasonable the court shall continue the restraining order or modify it as the circumstances require. Costs shall be in the discretion of the court. If the court finds that the order of the inspector of buildings is unreasonable, the inspector of buildings or other designated officer shall issue no other order under this section in regard to the same building or part thereof until its condition is substantially changed. The remedies provided in this subsection are exclusive remedies and anyone affected by such an order of the inspector shall not be entitled to recover any damages for the razing and removal of any such building and the restoration of the site to a dust-free and erosion-free condition.

(4) "Building" as used in this section includes any building or structure.

(5) If any building ordered razed and removed and the site ordered restored to a dust-free and erosion-free condition or made safe and sanitary by repairs contains personal property or fixtures which will unreasonably interfere with the razing or repair of such building and restoration of such site or if the razing and removal of the building and the restoration of the site to a dust-free and erosion-free condition makes necessary the removal, sale or destruction of such personal property or fixtures the inspector of buildings or other designated officer may order in writing the removal of such personal property or fixtures by a certain date. Such order shall be served as provided in sub. (1). If the personal property or fixtures or both are not removed by the time specified the inspector may store the same, or may sell it, or if it has no appreciable value he or she may destroy the same. In case the property is stored the amount paid for storage shall be a lien against such property and against the real estate and, to the extent that the amount is not reimbursed under s. 632.103 (2) from funds withheld from an insurance settlement, shall be assessed and collected as a special tax against the real estate if the real estate is owned by the owner of the personal property and fixtures. If the property is stored the owner thereof, if known, shall be notified of the place of its storage and if it be not claimed by the owner it may be sold at the expiration of 6 months after it has been stored. In case of sale the handling of the sale and the distribution of the net proceeds after deducting the cost of storage and any other costs shall be handled as specified in sub. (2) and a report made to the circuit court as therein specified. Anyone affected by any order made under this subsection may appeal as provided in sub. (3).

(5m) This section shall not limit powers otherwise granted to municipalities by other laws of this state.

(6) In any town, city or village in any county having a population of 500,000 or more no excavation for building purposes, whether or not completed, shall be left open for more than 6 months without proceeding with the erection of a building thereon. In the event any such excavation remains open for more than 6 months, the inspector of buildings or other designated officer in such town, village or city shall order that the erection of a building on the excavation begin forthwith or in the alternative that the excavation be filled to grade. The order shall be served upon the owner of the land or the owner's agent and upon the holder of any encumbrance of record as provided in sub. (1). If the owner of the land fails to comply with the order within 15 days after service thereof upon the owner, the inspector of buildings or other designated officer shall cause the excavation to be filled to grade and the cost shall be charged against the real estate as provided in sub. (2). Subsection (3) shall also apply to orders issued under this subsection. This shall not be construed to impair the authority of any city or village to enact ordinances in this field.

(8) (a) In this subsection "building" means a building, dwelling or structure.

(am) Whenever an owner of any building in any city, village or town permits the same, either as a result of vandalism or for any other reason, to deteriorate or become dilapidated or blighted to the extent where windows, doors or other openings or plumbing or heating fixtures or facilities or appurtenances of such building are either deteriorated, damaged, destroyed or removed so that such building offends the aesthetic character of the immediate neighborhood or produces blight or deterioration by reason of such condition, the building inspector or other designated officer of such city, village or town shall issue a written notice respecting the existence of such defect; such written notice shall be served on the owner of such building as set forth in sub. (1) (a) and shall direct the owner of such building to promptly remedy the defect within 30 days following the service of such notice.

(b) 1. If an owner fails to remedy or improve the defect in accordance with the written notice furnished by the building inspector or other designated officer under par. (am) within the 30-day period specified in the written notice, the building inspector or other designated officer shall apply to the circuit court of the county in which the building is located for an order determining that the building constitutes a public nuisance. As a part of the application for such order from the circuit court the building inspector or other designated officer shall file a verified petition which recites the giving of such written notice, the defect or defects in such building, the owner's failure to comply with the notice and such other pertinent facts as may be related thereto. A copy of the petition shall be served upon the owner of record or the owner's agent if an agent is in charge of the building and upon the holder of any encumbrance of record under sub. (1) (a) and the owner shall have 20 days following service upon the owner in which to reply to such petition. Upon application by the building inspector or other designated officer the circuit court shall set promptly the petition for hearing. Testimony shall be taken by the circuit court with respect to the allegations of the petition and denials contained in the verified answer. If the circuit court after hearing the evidence with respect to the petition and the answer determines that the building constitutes a public nuisance, the court shall issue promptly an order directing the owner of the building to remedy the defect and to make such repairs and alterations as may be required. The court shall set a reasonable period of time in which the defect shall be remedied and the repairs or alterations completed. A copy of the order shall be served upon the owner as provided in sub. (1) (a). The order of the circuit court shall state in the alternative that if the order of the court is not complied with within the time fixed by the court, the court will appoint a receiver or authorize the building inspector or other designated officer to proceed to raze and remove the building and restore the site to a dust-free and erosion-free condition under par. (bg).

2. In an action under this subsection, the circuit court before which the action is commenced shall exercise jurisdiction in rem or quasi rem over the property which is the subject of the action. The owner of record of the property, if known, and all other persons of record holding or claiming any interest in the property shall be made parties defendant and service of process may be had upon them.

3. It shall not be a defense to an action under this subsection that the owner of record of the property is a different person, partnership or corporate entity than the owner of record of the property on the date the action was commenced or thereafter if a lis pendens was filed before the change of ownership.

(bg) If the order of the circuit court under par. (b) is not complied with within the time fixed by the court under par. (b), the court shall authorize the building inspector or other designated officer to raze and remove the building and restore the site to a dust-free and erosion-free condition or shall appoint a disinterested person to act as receiver of the property to do either of the following within a reasonable period of time set by the court:

1. Remedy the defect and make any repairs and alterations necessary to meet the standards required by the building code or any health order. A receiver appointed under this subdivision, with the approval of the circuit court, may borrow money against and mortgage the property held in receivership as security in any amount necessary to remedy the defect and make the repairs and alterations. For the expenses incurred to remedy the defect and make the repairs and alterations necessary under this subdivision, the receiver shall have a lien upon the property. At the request of and with the approval of the owner, the receiver may sell the property at a price equal to at least the appraisal value of the property plus the cost of any repairs made under this subdivision. The selling owner shall be liable for such costs.

2. Secure and sell the building to a buyer who demonstrates to the circuit court an ability and intent to rehabilitate the building and to cause the building to be reoccupied in a legal manner.

(bm) 1. Any receiver appointed under par. (bg) shall collect all rents and profits accruing from the property held in receivership and pay all costs of management, including all general and special real estate taxes or assessments and interest payments on first mortgages on the property. A receiver under par. (bg) shall apply moneys received from sale of property held in receivership to pay all debts due on the property in the order set by law and shall pay any balance to the selling owner if the circuit court approves.

2. The circuit court shall set the fees and bond of a receiver appointed under par. (bg) and may discharge the receiver as the court deems appropriate.

3. Nothing in this subsection relieves the owner of any property for which a receiver has been appointed under par. (bg) from any civil or criminal responsibility or liability except that the receiver shall have civil and criminal responsibility and liability for all matters and acts directly under the receiver's authority or performed at his or her discretion.

4. If a defect is not remedied and repairs and alterations are not made within the time limit set by the circuit court under par. (bg), the court shall order that the building inspector or other designated officer proceed to raze and remove the building and restore the site to a dust-free and erosion-free condition.

5. All costs and disbursements with respect to razing, removing and restoration of the site under this subsection shall be as provided for under sub. (2) (a).

(d) Any building, which under par. (am) either as a result of vandalism or for any other reason is permitted to deteriorate or become dilapidated or blighted to the extent where windows, doors or other openings or plumbing or heating fixtures or facilities or appurtenances of such building, dwelling or structure are either damaged, destroyed or removed so that such building, dwelling or structure offends the aesthetic character of the immediate neighborhood and produces blight or deterioration by reason of such condition, is a public nuisance.

(9) (a) In this subsection:

1. "Cost of repairs" includes the estimated cost of repairs that are necessary to comply with applicable building codes, or other ordinances or regulations, governing the repair or renovation of a historic building.

1m. "Historic building" means any building, structure or object listed on, or any building, structure or object within and contributing to a historic district listed on, the national register of historic places in Wisconsin, the state register of historic places or a list of historic places maintained by a municipality.

2. "Municipality" means a city, village, county or town.

(b) The state historical society shall notify a municipality of any historic building located in the municipality. If a historic district lies within a municipality, the historical society shall furnish to the municipality a map delineating the boundaries of the district.

(c) If an order is issued under this section to raze and remove a historic building and restore the site to a dust-free and erosion-

free condition, an application is made for a permit to raze and remove a historic building and restore the site to a dust-free and erosion-free condition or a municipality intends to raze and remove a municipally owned historic building and restore the site to a dust-free and erosion-free condition, the municipality in which the historic building is located shall notify the state historical society of the order, application or intent. No historic building may be razed and removed nor the site restored to a dust-free and erosion-free condition for 30 days after the notice is given. During the 30-day period, the state historical society shall have access to the historic building to create or preserve a historic record.

(d) If a municipal governing body, inspector of buildings or designated officer determines that the cost of repairs to a historic building would be less than 85% of the assessed value of the building divided by the ratio of the assessed value to the recommended value as last published by the department of revenue for the municipality within which the historic building is located, such repairs shall be presumed reasonable.

(10) (a) First class cities may adopt by ordinance alternate or additional provisions governing the placarding, closing, razing and removal of a building and the restoration of the site to a dust-free and erosion-free condition.

(b) This subsection shall be liberally construed to provide 1st class cities with the largest possible power and leeway of action.

**History:** Sup. Ct. Order, 67 W (2d) 750; 1977 c. 187; 1979 c. 323; 1981 c. 341; 1983 a. 108, 192, 219; 1983 a. 275 s. 15 (2); 1987 a. 395; 1989 a. 347; 1991 a. 39, 316; 1993 a. 213, 246, 267, 382, 491.

The 30-day time limitation within which an owner may apply to the circuit court for an order restraining a municipality from razing a building as prescribed in 66.05 (3), Stats. 1969, merely calls for an application to the court within the 30-day period; hence service of the application or resultant order need not be made within that period although, as provided in the statute, a hearing on the merits of the controversy must be held within 20 days. *Berkoff v. Dept. of Building Inspection*, 47 W (2d) 215, 177 NW (2d) 142.

The owner has no option to repair buildings ordered razed where the cost of repair would be unreasonable, i.e., exceeding 50% of value. *Appleton v. Brunschweiler*, 52 W (2d) 303, 190 NW (2d) 545.

The statute only creates a presumption that repairs in excess of 50% are unreasonable but the property owner has the burden to show that presumption is unreasonable in the particular case. *Posnanski v. City of West Allis*, 61 W (2d) 461, 213 NW (2d) 51.

Trial court exceeded authority in modifying building inspector's order to raze building by instead ordering repairs necessary to make building fit for human habitation where public had no access to building. *Donley v. Boettcher*, 79 W (2d) 393, 255 NW (2d) 574.

Persons affected by razing order have exclusive remedy under (3). *Gehr v. Sheboygan*, 81 W (2d) 117, 260 NW (2d) 30.

City was properly held in contempt for razing building protected by foreclosure judgment. *Mohr v. Milwaukee*, 106 W (2d) 80, 315 NW (2d) 504 (1982).

Land contract vendor is not an owner of real estate under this section. *City of Milwaukee v. Greenberg*, 163 W (2d) 28, 471 NW (2d) 33 (1991).

See note to 32.19, citing *Devines v. Maier*, 728 F. (2d) 876 (1984).

**66.051 Power of municipalities to prohibit criminal conduct.** (1) The board or council of any town, village or city may:

(a) Prohibit all forms of gambling and fraudulent devices and practices;

(b) Cause the seizure of anything devised solely for gambling or found in actual use for gambling and cause the destruction of any such thing after a judicial determination that it was used solely for gambling or found in actual use for gambling;

(bm) Enact and enforce an ordinance to prohibit the possession of 25 grams or less of marijuana, as defined in s. 161.01 (14), subject to the exceptions in s. 161.41 (3r), and provide a forfeiture for a violation of the ordinance; except that any person who is charged with possession of more than 25 grams of marijuana, or who is charged with possession of any amount of marijuana following a conviction for possession of marijuana, in this state shall not be prosecuted under this paragraph; and

(c) Prohibit conduct which is the same as or similar to that prohibited by s. 947.01 or 947.012.

(2) Except as provided in sub. (3), nothing in this section may be construed to preclude cities, villages and towns from prohibiting conduct which is the same as or similar to that prohibited by chs. 941 to 948.



(3) The board or council of a city, village or town may not, by ordinance, prohibit conduct which is the same as or similar to conduct prohibited by s. 944.21.

History: 1973 c. 198; 1979 c. 131 s. 4; 1987 a. 332 s. 64; 1987 a. 416; 1989 a. 121, 276; 1993 a. 246.

See note to 161.001, citing 63 Atty. Gen. 107, concerning marijuana penalties.

**66.052 Offensive industry.** (1) Any common council or village board may direct the location, management and construction of, and license, regulate or prohibit any industry, thing or place where any nauseous, offensive or unwholesome business is carried on, that is within the city or village or within 4 miles of the boundaries of the city or village, except that the Milwaukee, Menominee and Kinnickinnic rivers with their branches to the outer limits of the county of Milwaukee, and all canals connecting with said rivers, together with the lands adjacent to said rivers and canals or within 100 yards of them, are deemed to be within the jurisdiction of the city of Milwaukee. Any town board shall have the same powers as are provided in this section for cities and villages, as to the area within the town that is not licensed, regulated or prohibited by any city or village under this section. Any business that is conducted in violation of any city, village or town ordinance that is authorized to be enacted under this section is a public nuisance. An action for the abatement or removal of the business or to obtain an injunction to prevent operation of the business may be brought and maintained by the common council or village or town board in the name of this state on the relation of such city, village or town as provided in ss. 823.01, 823.02 and 823.07, or as provided in s. 254.58. Section 97.42 may not limit the powers granted by this section. Section 95.72 may not limit the powers granted by this section to cities or villages but powers granted to towns by this section are limited by s. 95.72 and by any orders and rules promulgated under s. 95.72.

(2) Any city or village may, subject to the approval of the town board of such town, by ordinance enact reasonable regulations governing areas where refuse, rubbish, ashes or garbage shall be dumped or accumulated in any town within one mile of the corporate limits of such city or village, so as to prevent nuisance.

History: 1973 c. 206; Sup. Ct. Order, 67 W (2d) 585, 774 (1975); 1993 a. 27

The social and economic roots of judge-made air pollution policy in Wisconsin. Laitos, 58 MLR 465.

**66.053 Licenses for nonintoxicating and soda water beverages.** (1) **NONINTOXICATING BEVERAGES.** (a) Each town board, village board and common council shall grant licenses to such persons as they deem proper for the sale of beverages containing less than one-half of one per centum of alcohol by volume to be consumed on the premises where sold and to manufacturers, wholesalers, retailers and distributors of such beverages, for which a license fee of not less than \$5 nor more than \$50, to be fixed by the board or council, shall be paid, except that where such beverages are sold, not to be consumed on the premises, the license fee shall be \$5. Such license shall be issued by the town, village or city clerk, shall designate the specific premises for which granted and shall expire the thirtieth day of June thereafter. The full license fee shall be charged for the whole or a fraction of the year. No such beverages shall be manufactured, sold at wholesale or retail or sold for consumption on the premises, or kept for sale at wholesale or retail, or for consumption on the premises where sold without such license.

(am) In case of removal of the place of business from the premises designated in the license to another location in the town, village or city within the license period, the licensee shall give notice of such change of location, and the license shall be amended accordingly without payment of additional fee. No such license, however, shall be transferable from one person to another.

(b) No license or permit may be granted to any person, unless to a domestic corporation or domestic limited liability company, not a resident of this state and of the town, village or city in which the license is applied for, nor, subject to ss. 111.321, 111.322 and 111.335, to any person who has been convicted of a felony, unless the person has been restored to civil rights.

(c) Each town board, village board and common council shall have authority by resolution or ordinance to adopt such regulations as it may deem reasonable and necessary regarding the location of licensed premises, the conduct thereof, the sale of beverages containing less than one-half of one per centum of alcohol by volume and the revocation of any license or permit.

(2) **SODA WATER BEVERAGES.** Each town board, village board and common council of any city may grant licenses to such persons as they deem proper for the sale of soda water beverages, as defined in s. 97.34, to be consumed on or off the premises where sold. Such license fee shall be fixed by such governing body of such city, village or town but shall not exceed \$5. The license shall be issued by the town, city or village clerk, shall designate the specific premises for which granted and shall expire on the thirtieth day of June thereafter. Each such governing body shall have authority by resolution or ordinance to adopt such regulations as it may deem reasonable and necessary regarding the location of licensed premises, the conduct thereof and the revocation of any such license.

History: 1977 c. 125; 1981 c. 334 s. 25 (1); 1981 c. 380, 391; 1993 a. 112.

**66.057 Minimum acreage of cemeteries.** A city, village or town may enact and enforce an ordinance that does any of the following:

(1) Allows a cemetery consisting of less than the minimum acreage specified in s. 157.128 (1) to be dedicated, as defined in s. 157.061 (4), in that city, village or town.

(2) Allows a person to establish and use a public mausoleum in a cemetery consisting of less than the minimum acreage specified in s. 157.12 (2) (c).

History: 1991 a. 269

**66.058 Mobile home parks.** (1) **DEFINITIONS.** For the purposes of this section:

(a) "Dependent mobile home" means a mobile home which does not have complete bathroom facilities.

(b) "Licensee" means any person licensed to operate and maintain a mobile home park under this section.

(c) "Licensing authority" means the city, town or village wherein a mobile home park is located.

(d) "Mobile home" is that which is, or was as originally constructed, designed to be transported by any motor vehicle upon a public highway and designed, equipped and used primarily for sleeping, eating and living quarters, or is intended to be so used; and includes any additions, attachments, annexes, foundations and appurtenances.

(e) "Mobile home park" means any plot or plots of ground upon which 2 or more units, occupied for dwelling or sleeping purposes are located, regardless of whether or not a charge is made for such accommodation.

(f) "Nondependent mobile home" means a mobile home equipped with complete bath and toilet facilities, all furniture, cooking, heating, appliances and complete year round facilities.

(g) "Park" means mobile home park.

(h) "Person" means any natural individual, firm, trust, partnership, association, corporation or limited liability company.

(i) "Space" means a plot of ground within a mobile home park, designed for the accommodation of one mobile home unit.

(j) "Unit" means a mobile home unit.

(2) **LICENSE AND REVOCATION OR SUSPENSION THEREOF.** (a) It shall be unlawful for any person to maintain or operate within the limits of any city, town or village, any mobile home park unless such person shall first obtain from the city, town or village a license therefor. All such parks in existence on August 9, 1953 shall within 90 days thereafter, obtain such license, and in all other respects comply fully with the requirements of this section except that the licensing authority shall upon application of a park operator, waive such requirements that require prohibitive reconstruction costs if such waiver does not affect sanitation requirements



of the city, town or village or create or permit to continue any hazard to the welfare and health of the community and the occupants of the park.

(b) In order to protect and promote the public health, morals and welfare and to equitably defray the cost of municipal and educational services required by persons and families using or occupying trailers, mobile homes, trailer camps or mobile home parks for living, dwelling or sleeping purposes, each city council, village board and town board may establish and enforce by ordinance reasonable standards and regulations for every trailer and trailer camp and every mobile home and mobile home park; require an annual license fee to operate the same and levy and collect special assessments to defray the cost of municipal and educational services furnished to such trailer and trailer camp, or mobile home and mobile home park. They may limit the number of units, trailers or mobile homes that may be parked or kept in any one camp or park, and limit the number of licenses for trailer camps or parks in any common school district, if the mobile housing development would cause the school costs to increase above the state average or if an exceedingly difficult or impossible situation exists with regard to providing adequate and proper sewage disposal in the particular area. The power conferred on cities, villages and towns by this section is in addition to all other grants and shall be deemed limited only by the express language of this section.

(c) In any town in which the town board adopts an ordinance regulating trailers under the provisions of this section and has also adopted and approved a county zoning ordinance under the provisions of s. 59.97, the provisions of the ordinance which is most restrictive shall apply with respect to the establishment and operation of any trailer camp in said town.

(d) Any license granted under the provisions of this section shall be subject to revocation or suspension for cause by the common council, village board or town board that issued the license upon complaint filed with the clerk of the city, village or town signed by any law enforcement officer, local health officer, as defined in s. 250.01 (5), or building inspector after a public hearing upon the complaint, provided that the holder of the license shall be given 10 days' notice in writing of the hearing, and the holder of the license shall be entitled to appear and be heard as to why the license shall not be revoked. Any holder of a license that is revoked or suspended by the governing body of any city, village or town may within 20 days of the date of the revocation or suspension appeal therefrom to the circuit court of the county in which the trailer camp or mobile home park is located by filing a written notice of appeal with the city, village or town clerk, together with a bond executed to the city, village or town, in the sum of \$500 with 2 sureties or a bonding company approved by the said clerk, conditioned for the faithful prosecution of the appeal and the payment of costs adjudged against the license holder.

**(3) LICENSE AND MONTHLY MOBILE HOME FEE; REVIEW** (a) The licensing authority shall exact from the licensee an annual license fee of not less than \$25 and not more than \$100 for each 50 spaces or fraction thereof within each mobile home park within its limits, except that where the park lies in more than one municipality the amount of the license fee shall be such fraction thereof as the number of spaces in the park in the municipality bears to the entire number of spaces in the park.

(b) The licensing authority may collect a fee of \$10 for each transfer of a license.

(c) In addition to the license fee provided in pars. (a) and (b), each local taxing authority shall collect from each mobile home occupying space or lots in a park in the city, town or village, except from mobile homes that constitute improvements to real property under s. 70.043 (1) and from recreational mobile homes and camping trailers as defined in s. 70.111 (19), a monthly parking permit fee computed as follows: On January 1, the assessor shall determine the total fair market value of each mobile home in the taxation district subject to the monthly parking permit fee. The

fair market value, minus the tax-exempt household furnishings thus established, shall be equated to the general level of assessment for the prior year on other real and personal property in the district. The value of each mobile home thus determined shall be multiplied by the general property gross tax rate, less any credit rate for the property tax relief credit, established on the preceding year's assessment of general property. The total annual parking permit fee thus computed shall be divided by 12 and shall represent the monthly mobile home parking permit fee. The fee shall be applicable to mobile homes moving into the tax district any time during the year. The park operator shall furnish information to the tax district clerk and the assessor on mobile homes added to the park within 5 days after their arrival, on forms prescribed by the department of revenue. As soon as the assessor receives the notice of an addition of a mobile home to a park, the assessor shall determine its fair market value and notify the clerk of that determination. The clerk shall equate the fair market value established by the assessor and shall apply the appropriate tax rate, divide the annual parking permit fee thus determined by 12 and notify the mobile home owner of the monthly fee to be collected from the mobile home owner. A municipality, by ordinance, may require the mobile home park operator to collect the monthly parking fee from the mobile home owner. Liability for payment of the fee shall begin on the first day of the next succeeding month and shall remain on the mobile home only for such months as the mobile home remains in the tax district. A new fee and a new valuation shall be established each January and shall continue for that calendar year. The valuation established shall be subject to review as are other values established under ch. 70. If the board of review reduces a valuation on which previous monthly payments have been made the tax district shall refund past excess fee payments. The monthly parking permit fee shall be paid by the mobile home owner to the local taxing authority on or before the 10th of the month following the month for which such parking permit fee is due. No such fee shall be imposed for any space occupied by a mobile home accompanied by an automobile for an accumulating period not to exceed 60 days in any 12 months if the occupants of the mobile home are tourists or vacationists. Exemption certificates in duplicate shall be accepted by the treasurer of the licensing authority from qualified tourists or vacationists in lieu of monthly mobile home parking permit fees. The credit under s. 79.10 (9) (bm), as it applies to the principal dwelling on a parcel of taxable property of an owner shall apply to the estimated fair market value of a mobile home that is the principal dwelling of the owner. The owner of the mobile home shall file a claim for the credit with the treasurer of the municipality in which the property is located no later than January 31. To obtain the credit under s. 79.10 (9) (bm), the owner shall attest on the claim that the mobile home is the owner's principal dwelling, as defined in s. 79.10 (1) (f). The treasurer shall reduce the owner's parking permit fee by the amount of any allowable credit. The treasurer shall furnish notice of all claims for credits filed under this paragraph to the department of revenue as provided under s. 79.10 (1m).

1. The licensee of a park shall be liable for the monthly parking permit fee for any mobile home occupying space therein as well as the owner and occupant thereof.

(d) This section shall not apply where a mobile home park is owned and operated by any county under the provisions of s. 59.07 (13) (b).

(e) If a mobile home is permitted by local ordinance to be located outside of a licensed park, the monthly parking permit fee shall be paid by the owner of the land on which it stands, and the owner of such land shall be required to comply with the reporting requirements of par. (c). The owner of the land may collect the fee from the owner of the mobile home and, on or before January 10 and on or before July 10, shall transmit to the taxation district all fees owed for the 6 months ending on the last day of the month preceding the month when the transmission is required. Nothing con-

tained in this subsection shall prohibit the regulation thereof by local ordinance.

(g) Failure to timely pay the tax hereunder shall be treated in all respects like a default in payment of personal property tax and shall be subject to all procedures and penalties applicable thereto under chs. 70 and 74.

(h) Each local governing body is empowered to enact an ordinance providing a forfeiture of up to \$25 for the failure to comply with the reporting requirements of par. (c) or (e). Each failure to report shall be regarded as a separate offense.

**(3m) PARK OPERATOR REIMBURSEMENT** A park operator who is required by municipal ordinance to collect the monthly parking permit fee from the mobile home owner may deduct, for administrative expenses, 2% of the monthly fees collected.

**(4) APPLICATION FOR LICENSE** Original application for mobile home park license shall be filed with the clerk of the licensing authority. Applications shall be in writing, signed by the applicant and shall contain the following:

- (a) The name and address of the applicant.
- (b) The location and legal description of the mobile home park
- (c) The complete plan of the park.

**(5) PLANS AND SPECIFICATIONS TO BE FILED** Accompanying, and to be filed with an original application for a mobile home park, shall be plans and specifications which shall be in compliance with all applicable city, town or village ordinances and provisions of the department of health and social services. The clerk after approval of the application by the governing body and upon completion of the work according to the plans shall issue the license. A mobile housing development harboring only nondependent mobile homes as defined in sub. (1) (f) shall not be required to provide a service building.

**(6) RENEWAL OF LICENSE** Upon application by any licensee and after approval by the governing body of the city, town or village and upon payment of the annual license fee, the clerk of the city, town or village shall issue a certificate renewing the license for another year, unless sooner revoked. The application for renewal shall be in writing, signed by the applicant on forms furnished by the city, town or village.

**(7) TRANSFER OF LICENSE; FEE** Upon application for a transfer of license the clerk of the city, town or village after approval of the application by the governing body shall issue a transfer upon payment of the required \$10 fee.

**(8) DISTRIBUTION OF FEES** The municipality may retain 10% of the monthly parking permit fees collected in each month, without reduction for any amounts deducted under sub. (3m), to cover the cost of administration. The municipality shall pay to the school district in which the park is located, within 20 days after the end of each month, such proportion of the remainder of the fees collected in the preceding month as the ratio of the most recent property tax levy for school purposes bears to the total tax levy for all purposes in the municipality. If the park is located in more than one school district, each district shall receive a share in the proportion that its property tax levy for school purposes bears to the total school tax levy.

**History:** 1971 c. 125 s. 521; 1975 c. 139, 199; 1977 c. 29 s. 1646 (3); 1983 a 189 ss 53, 329 (14); 1983 a 342; 1987 a 194; 1991 a 39, 269, 316; 1993 a 27, 112, 213

A license issued without prior approval of park plans is void and the owner cannot complain if it is revoked. A mobile home park zoning ordinance adopted without compliance with the notice of hearing requirements of s. 60.74 (2), 1981 stats. [now 60.61 (4)] is void. *Edelbeck v. Town of Theresa*, 57 W (2d) 172, 203 NW (2d) 694.

Time for appeal under sub. (2) (d) begins on date of action revoking license, not on effective date of revocation. *Reusch v. City of Baraboo*, 85 W (2d) 294, 270 NW (2d) 229 (1978).

State university is not subject to local licensing in the operation of a university mobile home park. 60 Atty. Gen. 7.

Town cannot have more restrictive ordinance regulating use and location of mobile homes outside mobile home parks than county. 60 Atty. Gen. 131.

Town board which has given conditional approval to plans for mobile home park has power to alter conditions as long as it acts reasonably. *Molgaard v. Town of Caledonia*, 527 F Supp. 1073 (1981).

**66.0585 Municipalities; parking fees on mobile homes.** Any municipality may assess parking fees at the rates under s. 66.058 on mobile homes, as defined in s. 70.111 (19) except mobile homes which are located in campgrounds licensed under s. 254.47 and mobile homes which are located on land where the principal residence of the owner of the mobile home is located, regardless of whether or not the mobile home is occupied during all or part of any calendar year.

**History:** 1981 c. 221; 1983 a. 342; 1993 a. 27

**66.059 Public improvement bonds: issuance.** (1) Any county, town, sanitary district, public inland lake protection and rehabilitation district, city or village, in addition to any other authority to borrow money and issue its municipal obligations, may also borrow money and issue its public improvement bonds to finance the cost of construction or acquisition, including site acquisition, of any revenue-producing public improvement of such municipality. In this section, unless the context or subject matter otherwise requires:

(a) "Debt service" means the amount of principal, interest and premium due and payable with respect to public improvement bonds.

(b) "Deficiency" means the amount by which debt service required to be paid in any calendar year exceeds the amount of revenues estimated to be derived from the ownership and operation of the public improvement for such calendar year, after first subtracting from the estimated revenues the estimated cost of paying the expenses of operating and maintaining the public improvement for such calendar year.

(c) "Municipality" means county, sanitary district, public inland lake protection and rehabilitation district, town, city or village.

(d) "Public improvement" means any public improvement which a municipality may lawfully own and operate from which the municipality expects to derive revenues.

(2) The governing body of the municipality proposing to issue public improvement bonds shall adopt a resolution authorizing their issuance. The resolution shall set forth the amount of bonds authorized, or a sum not to exceed a stated amount, and the purpose for which the bonds are to be issued. The resolution shall prescribe the terms, form and contents of the bonds and such other matters as the governing body deems necessary or advisable. The bonds may be in any denomination of not less than \$1,000, shall bear interest payable annually or semiannually, shall be payable not later than 20 years from the date of the bonds, at such times and places as the governing body determines, and may be subject to redemption prior to maturity on such terms and conditions as the governing body determines. The bonds may be issued either payable to bearer with interest coupons attached thereto or may be registered under s. 67.09. The bonds may be sold at public competitive sale or by private negotiation at the discretion of the governing body. Sections 67.08 and 67.10 apply to public improvement bonds, except insofar as they are in conflict herewith, in which case this section controls.

**(2m)** (a) A resolution, adopted under sub. (2) by the governing body of a municipality, need not be submitted to the electors of the municipality for approval, unless within 30 days after the resolution is adopted there is filed with the clerk of the municipality a petition conforming to the requirements of s. 8.40 requesting a referendum thereon, signed by electors numbering at least 10% of the votes cast in the municipality for governor at the last general election. Any resolution, adopted under sub. (2) at the discretion of the municipal governing body, may be submitted to the electors without waiting for the filing of a petition.

(b) If a referendum is to be held on a resolution, the municipal governing body shall direct the municipal clerk to call a special election for the purpose of submitting the resolution to the electors for a referendum on approval or rejection. In lieu of a special elec-

tion, the municipal governing body may specify that the election be held at the next succeeding spring primary or election or September primary or general election.

(c) The municipal clerk shall publish a class 2 notice, under ch. 985, containing a statement of the purpose of the referendum, giving the amount of the bonds proposed to be issued and the purpose for which they will be issued, and stating the time and places of holding the election and the hours during which the polls will be open.

(d) The election shall be held and conducted and the votes cast thereat canvassed as at regular municipal elections and the results certified to the municipal clerk. A majority of all votes cast in the municipality shall decide the question.

(3) The reasonable cost and value of any services rendered by the public improvement to the municipality shall be charged against the municipality and shall be paid by it in monthly installments.

(4) (a) Gross revenues derived from the ownership and operation of the public improvement shall be first pledged to debt service on issued public improvement bonds. When in excess of such obligation, the revenues shall be subject to requirements set by resolution or ordinance of the governing body fixing:

1. The proportion of revenues of the public improvement necessary for the reasonable and proper operation and maintenance thereof; and

2. The proportion of revenues necessary for the payment of debt service on the public improvement bonds. Such revenues shall be paid into a special fund in the treasury of the municipality known as the "Public Improvement Bond Account".

(b) At any time after one year's operation, the governing body may recompute the proportion of revenues assignable under par. (a) based upon experience of operation.

(c) All funds on deposit in a public improvement bond account, which are not immediately required for the purposes specified in this section, shall be invested in accordance with s. 66.04.

(5) Annually, on or before August 1 the officer or department of the municipality responsible for the operation of the public improvement shall file with the governing body, or its designated representative, a detailed statement setting forth the amount of the debt service on the public improvement bonds issued for the public improvement for the succeeding calendar year and an estimate for such year of the total revenues to be derived from the ownership and operation of the public improvement and the total cost of operating and maintaining the public improvement.

(6) (a) If it is determined that there will be a deficiency for the ensuing calendar year, the municipality shall make up the deficiency, but the obligation to do so shall be limited to a sum which shall not cause the municipality to exceed its municipal debt limits. The deficiency may be made up by the municipality from any revenues available therefor, including a tax levy. The amount contributed by the municipality shall be deposited in the public improvement bond account and applied to the payment of debt service. Taxes levied under this paragraph shall not be subject to statutory limitations of rate or amount.

(b) The amount of any deficiency determined under par. (a) for the ensuing calendar year shall be related to the total debt service for such year. Such ratio shall determine the outstanding indebtedness of the issue to be reflected as part of the municipality's indebtedness for the year.

(7) Whenever revenue bonds have been issued by a municipality pursuant to law and an ordinance authorizing their issuance without limitation as to amount has been enacted by the governing body of the municipality, public improvement bonds may be issued under the ordinance with the same effect as though they were revenue bonds. Such bonds shall be public improvement bonds and this section shall apply thereto, except that nothing contained in this subsection shall in any way impair the contract between the municipality and the holders of any outstanding revenue

bonds. Whatever liens have been created in favor of any outstanding revenue bonds issued under the ordinance shall apply to public improvement bonds so issued. The public improvement bonds shall be payable on a parity with the revenue bonds issued under the ordinance if the public improvement bonds are issued in compliance with the requirements of the ordinance for the issuance of parity bonds under the ordinance.

History: 1971 c. 188; 1975 c. 62, 197; 1983 a. 24, 189; 1983 a. 207 s. 93 (4); 1989 a. 192

**66.06 Public utilities.** (1) DEFINITIONS. The definition of "public utility" in s. 196.01 is applicable to ss. 66.06 to 66.078. Whenever the phrase "resolution or ordinance" is used in ss. 66.06 to 66.065 and 66.068 to 66.078, it means, as to towns, villages and cities, ordinance only.

(2) LIMITATION. Nothing in ss. 66.06 to 66.078 shall be construed as depriving the office of the commissioner of railroads, department of transportation or public service commission of any power conferred by ss. 195.05 and 197.01 to 197.10 and ch. 196.

History: 1977 c. 29 ss. 705, 1654 (9) (i); 1981 c. 347 s. 80 (2); 1983 a. 207; 1993 a. 16, 123, 246.

**66.061 Franchises; service contracts.** (1) FRANCHISES. (a) Any city, village or town may grant to any person or corporation the right to construct and operate therein a system of waterworks or to furnish light, heat or power subject to such reasonable rules and regulations as the proper municipal authorities by ordinance may from time to time prescribe.

(b) The board or council may submit the ordinance when passed and published to a referendum.

(c) No such ordinance shall be operative until 60 days after passage and publication unless sooner approved by a referendum. Within that time electors equal in number to 20 per cent of those voting at the last regular municipal election, may demand a referendum. The demand shall be in writing and filed with the clerk. Each signer shall state his or her occupation and residence and signatures shall be verified by the affidavit of an elector. The referendum shall be held at the next regular municipal election, or at a special election within 90 days of the filing of the demand, and the ordinance shall not be effective unless approved by a majority of the votes cast thereon. This paragraph shall not apply to extensions by a utility previously franchised by the village or city.

(d) Whenever any city or village at the time of its incorporation included within its corporate limits territory in which a public utility, prior to such incorporation, had been lawfully engaged in rendering public utility service, such public utility shall be deemed to possess a franchise to operate in such city or village to the same extent as though such franchise had been formally granted by ordinance duly adopted by the governing body of such city or village. This paragraph shall not apply to any public utility organized under this chapter.

(2) SERVICE CONTRACTS. (a) Cities, villages and towns may contract for furnishing light, heat, water, motor bus or other systems of public transportation to the municipality or to the inhabitants thereof for a period of not more than 30 years or for an indeterminate period if the prices are subject to adjustment at intervals of not greater than 5 years. The public service commission shall have jurisdiction relative to the rates and service to any city, village or town where light, heat or water is furnished to such city, village or town under any contract or arrangement, to the same extent that the public service commission has jurisdiction where that service is furnished directly to the public.

(b) When a city, village or town has contracted for water, lighting service, motor bus or other systems of public transportation to the municipality the cost may be raised by tax levy. In making payment to the owner of the utility a sum equal to the amount due the city, village or town from such owner for taxes or special assessments may be deducted.

(c) This subsection shall apply to every city, village and town regardless of any charter limitations on the tax levy for water or light.

(d) When any privately owned motor bus or public transportation system in a city, village or town fails to provide service for a period in excess of 30 days, and the owner or stockholders of the privately owned motor bus or public transportation system have announced an intention to abandon service, the governing body of the affected municipality may without referendum furnish or contract for the furnishing of other motor bus or public transportation service to the municipality and its inhabitants and to the users of the defaulting prior service for a period of not more than one year. This section shall not authorize a municipality to hire, directly or indirectly, any strikebreaker or other person for the purpose of replacing employes of said motor bus or public transportation system engaged in a strike.

**History:** 1977 c. 29; 1981 c. 347 s. 80 (2); 1981 c. 390 s. 252; 1991 a. 316; 1993 a. 16, 246

**66.064 Joint operation.** Any city, village or town served by any privately owned public utility, motor bus or other systems of public transportation rendering local service may contract with the owner thereof for the leasing, public operation, joint operation, extension and improvement by the municipality or with funds loaned by the municipality, for the stabilization by municipal guaranty of the return upon or for the purchase by instalments out of earnings or otherwise of that portion of said public utility which is operated within such municipality and any territory immediately adjacent and tributary thereto; or for the accomplishment of any object agreed upon between the parties relating to the use, operation, management, value, earnings, purchase, extension, improvement, sale, lease or control of such property. The provisions of s. 66.07 relating to preliminary agreement, approval by the department of transportation or public service commission, and ratification by the electors, shall be applicable to the contracts authorized by this section. The department of transportation or public service commission shall, when any such contract is approved by it and consummated, cooperate with the parties in respect to making valuations, appraisals, estimates and other determinations specified in such contract to be made by it.

**History:** 1977 c. 29 s. 1654 (9) (g); 1981 c. 347 s. 80 (2); 1985 a. 187; 1993 a. 16, 246

**66.065 Acquisition.** (1) Any town, village or city may construct, acquire or lease any plant and equipment located within or without the municipality, and including interest in or lease of land, for furnishing water, light, heat, or power, to the municipality, or to its inhabitants; may acquire a controlling portion of the stock of any corporation owning private waterworks or lighting plant and equipment; and may purchase the equity of redemption in a mortgaged or bonded waterworks or lighting system, including the cases where the municipality shall in the franchise have reserved right to purchase. The character or duration of the franchise, permit or grant under which any public utility is operated, shall not affect the power to acquire the same hereunder. Two or more public utilities owned by the same person or corporation, or 2 or more public utilities subject to the same lien or charge, may be acquired as a single enterprise under any proceeding heretofore begun or hereafter commenced, and the board or council may at any time agree with the owner or owners of any public utility or utilities as to the agreed value thereof, and to contract to purchase or acquire the same hereunder at such value, upon such terms and conditions as may be mutually agreed upon between said board or council and said owner or owners.

(2) A resolution, specifying the method of payment and submitting the question to a referendum, shall be adopted by a majority of all the members of the board or council at a regular meeting, after publication at least one week previous in the official paper.

(3) The notice of the referendum shall include a general statement of the plant equipment or part thereof it is proposed to acquire or construct and of the manner of payment.

(4) Referendum elections under this section shall not be held oftener than once a year, except that a referendum so held for the acquisition, lease or construction of any of the types of property enumerated in sub. (1) shall not bar the holding of one referendum in the same year for the acquisition and operation of a bus transportation system by the municipality.

(4a) The provisions of subs. (2), (3) and (4) shall not apply to the acquisition of any plant, equipment or public utility for furnishing water service when such plant, equipment or utility is acquired by the municipality by dedication or without monetary or financial consideration.

(5) Any city, village or town may by action of its governing body and with a referendum vote provide, acquire, own, operate or engage in a municipal bus transportation system where no existing bus, rail or other local transportation system exists in such municipality. Any city, village or town in which there exists any local transportation system by similar action and referendum vote may acquire, own, operate or engage in the operation of a municipal bus transportation system upon acquiring the local transportation system by voluntary agreement with the owners thereof, or pursuant to law, or upon securing a certificate from the department of transportation under s. 194.23.

(6) Any street motor bus transportation company operating pursuant to ch. 194 shall, by acceptance of authority under that chapter, be deemed to have consented to a purchase of its property actually used and useful for the convenience of the public by the municipality in which the major part of such property is situated or operated.

(7) Any city, village or town providing or acquiring a motor bus transportation system under the provisions of this section may finance such construction or purchase in any manner now authorized in respect of the construction or purchase of a public utility.

**History:** 1977 c. 29 s. 1654 (9) (f); 1981 c. 347 ss. 13, 80 (2); 1985 a. 187; 1993 a. 16, 246

This section is not a restriction upon the authority granted the department of natural resources by 144.025 (2) (r) to order the construction of a municipal water system, but constitutes merely an alternative by which a municipality may voluntarily construct or purchase a water utility. *Village of Sussex v. Dept. of Natural Resources*, 68 W (2d) 187, 228 NW (2d) 173.

Section 66.065, which requires a municipality to obtain voter approval through a referendum prior to the construction or acquisition of a waterworks, does not apply when a municipality is ordered to construct a public water supply system pursuant to 144.025 (2) (r). 60 Atty. Gen. 523.

**66.066 Revenue obligations.** (1) In this section:

(a) "Municipality" means any city, village, town, county, commission created by contract under s. 66.30, public inland lake protection and rehabilitation district established under s. 33.23, 33.235 or 33.24, metropolitan sewerage district created under ss. 66.20 to 66.26 or 66.88 to 66.918, town sanitary district under subch. IX of ch. 60 or a municipal water district or power district under ch. 198 and any other public or quasi-public corporation, officer, board or other public body empowered to borrow money and issue obligations to repay the same out of revenues. "Municipality" does not include the state or a local exposition district created under subch. II of ch. 229.

(b) For purposes of financing under this section, "public utility" means any revenue producing facility or enterprise owned by a municipality and operated for a public purpose as defined in s. 67.04 (1) (b) or undertaken by a municipality under s. 66.067.

(c) "Revenue" means all moneys received from any source by a public utility and all rentals and fees.

(1a) Nothing herein shall be construed to limit the authority of any municipality to acquire, own, operate and finance in the manner provided in this section, a source of water supply and necessary transmission facilities (including all real and personal property) beyond its corporate limits, and a source of water supply 50 miles beyond such limits shall be deemed to be within such authority.

(1m) Any municipality may, by action of its governing body, provide for purchasing, acquiring, leasing, constructing, extending, adding to, improving, conducting, controlling, operat-

ing or managing a public utility, motor bus or other systems of public transportation from the general fund, or from the proceeds of municipal obligations, including revenue bonds. Any obligation created pursuant to subs. (2) to (4) shall not be considered an indebtedness of such municipality, and shall not be included in arriving at the constitutional debt limitation.

(2) Where payment is provided by revenue bonds, the procedure for payment shall be in the manner following:

(a) 1. The governing body, by ordinance or resolution, shall order the issuance and sale of bonds, executed as provided in s. 67.08 (1) and payable at such times not exceeding 40 years from the date thereof, and at such places, as the governing body of such municipality shall determine, which bonds shall be payable only out of the special redemption fund. Each such bond shall include a statement that it is payable only from the special redemption fund, naming the ordinance or resolution creating it and that it does not constitute an indebtedness of such municipality. The bonds may be issued either as registered bonds under s. 67.09 or as coupon bonds payable to bearer. Bonds shall be sold in such manner and upon such terms as the governing body deems for the best interests of said municipality.

2. Interest, if any, on bonds shall be paid at least annually to bondholders. Payment of principal on the bonds shall commence not later than 3 years after the date of issue or 2 years after the estimated date that construction will be completed, whichever is later. Thereafter, at least annually, the municipality shall make principal payments and, if any, interest payments to bondholders or provide by ordinance or resolution that payments be made into a separate fund for payment to bondholders as specified in the ordinance or resolution authorizing the issuance of the bonds. The amount of the annual debt service payments made or provided for shall be reasonable in accordance with prudent municipal utility management practices.

3. All such bonds may contain a provision authorizing redemption thereof, in whole or in part, at stipulated prices, at the option of the municipality on any interest payment date. The governing body may provide in any contract for purchasing, acquiring, leasing, constructing, extending, adding to, improving, conducting, controlling, operating or managing a public utility, that payment thereof shall be made in such bonds at not less than 95% of the par value thereof.

(b) All moneys received from any bonds issued under this section shall be applied solely for purchasing, acquiring, leasing, constructing, extending, adding to, improving, conducting, controlling, operating or managing a public utility, and in the payment of the cost of any subsequent necessary additions, improvements and extensions. Bonds issued under this section shall be secured by a pledge of the revenues of the public utility to the holders of the bonds and to the holders of any coupons of the bonds and may be additionally secured by a mortgage lien upon the public utility to the holders of the bonds and to the holders of any coupons of the bonds. If a mortgage lien is created by ordinance or resolution, the lien shall be perfected by publication of the ordinance or resolution or by recording of the ordinance or resolution in the records of the municipality. In addition, the municipality may record the lien by notifying the register of deeds of the county in which the public utility is located concerning its issuance of bonds. If the register of deeds receives notice from the municipality, the register of deeds shall record any mortgage lien created. The public utility shall remain subject to the pledge and, if created, the mortgage lien until the payment in full of the principal and interest of the bonds. Upon repayment of bonds for which a mortgage lien has been created, the register of deeds shall, upon notice from the municipality, record a satisfaction of the mortgage lien. Any holder of a bond or of any coupons attached to a bond may either at law or in equity protect and enforce this pledge and, if created, the mortgage lien and compel performance of all duties required of the municipality by this section. Any municipality may provide for additions, extensions and improvements to a public utility that

it owns by additional issues of bonds under this section. Such additional issues of bonds shall be subordinate to all prior issues of bonds under this section, but a municipality may in the ordinance or resolution authorizing bonds permit the issue of additional bonds on a parity therewith. Any municipality may issue new bonds under this section to provide funds for refunding any outstanding bonds, bond anticipation notes or promissory notes issued under this section or under ch. 67 for any of the purposes stated in sub. (1m). Refunding bonds are subject to the following provisions:

1. Refunding bonds may be issued to refinance more than one issue of outstanding bonds or promissory notes notwithstanding that such outstanding bonds or promissory notes may have been issued at different times and may be secured by the revenues of more than one public utility. Any such public utilities may be operated as a single public utility, subject however to contract rights vested in holders of bonds or promissory notes being refinanced. A determination by the governing body that any refinancing is advantageous or necessary to the municipality shall be conclusive.

4. The refunding bonds shall not be considered an indebtedness of such municipality, and shall not be included in arriving at the constitutional debt limitation.

5. The governing body may, in addition to other powers conferred by this section, include a provision in any ordinance or resolution authorizing the issuance of refunding bonds pledging all or any part of the revenues of any public utility or utilities or combination thereof originally financed or extended or improved from the proceeds of any of the bonds, bond anticipation notes or promissory notes being refunded, and pledging all or any part of the surplus income derived from the investment of any trust created in relation to the refunding.

6. This subsection, without reference to any other laws of this state, shall constitute full authority for the authorization and issuance of refunding bonds hereunder and for the doing of all other acts authorized by this subsection to be done or performed and such refunding bonds may be issued hereunder without regard to the requirements, restrictions or procedural provisions contained in any other law.

(c) The governing body shall, in the ordinance or resolution authorizing the issuance of bonds, establish a system of funds and accounts and provide for sufficient revenues to operate and maintain the public utility and to provide fully for annual debt service requirements of bonds issued under this section. The governing body may establish a fund or account for depreciation of assets of the public utility.

(d) If a governing body creates a depreciation fund under par. (c) it shall use the funds set aside to restore any deficiency in the special redemption fund specified in par. (e) for the payment of the principal and interest due on the bonds and for the creation and maintenance of any reserves established by the bond ordinance or resolution to secure these payments. If the special redemption fund is sufficient for these purposes, moneys in the depreciation fund may be expended for repairs, replacements, new constructions, extensions or additions of the public utility. Any accumulations of the depreciation fund may be invested, and if invested, the income from the investment shall be deposited in the depreciation fund.

(e) The governing body of the municipality shall by ordinance or resolution create a special fund in the treasury of the municipality to be identified as "the special redemption fund" into which shall be paid the amount which shall be set aside for the payment of the principal and interest due on the bonds and for the creation and maintenance of any reserves established by bond ordinance or resolution to secure these payments.

(f) At the close of the public utility's fiscal year, if any surplus has accumulated in any of the above funds, it may be disposed of in the order set forth under s. 66.069 (1) (c).



(g) The reasonable cost and value of any service rendered to such municipality by such public utility shall be charged against the municipality and shall be paid by it in instalments.

(h) The rates for all services rendered by such public utility to the municipality or to other consumers, shall be reasonable and just, taking into account and consideration the value of the said public utility, the cost of maintaining and operating the same, the proper and necessary allowance for depreciation thereof, and a sufficient and adequate return upon the capital invested.

(i) The governing body shall have full power to adopt all ordinances and resolutions necessary to carry into effect this subsection. Any ordinance or resolution providing for the issuance of bonds may contain such provisions or covenants, without limiting the generality of the power to adopt such ordinance or resolution, as is deemed necessary or desirable for the security of bondholders or the marketability of the bonds, including but not limited to provisions as to the sufficiency of the rates or charges to be made for service, maintenance and operation, improvements or additions to and sale or alienation of the public utility, insurance against loss, employment of consulting engineers and accountants, records and accounts, operating and construction budgets, establishment of reserve funds, issuance of additional bonds, and deposit of the proceeds of the sale of the bonds or revenues of the public utility in trust, including the appointment of depositories or trustees. Any ordinance or resolution authorizing the issuance of bonds or other obligations payable from revenues of a public utility shall constitute a contract with the holder of any bonds or other obligations issued pursuant to such ordinance or resolution.

(j) Proceedings for purchasing, acquiring, leasing, constructing, extending, adding to, improving, conducting, controlling, operating, or managing a public utility by any municipality begun prior to May 6, 1911, under the provisions of law other than sub. (2), may be continued either under the provisions of such law, if still in force, or under sub. (2) as the governing body may elect. A municipality proceeding under ch. 197 to acquire the property of a public utility may pay for it by the method provided for in this section.

(k) Under this paragraph, the ordinance or resolution required under par. (c) may set apart bonds equal to the amount of any secured debt or charge subject to which a public utility may be purchased, acquired, leased, constructed, extended, added to or improved, and shall set aside for interest and debt service fund from the income and revenues of the public utility a sum sufficient to comply with the requirements of the instrument creating the lien, or, if the instrument does not make any provision for it, the ordinance or resolution shall fix the amount which shall be set aside into a secured debt fund from month to month for interest on the secured debt, and a fixed amount or proportion not exceeding a stated sum, which shall be not less than one percent of the principal, to be set aside into the fund to pay the principal of the debt. Any surplus after satisfying the debt may be transferred to the special redemption fund. Public utility bonds set aside for the debt may from time to time be issued to an amount sufficient with the amount then in the debt service fund to pay and retire the debt or any portion of it; the bonds may be issued at not less than 95% of the par value in exchange for, or satisfaction of, the secured debt, or may be sold in the manner provided in this paragraph, and the proceeds applied in payment of the secured debt at maturity or before maturity by agreement with the holder. The governing body and the owners of any public utility acquired, purchased, leased, constructed, extended, added to or improved under this paragraph may, upon such terms and conditions as are satisfactory, contract that public utility bonds providing for the secured debt or for the whole purchase price shall be deposited with a trustee or depository and released from deposit from time to time on the terms and conditions necessary to secure the payment of the debt.

(l) Any municipality purchasing, acquiring, leasing, constructing, extending, adding to or improving, conducting, controlling, operating or managing a public utility subject to a mort-

gage or deed of trust by the vendor or the vendor's predecessor in title to secure the payment of outstanding and unpaid bonds made by the vendor or the vendor's predecessor in title, may readjust, renew, consolidate or extend the obligation evidenced by the outstanding bonds and continue the lien of the mortgage, securing the same by issuing bonds to refund the outstanding mortgage or revenue bonds at or prior to their maturity, which bonds shall be payable only out of a special redemption fund to be created and set aside by ordinance or resolution under par. (e). The refunding bonds shall be secured by a mortgage lien upon the public utility, and the municipality is authorized to adopt all ordinances or resolutions and take all proceedings, following the procedure under this subsection. The lien shall have the same priority on the public utility as the mortgage securing the outstanding bonds, unless otherwise expressly provided in the proceedings of the governing body of the municipality.

(m) 1. If the governing body of any municipality, by ordinance or resolution, declares its intentions to authorize the issuance or sale of revenue bonds under this section, the governing body may, prior to issuance of the bonds and in anticipation of their sale, authorize the issuance of bond anticipation notes by the adoption of a resolution or ordinance. The notes shall be named "bond anticipation notes." Bond anticipation notes may be issued for the purposes for which the municipality has authority to issue revenue bonds. The ordinance or resolution authorizing the bond anticipation notes shall state the purposes for which the bond anticipation notes are to be issued and shall set forth a covenant of the municipality to issue the revenue bonds in an amount sufficient to retire the outstanding bond anticipation notes. The ordinance or resolution may contain other covenants and provisions, including a description of the terms of the revenue bonds to be issued. The municipality may pledge revenues of the public utility to payment of the principal and interest on the bond anticipation notes. Prior to issuance of the bond anticipation notes, the governing body may adopt an ordinance or resolution authorizing the revenue bonds.

2. Bond anticipation notes may be issued for periods of up to 5 years and may, by ordinance or resolution of the governing body, be refunded one or more times, if the refunding bond anticipation notes do not exceed 5 years in term and if they will be paid within 10 years after the date of issuance of the original bond anticipation notes. Bond anticipation notes shall be executed as provided in s. 67.08 (1) and may be registered under s. 67.09. These notes shall state the sources from which they are payable. Bond anticipation notes are not an indebtedness of the municipality issuing them, and no lien may be created or attached with respect to any property of the municipality as a consequence of the issuance of such notes.

3. Any funds derived from the issuance and sale of revenue bonds under this section and issued subsequent to the execution and sale of bond anticipation notes shall constitute a trust fund, and such fund shall be expended first for the payment of principal and interest of such bond anticipation notes, and then may be expended for such other purposes as are set forth in the ordinance or resolution authorizing the revenue bonds. No bond anticipation notes may be issued unless a financial officer of the municipality certifies to the governing body that contracts with respect to additions, improvements and extensions are to be let and that the proceeds of such notes shall be required for the payment of such contracts.

4. Following the issuance of the bond anticipation notes, revenues of the public utility may be paid into a fund to pay principal and interest on the bond anticipation notes, which moneys or any part of them may, by the ordinance or resolution authorizing the issuance of bond anticipation notes, be pledged for the payment of the principal of and interest on such notes. The ordinance or resolution shall pledge to the payment of the principal of the notes the proceeds of the sale of the revenue bonds in anticipation of the sale of which the notes were authorized to be issued and may provide for use of revenue of the public utility or other available funds

for payment of principal on the notes. The notes shall constitute negotiable instruments.

6. Any municipality authorized to issue or sell bond anticipation notes under this paragraph may, in addition to the revenue sources or bond proceeds, appropriate funds out of its annual tax levy for the payment of such notes. The payment of such notes out of funds from a tax levy shall not be construed as constituting an obligation of such municipality to make any other such appropriation.

7. Such bond anticipation notes shall constitute a legal form of investment for municipal funds under s. 66.04 (2).

(4) Any municipality which may own, purchase, acquire, lease, construct, extend, add to, improve, conduct, control, operate or manage any public utility may also, by action of its governing body, in lieu of issuing bonds or levying taxes and in addition to any other lawful methods of paying obligations, provide for or secure the payment of the cost of purchasing, acquiring, leasing, constructing, extending, adding to, improving, conducting, controlling, operating or managing a public utility by pledging, assigning or otherwise hypothecating, shares of stock evidencing a controlling interest therein, or the net earnings or profits derived, or to be derived, from the operation of the public utility. The municipality may enter into the contracts and may mortgage the public utility and issue obligations to carry out this subsection. Any municipality may issue additional obligations under this subsection or elsewhere in this section, but those obligations shall be subordinate to all prior obligations, except that the municipality may in the ordinance or resolution authorizing obligations under this subsection permit the issue of additional obligations on a parity with those previously issued.

**History:** 1973 c. 172; 1979 c. 268; 1981 c. 282; 1983 a. 24; 1983 a. 207 ss. 9 to 21, 93 (1), (3); 1987 a. 197; 1991 a. 316; 1993 a. 263.

A village has power to own and operate a home for the aged, finance the same under 66.066, 66.067, and lease facility to a nonprofit corporation but probably could not lease to a profit corporation for operation 62 Atty Gen 226

Wisconsin municipal debt finance: An outlook for the eighties Schilling, Griggs and Ebert, 63 MLR 539 (1980).

**66.067 Public works projects.** For financing purposes, garbage incinerators, toll bridges, swimming pools, tennis courts, parks, playgrounds, golf links, bathing beaches, bathhouses, street lighting, city halls, village halls, town halls, courthouses, jails, schools, cooperative educational service agencies, hospitals, homes for the aged or indigent, regional projects, waste collection and disposal operations, systems of sewerage and any and all other necessary public works projects undertaken by any municipality are public utilities within the meaning of s. 66.066.

**History:** 1971 c. 130; 1977 c. 391; 1979 c. 362; 1981 c. 282; 1981 c. 314 s. 146; 1983 a. 207; 1993 a. 246, 490.

**66.068 Management. (1)** In cities owning a public utility, the governing body shall and in towns and villages owning a public utility the governing body may provide for a nonpartisan management thereof, and create for each or all such utilities, a board of 3 or 5 or 7 commissioners, to take entire charge and management of the utility, to appoint a manager and fix the compensation, and to supervise the operation of the utility under the general control and supervision of the governing body.

(2) The commissioners shall be elected by the governing body for a term, beginning on the first day of October, of as many years as there are commissioners, except that the terms of the commissioners first elected shall expire successively one each year on each succeeding first day of October.

(3) The commissioners shall choose from among their number a president and a secretary. They may command the services of the city, village or town engineer and may employ and fix the compensation of such subordinates as shall be necessary. They may make rules for their own proceedings and for the government of their department. They shall keep books of account, in the manner and form prescribed by the department of transportation or public service commission, which shall be open to the public.

(4) It may be provided that departmental expenditures be audited by such commission, and if approved by the president and secretary of the commission, be paid by the city, village or town clerk and treasurer as provided by s. 66.042; that the utility receipts be paid to a bonded cashier or cashiers appointed by the commission, to be turned over to the city, village or town treasurer at least once a month; and that the commission have such general powers in the construction, extension, improvement and operation of the utility as shall be designated. Where in any municipality water mains have been installed or extended and the cost thereof has been in some instances assessed against the abutting owners and in other instances paid by the municipality or any utility therein, it may be provided by the governing body of such municipality that all persons who paid any such assessment against any lot or parcel of land may be reimbursed the amount of such assessment regardless of when such assessment was made or paid. Such reimbursement may be made from such funds or earnings of said municipal utility or from such funds of the municipality as the governing body determines.

(5) Actual construction work shall be under the immediate supervision of the board of public works or corresponding authority.

(6) Two or more public utilities acquired as a single enterprise hereunder may be operated as a single enterprise.

(7) In a 2nd, 3rd or 4th class city, a village or a town, the council or board may provide for the operation of a public utility or utilities by the board of public works or by another officer or officers, in lieu of the commission above provided for.

**History:** 1977 c. 29 s. 1654 (9) (g); 1981 c. 347 s. 80 (2); 1983 a. 207 ss. 23, 93 (1); 1983 a. 538; 1993 a. 16, 246.

Where city council creates board under (1), council is prohibited by (3) from fixing wages of utility employes Schroeder v. City of Clintonville, 90 W (2d) 457, 280 NW (2d) 166 (1979).

**66.069 Charges; outside services. (1) CHARGES. (a)** The governing body of any town, village or city operating a public utility may, by ordinance, fix the initial rates and provide for this collection monthly, quarterly or semiannually in advance or otherwise. The rates shall be uniform for like service in all parts of the municipality and shall include the cost of fluorinating the water. The rates may also include standby charges to property not connected but for which such facilities have been made available. The charges shall be collected by the treasurer.

(b) On October 15 in each year notice shall be given to the owner or occupant of all lots or parcels of real estate to which water has been furnished prior to October 1 by a water utility operated by any town, city or village and payment for which is owing and in arrears at the time of giving such notice. The department in charge of the utility shall furnish the treasurer with a list of all such lots or parcels of real estate, and the notice shall be given by the treasurer, unless the governing body of the city, village or town shall authorize such notice to be given directly by the department. Such notice shall be in writing and shall state the amount of such arrears, including any penalty assessed pursuant to the rules of such utility; that unless the same is paid by November 1 thereafter a penalty of 10 per cent of the amount of such arrears will be added thereto; and that unless such arrears, with any such added penalty, shall be paid by November 15 thereafter, the same will be levied as a tax against the lot or parcel of real estate to which water was furnished and for which payment is delinquent as above specified. Such notice may be served by delivery to either such owner or occupant personally, or by letter addressed to such owner or occupant at the post-office address of such lot or parcel of real estate. On November 16 the officer or department issuing the notice shall certify and file with the clerk a list of all lots or parcels of real estate, giving the legal description thereof, to the owners or occupants of which notice of arrears in payment were given as above specified and which arrears still remain unpaid, and stating the amount of such arrears together with the added penalty thereon as herein provided. Each such delinquent amount, including such penalty, shall thereupon become a lien upon the lot or parcel of real

estate to which the water was furnished and payment for which is delinquent, and the clerk shall insert the same as a tax against such lot or parcel of real estate. All proceedings in relation to the collection of general property taxes and to the return and sale of property for delinquent taxes shall apply to said tax if the same is not paid within the time required by law for payment of taxes upon real estate.

(c) The income of a public utility owned by a municipality, shall first be used to meet operation, maintenance, depreciation, interest, and debt service fund requirements, local and school tax equivalents, additions and improvements, and other necessary disbursements or indebtedness. Income in excess of these requirements may be used to purchase and hold interest bearing bonds, issued for the acquisition of the utility, or bonds issued by the United States or any municipal corporation of this state, or insurance upon the life of an officer or manager of such utility, or may be paid into the general fund.

(d) Any city, town or village may use funds derived from its water plant above such as are necessary to meet operation, maintenance, depreciation, interest and debt service funds, new construction or equipment or other indebtedness, for sewerage construction work other than such as is chargeable against abutting property; or they may turn such funds into the general fund to be used for general city purposes, or may place such funds in a special fund to be used for special municipal purposes.

(e) Any city, village or town owning a public utility shall be entitled to the same rate of return as permitted for privately owned utilities.

(2) **OUTSIDE SERVICE** (a) Any town, town sanitary district, village or city owning water, light or power plant or equipment may serve persons or places outside its corporate limits, including adjoining municipalities not owning or operating a similar utility, and may interconnect with another municipality, whether contiguous or not, and for such purposes may use equipment owned by such other municipality.

(b) So much of such plant or equipment, except water plant or equipment or interconnection property in any municipality so interconnected, as shall be situated in another municipality shall be taxable in such other municipality pursuant to s. 76.28.

(c) Notwithstanding s. 196.58 (5), each city, village or town may by ordinance fix the limits of such service in unincorporated areas. Such ordinance shall delineate the area within which service will be provided and the municipal utility shall have no obligation to serve beyond the area so delineated. Such area may be enlarged by a subsequent ordinance. No such ordinance shall be effective to limit any obligation to serve which may have existed at the time the ordinance was adopted.

(d) An agreement by a city, village or town to furnish utility service outside its corporate limits to unincorporated property used for public, educational, industrial or eleemosynary purposes fixes the nature and geographical limits of that utility service unless altered by a change in the agreement, notwithstanding s. 196.58 (5). A change in use or ownership of property included under that agreement does not alter terms and limitations of that agreement.

(dm) An agreement under par. (d) under which a city or village agrees to furnish sewerage service to a prison, which is located in an area which has been incorporated since that agreement was made, may be amended to provide that the city or village also furnish water service to the prison. An agreement amended under this paragraph fixes the nature and geographical limits of the water and sewer service unless altered by a change in the agreement, notwithstanding s. 196.58 (5). A change in use or ownership of property included under an agreement amended under this paragraph does not alter the terms and limitations of that agreement.

(e) Any town, village or city owning a public utility, or the board of any municipal utility appointed under s. 66.068, may enter into agreements with any other such towns, villages or cities, or any other such boards of municipal utilities, for mutual aid in the event of an emergency or disaster in any of their respective service areas. Such agreements may include, but are not limited to, provisions for the movement of employes and equipment in and between the service areas of the various participating municipalities for the purpose of rendering such aid and, for the reimbursement of a municipality rendering such aid by the municipality receiving the aid.

**History:** 1971 c. 125 s. 521; 1983 a. 27 s. 2202 (45); 1983 a. 207 s. 93 (2), (8); 1987 a. 27; 1993 a. 246

See note to Art. XI, s. 3, citing *Town of Hallie v. City of Chippewa Falls*, 105 W (2d) 533, 314 NW (2d) 321 (1982)

State policy authorizes city to refuse sewage treatment unless purchaser becomes annexed; antitrust law was not violated. *Town of Hallie v. City of Eau Claire*, 471 US 34 (1985)

**66.07 Sale or lease.** Any town, village or city may sell or lease any complete public utility plant owned by it, in manner following:

(1) A preliminary agreement with the prospective purchaser or lessee shall be authorized by a resolution or ordinance containing a summary of the terms proposed, of the disposition to be made of the proceeds, and of the provisions to be made for the protection of holders of obligations against such plant or against the municipality on account thereof. Such resolution or ordinance shall be published at least one week before adoption, as a class 1 notice, under ch. 985. It may be adopted only at a regular meeting and by a majority of all the members of the governing body.

(2) The preliminary agreement shall fix the price of sale or lease, and provide that if the amount fixed by the department of transportation or public service commission shall be larger, the price shall be that fixed by the department or commission.

(3) The municipality shall submit the preliminary agreement when executed to the department of transportation or public service commission, which shall determine whether the interests of the municipality and of the residents thereof will be best served by the sale or lease, and if it so determines, shall fix the price and other terms.

(4) The proposal shall then be submitted to the electors of the municipality. The notice of the referendum shall include a description of the plant, and a summary of the preliminary agreement, and of the price and terms as fixed by the department of transportation or public service commission. If a majority voting on the question shall vote for the sale or lease, the board or council shall be authorized to consummate the same, upon the terms and at a price not less than fixed by the department of transportation or public service commission, with the proposed purchaser or lessee or any other with whom better terms approved by the department of transportation or public service commission can be made.

(5) Unless the sale or lease is consummated within one year of the referendum, or the time is extended by the department of transportation or public service commission, the proceedings shall be void.

(6) If the municipality has revenue or mortgage bonds outstanding relating to such utility plant and which by their terms may not be redeemed concurrently with the sale or lease transaction, an escrow fund with a domestic bank as trustee may be established for the purpose of holding, administering and distributing such portion of the sales or lease proceeds as may be necessary to cover the payment of the principal, any redemption premium and interest which will accrue on the principal through the earliest retirement date of the bonds. During the period of the escrow arrangement such funds may be invested in securities or other investments as described in s. 201.25 (1) (a), (b), (dm) and (j),

1969 stats., and in deposits or certificates of deposit with any state or national bank doing business in this state.

(7) For the purpose of this section, the department of transportation has jurisdiction over transportation systems and the public service commission has jurisdiction over public utilities as defined in s. 196.01.

**History:** 1971 c. 260; 1977 c. 29 ss. 712, 1654 (9) (g); 1981 c. 347 ss. 14, 80 (2); 1981 c. 390 s. 252; 1983 a. 207 s. 93 (1); 1993 a. 16

**66.071 First class city utilities.** In cities of the first class:

(1) **WATERWORKS.** (a) Water rates shall be collected in the manner and by any one whom the council may from time to time determine, and shall be accounted for and paid to such other officials in such manner and at such times as the council may from time to time prescribe. Such persons shall give a bond to cover all the duties in such an amount as may be prescribed by the council. Final accounting shall be made to comptroller and final disposition of money shall be made to city treasurer.

(b) The words "commissioner of public works" in sub. (1) shall be construed to mean and have reference to any board of public works, or commissioner of public works, or other officer of any city having control of the public works therein, and all acts authorized to be done by such commissioner except for the enforcement of regulations approved by the council shall require the approval of the council before they shall have any force or effect.

(c) When the city owns its waterworks, the commissioner of public works shall have power, from time to time, to make and enforce bylaws, rules and regulations in relation to the said waterworks, and, before the actual introduction of water, the commissioner shall make bylaws, rules and regulations, fixing uniform water rates to be paid for the use of water furnished by the said waterworks, and fixing the manner of distributing and supplying water for use or consumption, and for withholding or turning off the same for cause, and the commissioner shall have power, from time to time, to alter, modify or repeal such bylaws, rules and regulations.

(d) Water rates shall be due and payable upon such date or dates as the common council may provide by regulation. To all water rates remaining unpaid 20 days thereafter, there shall be added a penalty of 5 per cent of the amount of such rates, and if such rates shall remain unpaid for 10 days thereafter, water may be turned off the premises; subject to the payment of such delinquent rates, and in such cases where the supply of water is turned off as above provided, water shall not be again turned on to said premises until all delinquent rates and penalties, and a sum not exceeding \$2 as provided for by regulation for turning the water off and on, shall have been paid. The same penalty and charge may be made when payment is made to a collector sent to the premises. On or before each day when such rates become due and payable as aforesaid, a written or printed notice or bill shall be mailed or personally delivered to the occupant or, upon written request, to the owner wherever the owner shall state, of all premises subject to the payment of water rates, stating the amount due, the time when and the place where such rates can be paid, the penalty for neglect of payment.

(e) All water rates for water furnished to any building or premises, and the cost of repairing meters, service pipes, stops or stop boxes, shall be a lien on the lot, part of lot or parcel of land on which such building or premises shall be situated. If any water rates or bills for the repairing of meters, service pipes, stops or stop boxes remain unpaid on the first day of October, in any year, the same shall be certified to the city comptroller of such city on or before the first day of November next following, and shall be placed by the comptroller upon the tax roll and collected in the same manner as other taxes on real estate are collected in said city. The charge for water supplied by the city in all premises where meters are attached and connected, shall be at rates fixed by the commissioner of public works and for the quantity indicated by the meter. If in any case, the commissioner of public works shall determine that the quantity indicated by the meter is materially incorrect or if a meter has been off temporarily on account of

repairs, the commissioner of public works shall determine in the best manner in the commissioner's power the quantity used, and such determination shall be conclusive. No water rate or rates duly assessed against any property shall be thereafter remitted or changed except by the council of such city.

(f) The commissioner of public works of any such city may issue a permit to the county in which it is located, to any national home for disabled soldiers, or to any other applicant to obtain water from the waterworks in the said city for use outside of the limits of such city; and for that purpose to connect any pipe that shall be laid outside of the city limits with water pipe in such city. No such permit shall be issued until the applicant shall first file with the commissioner of public works a bond in such sum and with such surety as the said commissioner shall approve, conditioned that the said applicant will obey the rules and regulations that may from time to time be prescribed by the commissioner of public works for the use of such water; that the applicant will pay all charges fixed by said commissioner for the use of such water as measured by a meter to be approved by said commissioner, which charges shall include the proportionate cost of fluorinating the water and, except as to water furnished directly to county or other municipal properties, shall not be less than one-quarter more than those charged to the inhabitants of the city for like use of water; that the applicant will pay to any such city a water pipe assessment if the property to be supplied with water has frontage on any thoroughfare forming the city boundary line in which a water main has or shall be laid, and at the rate prescribed by the commissioner of public works; if the property to be supplied does not front on a city boundary but is distant therefrom, that a main pipe of the same size, class and standard as terminates at the city boundary shall be extended, and the entire cost shall be paid by the applicant for the extension; that such water main shall be laid according to city specifications and under city inspection; that such water main and appliances shall become the absolute property of such city, without any compensation therefor, whenever the property supplied with water by said extension or any part thereof shall be annexed to or in any manner become a part of such city; and that the applicant will pay to any such city all damages whatever that it may sustain, arising in any way out of the manner in which such connection is made or water supply is used. In case of granting a permit to any county or to any national home for disabled soldiers, the commissioner of public works may waive the giving of such a bond. Every such permit shall be issued upon the understanding that such city shall in no event ever be liable for any damage in case of failure to supply water by reason of any condition beyond its control.

(g) The commissioner of public works shall prescribe and regulate the kind of water meters to be used in such city and the manner of attaching and connecting the same, and may in like manner make such other rules for the use and control of water meters attached and connected as herein provided as shall be necessary to secure reliable and just measurement of the quantity of water used; and may alter and amend such rules from time to time as shall be necessary for the purposes named. If the owner or occupant of any premises, where the attaching and connection of a water meter may lawfully be required, shall neglect or fail to attach and connect such water meter, as is required according to the rules established by the commissioner of public works, for 30 days after the expiration of the time within which such owner or occupant shall have been notified by said commissioner of public works to attach and connect such meter, the commissioner of public works may cause the water supply by the city to be cut off from the premises, and it shall not be restored except upon such terms and conditions as the commissioner of public works shall prescribe.

(h) The commissioner of public works may prescribe and regulate the size of connections made with the distribution mains for supplying automatic sprinkler systems and fix an annual charge for such service.

(i) The commissioner of public works may also make rules and regulations for the proper ventilating and trapping of all drains, soil pipes and fixtures hereafter constructed to connect with or be used in connection with the sewerage or water supply of the city. The council may provide by ordinance for the enforcement of such rules and regulations, and may prescribe proper penalties and punishment for disobedience of the same. The commissioner of public works may also make rules to regulate the use of vent, soil, drain, sewer or water pipes in all buildings in said city, which hereafter shall be proposed to be connected with the city water supply or sewerage, specifying the dimensions, strength and material of which the same shall be made, and may prohibit the introduction into any building of any style of water fixture, tap or connection, the use of which shall have been determined to be dangerous to health or for any reason unfit to be used, and the commissioner of public works shall require a rigid inspection by a skilled and competent inspector under the direction of the commissioner of public works of all plumbing and draining work and water and sewer connections, hereafter done or made in any building in the city, and unless the same are done or made according to rules of the commissioner of public works, and approved by the commissioner of public works, no connection of the premises with the city sewerage or water supply shall be allowed.

(j) The commissioner of public works shall make an annual report to the council of the commissioner's doings under this section and the state of the water fund and the general condition of the waterworks, and the report after being submitted to the council shall be filed in the office of the comptroller.

**(2) UTILITY DIRECTORS.** (a) The term "electric plant" as used in this section shall mean a plant for the production, transmission, delivery and furnishing of electric light, heat or power directly to the public.

(b) If the city shall have determined to acquire an electric plant or any other public utility in accordance with the provisions of this section, the mayor of such city, prior to the city taking possession of such property, shall appoint, subject to the confirmation of the council, 7 persons of recognized business experience and standing to act as the board of directors for such utility. Two of such persons shall be appointed for a term of 2 years, 2 for a term of 4 years, 2 for a term of 6 years, and one for a term of 8 years. Thereafter successors shall be appointed in like manner for terms of 10 years each. Any such director may be removed by the mayor with the approval of the council for misconduct in office or for unreasonable absence from meetings of the directors.

(c) The directors so appointed shall have power to: employ a manager experienced in the management of electric plants or other like public utilities and fix his or her compensation and the other terms and conditions of employment and to remove him or her at pleasure, subject to the terms and conditions of his or her employment; advise and consult with the manager and all other employees as to any matter pertaining to maintenance, operation or extension of such utility; and perform such other duties as ordinarily devolve upon a board of directors of a corporation organized under ch. 180 not inconsistent with this section and the laws governing 1st class cities. No money shall be raised or authorized to be raised by said board of directors other than from revenues derived from the operation of the utility, except by action of the council.

(d) The manager appointed by the board of directors shall have complete management and control of the utility, subject to the powers herein conferred upon the board of directors and the council and shall have power to appoint assistants and all other employees which the manager deems necessary and fix their compensation and other terms and conditions of employment, except that the board of directors may prescribe rules for determining the fitness of persons for positions and employment.

(e) The council shall fix the compensation, if any, of members of the board of directors and shall have the powers herein con-

ferred upon it and such other powers as it now possesses with reference to electric plants and other public utilities.

History: 1983 a 192; 1985 a 187; 1991 a 32, 189, 316

**66.072 Utility districts.** (1) Towns, villages and 3rd and 4th class cities may establish utility districts.

(a) In villages and 3rd and 4th class cities, the village board or common council may direct that the cost of utility district highways, sewers, sidewalks, street lighting and water for fire protection not paid for by special assessment be paid out of the district fund under sub. (2). The cost of bridges in the district may not be paid out of the district fund.

(b) In towns, the town board may direct that the cost of any convenience or public improvement provided in the district and not paid for by special assessment be paid from the district fund under sub. (2).

(2) The fund of each district shall be provided by taxation of the property in such district, upon an annual estimate by the department in charge of public works in cities and villages, and by the town chairperson in towns, filed by October 1. Separate account shall be kept of each district fund.

(3) In towns a majority vote and in villages and cities a three-fourths vote of all the members of the governing body shall be required to thus establish utility districts and by a like vote districts may be vacated, altered, or consolidated.

(4) Before the vote is effective to establish, vacate, alter or consolidate, a hearing shall be held as provided in s. 66.60 (7). In towns the notice may be given by posting in 3 public places in said town, one of which shall be in the proposed district, at least 2 weeks prior to such hearing.

(5) (a) When any town board establishes a utility district under this section the board may also, if a town sanitary district is in existence for the town, dissolve said sanitary district in which case all assets, liabilities and functions of the sanitary district shall be taken over by the utility district.

(b) All functions performed by a sanitary district and assumed by a utility district under this subsection shall remain subject to regulation by the public service commission as if no transfer had occurred.

(c) If a sanitary district is located in more than one municipality, action under this section may be taken only upon approval of a majority of the members of the governing body of each municipality in which the sanitary district is located.

(6) Whenever a municipality, within which a utility district is located, is consolidated with another municipality which provides the same or similar services for which the district was established, but on a municipality-wide basis rather than on a utility district basis as provided in this section, the fund of the utility district shall become part of the general fund of the consolidated municipality; thereupon said utility district shall be abolished. This section shall also apply to consolidations completed prior to June 30, 1965.

History: 1983 a 207 s 93 (1); 1983 a 532; 1989 a 56 s 258

**66.073 Municipal electric companies.** (1) **SHORT TITLE.** This section shall be known as the "Municipal Electric Company Act".

(2) **FINDING AND DECLARATION OF NECESSITY.** It is declared that the operation of electric utility systems by municipalities of this state and the improvement of the systems through joint action in the fields of the generation, transmission and distribution of electric power and energy is in the public interest; that there is a need in order to ensure the stability and continued viability of the municipal systems to provide for a means by which municipalities which operate the systems may act jointly in all ways possible, including development of coordinated bulk power and fuel supply programs and efficient, community-based energy systems; and that, the necessity in the public interest for the provisions hereinaf-



ter enacted in this section is declared as a matter of legislative determination.

**(3) DEFINITIONS** As used in this section, unless the context clearly indicates otherwise:

(a) "Bonds" means any bonds, interim certificates, notes, debentures or other obligations of a company issued under this section.

(am) "Community-based energy system" means a small-scale energy production system or device which serves a local area or portion thereof, including, but not limited to, a small scale power plant, using coal, sun, wind, organic waste or other form of energy, if the system is located sufficiently close to the community to make the dual production of heat and electricity possible. "Community-based energy system" also means a methane producing system or solar, wind or other energy source system for individual buildings or facilities.

(b) "Company" and "electric company" mean a municipal electric company.

(c) "Contracting municipality" means a municipality which contracts to establish an electric company under this section.

(d) "Municipal electric company" means a public corporation created by contract between 2 or more municipalities under this section.

(e) "Municipality" means a city, village or town.

(f) "Person" means a natural person, a public agency, cooperative or private corporation, limited liability company, association, firm, partnership, or business trust of any nature whatsoever, organized and existing under the laws of any state or of the United States.

(g) "Project" means any plant, works, system, facilities, and real and personal property of any nature whatsoever, together with all parts thereof and appurtenances thereto, used or useful in the generation, production, transmission, distribution, purchase, sale, exchange, or interchange of electric power and energy, or any interest therein or right to capacity thereof and the acquisition of fuel of any kind for any such purposes, including, but not limited to, the acquisition of fuel deposits and the acquisition or construction and operation of facilities for extracting fuel from natural deposits, for converting it for use in another form, for burning it in place, for transportation, storage and reprocessing or for any energy conservation measure which involves public education or the actual fitting and application of a device.

(h) "Public agency" means any municipality or other municipal corporation, political subdivision, governmental unit, or public corporation created under the laws of this state or of another state or of the United States, and any state or the United States, and any person, board, or other body declared by the laws of any state or the United States to be a department, agency or instrumentality thereof.

**(4) CREATION OF MUNICIPAL ELECTRIC COMPANIES** (a) Any combination of municipalities of the state which operate facilities for the generation or transmission or distribution of electric power and energy may, by contract with each other, establish a separate governmental entity to be known as a municipal electric company to be used by such contracting municipalities to effect joint development of electric energy resources or production, distribution and transmission of electric power and energy in whole or in part for the benefit of the contracting municipalities. The municipalities party to the contract may amend the contract as provided therein.

(b) Any contract entered into under this section shall be filed with the secretary of state. Upon receipt, the secretary shall record the contract and issue a certificate of incorporation stating the name of the company and the date and fact of incorporation. Upon issuance of the certificate, the existence of the company shall begin.

**(5) CONTRACT** Any contract establishing an electric company under this section shall specify:

(a) The name and purpose of the company and the functions or services to be provided by the company. The name may refer to the company as an agency, authority, company, corporation, group, system or other descriptive title.

(b) The establishment and organization of a governing body of the company which shall be a board of directors in which all powers of the company are vested. The contract may provide for the creation by the board of an executive committee of the board to which the powers and duties may be delegated as the board shall specify.

(c) The number of directors, the manner of their appointment, terms of office and compensation, if any, and the procedure for filling vacancies on the board. Each contracting municipality shall have the power to appoint one member to the board of directors and shall be entitled to remove that member at will.

(d) The manner of selection of the officers of the company and their duties.

(e) The voting requirements for action by the board; but, unless specifically provided otherwise, a majority of directors shall constitute a quorum and a majority of the quorum shall be necessary for any action taken by the board.

(f) The duties of the board which shall include the obligation to comply or to cause compliance with this section and the laws of the state and in addition, with each and every term, provision and covenant in the contract creating the company on its part to be kept or performed.

(g) The manner in which additional municipalities may become parties to the contract by amendment.

(h) Provisions for the disposition, division or distribution of any property or assets of the company on dissolution.

(i) The term of the contract, which may be a definite period or until rescinded or terminated, and the method, if any, by which the contract may be rescinded or terminated, but that the contract may not be rescinded or terminated so long as the company has bonds outstanding, unless provision for full payment of such bonds, by escrow or otherwise, has been made pursuant to the terms of the bonds or the resolution, trust indenture or security instrument securing the bonds.

**(6) POWERS** The general powers of an electric company shall include the power to:

(a) Plan, develop, acquire, construct, reconstruct, operate, manage, dispose of, participate in, maintain, repair, extend or improve one or more projects within or outside the state and act as agent, or designate one or more other persons participating in a project to act as its agent, in connection with the planning, acquisition, construction, operation, maintenance, repair, extension or improvement of such project.

(b) Produce, acquire, sell, distribute and process fuels necessary to the production of electric power and energy and implement energy conservation measures necessary to meet energy needs.

(c) Enter into franchises, exchange, interchange, pooling, wheeling, transmission and other similar agreements with any person or public agency.

(d) Make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the company.

(e) Employ agents and employees.

(f) Contract with any person or public agency within or outside the state, for the construction of any project or for the sale or transmission of electric power and energy generated by any project, or for any interest therein or any right to capacity thereof, on such terms and for such period of time as its board of directors shall determine.

(g) Purchase, sell, exchange, transmit or distribute electric power and energy within and outside the state in such amounts as it shall determine to be necessary and appropriate to make the most effective use of its powers and to meet its responsibilities, and to enter into agreements with any person or public agency with respect to such purchase, sale, exchange, or transmission, on

such terms and for such period of time as its board of directors shall determine. A company may not sell power and energy at retail unless requested to do so by a municipal member within the service area of that municipal member.

(h) Acquire, own, hold, use, lease (as lessor or lessee), sell or otherwise dispose of, mortgage, pledge, or grant a security interest in any real or personal property, commodity or service or interest therein subject to s. 182.017 (7).

(i) Exercise the powers of eminent domain granted to public utility corporations under ch. 32.

(j) Incur debts, liabilities or obligations including the borrowing of money and the issuance of bonds, secured or unsecured, under sub. (11) (b).

(k) Sue and be sued in its own name.

(L) Have and use a corporate seal.

(m) Fix, maintain and revise fees, rates, rents and charges for functions, services, facilities or commodities provided by the company.

(n) Make, and from time to time amend and repeal, bylaws, rules and regulations not inconsistent with this section to carry into effect the powers and purposes of the company.

(o) Notwithstanding the provisions of any other law, invest any funds held in reserve or sinking funds, or any funds not required for immediate disbursement, including the proceeds from the sale of any bonds, in such obligations, securities and other investments as the company deems proper.

(p) Join organizations, membership in which is deemed by the board of directors to be beneficial to accomplishment of the company's purposes.

(q) Exercise any other powers which are deemed necessary and convenient by the company to effectuate the purposes of the company.

(r) Do and perform any acts and things authorized by this section under, through or by means of an agent or by contracts with any person.

**(6m) ENERGY CONSERVATION DUTIES** A municipal electric company established by contract under this section shall consider energy conservation measures and the development of efficient, community-based energy systems.

**(7) PUBLIC CHARACTER** An electric company established by contract under this section shall constitute a political subdivision and body public and corporate of the state, exercising public powers, separate from the contracting municipalities. It shall have the duties, privileges, immunities, rights, liabilities and disabilities of a public body politic and corporate but shall not have taxing power.

**(8) PAYMENTS** (a) The contracting municipalities may provide in the contract created under sub. (5) for payment to the company of funds for commodities to be procured and services to be rendered by the company. These municipalities and other persons and public agencies may enter into purchase agreements with the company for the purchase of electric power and energy whereby the purchaser is obligated to make payments in amounts which shall be sufficient to enable the company to meet its expenses, interest and principal payments (whether at maturity or upon debt service fund redemption) for its bonds, reasonable reserves for debt service, operation and maintenance and renewals and replacements and the requirements of any rate covenant with respect to debt service coverage contained in any resolution, trust indenture or other security instrument. Purchase agreements may contain such other terms and conditions as the company and the purchasers may determine, including provisions whereby the purchaser is obligated to pay for power irrespective of whether energy is produced or delivered to the purchaser or whether any project contemplated by any such agreement is completed, operable or operating, and notwithstanding suspension, interruption, interference, reduction or curtailment of the output of such project. Such agreements may be for a term covering the life of a project or for

any other term, or for an indefinite period. The contract created under sub. (5) or a purchase agreement may provide that if one or more of the purchasers defaults in the payment of its obligations under any such purchase agreement, the remaining purchasers which also have such agreements shall be required to accept and pay for and shall be entitled proportionately to use or otherwise dispose of the power and energy to be purchased by the defaulting purchaser. For purposes of this paragraph the phrase "purchase of electric power and energy" includes any right to capacity or interest in any project.

(b) The obligations of a municipality under a purchase agreement with a company or arising out of the default by any other purchaser with respect to such an agreement shall not be construed to constitute debt of the municipality. To the extent provided in the purchase agreement, such obligations shall constitute special obligations of the municipality, payable solely from the revenues and other moneys derived by the municipality from its municipal electric utility and shall be treated as expenses of operating a municipal electric utility.

(c) The contract also may provide for payments in the form of contributions to defray the cost of any purpose set forth in the contract and as advances for any such purpose subject to repayment by the company.

**(9) SALE OF EXCESS CAPACITY** (a) An electric company may sell or exchange excess power and energy produced or owned by it not required by any of the contracting municipalities for such consideration and for such period and upon such terms and conditions as it may determine to any other person or public agency.

(b) Notwithstanding any other provision of this section or any other statute, nothing shall prohibit a company from undertaking any project in conjunction with or owning any project jointly with any person or public agency.

**(10) REGULATION** (a) An electric company created under this section shall be deemed to be a "public utility" for purposes of ch. 196, except that the terms and conditions and the rates at which a company sells power and energy for resale shall not be subject to regulation or alteration by the public service commission.

(b) Advance plans submitted by a municipal electric utility under s. 196.491 shall include consideration of alternatives to any proposed addition to any bulk electric generating facility as defined under s. 196.491. Such alternatives shall include, but not be limited to, community-based energy systems and energy conservation measures.

**(11) TYPES OF BONDS** (a) An electric company may issue such types of bonds as it may determine, subject only to any agreement with the holders of particular bonds, including bonds as to which the principal and interest are payable exclusively from all or a portion of the revenues from one or more projects, or from one or more revenue producing contracts made by the company with any person or public agency, or from its revenues generally, or which may be additionally secured by a pledge of any grant, subsidy, or contribution from any public agency or other person, or a pledge of any income or revenues, funds, or moneys of the company from any source whatsoever.

(b) A company may from time to time issue its bonds in such principal amounts as the company deems necessary to provide sufficient funds to carry out any of its corporate purposes and powers, including the establishment or increase of reserves, interest accrued during construction of a project and for a period not exceeding one year after the completion of construction of a project, and the payment of all other costs or expenses of the company incident to and necessary or convenient to carry out its corporate purposes and powers.

(c) Neither the members of the board of directors of a company nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof.

(d) The bonds of an electric company (and such bonds shall so state on their face) shall not be a debt of the municipalities which are parties to the contract creating the company or of the state and

neither the state nor any such municipality shall be liable thereon nor in any event shall such bonds be payable out of any funds or properties other than those of the company.

**(12) FORM AND SALE OF BONDS** (a) Bonds of an electric company shall be authorized by resolution of the board of directors and may be issued under such resolution or under a trust indenture or other security instrument in one or more series and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in the form of coupon bonds or registered bonds under s. 67.09, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption, with or without premium, as such resolution, trust indenture or other security instrument may provide, and without limitation by the provisions of any other law limiting amounts, maturities or interest rates.

(b) The bonds may be sold at public or private sale as the company may provide and at such price or prices as the company shall determine.

(c) In case any of the officers whose signatures appear on any bonds or coupons shall cease to be such officers before the delivery of such obligations, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if the officers had remained in office until such delivery.

**(13) COVENANTS** The company shall have power in connection with the issuance of its bonds to:

(a) Covenant as to the use of any or all of its property, real or personal.

(b) Redeem the bonds, to covenant for their redemption and to provide the terms and conditions thereof.

(c) Covenant to charge rates, fees and charges sufficient to meet operating and maintenance expenses, renewals and replacements to a project, principal and debt service on bonds, creation and maintenance of any reserves required by a bond resolution, trust indenture or other security instrument and to provide for any margins or coverages over and above debt service on the bonds deemed desirable for the marketability of the bonds.

(d) Covenant and prescribe as to events of default and terms and conditions upon which any or all of its bonds shall become or may be declared due before maturity, as to the terms and conditions upon which such declaration and its consequences may be waived and as to the consequences of default and the remedies of bondholders.

(e) Covenant as to the mortgage or pledge of or the grant of a security interest in any real or personal property and all or any part of the revenues from any project or projects or any revenue producing contract or contracts made by the company with any person or public agency to secure the payment of bonds, subject to such agreements with the holders of bonds as may then exist.

(f) Covenant as to the custody, collection, securing, investment and payment of any revenues, assets, moneys, funds or property with respect to which the company may have any rights or interest.

(g) Covenant as to the purposes to which the proceeds from the sale of any bonds then or thereafter to be issued may be applied, and the pledge of such proceeds to secure the payment of the bonds.

(h) Covenant as to limitations on the issuance of any additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding bonds.

(i) Covenant as to the rank or priority of any bonds with respect to any lien or security.

(j) Covenant as to the procedure by which the terms of any contract with or for the benefit of the holders of bonds may be amended or abrogated, the amount of bonds, the holders of which must consent thereto, and the manner in which such consent may be given.

(k) Covenant as to the custody of any of its properties or investments, the safekeeping thereof, the insurance to be carried thereon, and the use and disposition of insurance proceeds.

(L) Covenant as to the vesting in a trustee or trustees, within or outside the state, of such properties, rights, powers and duties in trust as the company may determine.

(m) Covenant as to the appointing and providing for the duties and obligations of a paying agent or paying agents or other fiduciaries within or outside the state.

(n) Make all other covenants and to do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds, or in the absolute discretion of the company tend to make the bonds more marketable; notwithstanding that such covenants, acts or things may not be enumerated herein; it being the intention hereof to give the company power to do all things in the issuance of bonds and in the provisions for security thereof which are not inconsistent with the constitution of the state.

(o) Execute all instruments necessary or convenient in the exercise of the powers herein granted or in the performance of covenants or duties, which may contain such covenants and provisions, as any purchaser of the bonds of the company may reasonably require.

**(14) REFUNDING BONDS** A company may issue refunding bonds for the purpose of paying any of its bonds at or prior to maturity or upon acceleration or redemption. Refunding bonds may be issued at such time prior to the maturity or redemption of the refunded bonds as the company deems to be in the public interest. The refunding bonds may be issued in sufficient amounts to pay or provide the principal of the bonds being refunded, together with any redemption premium thereon, any interest accrued or to accrue to the date of payment of such bonds, the expenses of issue of the refunding bonds, the expenses of redeeming the bonds being refunded, and such reserves for debt service or other capital or current expenses from the proceeds of such refunding bonds as may be required by the resolution, trust indenture or other security instruments. The issue of refunding bonds, the maturities and other details thereof, the security therefor, the rights of the holders thereof, and the rights, duties and obligations of the company in respect of the same shall be governed by this section relating to the issue of bonds other than refunding bonds insofar as the same may be applicable.

**(15) BONDS ELIGIBLE FOR INVESTMENT** Bonds issued by a company under this section are hereby made securities in which all public officers and agencies of the state and all political subdivisions, all insurance companies, trust companies, banks, savings banks, savings and loan associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any officer or agency of the state or any political subdivision for any purpose for which the deposit of bonds or obligation of the state or any political subdivision is now or may hereafter be authorized by law.

**(16) TAX EXEMPTION AND PAYMENTS IN LIEU OF TAXES** (a) All bonds of a municipal electric company are declared to be issued on behalf of the state for an essential public and governmental purpose and to be debts of a state municipal corporation.

(b) The property of a company, including any proportional share of any property owned by a company in conjunction with any other person or public agency, is declared to be public property used for essential public and governmental purposes and such property or proportional share, a company and its income shall be exempt from all taxes of the state or any state public body except that for each project owned or partly owned by it, a company shall make payments—in-lieu-of—taxes to the state equal to the amount

which would be paid to the state under ss. 76.01 to 76.26 for such project or share thereof if it were deemed to be owned by a company under s. 76.02(9). The payment shall be determined, administered and distributed by the state in the same manner as the taxes paid by companies under ss. 76.01 to 76.26.

(17) **SUCCESSOR** A company shall, if the contract so provides, be the successor to any nonprofit corporation, agency or any other entity theretofore organized by such contracting municipalities to provide the same or a related function, and the company shall be entitled to all rights and privileges and shall assume all obligations and liabilities of the other entity under existing contracts to which the other entity is a party.

(18) **OTHER STATUTES** The powers granted under this section do not limit the powers of municipalities to enter into intergovernmental cooperation or contracts or to establish separate legal entities under s. 66.30 or any other applicable law, or otherwise to carry out their powers under applicable statutory provisions, nor shall such powers limit the powers reserved to municipalities by state law.

(19) **CONSTRUCTION** This section shall be interpreted liberally to effect the purposes set forth in this section.

History: 1977 c. 159; 1979 c. 110; 1979 c. 323 s. 33; 1983 a. 24, 27; 1983 a. 207 s. 93 (8); 1991 a. 221; 1993 a. 112

#### 66.074 Ice plants, fuel depots and landing fields.

(1) Any city, village or town may enter into any contract which will enable it to purchase, construct, lease or acquire any equipment necessary to secure, manufacture, or sell ice, and to supply ice to itself, its inhabitants and persons doing business therein, or the county in which it is located, and may operate the same.

(2) Any city, village or town may by a vote of three-fourths of all the members of the council or board establish and operate equipment for the purchase, sale and supply of fuel to its citizens, under regulation of the council or board.

(3) Any city, village or town may purchase or lease lands for the use of the public as an aerial landing field, and may construct thereon hangars, shops, and other equipment and maintain such landing field; and may establish and collect uniform fees for use of such field. No city, village or town, nor any board, commission or officer thereof, maintaining and operating any aerial landing field, as provided in this subsection, and collecting fees for the use of the same, shall be held liable in damages for injuries done to any person, not an employe of such city, village or town, by reason of the maintenance or operation of such landing field.

History: 1993 a. 246

**66.075 Slaughterhouses.** (1) Authority is hereby given to every county and to every city, village and town of more than 5,000 inhabitants to construct and maintain public slaughterhouses upon such conditions and under such regulations as may be imposed by the department of agriculture, trade and consumer protection.

(2) The county board in each county and the common council in each city shall authorize the construction of a county or municipal slaughterhouse, shall make the necessary appropriation for the purchase of land and the construction and maintenance of such slaughterhouse and shall take proper action to secure the building, establishment and maintenance of such county or municipal slaughterhouse.

(3) All cattle, sheep, swine and goats slaughtered in such slaughterhouse shall be examined by the proper state authorities, and after examination and inspection shall be approved or condemned in accordance with the state laws and the municipal regulations governing the examination and inspection of similar private establishments.

(4) Any person, firm or corporation who shall make use of a county or municipal slaughterhouse, and in such use shall violate any of the terms of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not

more than \$500 or by imprisonment of not more than one year, or by both such fine and imprisonment in the discretion of the court.

(5) The provisions of this section shall apply only to such counties, cities, villages and towns as shall have adopted the same at any general or municipal election at which the question of the establishment of such county or municipal slaughterhouse shall have been submitted to the voters of such county, city, village or town. Such question shall, upon the filing of a petition conforming to the requirements of s. 8.40 by electors of such county, city, village or town equal in number to at least 10% of all the votes cast in such county, city, village or town for governor at the last preceding general election, be submitted to the electors of such county, city, village or town at the next ensuing election, and if a majority of votes cast shall be in favor of the establishment of such slaughterhouse, the provisions of this section shall apply to such county, city, village or town.

History: 1977 c. 29 s. 1650m (4); 1989 a. 192; 1993 a. 27, 246.

#### 66.076 Sewerage system, service charge. (1) In

addition to all other methods provided by law, any municipality may construct, acquire or lease, extend or improve any plant and equipment within or without its corporate limits for the collection, transportation, storage, treatment and disposal of sewage, including the lateral, main and interceptor sewers necessary in connection therewith, and any town, village or city may arrange for such service to be furnished by a metropolitan sewerage district or joint sewerage system. Except as provided in s. 66.60 (6m), payment for the same or any part thereof may be provided from the general fund, from taxation, special assessments, sewerage service charges, or from the proceeds of either municipal obligations, revenue bonds or from any combination of these enumerated methods of financing.

(1m) In this section, "municipality" means any town, village, city or metropolitan sewerage district created under ss. 66.20 to 66.26 or under ss. 66.88 to 66.918.

(2) Where payment in whole or in part is made by the issue and sale of revenue bonds, the payments shall be made as provided in s. 66.066. The provisions of s. 66.066 which are not inconsistent with this section are made a part of this section. The term "public utility" as used in s. 66.066 shall for this purpose include the sewerage system, accessories, equipment and other property, including land. The mortgage or revenue bonds or mortgage certificates shall not constitute an indebtedness of the municipality but shall be secured only by the sewerage system and its revenue, and the franchise provided for in this section.

(3) In the event of a sale of the mortgaged premises on a judgment of foreclosure and sale, the price paid for the same shall not exceed the amount of the judgment and the costs of sale to and including the recording of the sheriff's deed. The purchaser on the foreclosure sale may operate and maintain said sewerage system and collect sewerage service charges, and for that purpose shall be deemed to have a franchise from the municipality. The term "purchaser" shall include the purchaser's successors or assigns. The rates to be charged, in addition to the contributions, if any, which the municipality has obligated itself to make toward the capital or operating costs of the plant, shall be sufficient to meet the requirements of operation, maintenance, repairs, depreciation, interest and an amount sufficient to amortize the judgment debts and all additional capital costs which the purchaser contributes to the plan over a period not exceeding 20 years, and in addition to the foregoing the purchaser of the premises shall be entitled to earn a reasonable amount, as determined by the public service commission, on the actual amount of the purchaser's investment in the premises represented by the purchase price of the premises, plus any additions made to the same by the purchaser or minus any payments made by the municipality on account of such investments. The municipality may at any time by payment reduce such investment of the purchaser and after full payment of the purchase price plus the cost of subsequent improvements the premises shall revert to

the municipality. So long as the premises are owned by the private purchaser, the same shall be considered a public utility and be subject to ch. 196 so far as applicable.

(4) The governing body of the municipality may establish sewerage service charges in such amount as to meet all or part of the requirements for the construction, reconstruction, improvement, extension, operation, maintenance, repair and depreciation of the sewerage system, and for the payment of all or part of the principal and interest of any indebtedness incurred thereof, including the replacement of funds advanced by or paid from the general fund of the municipality. Service charges made by a metropolitan sewerage district to any town, village or city shall in turn be levied by such town, village or city against the individual sewer system users within the corporate limits of such municipality, and the responsibility for collecting such charges and promptly remitting same to the metropolitan sewerage district shall lie with such municipality. Delinquent charges shall be collected in accordance with sub. (7).

(5) For the purpose of making equitable charges for all services rendered by the sewerage system to the municipality or to citizens, corporations and other users, the property benefited thereby may be classified, taking into consideration the volume of water, including surface or drain waters, the character of the sewage or waste and the nature of the use made of the sewerage system, including the sewage disposal plant. The charges may also include standby charges to property not connected but for which such facilities have been made available.

(6) Any municipality may pledge, assign or otherwise hypothecate the net earnings or profits derived or to be derived from a sewerage system to secure the payment of the costs of purchasing, constructing or otherwise acquiring a sewerage system or any part thereof, or for extending or improving such sewerage system, in the manner provided in s. 66.066 (4) as the same has been and from time to time may be amended or recreated.

(7) Sewerage service charges shall be collected and taxed and shall be a lien upon the property served in the same manner as water rates are taxed and collected under s. 66.069 (1) or 66.071 (1) (e), so far as applicable, except that charges of a metropolitan sewerage district created under ss. 66.88 to 66.918 shall be assessed and collected as provided in s. 66.91 (5).

(8) The governing body of any municipality, and the officials in charge of the management of the sewerage system as well as other officers of the municipality, shall be governed in the discharge of their powers and duties under this section by s. 66.069 or 66.071 (1) (e), which are hereby made a part of this section so far as applicable and not inconsistent herewith or, in the case of a metropolitan sewerage district created under ss. 66.88 to 66.918, by ss. 66.91 and 66.912.

(9) If any user of a service complains to the public service commission that rates, rules and practices are unreasonable or unjustly discriminatory, or if a holder of a mortgage or revenue bond or mortgage certificate or other evidence of debt, secured by a mortgage on the sewerage system or any part thereof or pledge of the income of sewerage service charges, complains that rates are inadequate, the public service commission shall investigate the complaint. If there appears to be sufficient cause for the complaint, the commission shall set the matter for a public hearing upon 10 days' notice to the complainant and the town, village or city. After the hearing, if the public service commission determines that the rates, rules or practices complained of are unreasonable or unjustly discriminatory, it shall determine and by order fix reasonable rates, rules and practices and shall make such other order respecting the complaint as may be just and reasonable. The proceedings under this subsection shall be governed, as far as applicable, by ss. 196.26 to 196.40. The commission shall bill any expense of the commission attributable to a proceeding under this subsection to the town, village or city under s. 196.85 (1).

(10) Judicial review of the determination of the public service commission may be had by any person aggrieved in the manner prescribed in ch. 227.

(11) The word "sewerage" as used in this section shall be considered a comprehensive term, including all constructions for collection, transportation, pumping, treatment and final disposition of sewage.

(12) The authority hereby given shall be in addition to any power which municipalities now have with respect to sewerage or sewage disposal. Nothing in this section shall be construed as restricting or interfering with any powers and duties of the department of health and social services as prescribed by law.

History: 1971 c. 276; 1975 c. 414 s. 28; 1977 c. 29; 1981 c. 282, 314; 1983 a. 207; 1989 a. 322; 1991 a. 316

"In lieu of tax" charge was not allowable method of sewerage treatment cost recovery under (4). *Fred Rueping Leather Co. v. City of Fond du Lac*, 99 W (2d) 1, 298 NW (2d) 227 (Ct. App. 1980)

PSC is not authorized by (9) to set rates retroactively or to order refunds. *Kimberly-Clark Corp. v. Public Service Comm.* 110 W (2d) 455, 329 NW (2d) 143 (1983).

### 66.077 Combining water and sewer utilities.

(1) Any town, village, or city of the fourth class may construct, acquire, or lease, or extend and improve, a plant and equipment within or without its corporate limits for the furnishing of water to the municipality or to its inhabitants, and for the collection, treatment, and disposal of sewage, including the lateral, main and intercepting sewers, and all equipment necessary in connection therewith. Such plant and equipment, whether the structures and equipment for the furnishing of water and for the disposal of sewage shall be combined or separate, may by ordinance be constituted a single public utility.

(2) All of the provisions of this chapter and chs. 196 and 197 as the same shall have been and from time to time may be amended or recreated, relating to a waterworks system, including, but not limited to, those provisions relating to the regulation of a waterworks system by the public service commission, shall apply to such combined waterworks and sewage disposal system as a single public utility. In prescribing rates, accounting and engineering practices, extension rules, service standards or other regulations for such combined waterworks and sewage disposal system, the public service commission shall treat the waterworks system and the sewage disposal system separately, unless such commission shall find that the public interest requires otherwise.

(3) Any town, village, or city of the fourth class which now owns or hereafter may acquire a waterworks plant and system and a plant or system for the treatment or disposal of sewage may by ordinance combine such system into a single public utility. After the effective date of such ordinance such combined utility shall be subject to all of the provisions of this section with the same force and effect as though originally acquired as a single public utility.

History: 1981 c. 390

### 66.078 Refunding village, town, sanitary and inland lake district bonds.

Any village, town, town sanitary district established under s. 60.71 (1) or public inland lake protection and rehabilitation district established under ch. 33 which has undertaken to construct a combined sewer and water system and issued revenue bonds payable from the combined revenues of the system and which is unable to provide sufficient funds to complete the construction of the system and to meet maturing principal of the revenue bonds, may, with the consent of all of the holders of non-callable bonds, refund all or any part of its outstanding indebtedness, including revenue bonds, by issuing term bonds maturing in not more than 20 years, payable solely from the revenues of the combined sewer and water system and redeemable at par on any interest payment date. Such bonds may be issued as provided in s. 66.066 (2) and shall pledge income from hydrant rentals and all sewer and water charges and may contain any covenants authorized by law, except if bonds are issued under this section to refund floating indebtedness, the bonds shall be subject to the prior lien and claim of all bonds issued to refund revenue bonds issued prior to the refunding.

History: 1975 c. 197; 1983 a. 532 s. 36; 1993 a. 246

**66.079 Parking systems.** (1) Any city, village or town without necessity of a referendum may purchase, acquire, rent



from a lessor, construct, extend, add to, improve, conduct, operate or rent to a lessee a municipal parking system for the parking of vehicles, including parking lots and other parking facilities, upon its public streets or roads or public grounds and issue revenue bonds to acquire funds for any one or more of these purposes. The parking lots and other parking facilities may include space designed for leasing to private persons for purposes other than parking. If, in 1st class cities, a charge is made for parking privileges in a parking system or parking lot and attendants are employed there, the parking system or parking lot shall be operated under contract with private persons. No such contract is required if the 1st class city cannot obtain reasonable terms and conditions. The provisions of s. 66.066 governing the issuance of revenue bonds apply, so far as applicable, to revenue bonds issued under this subsection. The municipal parking systems are public utilities under article XI, section 3, of the constitution. Revenue bonds issued under this subsection are payable solely, both principal and interest, from the revenues to be derived from the parking system, including without limitation revenues from parking meters or other parking facilities. Any revenue derived from any facility financed by a revenue bond issued under this subsection shall be used only to pay the principal and interest of that revenue bond, except that after the principal and interest of that revenue bond have been paid in full the revenue derived from the facility may be used for any purpose.

(2) Any municipality empowered to create a parking system under sub. (1) may finance and operate any part of such system in the following manner:

(a) The cost of constructing any parking system or facility, including the cost of the land, may be assessed against a benefited area, such benefited area and assessments to be determined in the manner prescribed by either subch. II of ch. 32 or s. 66.60, except that the number of annual instalments in which such assessment is payable shall not exceed 20.

(b) The cost of operating and maintaining any parking system or facility may be assessed not more than once in each calendar year against all property in a benefited area, such area and such assessments to be determined in the manner prescribed by either subch. II of ch. 32 or by s. 66.60. Such costs may include a payment in lieu of taxes, operating, maintenance and replacement costs, and interest on any unpaid capital cost.

(c) The governing body may, in determining the amount of the assessment under par. (a) or (b) credit any portion of the revenues from the parking system or facility.

(d) No assessment, as authorized in par. (a) or (b), shall be made against any property used wholly for residential purposes.

History: 1973 c. 172; 1983 a. 192; 1983 a. 207 s. 93 (3); 1983 a. 236 ss. 7, 13; 1985 a. 231; 1987 a. 152; 1993 a. 246

**66.08 Utilities, special assessments.** (1) Whenever any city, village or town shall construct or acquire by gift, purchase or otherwise a distribution system or a production or generating plant for the furnishing of light, heat or power to any municipality or its inhabitants or shall make any extensions thereto, such city, village or town may assess the whole or any part of the cost thereof to the property benefited thereby, whether abutting or not, in the same manner as is provided for the assessment of benefits under s. 66.60.

(2) Such special assessments may be made payable and certificates or bonds issued under s. 66.54. In a city, village or town where no official paper is published, notice may be given by posting the notice in 3 public places in the city, village or town.

History: 1993 a. 246

**66.081 Record of orders and court certificates.** The clerk of every town, village, city and county which is not provided with a book which serves the purposes indicated in this section shall obtain and keep a cancellation book in which the clerk shall enter the number and date of each order drawn upon the treasurer of the town, city, village or county, the page of the record of the

proceedings of the body which authorized the issuing of the order, the amount thereof, the name of the drawee, the purpose for which it was allowed and the date of its cancellation. The book shall be furnished by the clerk of each county to the town, city and village clerks therein. The clerk of each county shall prescribe the form and size thereof and procure it at the expense of the county. Upon their receipt the clerk of the county shall transmit the books to the clerks and charge their cost to the municipalities to which supplied. When directed by the court in any county the clerk of the court shall file with the county clerk a list of the court certificates drawn on the county treasurer. The list shall specify the number of each certificate, its date, the amount for which it was drawn, the name of the payee and the character of the service performed by the clerk of the court. The list shall be recorded in a part of the cancellation book set apart for that purpose. The part shall contain a blank column in which shall be entered the date of the cancellation of each certificate. Whenever a town, village, city or county treasurer pays or receives in payment of taxes, or for any other purpose equivalent to the payment thereof, any order or court certificate, the treasurer shall return the order or certificate to the proper authorities at their first meeting thereafter. The evidences of indebtedness shall be canceled by destroying them, and the date of their cancellation shall be immediately entered by the proper clerk in the cancellation book. Every clerk on the receipt of the book shall enter therein a list of all orders and court certificates which remain outstanding and unpaid.

History: 1977 c. 449.

**66.082 Regulation of cable television by municipalities.** (1) LEGISLATIVE FINDINGS (a) The legislature finds that:

1. The federal cable communications policy act of 1984 authorizes, and, for systems installed and services provided after July 1, 1984, requires, the award of a franchise to a cable operator.

2. The practice of individual municipalities in this state prior to December 29, 1984, requiring a franchise for operation of a cable television system within their respective boundaries conformed to the policy and regulations issued by the federal communications commission.

3. Prior to December 29, 1984, federal law did not prohibit requiring compensation for operation of a cable television system in a city, town or village.

4. The federal cable communications policy act of 1984 authorizes a city, town or village to impose a limited franchise fee based on the gross revenues a cable operator derives from operation of a cable television system in the city, town or village.

5. Section 637 of the federal communications policy act of 1984 reaffirms the authority of cities, towns and villages to award cable television system franchises and maintains the integrity of existing franchises.

6. Regulation of cable television services by cities, towns and villages is necessary to ensure citizens adequate and efficient cable television service and to protect and promote public health, safety and welfare.

7. It is in the public interest to maintain the authority of cities, towns and villages to grant and revoke cable television franchises, require the payment of franchise fees and establish rates charged to customers by franchise holders.

(b) In this section the legislature intends to:

1. Clarify the legislature's position on certain antitrust and franchise fee and other compensation issues which affect the cities, towns and villages of this state, which are related to the regulation of cable television services and which have arisen in recent state and federal court actions.

2. Reaffirm the policy of the legislature, which is to provide that the exercise of the police power of this state concerning cable television service remain in the cities, towns and villages of this state.

3. Authorize cities, towns and villages to impose franchise fees for the purpose of raising general revenue.

4. Maintain the spirit of the compromise between the cable industry and municipalities effected under the federal cable communications policy act of 1984, the enactment of which the municipalities agreed to support because it provides for their clear right to impose and collect a limited franchise fee based on cable operator income or gross revenues.

**(2) DEFINITIONS.** In this section:

(a) "Affiliate", when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership control with such person.

(b) "Cable operator" means any person who provides cable service over a cable television system and who:

1. Directly or through one or more affiliates owns a significant interest in the cable television system; or

2. Otherwise controls or is responsible for, through any arrangement, the management and operation of the cable television system.

(c) "Cable service" means:

1. The one-way transmission to subscribers of video programming or of other programming service; and

2. Subscriber interaction, if any, which is required for the selection of such video programming or other programming service.

(d) "Cable television system" means a facility which consists of a set of closed transmission paths and associated signal generation, reception and control equipment designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community. "Cable television system" does not include any of the following:

1. A facility which serves only to retransmit the television signals of one or more television broadcast stations.

2. A facility that serves only subscribers in one or more multi-unit dwellings under common ownership, control or management unless such facility uses any public right-of-way.

3. A facility of a common carrier which is subject, in whole or in part, to the provisions of 47 USC 201 to 222, except that the facility is a cable television system to the extent that the facility is used in transmission of video programming directly to subscribers.

4. Any facility of any electric utility used solely for operating its electric utility system.

(e) "Franchise fee" means any fee, assessment or other compensation which a municipality requires a cable operator to pay, with respect to the operation of cable television systems, solely because of the cable operator's status as such, and includes any compensation required under s. 66.045.

(f) "Municipality" means a city, village or town.

(g) "Other programming service" means information which a cable operator makes available to all subscribers generally.

(h) "Video programming" means programming provided by, or generally considered comparable to, programming provided by a television broadcast station.

**(3) FRANCHISES.** A municipality may operate or regulate a cable television system and in such operation and regulation may, without limitation because of enumeration:

(a) Own and operate a cable television system.

(b) Grant or revoke one or more franchises authorizing the construction and operation of a cable television system and govern the operation of any franchise granted.

(c) Require the payment of franchise fees which, notwithstanding s. 66.70, may be based on the income or gross revenues of a cable television system, or measured by such income or gross revenues.

(d) Contract for operation of a municipally owned cable television system.

(e) Establish rates and regulate services to the extent provided under federal law.

**(4) CONSTRUCTION.** The authority granted under this section to a municipality to operate and regulate a cable television system is in addition to any other power which the municipality has and the authority of a municipality to operate and regulate a cable television system is limited only by the express language of this section.

**(5) FRANCHISE TRANSFERS.** (a) A cable operator shall give the municipality that authorized its franchise at least 90 days' advance written notice of the cable operator's intention to transfer ownership or control of a cable television system. During the term of a franchise agreement, a cable operator may not transfer ownership or control of a cable television system without the approval of the municipality that authorized the franchise. A municipality may not withhold approval of an ownership transfer or a transfer of control without good cause. If a hearing is necessary to determine if a transfer may have an adverse effect, a municipality may schedule a hearing to take place within 45 days after the date on which the municipality receives the notice. If a municipality withholds approval of an ownership transfer or a transfer of control, the municipality shall state its objections to the transfer in writing within 60 days after the date on which the municipality receives the notice. Under this paragraph, a transfer of control is presumed to occur if 40% or more of the ownership interest in a cable television system is transferred.

(am) If 10% or more of the ownership interest in a cable television system is transferred, the cable operator shall inform the municipality that authorized its franchise of the transfer in writing within 30 days after the date of the transfer.

(c) The provisions of this subsection may be varied under a written franchise agreement that is entered into, renewed, extended or modified after May 14, 1992.

History: 1985 a. 29; 1991 a. 296

**66.083 Transient merchants.** Cities and villages may, by ordinance, regulate the retail sales, other than auction sales, made by transient merchants, as defined in s. 130.065 (1m), 1987 stats., and provide penalties for violations of those ordinances.

History: 1989 a. 301, 359

**66.085 Access to cable service.** **(1) DEFINITIONS.** (a) "Cable operator" has the meaning given in s. 66.082 (2) (b).

(b) "Cable service" has the meaning given in s. 66.082 (2) (c).

**(2) INTERFERENCE PROHIBITED.** The owner or manager of a multiunit dwelling under common ownership, control or management or the association or board of directors of a condominium may not prevent a cable operator from providing cable service to a subscriber who is a resident of the multiunit dwelling or of the condominium or interfere with a cable operator providing cable service to a subscriber who is a resident of the multiunit dwelling or of the condominium.

**(3) INSTALLATION IN MULTIUNIT BUILDING.** Before installation, a cable operator shall consult with the owner or manager of a multiunit dwelling or with the association or board of directors of a condominium to establish the points of attachment to the building and the methods of wiring. A cable operator shall install facilities to provide cable service in a safe and orderly manner and in a manner designed to minimize adverse effects to the aesthetics of the multiunit dwelling or condominium. Facilities installed to provide cable service may not impair public safety, damage fire protection systems or impair fire-resistant construction or components of a multiunit dwelling or condominium.

**(4) REPAIR RESPONSIBILITY.** A cable operator shall be responsible for any repairs to a building required because of the construction, installation, disconnection or servicing of facilities to provide cable service.

History: 1989 a. 143

**66.09 Judgment against municipalities, etc.** (1) When a final judgment for the payment of money shall be recovered against a town, village, city, county, school district, technical college district, town sanitary district, public inland lake

protection and rehabilitation district or community center, or against any officer thereof, in any action by or against him or her in his or her name of office, when the judgment should be paid by such municipality, the judgment creditor, or his or her assignee or attorney, may file with the clerk a certified transcript of the judgment or of the docket of the judgment, together with his or her affidavit of payments made, if any, and the amount due and that the judgment has not been appealed from or removed to another court, or if so appealed or removed has been affirmed. The amount due, with costs and interest to the time when the money will be available for payment, shall be added to the next tax levy, and shall, when received, be paid to satisfy the judgment. If the judgment is appealed after filing the transcript with the clerk, and before the tax is collected, the money shall not be collected on that levy. If the clerk fails to include the proper amount in the first tax levy, he or she shall include it or such portion as is required to complete it in the next levy.

(2) In the case of school districts, town sanitary districts, public inland lake protection and rehabilitation districts or community centers, transcript and affidavit shall be filed with the clerk of the town, village or city in which the district or any part of it lies, and levy shall be made against the taxable property of the district or center.

(3) No process for the collection of such judgment shall issue until after the time when the money, if collected upon the first tax levy as herein provided, would be available for payment, and then only by leave of court upon motion.

(4) If by reason of dissolution or other cause, pending action, or after judgment, the transcript cannot be filed with the clerk therein designated, it shall be filed with the clerk or clerks whose duty it is to make up the tax roll for the property liable.

History: 1971 c 154; 1975 c 197; 1993 a 399.

**66.091 Mob damage.** (1) A county shall be liable for injury to person or property by a mob or riot therein except when cities are liable. Within a city, the city shall be liable for such injury except that within a 1st class city the city shall not be liable for any such injury occurring upon the interstate freeway system or in or upon grounds, buildings or other improvements owned by a county and designated for stadium or airport purposes and appurtenant uses. A 1st class city's immunity from liability in providing or failing to provide police services upon the freeway system or in or upon such grounds, buildings or other improvements shall be as provided under s. 893.80 (6).

(2) Claim therefor must be filed within 6 months thereafter. Such claim may be allowed in whole or in part, as other claims, and procedure to enforce shall be as for other claims.

(3) The city or county may recover all such claims and costs paid by it, against any and all persons engaged in inflicting the injury.

(4) No person shall recover hereunder when the injury was occasioned or in any manner aided, sanctioned, or permitted by that person or caused by that person's negligence, nor unless that person shall have used all reasonable diligence to prevent the same, and shall have immediately notified the mayor or sheriff after being apprised of any threat of or attempt at such injury. Every mayor or sheriff receiving such notice shall take all legal means to prevent injury, and if that officer shall refuse or neglect to do so, the party injured may elect to hold that officer liable by bringing action against that officer within 6 months of the injury.

(5) This section shall not apply to property damage to houses of ill fame when the owner has notice that they are used as such.

History: 1979 c 34; 1981 c 314 s. 146; 1991 a 316.

This section does not render a city a wrongdoer, since liability is imposed without fault, and an insurer who has paid for riot damage cannot recover on a theory of subrogation. *Interstate Fire & Cas. Co v. Milwaukee*, 45 W (2d) 331, 173 NW (2d) 187.

An insurer cannot recover against a city for money paid out for mob damage on a subrogation theory. *American Ins. Co v. Milwaukee*, 51 W (2d) 346, 187 NW (2d) 142.

Liability for riot damages; subrogation against municipalities for riot damage claims. 1971 WLR 1236.

**66.10 Official publication.** Whenever in ss. 66.01 to 66.08 publication is required to be in the official paper of other than a city, and there is no official paper, the publication shall be in a paper published in the municipality and designated by the officers or body conducting the proceedings, and if there be no paper published in the municipality, then in a paper published in the county and having a general circulation in the municipality and so designated, and by posting in at least four public places in the municipality, and if there be also no such paper, then by such posting.

**66.11 Eligibility for office.** (1) **DEPUTY SHERIFFS AND MUNICIPAL POLICE** No person shall be appointed deputy sheriff of any county or police officer for any city, village or town unless that person is a citizen of the United States. This section shall not affect common carriers, nor apply to a deputy sheriff not required to take an oath of office.

(2) **ELIGIBILITY OF OTHER OFFICERS** Except as expressly authorized by statute, no member of a town, village or county board, or city council, shall, during the term for which the member is elected, be eligible for any office or position which during such term has been created by, or the selection to which is vested in, such board or council, but such member shall be eligible for any elective office. The governing body may be represented on city, village or town boards and commissions where no additional remuneration is paid such representatives and may fix the tenure of such representatives notwithstanding any other statutory provision. This subsection shall not apply to a member of any such board or council who resigns from said board or council before being appointed to an office or position which was not created during the member's term in office.

(3) **APPOINTMENTS ON CONSOLIDATION OF OFFICES** Whenever offices are consolidated, the occupants of which are members of the same statutory committee or board and which are serving in that office because of holding another office or position, the common council or village board may designate another officer or officers or make such additional appointments as may be necessary to procure the number of committee or board members provided for by statute.

(4) **COMPATIBLE OFFICES AND POSITIONS** A volunteer fire fighter or emergency medical technician in a city, village or town whose annual compensation, including fringe benefits, does not exceed \$2,500 may also hold an elected office in that city, village or town.

History: 1979 c 110; 1987 a 27, 403; 1991 a 316; 1993 a 246.

Citizenship requirement for peace officers is constitutional. 65 Atty Gen. 273 is withdrawn. 68 Atty Gen. 61.

Offices of commissioner of town sanitary district and supervisor of town board are incompatible where town board also serves as appointing authority for commissioners. 69 Atty Gen. 108.

**66.111 Fees for same service allowed to all.** When a fee is allowed to one officer the same fee shall be allowed to other officers for the performance of the same services, when such officers are by law authorized to perform such services.

**66.113 Receipts for fees.** Every officer upon receiving fees for any official duty or service shall, if required by the person paying the same, deliver to the person paying a particular receipted account of such fees, specifying for what they respectively accrued; and if the officer fails to do so the officer shall be liable to the party paying the same for 3 times the amount paid.

History: 1991 a 316.

**66.114 Bail under municipal ordinances.** (1) When any person is arrested for the violation of a city, village or town ordinance and the action is to be in circuit court, the chief of police or police officer designated by the chief, marshal or clerk of court may accept from the person a bond, in an amount not to exceed the maximum penalty for the violation, with sufficient sureties, or the person's personal bond upon depositing the amount thereof in

money, for appearance in the court having jurisdiction of the offense. A receipt shall be issued therefor.

(2) (a) If the person so arrested and released fails to appear, personally or by an authorized attorney or agent, before the court at the time fixed for hearing of the case, then the bond and money deposited, or such portion thereof as the court may determine to be an adequate penalty, plus costs, including any applicable fees prescribed in ch. 814, may be declared forfeited by the court or may be ordered applied upon the payment of any penalty which may be imposed after an ex parte hearing together with the costs. In either event, the surplus, if any, shall be refunded to the person who made the deposit.

(b) The provisions of this subsection shall not apply to violations of parking ordinances. Bond or bail given for appearance to answer a charge under any such ordinance may be forfeited in the manner determined by the governing body.

(3) This section shall not be construed as a limitation upon the general power of cities, villages and towns in all cases of alleged violations of city, village or town ordinances to authorize the acceptance of bonds or cash deposits or upon the general power to accept stipulations for forfeiture of bonds or deposits or pleas where arrest was had without warrant or where action has not been started in court.

(4) This section shall not apply to ordinances enacted under ch. 349.

**History:** 1971 c. 278; 1977 c. 305; 1977 c. 449 s. 497; 1981 c. 317; 1987 a. 27, 399; 1993 a. 246

Defendant had option under s. 66.114 (1), 1975 stats., to post either the required bond or the permitted cash bail. *City of Madison v. Ricky Two Crow*, 88 W (2d) 156, 276 NW (2d) 359 (Ct. App. 1979)

**66.115 Penalties under county and municipal ordinances.** Where a statute requires that the penalty under any county or municipal ordinance shall conform to the penalty provided by statute such ordinance may impose only a forfeiture and may provide for imprisonment in case the forfeiture is not paid.

**History:** 1971 c. 278.

**66.117 Outstanding unpaid forfeitures.** (1) In this section, "municipality" means a county, city, village or town. Except as provided under sub. (2), any municipality may refuse to issue any license or permit to a person who has not paid an overdue forfeiture resulting from a violation of an ordinance of the municipality. Any municipality, by written agreement between itself and any other city, village or town within the county in which the municipality is located, may refuse to issue any license or permit to a person who has not paid an overdue forfeiture resulting from a violation of an ordinance of any municipality which is a party to the agreement. No municipality may refuse to issue a license or permit to a person who is appealing the imposition of a forfeiture.

(2) A municipality may not refuse to issue any of the following licenses under sub. (1):

- (a) A marriage license issued under s. 765.12.
- (b) A hunting or fishing license issued under ch. 29.
- (c) A dog license issued under s. 174.07.

**History:** 1981 c. 198.

**66.119 Citations for certain ordinance violations.** (1) **ADOPTION; CONTENT.** (a) The governing body of any county, town, city, village or public inland lake protection and rehabilitation district may by ordinance adopt and authorize the use of a citation to be issued for violations of ordinances, including ordinances for which a statutory counterpart exists.

(b) An ordinance adopted under par. (a) shall prescribe the form of the citation which shall provide for the following:

1. The name and address of the alleged violator.
2. The factual allegations describing the alleged violation.
3. The time and place of the offense.
4. The section of the ordinance violated.

5. A designation of the offense in such manner as can be readily understood by a person making a reasonable effort to do so.

6. The time at which the alleged violator may appear in court.

7. A statement which in essence informs the alleged violator:

a. That the alleged violator may make a cash deposit of a specified amount to be mailed to a specified official within a specified time.

b. That if the alleged violator makes such a deposit, he or she need not appear in court unless subsequently summoned.

c. That if the alleged violator makes a cash deposit and does not appear in court, he or she either will be deemed to have tendered a plea of no contest and submitted to a forfeiture, a penalty assessment imposed by s. 165.87, a jail assessment imposed by s. 302.46 (1) and any applicable domestic abuse assessment imposed by s. 973.055 (1) not to exceed the amount of the deposit or will be summoned into court to answer the complaint if the court does not accept the plea of no contest.

d. That if the alleged violator does not make a cash deposit and does not appear in court at the time specified, the court may issue a summons or a warrant for the defendant's arrest or consider the nonappearance to be a plea of no contest and enter judgment under sub. (3) (d), or the municipality may commence an action against the alleged violator to collect the forfeiture, the penalty assessment imposed by s. 165.87, the jail assessment imposed by s. 302.46 (1) and any applicable domestic abuse assessment imposed by s. 973.055 (1).

e. That if the court finds that the violation involves an ordinance that prohibits conduct that is the same as or similar to conduct prohibited by state statute punishable by fine or imprisonment or both, and that the violation resulted in damage to the property of or physical injury to a person other than the alleged violator, the court may summon the alleged violator into court to determine if restitution shall be ordered under s. 800.093.

8. A direction that if the alleged violator elects to make a cash deposit, the alleged violator shall sign an appropriate statement which accompanies the citation to indicate that he or she read the statement required under subd. 7 and shall send the signed statement with the cash deposit.

9. Such other information as may be deemed necessary.

(c) An ordinance adopted under par. (a) shall contain a schedule of cash deposits that are to be required for the various ordinance violations, and for the penalty assessment imposed by s. 165.87, the jail assessment imposed by s. 302.46 (1) and any applicable domestic abuse assessment imposed by s. 973.055 (1), for which a citation may be issued. The ordinance shall also specify the court, clerk of court or other official to whom cash deposits are to be made and shall require that receipts be given for cash deposits.

(2) **ISSUANCE; FILING.** (a) Citations authorized under this section may be issued by law enforcement officers of the county, town, city, village or public inland lake protection and rehabilitation district. In addition, the governing body of a county, town, city, village or public inland lake protection and rehabilitation district may designate by ordinance or resolution other county, town, city, village or public inland lake protection and rehabilitation district officials who may issue citations with respect to ordinances which are directly related to the official responsibilities of the officials. Officials granted the authority to issue citations may delegate, with the approval of the governing body, the authority to employees. Authority delegated to an official or employee shall be revoked in the same manner by which it is conferred.

(b) The issuance of a citation by a person authorized to do so under par. (a) shall be deemed adequate process to give the appropriate court jurisdiction over the subject matter of the offense for the purpose of receiving cash deposits, if directed to do so, and for the purposes of sub. (3) (b) and (c). Issuance and filing of a citation does not constitute commencement of an action. Issuance of a citation does not violate s. 946.68.

(3) VIOLATOR'S OPTIONS; PROCEDURE ON DEFAULT (a) The person named as the alleged violator in a citation may appear in court at the time specified in the citation or may mail or deliver personally a cash deposit in the amount, within the time and to the court, clerk of court or other official specified in the citation. If a person makes a cash deposit, the person may nevertheless appear in court at the time specified in the citation, provided that the cash deposit may be retained for application against any forfeiture, restitution, penalty assessment, jail assessment or domestic abuse assessment that may be imposed.

(b) If a person appears in court in response to a citation, the citation may be used as the initial pleading, unless the court directs that a formal complaint be made, and the appearance confers personal jurisdiction over the person. The person may plead guilty, no contest or not guilty. If the person pleads guilty or no contest, the court shall accept the plea, enter a judgment of guilty and impose a forfeiture, the penalty assessment imposed by s. 165.87, the jail assessment imposed by s. 302.46 (1) and any applicable domestic abuse assessment imposed by s. 973.055 (1). If the court finds that the violation meets the conditions in s. 800.093 (1), the court may order restitution under s. 800.093. A plea of not guilty shall put all matters in the case at issue, and the matter shall be set for trial.

(c) If the alleged violator makes a cash deposit and fails to appear in court, the citation may serve as the initial pleading and the violator shall be considered to have tendered a plea of no contest and submitted to a forfeiture, the penalty assessment imposed by s. 165.87, the jail assessment imposed by s. 302.46 (1) and any applicable domestic abuse assessment imposed by s. 973.055 (1) not exceeding the amount of the deposit. The court may either accept the plea of no contest and enter judgment accordingly or reject the plea. If the court finds the violation meets the conditions in s. 800.093 (1), the court may summon the alleged violator into court to determine if restitution shall be ordered under s. 800.093. If the court accepts the plea of no contest, the defendant may move within 10 days after the date set for the appearance to withdraw the plea of no contest, open the judgment and enter a plea of not guilty if the defendant shows to the satisfaction of the court that the failure to appear was due to mistake, inadvertence, surprise or excusable neglect. If the plea of no contest is accepted and not subsequently changed to a plea of not guilty, no costs or fees may be taxed against the violator, but a penalty assessment, a jail assessment and, if applicable, a domestic abuse assessment shall be assessed. If the court rejects the plea of no contest, an action for collection of the forfeiture, penalty assessment, jail assessment and any applicable domestic abuse assessment may be commenced. A city, village or public inland lake protection and rehabilitation district may commence action under s. 66.12 (1) and a county or town may commence action under s. 778.10. The citation may be used as the complaint in the action for the collection of the forfeiture, penalty assessment, jail assessment and any applicable domestic abuse assessment.

(d) If the alleged violator does not make a cash deposit and fails to appear in court at the time specified in the citation, the court may issue a summons or warrant for the defendant's arrest or consider the nonappearance to be a plea of no contest and enter judgment accordingly if service was completed as provided under par. (e) or the county, town, city, village or public inland lake protection and rehabilitation district may commence an action for collection of the forfeiture, penalty assessment and jail assessment and any applicable domestic abuse assessment. A city, village or public inland lake protection and rehabilitation district may commence action under s. 66.12 (1) and a county or town may commence action under s. 778.10. The citation may be used as the complaint in the action for the collection of the forfeiture, penalty assessment and jail assessment and any applicable domestic abuse assessment. If the court considers the nonappearance to be a plea of no contest and enters judgment accordingly, the court shall promptly mail a copy or notice of the judgment to the defendant. The judgment shall allow the defendant not less than 20 days

from the date of the judgment to pay any forfeiture, penalty assessment and jail assessment and any applicable domestic abuse assessment imposed. If the defendant moves to open the judgment within 6 months after the court appearance date fixed in the citation, and shows to the satisfaction of the court that the failure to appear was due to mistake, inadvertence, surprise or excusable neglect, the court shall reopen the judgment, accept a not guilty plea and set a trial date.

(e) A judgment may be entered under par. (d) if the summons or citation was served as provided under s. 968.04 (3) (b) 2 or by personal service by a county, town, city, village or public inland lake protection and rehabilitation district employee.

(4) RELATIONSHIP TO OTHER LAWS The adoption and authorization for use of a citation under this section shall not preclude the governing body from adopting any other ordinance or providing for the enforcement of any other law or ordinance relating to the same or any other matter. The issuance of a citation under this section shall not preclude the proceeding under any other ordinance or law relating to the same or any other matter. The proceeding under any other ordinance or law relating to the same or any other matter shall not preclude the issuance of a citation under this section.

(5) MUNICIPAL COURT If the action is to be in municipal court, the citation under s. 800.02 (2) shall be used.

**History:** 1975 c. 201, 421; 1977 c. 29, 305; 1979 c. 32 s. 92 (8), (17); 1979 c. 151, 355; 1987 a. 27, 389; 1989 a. 107; 1991 a. 39, 40, 128, 189, 315; 1993 a. 16, 167.

**Cross-reference:** As to (3) (d), see s. 800.093 regarding municipal court authority to order restitution

Circuit court may not issue bench warrant for violator of county ordinance who has received citation under this section and who neither posts deposit nor appears at citation return date 70 Atty Gen 280

Sub. (3) (b) only authorizes use of citations for violations of ordinances other than those for which a statutory counterpart exists. 76 Atty Gen 211

### 66.12 Actions for violation of ordinances.

(1) COLLECTION OF FORFEITURES AND PENALTIES. (a) An action for violation of an ordinance or bylaw enacted by a city, village or public inland lake protection and rehabilitation district is a civil action. All forfeitures and penalties imposed by any ordinance or bylaw of the city, village or public inland lake protection and rehabilitation district, except as provided in ss. 345.20 to 345.53, may be collected in an action in the name of the city or village before the municipal court or in an action in the name of the city, village or public inland lake protection and rehabilitation district before a court of record. If the action is in municipal court, the procedures under ch. 800 apply and the procedures under this section do not apply. If the action is in a court of record, it shall be commenced by warrant or summons under s. 968.04 or, if applicable, by citation under s. 778.25 or 778.26. A law enforcement officer may arrest the offender in all cases without warrant under s. 968.07. The affidavit where the action is commenced by warrant may be the complaint. The affidavit or complaint shall be sufficient if it alleges that the defendant has violated an ordinance or bylaw, specifying the ordinance or bylaw by section, chapter, title or otherwise with sufficient plainness to identify the ordinance or bylaw. The judge may release a defendant without bail or may permit him or her to execute an unsecured appearance bond upon arrest. In arrests without a warrant or summons a statement on the records of the court of the offense charged shall stand as the complaint unless the court directs that formal complaint be issued. In all actions under this paragraph the defendant's plea shall be guilty, not guilty or no contest and shall be entered as not guilty on failure to plead, which plea of not guilty shall put all matters in the case at issue, any other provision of law notwithstanding.

(b) Local ordinances, except as provided in this paragraph or ss. 345.20 to 345.53, may contain a provision for stipulation of guilt or no contest of any or all violations under those ordinances, and may designate the manner in which the stipulation is to be made and fix the penalty to be paid. When a person charged with a violation for which stipulation of guilt or no contest is authorized makes a timely stipulation and pays the required penalty and pays the penalty assessment imposed by s. 165.87, the jail assessment



imposed by s. 302.46 (1) and any applicable domestic abuse assessment imposed by s. 973.055 (1) to the designated official, the person need not appear in court and no witness fees or other additional costs may be taxed unless the local ordinance so provides. A court appearance is required for a violation of a local ordinance in conformity with s. 346.63 (1). The official receiving the penalties shall remit all moneys collected to the treasurer of the city, village or public inland lake protection and rehabilitation district in whose behalf the sum was paid, except that all jail assessments shall be remitted to the county treasurer, within 20 days after its receipt by him or her; and in case of any failure in the payment, the treasurer may collect the payment of the officer by action, in the name of the office, and upon the official bond of the officer, with interest at the rate of 12% per year from the time when it should have been paid. In the case of the penalty assessment imposed by s. 165.87, the driver improvement surcharge imposed by s. 346.655 (1) and any applicable domestic abuse assessment imposed by s. 973.055 (1), the treasurer of the city, village or public inland lake protection and rehabilitation district shall remit to the state treasurer the sum required by law to be paid on the actions so entered during the preceding month on or before the first day of the next succeeding month. The governing body of the city, village or public inland lake protection and rehabilitation district shall by ordinance designate the official to receive the penalties and the terms under which the official shall qualify.

(c) If the circuit court finds a defendant guilty in a forfeiture action based on a violation of an ordinance, the court shall render judgment as provided under ss. 800.09 and 800.095. If the court finds the violation meets the conditions in s. 800.093 (1) (a) and (b), the court may hold a hearing to determine if restitution shall be ordered under s. 800.093.

(d) If the defendant desires to enter a not guilty plea, such plea may be entered by certified mail.

(2) **APPEALS.** Appeals in actions in courts of record to recover forfeitures and penalties imposed by any ordinance or bylaw of a city, village or public inland lake protection and rehabilitation district may be taken either by the defendant or by the city, village or public inland lake protection and rehabilitation district. Appeals from circuit court in actions to recover forfeitures for ordinances enacted under ch. 349 shall be to the court of appeals. An appeal by the defendant shall include a bond to the city, village or public inland lake protection and rehabilitation district with surety, to be approved by the judge, conditioned that if judgment is affirmed in whole or in part the defendant will pay the judgment and all costs and damages awarded against the defendant on the appeal. If the judgment is affirmed in whole or in part, execution may issue against both the defendant and the surety.

(3) **COSTS AND FEES; FORFEITURES TO GO TO TREASURY.** (a) Fees in forfeiture actions in circuit court for violations of ordinances are prescribed in s. 814.63 (1) and (2).

(b) All forfeitures and penalties recovered for the violation of any ordinance or bylaw of any city, village, town or public inland lake protection and rehabilitation district shall be paid into the city, village, town or public inland lake protection and rehabilitation district treasury for the use of the city, village, town or public inland lake protection and rehabilitation district, except as otherwise provided in par. (c), sub. (1) (b) and s. 165.87. The judge shall report and pay into the treasury, quarterly, or at more frequent intervals if so required, all moneys collected belonging to the city, village, town or public inland lake protection and rehabilitation district, which report shall be certified and filed in the office of the treasurer; and the judge shall be entitled to duplicate receipts for such moneys, one of which he or she shall file with the city, village or town clerk.

(c) The entire amount in excess of \$150 of any forfeiture imposed for the violation of any traffic regulation in conformity with ch. 348 shall be transmitted to the county treasurer if the violation occurred on an interstate highway, a state trunk highway or a highway over which the local highway authority does not have primary maintenance responsibility. The county treasurer

shall then make payment to the state treasurer as provided in s. 59.20 (8n).

**History:** 1971 c. 278; 1973 c. 336; 1975 c. 231; 1977 c. 29, 182, 269, 272, 305, 418, 447, 449; 1979 c. 32 s. 92 (17); 1979 c. 110 s. 60 (13); 1979 c. 331; 1981 c. 20, 317; 1983 a. 418 s. 8; 1987 a. 27, 389; Sup. Ct. Order, 146 W (2d) xiii (1988); 1989 a. 107; 1991 a. 39, 40, 189; 1993 a. 16, 167, 246, 491

Costs should be awarded a defendant who prevails in a municipal ordinance violation case. *Milwaukee v. Leschke*, 57 W (2d) 159, 203 NW (2d) 669

The simultaneous sale of 4 different magazines by the same seller to the same buyer may give rise to separate violations of the obscenity ordinance. *Madison v. Nickel*, 66 W (2d) 71, 223 NW (2d) 865

Under the rationale of the *Pedersen Case*, 56 W (2d) 286, (1) (c) is constitutional except in the instance where imprisonment under the statute is used as a means of collection from an indigent defendant. *West Allis v. State ex rel. Tochalauski*, 67 W (2d) 26, 226 NW (2d) 424

Sub (1) (a) does not authorize the issuance of arrest warrants without a showing of probable cause. *State ex rel. Warrender v. Kenosha County Ct.* 67 W (2d) 333, 231 NW (2d) 193

Under 968.07 (1) (d) and 66.12 (1) (a), officer may make warrantless arrest for ordinance violation if statutory counterpart of ordinance exists. *City of Madison v. Ricky Two Crow*, 88 W (2d) 156, 276 NW (2d) 359 (Ct. App. 1979)

Defendant has burden to raise and prove indigency where imprisonment is ordered for failure to pay fine under (1) (c). 64 Atty. Gen. 94.

**66.121 Inspection of property.** A county or a city authorized to act under s. 74.87 may enter any real property for which a tax certificate has been issued under s. 74.57, or may authorize another person to enter the real property, to determine the nature and extent of environmental pollution, as defined in s. 144.01 (3).

**History:** 1993 a. 453.

**66.122 Special inspection warrants.** (1) (a) Any state, county, city, village, town, town sanitary district or public inland lake protection and rehabilitation district officer, agent or employe charged under statute or municipal ordinance with powers or duties involving inspection of real or personal property, including buildings, building premises and building contents, is deemed a peace officer for the purpose of applying for, obtaining and executing special inspection warrants under s. 66.123 for inspection purposes.

(b) "Inspection purposes" include, without limitation because of enumeration, such purposes as building, housing, electrical, plumbing, heating, gas, fire, health, safety, environmental pollution, water quality, waterways, use of water, food, zoning, property assessment, meter and obtaining data required to be submitted in an initial site report or feasibility report under s. 144.44 or 144.64 or an environmental impact statement related to one of those reports.

(2) Except in cases of emergency where no special inspection warrant shall be required, special inspection warrants shall be issued for inspection of personal or real properties which are not public buildings or for inspection of portions of public buildings which are not open to the public only upon showing that consent to entry for inspection purposes has been refused. The definition of "public building" under s. 101.01 (2) (g) applies to this section.

**History:** 1971 c. 185 s. 7; 1981 c. 374; 1983 a. 189 s. 329 (4); 1989 a. 159.

See note to 141.05, citing 63 Atty. Gen. 337

**66.123 Special inspection warrant forms.** The following forms for use under s. 66.122 are illustrative and not mandatory:

#### AFFIDAVIT

#### STATE OF WISCONSIN

.... County

In the .... court of the .... of ....

A. F., being duly sworn, says that on the .... day of ...., 19...., in said county, in and upon certain premises in the (city, town or village) of .... and more particularly described as follows: (describe the premises) there now exists a necessity to determine if said premises comply with (section .... of the Wisconsin statutes) or (section .... of ordinances of said municipality) or both. The facts tending to establish the grounds for issuing a special inspection warrant are as follows: (set forth brief statement of reasons for inspection, frequency and approximate date of last inspection, if any, which shall be deemed probable cause for issuance of warrant).

Wherefore, the said A. F. prays that a special inspection warrant be issued to search such premises for said purpose.

(Signed) A. F.

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_, 19\_\_

\_\_\_\_ Judge of the \_\_\_\_ Court.

SPECIAL INSPECTION WARRANT

STATE OF WISCONSIN

\_\_\_\_ County

In the \_\_\_\_ court of the \_\_\_\_ of \_\_\_\_

THE STATE OF WISCONSIN, To the sheriff or any constable or any peace officer of said county:

Whereas, A. B. has this day complained (in writing) to the said court upon oath that on the \_\_\_\_ day of \_\_\_\_, 19\_\_, in said county, in and upon certain premises in the (city, town or village) of \_\_\_\_ and more particularly described as follows: (describe the premises) there now exists a necessity to determine if said premises comply with (section \_\_\_\_ of the Wisconsin statutes) or (section \_\_\_\_ of ordinances of said municipality) or both and prayed that a special inspection warrant be issued to search said premises.

Now, therefore, in the name of the state of Wisconsin you are commanded forthwith to search the said premises for said purposes.

Dated this \_\_\_\_ day of \_\_\_\_, 19\_\_

\_\_\_\_ Judge of the \_\_\_\_ Court.

INDORSEMENT ON WARRANT

Received by me \_\_\_\_, 19\_\_, at \_\_\_\_ o'clock \_\_\_\_ M.

\_\_\_\_ Sheriff (or peace officer).

RETURN OF OFFICER

STATE OF WISCONSIN

\_\_\_\_ Court

\_\_\_\_ County

I hereby certify that by virtue of the within warrant I searched the named premises and found the following things (describe findings):

Dated this \_\_\_\_ day of \_\_\_\_, 19\_\_

\_\_\_\_ Sheriff (or peace officer).

History: 1983 a 36

**66.124 Order authority.** (1) An employe or agent of a local health department designated by the department of health and social services under s. 254.69 (2) or the department of agriculture, trade and consumer protection under s. 97.41 may enter, at reasonable hours, any premises for which the local health department issues a permit under s. 97.41 or 254.69 (2) to inspect the premises, secure samples or specimens, examine and copy relevant documents and records or obtain photographic or other evidence needed to enforce subch. VII of ch. 254, ch. 97 or s. 254.47, relating to those premises. If samples of food are taken, the local health department shall pay or offer to pay the market value of those samples. The local health department, department of health and social services or department of agriculture, trade and consumer protection shall examine the samples and specimens secured and shall conduct other inspections and examinations needed to determine whether there is a violation of subch. VII of ch. 254, ch. 97 or s. 254.47, rules adopted by the departments under those statutes, ordinances adopted by the village, city or county or regulations adopted by the local board of health under s. 97.41 (7) or 254.69.

(2) (a) Whenever, as a result of an examination, a village, city or county has reasonable cause to believe that any examined food constitutes, or that any construction, sanitary condition, operation or method of operation of the premises or equipment used on the premises creates an immediate danger to health, the administrator of the village, city or county agency responsible for the village's, city's or county's agent functions under s. 97.41 or 254.69 (2) may issue a temporary order and cause it to be delivered to the permittee, or to the owner or custodian of the food, or to both. The order

may prohibit the sale or movement of the food for any purpose, prohibit the continued operation or method of operation of specific equipment, require the premises to cease any other operation or method of operation which creates the immediate danger to health, or set forth any combination of these requirements. The administrator may order the cessation of all operations authorized by the permit only if a more limited order does not remove the immediate danger to health. Except as provided in par. (c), no temporary order is effective for longer than 14 days from the time of its delivery, but a temporary order may be reissued for one additional 14-day period, if necessary to complete the analysis or examination of samples, specimens or other evidence.

(b) No food described in a temporary order issued and delivered under par. (a) may be sold or moved and no operation or method of operation prohibited by the temporary order may be resumed without the approval of the village, city or county, until the order has terminated or the time period specified in par. (a) has run out, whichever occurs first. If the village, city or county, upon completed analysis and examination, determines that the food, construction, sanitary condition, operation or method of operation of the premises or equipment does not constitute an immediate danger to health, the permittee, owner or custodian of the food or premises shall be promptly notified in writing and the temporary order shall terminate upon his or her receipt of the written notice.

(c) If the analysis or examination shows that the food, construction, sanitary condition, operation or method of operation of the premises or equipment constitutes an immediate danger to health, the permittee, owner or custodian shall be notified within the effective period of the temporary order issued under par. (a). Upon receipt of the notice, the temporary order remains in effect until a final decision is issued under sub. (3), and no food described in the temporary order may be sold or moved and no operation or method of operation prohibited by the order may be resumed without the approval of the village, city or county.

(3) A notice issued under sub. (2) (c) shall be accompanied by notice of a hearing as provided in s. 68.11 (1). The village, city or county shall hold a hearing no later than 15 days after the service of the notice, unless both parties agree to a later date. Notwithstanding s. 68.12, a final decision shall be issued under s. 68.12 within 10 days of the hearing. The decision may order the destruction of food, the diversion of food to uses which do not pose a danger to health, the modification of food so that it does not create a danger to health, changes to or replacement of equipment or construction, other changes in or cessations of any operation or method of operation of the equipment or premises, or any combination of these actions necessary to remove the danger to health. The decision may order the cessation of all operations authorized by the permit only if a more limited order will not remove the immediate danger to health.

(4) A proceeding under this section, or the issuance of a permit for the premises after notification of procedures under this section, does not constitute a waiver by the village, city or county of its authority to rely on a violation of ch. 97, s. 254.47 or subch. VII of ch. 254 or any rule adopted under those statutes as the basis for any subsequent suspension or revocation of the permit or any other enforcement action arising out of the violation.

(5) (a) Except as provided in par. (b), any person who violates this section or an order issued under this section may be fined not more than \$10,000 plus the retail value of any food moved, sold or disposed of in violation of this section or the order, or imprisoned not more than one year in the county jail, or both.

(b) Any person who does either of the following may be fined not more than \$5,000 or imprisoned not more than one year in a county jail, or both:

1. Assaults, restrains, threatens, intimidates, impedes, interferes with or otherwise obstructs a village, city or county inspector, employe or agent in the performance of his or her duties under this section.

2. Gives false information to a village, city or county inspector, employe or agent engaged in the performance of his or her duties under this section, with the intent to mislead the inspector, employe or agent.

History: 1983 a. 203; 1987 a. 27 ss. 1217oc, 3200 (24); 1993 a. 27

**66.125 Orders; action; proof of demand.** No action shall be brought upon any city, village, town or school district order until the expiration of 30 days after a demand for the payment of the same shall have been made. If such action is brought and the defendant fails to appear and defend the same judgment shall not be entered without affirmative proof of such demand, and if entered without such proof shall be absolutely void.

History: 1993 a. 246

**66.13 Limitation of action attacking contracts.** Whenever the proper officers of any city, village or town enter into any contract in manner and form as prescribed by statute, and either party to the contract has procured or furnished materials or expended money under the terms of the contract, no action or proceedings may be maintained to test the validity of the contract unless the action or proceeding is commenced within the time limited by s. 893.75.

History: 1979 c. 323; 1993 a. 246

**66.14 Official bonds, premium.** Any city, however incorporated, may pay the cost of any official bond furnished by an officer thereof, pursuant to law or any rules or regulations requiring the same, if said officer shall furnish a bond with a surety company or companies authorized to do business in this state, said cost not to exceed the current rate of premium per year on the amount of said bond or obligation by said surety executed. The cost of any such bond in such city shall be charged to the fund appropriated and set up in the budget for the department, board, commission or other body, the officer of which is required to furnish a bond.

History: 1979 c. 110 s. 60 (13)

**66.144 Residency required for public officials in 1st class cities.** Any public official, as defined in s. 66.146 (1) (b), may not serve more than 180 days after his or her confirmation unless he or she resides within the boundaries of the 1st class city by which he or she is employed.

History: 1987 a. 289

**66.145 Requirements for surety bonds of officers and employes in cities of the first class.** When any office or position in the service of any city of the first class involves fiduciary responsibility or the handling of money, the appointing officer may require the appointee to furnish a bond or other security to such officer and the said city for the faithful performance of the appointee's duty, the amount to be fixed by the appointing officer, with the approval of the mayor, and notice of the mayor's approval shall be given to the city clerk by the mayor. Each bond shall be approved by the city attorney as to the form and execution thereof, and by the common council as to the sufficiency of the sureties therein; provided, however, that any surety company, the bonds of which are accepted by the judge of any court of record in this state, or which is approved by the comptroller of the said city, shall be sufficient security on any such bond, and that the premium on such bond, within the limits fixed by law, shall be paid out of the city treasury. The appointing officer shall immediately after the execution of such bond file the same with the city clerk, and it shall be the duty of the city clerk to require compliance with the terms of this section requiring the filing of bonds with the city clerk by officers and employes, and all such bonds of city officers and employes, duly witnessed and acknowledged, after being approved by the common council, shall be delivered to the city comptroller, who shall have them recorded in the office of the register of deeds and, after such recording by the city comptroller in the office of the register of deeds, the said bonds shall be returned to the city clerk, who shall keep them on file in the city clerk's

office; except that after the recording of the bond of the city clerk by the city comptroller, said bond shall remain on file in the office of the city comptroller. Each bond filed by any surety company shall be accompanied by a duplicate of said bond, which duplicate shall be filed by the clerk with the city comptroller.

History: 1991 a. 316

**66.146 Mayoral appointments in 1st class cities.** (1) In this section:

(a) "Public office" means the following positions or their equivalent: city engineer; city purchasing agent; commissioner of building inspection, of city development, of health or of public works; director of administration, of budget and management, of community development agency, of employe relations, of office of telecommunications, or of safety; emergency government coordinator; employe benefits administrator; executive director of the commission on community relations; municipal port director; commissioner of assessments; director of liaison; city personnel director; executive director of the retirement board; executive director of the city board of election commissioners; city librarian; city labor negotiator; executive secretary of the board of fire and police commissioners; and supervisor of the central electronics board.

(b) "Public official" means a person appointed to a public office under this section.

(2) In any 1st class city, the mayor shall appoint, subject to confirmation of the common council, a person to serve in the unclassified service in each public office. A public official serves at the pleasure of the mayor until the end of the mayoral term of office during which the public official is appointed unless reappointed and reconfirmed or until a successor is appointed and confirmed, whichever is later. The mayor shall make appointments under this subsection within 90 days after taking office or within 90 days after a vacancy in the public office occurs, whichever is later. The common council shall vote on confirmation of any appointment under this subsection within 45 days after that appointment.

(3) If a 1st class city authorizes the position of deputy for a public office, the public official in that office shall appoint a person to serve in the unclassified service as deputy. That deputy shall serve at the pleasure of the public official, but not longer than the public official's term of office unless reappointed.

(4) This section does not affect the authority of a 1st class city to abolish, consolidate or create a public office or other position.

History: 1987 a. 289, 382; 1989 a. 31; 1991 a. 156

**66.18 Liability insurance.** The state, or any municipality as defined in s. 345.05 (1) (c), is empowered to procure risk management services and liability insurance covering the state or municipality and its officers, agents and employes. A municipality may participate in and pay the cost of risk management services and liability insurance through a municipal insurance mutual organized under s. 611.23.

History: 1977 c. 346; 1983 a. 189 s. 329 (31)

NOTE: Chapter 346, laws of 1977, which amended this section, has an extensive note explaining the amendment.

This section authorizes the purchase of liability insurance for state officers, agents and employes for errors or omissions in carrying out responsibility of their governmental positions. 58 Atty. Gen. 150

**66.184 Self-insured health plans.** If a city, including a 1st class city, or a village provides health care benefits under its home rule power, or if a town provides health care benefits, to its officers and employes on a self-insured basis, the self-insured plan shall comply with ss. 49.493 (3) (d), 631.89, 631.90, 631.93 (2), 632.87 (4) and (5), 632.895 (9) and (10), 632.896, 767.25 (4m) (d) and 767.51 (3m) (d).

History: 1989 a. 201, 359; 1991 a. 39, 269; 1993 a. 246, 450, 481, 491

**66.185 Hospital, accident and life insurance.** Nothing in the statutes shall be construed to limit the authority of the state or municipalities, as defined in s. 345.05, to provide for the payment of premiums for hospital, surgical and other health and

accident insurance and life insurance for employes and officers and their spouses and dependent children, and such authority is hereby granted. A municipality may also provide for the payment of premiums for hospital and surgical care for its retired employes. In addition, a municipality may, by ordinance or resolution, elect to offer to all of its employes a health care coverage plan through a program offered by the group insurance board under ch. 40. Municipalities which elect to participate under s. 40.51 (7) shall be subject to the applicable sections of ch. 40 instead of this section.

History: 1985 a 29

**66.186 Health insurance; first class cities.** The common council of any 1st class city may, by ordinance or resolution, provide for general hospital, surgical and group insurance for both active and retired city officers and city employes and their respective dependents and for payment of premiums therefor in private companies, or may, by ordinance or resolution, elect to offer to all of its employes a health care coverage plan through a program offered by the group insurance board under ch. 40. Municipalities which elect to participate under s. 40.51 (7) shall be subject to the applicable sections of ch. 40 instead of this section. Contracts for such insurance may be entered into for active officers and employes separately from such contracts for retired officers and employes. Appropriations may be made for the purpose of financing such insurance. Moneys accruing to such fund, by investment or otherwise, shall not be diverted for any other purpose than those for which such fund was set up or to defray management expenses of such fund or to partially pay premiums so as to reduce costs to the city or to persons covered by such insurance, or both.

History: 1985 a 29

**66.187 Police authority to alderpersons in 1st class cities repealed.** No common council in a 1st class city by ordinance may give alderpersons the powers of city police officers.

History: 1983 a 210; 1993 a 184

**66.189 Uninsured motorist coverage; 1st class cities.** A 1st class city shall provide uninsured motorist motor vehicle liability insurance coverage for motor vehicles owned by the city and operated by city employes in the course of employment. The coverage required by this section shall have at least the limits prescribed for uninsured motorist coverage under s. 632.32 (4) (a).

History: 1983 a 537; Stats 1983 s 66 187; 1983 a 538 s 97; Stats 1983 s 66 189

Section requires city to provide uninsured motorist coverage for its vehicles regardless of whether it is able to obtain coverage from insurance carrier. *American Family Ins. Co. v. Milwaukee*, 148 W (2d) 280, 435 NW (2d) 280 (Ct. App. 1988).

This section puts the city in the position of an insurer subject to the subrogation rights of its officer's personal insurers. *Millers National Ins. Co. v. Milwaukee*, 184 W (2d) 155, 516 NW (2d) 516 (Ct. App. 1994).

**66.19 Civil service system; veterans' preference.** (1) Any city or village may proceed under s. 61.34 (1), 62.11 (5) or 66.01 to establish a civil service system of selection, tenure and status, and the system may be made applicable to all municipal personnel except the chief executive and members of the governing body, members of boards and commissions including election officials, employes subject to s. 62.13, members of the judiciary and supervisors. Any town may establish a civil service system under this subsection. For veterans there shall be no restrictions as to age, and veterans and their spouses shall be given preference points in accordance with s. 230.16 (7). The system may also include uniform provisions in respect to attendance, leave regulations, compensation and payrolls for all personnel included thereunder. The governing body of any city, village or town establishing a civil service system under this section may exempt from the system the librarians and assistants subject to s. 43.09 (1).

(2) (a) Any town may establish a civil service system under sub. (1) and in such departments as the town board may determine. Any person who has been employed in any such department for

more than 5 years prior to the establishment of such civil service is eligible to appointment without examination.

(b) Any town not having a civil service system and having exercised the option of placing assessors under civil service under s. 60.307 (3) may establish a civil service system for assessors under sub. (1), unless such town has come within the jurisdiction of a county assessor under s. 70.99.

(3) When any town has established a system of civil service, the ordinance establishing the system may not be repealed for a period of 6 years after its enactment, and thereafter it may be repealed only by proceedings under s. 9.20 by referendum vote. This subsection shall not apply where a town comes, before the expiration of the 6 years, within the jurisdiction of a county assessor under s. 70.99.

(4) Any civil service system established under the provisions of this section shall provide for the appointment of a civil service board or commission and for the removal of the members of such board or commission for cause by the mayor with approval of the council, and in cities organized under the provisions of ss. 64.01 to 64.15 by the city manager and the council, and by the board in villages and towns.

(5) All examinations given in a civil service system established under this section, including minimum training and experience requirements, for positions in the classified service shall be job-related in compliance with appropriate validation standards and shall be subject to the approval of the board or commission appointed under sub. (4). All relevant experience, whether paid or unpaid, shall satisfy experience requirements.

History: 1971 c 152 s 38; 1971 c 154, 211; 1977 c 196; 1983 a 532; 1985 a 225; 1991 a 101; 1993 a 246

**66.192 Combination of municipal offices.** (1) The office of county supervisor may be consolidated by charter ordinance under s. 66.01:

(a) With the office of village president in any village which has boundaries coterminous with the boundaries of any supervisory district established under s. 59.03 (3).

(b) With the office of alderperson or council member in any city in which the district from which such alderperson or council member is elected is coterminous with the boundaries of any supervisory district established under s. 59.03 (3).

(2) After the effective date of adoption or repeal of a charter ordinance under this section, the clerk of the municipality shall file a copy of the ordinance with the clerk of the county within which the supervisory district lies. When so consolidated, nomination papers shall contain that number of signatures required under s. 8.10 for county supervisors and shall be filed in the office of the county clerk.

(3) Removal from office of any incumbent of such consolidated office shall vacate said office in its entirety whether effected under ss. 17.09, 17.12 and 17.13 or other pertinent statute.

(4) Compensation for such consolidated office shall be separately established by the several governing bodies affected thereby as though no consolidation of offices had occurred.

(5) Tenure for such combination officer shall coincide with the term for county supervisors.

History: 1971 c 94; 1973 c 118 s 7; 1985 a 135 s 83 (1); 1993 a 184

**66.196 Compensation of governing bodies.** An elected official of any county, city, town or village, who by virtue of the office held by that official is entitled to participate in the establishment of the salary attending that office, shall not during the term of such office collect salary in excess of the salary provided at the time of that official's taking office. This provision is of statewide concern and applies only to officials elected after October 22, 1961.

History: 1991 a 316; 1993 a 213

**66.197 County salary adjustments.** The governing body of any county may, during the term of office of any elected

official whose salary is paid in whole or in part by such county, increase the salary of such elected official in such amount as the governing body determines. The power granted by this section shall take effect notwithstanding any other provision of law to the contrary, except that the exercise of such power shall be governed by s. 65.90 (5). The power granted by this section shall not extend to elected officials who by virtue of their office are entitled to participate in the establishment of the compensation attending their office.

**Cross-reference:** See also s. 59.15 as to salary adjustments.

Salaries of elected county officials may be increased during their terms, but any increase put into effect after earliest time for filing nomination papers does not carry forward to new term unless county board again votes increase during new term. 69 Atty Gen 1.

Discretionary authority to grant increases to elected county officials based upon performance or length of service may not be delegated to a committee of the county board because the board itself lacks the authority to establish such a compensation scheme. 80 Atty Gen 258.

**66.199 Automatic salary schedules.** Whenever the governing body of any city, village or town by ordinance adopts a salary schedule for some or all employes and officers of the city, village or town, other than members of the city council or village or town board, the salary schedule may include an automatic adjustment for some or all of the personnel in conformity with fluctuations upwards and downwards in the cost of living, notwithstanding ss. 60.32, 61.32, 62.09 (6) and 62.13 (7).

**History:** 1971 c. 125 s. 522 (1); 1971 c. 154; 1985 a. 225; 1993 a. 246.

**66.20 Metropolitan sewerage districts, definitions.** Unless the context requires otherwise, for the purposes of ss. 66.20 to 66.26, the following terms have the designated meanings:

(1) "Commission" means a metropolitan sewerage district commission.

(2) "Department" means the department of natural resources.

(3) "District" means a metropolitan sewerage district.

(4) "Municipality" means town, village, city or county.

**History:** 1971 c. 276, 307.

**66.21 Applicability.** Sections 66.20 to 66.26 shall apply to all areas of the state except those areas included in a metropolitan sewerage district created under ss. 66.88 to 66.918.

**History:** 1971 c. 276; 1981 c. 282 s. 47.

**66.22 Creation.** (1) Proceedings to create a district may be initiated by resolution of the governing body of any municipality setting forth:

(a) The proposed name of the district;

(b) A general description of the territory proposed to be included in the district;

(c) A general description of the functions which are proposed to be performed by such district;

(d) A general description of the existing facilities and works which are proposed to be placed under jurisdiction of the district; and

(e) Such other facts and statements as are deemed by the governing body to be relevant to the standards of sub. (4) (a) to (c).

(2) A governing body which adopts a resolution under sub. (1) shall immediately transmit a copy thereof to the department.

(3) Upon receipt of the resolution, the department shall:

(a) Schedule a public hearing in the county of the petitioning municipality, providing at least 30 days' written notice of the hearing and a copy of the resolution by mail to the clerk of all affected municipalities, town sanitary or utility districts, and to the affected regional planning commissions and state agencies; and publish an official notice of the hearing in a newspaper of general circulation in the proposed district as a class 1 notice under ch. 985;

(b) Conduct the hearing to permit any person to present any oral or written pertinent and relevant information relating to the purposes and standards of ss. 66.20 to 66.26; and

(c) Undertake research and collect other information and request advisory reports from regional planning commissions, other state agencies and citizen groups.

(4) Within 90 days following the hearing, the department shall either order or deny creation of the proposed district. An order creating the district shall be issued by the department if:

(a) The territory consisting of at least one municipality in its entirety and all or part of one or more other municipalities can be identified and can be determined to be conducive to fiscal and physical management of a unified system of sanitary sewage collection and treatment;

(b) The formation of the district will promote sewerage management policies and operation and will be consistent with adopted plans of municipal, regional and state agencies; and

(c) The formation of the district will promote the public health and welfare and will effect efficiency and economy in sewerage management, based upon current generally accepted engineering standards regarding prevention and abatement of environmental pollution and federal and state rules and policies in furtherance thereof.

(5) An order creating the district shall state the name and boundaries of the district, which may be different than those originally proposed if each municipality affected by the district received written notice of the hearing under sub. (3) (a) and if each municipality which jointly or separately owns or operates a sewerage collection and disposal system which has territory included in the revised district boundaries has filed with the department a certified copy of a resolution of its governing body consenting to the inclusion of that territory within the revised district. No territory of a city, village or town jointly or separately owning or operating a sewerage collection and disposal system may be included in the district unless it has filed with the department a certified copy of a resolution of its governing body consenting to inclusion of such territory within the proposed district. The order shall be effective on the date issued and the existence of the district shall commence on such date.

(6) No resolution for the formation of a district encompassing the same or substantially the same territory shall be made by any municipality for one year following the issuance of an order denying the formation under ss. 66.20 to 66.26.

(7) The orders of the department under this section shall be subject to review under ch. 227.

**History:** 1971 c. 276; 1993 a. 246.

**66.225 Dissolution.** If a district has been inactive for at least 2 years and if the department receives certified copies of a resolution recommending the dissolution of the district adopted by the governing bodies of every municipality owning or operating the district, upon a finding that all outstanding indebtedness of the district has been paid and all unexpended funds returned to the municipality which supplied them, or that adequate provision has been made therefor, the department shall either order or deny dissolution of the district.

**History:** 1983 a. 27.

**66.23 Commissioners.** (1) A district formed under ss. 66.20 to 66.26 shall be governed by a 5-member commission appointed for staggered 5-year terms. Except as provided in sub. (11), commissioners shall be appointed by the county board of the county in which the district is located. If the district contains territory of more than one county, the county boards of the counties not having the greatest population in the district shall appoint one commissioner each and the county board of the county having the greatest population in the district shall appoint the remainder. Of the initial appointments, the appointments for the shortest terms shall be made by the counties having the least amount of population, in reverse order of their population included in the district. Commissioners shall be residents of the district. Initial appointments shall be made no sooner than 60 days and no later than 90 days after issuance of the department order forming a district or



after completion of any court proceedings challenging such order. A per diem compensation not to exceed \$50 may be paid to commissioners. Commissioners may be reimbursed for actual expenses incurred as commissioners in carrying out the work of the commission.

(2) Each member of the commission shall take and file the official oath.

(3) A majority of such commission shall constitute a quorum to do business; and in the absence of a quorum, those members present may adjourn any meeting and make announcement thereof. All meetings and records of the commission shall be published.

(4) Such commission, when all of its members have been duly sworn and qualified, shall have charge of all the affairs of the district.

(5) Such commission shall organize by electing one of its members president and another secretary.

(6) The secretary shall keep a separate record of all proceedings and accurate minutes of all hearings.

(7) A per diem compensation not to exceed \$50 may be paid to commissioners. Commissioners shall be reimbursed for actual expenses incurred as commissioners in carrying out the work of the commission.

(8) The treasurer of the city, village or town having the largest equalized valuation within the district shall act as treasurer of the district, shall receive such additional compensation therefor as the commission may determine, and shall at the expense of the district furnish such additional bond as the commission may require. Such treasurer shall keep all moneys of the district in a separate fund to be disposed of only upon order of the commission signed by the president and secretary.

(9) Chapter 276, laws of 1971, shall apply to every metropolitan sewerage district that had been operating, prior to April 30, 1972, under ss. 66.20 to 66.209, 1969 stats. Commissioners for such districts who were in office on April 30, 1972 shall continue to serve until their respective terms are completed. The county board of the county having the greatest population in the district shall appoint 2 additional members to each such commission no sooner than 60 days and no later than 90 days after April 30, 1972. One such member shall have a 5-year term and one such member shall have a 4-year term. The county board of those counties having population within the district that did not appoint the preceding 2 members if any shall, each in turn according to their population in the district, appoint successors to each of the 3 commissioners who held office on April 30, 1972, until their allotted number of appointments, as specified under sub. (1) is filled. The governor may adjust terms of the successors to the 3 original commissioners in order that the appointment schedules are consistent with s. 66.23.

(10) Sections 66.20 to 66.26 do not affect the continued validity of contracts and obligations previously entered into by a metropolitan sewerage district operating under ss. 66.20 to 66.209, 1969 stats., prior to April 30, 1972, nor validity of any such district.

(11) (a) Notwithstanding sub. (1) the governing bodies of cities, towns and villages comprising a sewerage district may make the initial appointments of the commissioners under this section.

(am) 1. If the governing bodies of each city, town and village comprising a district pass a resolution authorizing the election of commissioners to terms succeeding the initial appointments, commissioners shall be chosen to fill vacant seats at spring elections, as defined in s. 5.02 (21), of the district at large. Each commissioner may hold office until a successor is elected and qualified, except as provided in s. 17.27 (1m). Any commissioner elected for a regular or unexpired term shall take office after filing the official oath on the 4th Monday in April.

2. No resolution passed under subd. 1. may authorize election of commissioners sooner than 6 months after the date of passage.

The commission shall immediately notify the elections board under s. 5.05 upon passage of a resolution under subd. 1.

3. If the governing bodies of each city, town and village comprising the district pass a resolution to discontinue election of commissioners, each commissioner may hold office until a successor is appointed and qualified. The commission shall immediately notify the elections board under s. 5.05 upon passage of a resolution under this subdivision.

(b) This subsection shall apply only if all the governing bodies of the cities, villages and towns comprising the sewerage district agree by resolution to elect its provisions.

**History:** 1971 c. 276; 1973 c. 289; 1979 c. 221; 1987 a. 399; 1989 a. 359; 1993 a. 246.

A town has no authority to enjoin a city from rezoning property which it had annexed therefrom, where: (1) the city possesses the power to pass a zoning ordinance under this section; (2) the act of passing an ordinance is legislative rather than ministerial; (3) no property right of the town would be invaded by the zoning ordinance; and (4) no allegation is made that any fund or property held in trust for taxpayers or citizens is threatened to be diverted or squandered. *Town of Pleasant Prairie v Kenosha*, 67 W (2d) 1, 226 NW (2d) 210

**66.24 Powers and duties. (1) GENERAL** (a) *Corporate status.* The district shall be a municipal body corporate and shall be authorized in its name to contract and to be contracted with, and to sue and to be sued. The commission may employ persons or firms performing engineering, legal or other necessary services, require any employe to obtain and file with it an individual bond or fidelity insurance policy, and procure insurance. A commission may employ engineers or other employes of any municipality as its engineers, agents or employes.

(b) *Plans.* The commission shall prepare and by resolution adopt plans and standards of planning, design and operation for all projects and facilities which will be operated by the district or which affect the services to be provided by the district. Commissions may and are encouraged to contract with regional or area-wide planning agencies for research and planning services. The commission's plans shall be consistent with adopted plans of a regional planning commission or area-wide planning agency organized under s. 66.945.

(c) *Research.* The commission may project and plan scientific experiments, investigations and research on treatment processes and on the receiving waterway to ensure that an economical and practical process for treatment is employed and that the receiving waterway meets the requirements of regulating agencies. The commission may conduct such scientific experiments, investigations and research independently or by contract or in cooperation with any public or private agency including any political subdivision of the state or any person or public or private organization.

(d) *Rules.* The commission may adopt rules for the supervision, protection, management and use of the systems and facilities operated by the district. Such rules may, in the interest of plan implementation, restrict or deny the provision of utility services to lands which are described in adopted master plans or development plans of a municipality or county as not being fit or appropriate for urban or suburban development. Rules of the district shall be adopted and enforced as provided by s. 66.902. Notwithstanding any other provision of law, such rules or any orders issued thereunder, may be enforced under s. 823.02 and the violation of any rule or any order lawfully promulgated by the commission is declared to be a public nuisance.

(e) *Annual report.* The commission shall prepare annually a full and detailed report of its official transactions and expenses and of all presently planned additions and major changes in district facilities and services and shall file a copy of such report with the department of natural resources, the department of health and social services and the governing bodies of all cities, villages and towns having territory in such district.

(2) **METROPOLITAN SEWERAGE COLLECTION AND TREATMENT.** The commission shall plan, project, construct and maintain within the district interceptor and other main sewers for the collection

and transmission of sewage. The commission shall also cause the sewage to be treated, disposed or recycled and may plan, project, construct and maintain works and facilities for this purpose.

(3) **CONNECTIONS WITH SYSTEM** The commission may require any person or municipality in the district to provide for the discharge of its sewage into the district's collection and disposal system, or to connect any sanitary sewerage system with the district's disposal system wherever reasonable opportunity therefor is provided; may regulate the manner in which such connections are made; may require any person or municipality discharging sewage into the system to provide preliminary treatment therefor; may prohibit and impose a penalty for the discharge into the system of any substance which it determines will or may be harmful to the system or any persons operating it; and may, with the prior approval of the department, after hearing upon 30 days' notice to the municipality involved, require any municipality to discontinue the acquisition, improvement or operation of any facility for disposal of any wastes or material handled by the commission wherever and so far as adequate service is or will be provided by the commission. The commission shall have access to all sewerage records of any municipality in the district and shall require all such municipalities to submit plans of existing systems and proposed extensions of local services or systems. The commission or its employes may enter upon the land in any municipality within the district for the purpose of making surveys or examinations.

(4) **PROPERTY ACQUISITION** Commissions may acquire by gift, purchase, lease or other like methods of acquisition or by condemnation under ch. 32, any land or property necessary for the operations of the commission or in any interest, franchise, easement, right or privilege therein, which may be required for the purpose of projecting, planning, constructing and maintaining the system. Any municipality and state agency is authorized to convey to or permit the use of any facilities owned or controlled by the municipality or agency subject to the rights of the holders of any bonds issued with respect thereto, with or without compensation, without an election or approval by any other government agency. Property, or any part or interest therein, when acquired, may be sold, leased or otherwise disposed of by the district whenever in the discretion of the commission the property or any part or portion thereof or interest therein is not needed to carry out the requirements and powers of the commission.

(5) **CONSTRUCTION** (a) *General.* The district may construct, enlarge, improve, replace, repair, maintain and operate any works determined by the commission to be necessary or convenient for the performance of the functions assigned to the commission.

(b) *Roads.* The district may enter upon any state, county or municipal street, road or alley, or any public highway for the purpose of installing, maintaining and operating the system, and it may construct in any such street, road or alley or public highway necessary facilities without a permit or a payment of a charge. Whenever the work is to be done in a state, county or municipal highway, the public authority having control thereof shall be duly notified, and the highway shall be restored to as good a condition as existed before the commencement of the work with all costs incident thereto borne by the district. All persons, firms or corporations lawfully having buildings, structures, works, conduits, mains, pipes, tracks or other physical obstructions in, over or under the public lands, avenues, streets, alleys or highways which block or impede the progress of district facilities, when in the process of construction, establishment or repair shall upon reasonable notice by the district, promptly so shift, adjust, accommodate or remove the same at the cost and expense of such individuals or corporations, as fully to meet the exigencies occasioning such notice. Any entry upon or occupation of any state freeway right-of-way after relocation or replacement of district facilities for which reimbursement is made under s. 84.295 (4m) shall be done in a manner which is acceptable to the department of transportation.

(c) *Waterways.* The district shall have power to lay or construct and to forever maintain, without compensation to the state, any part of the utility system, or of its works, or appurtenances, over, upon or under any part of the bed of any river or of any land covered by any of the navigable waters of the state, the title to which is held by the state, and over, upon or under canals or through waterways, and if the same is deemed advisable by the commission, the proper officials of the state are authorized and directed upon application of the commission to execute, acknowledge and deliver such easements, or other grants, as may be proper for the purpose of carrying out the district operations.

(d) *Bids.* Whenever plans and specifications for any facilities have been completed and approved by the commission and by any other agency which must approve the plans and specifications, and the commission has determined to proceed with the work of the construction thereof, it shall advertise by a class 2 notice under ch. 985, for bids for the construction of the facilities. Contracts for the work shall be let to the lowest responsible bidder, or the agency may reject any and all bids and if in its discretion the prices quoted are unreasonable, the bidders irresponsible or the bids informal, it may readvertise the work or any part of it. All contracts shall be protected by such bonds, penalties and conditions as the district shall require. The commission may itself do any part of any of the works.

(6) **ACQUISITION OF EXISTING FACILITIES** The commission may order that the district shall assume ownership of such existing utility works and facilities within the district as are needed to carry out the purposes of the commission. Appropriate instruments of conveyance for all such property shall be executed and delivered to the district by the proper officers of each municipality concerned. All persons regularly employed by a municipality to operate and maintain any works so transferred, on the date on which the transfer becomes effective, shall be employes of the district, in the same manner and with the same options and rights as were reserved to them in their former employment. The commission, upon assuming ownership of any works, shall become obligated to pay to the municipality amounts sufficient to pay when due all remaining principal of and interest on bonds issued by the municipality for the acquisition or improvement of the works taken over. Such amounts may be offset against any amounts due to be paid by the municipality to the district. The value of any works and facilities taken over by a commission may be agreed upon by the commission and the municipality owning the same. Should the commission and the governing body of the municipality be unable to agree upon a value, the value shall be determined by and fixed by the public service commission after a hearing to be held upon application of either party, and upon reasonable notice to the other party, to be fixed and served in such manner as the public service commission shall prescribe.

(7) **STORM WATER DRAINAGE** The commission may plan, project, construct and maintain storm sewers, works and facilities for the collection, transmission, treatment, disposal or recycling of storm water effluent to the extent such is permitted for sewage.

(8) **SOLID WASTE MANAGEMENT** The district may engage in solid waste management and shall for such purposes have all powers granted to county boards under s. 59.07 (135), except acquisition of land by eminent domain, if each county board having jurisdiction over areas to be served by the district has adopted a resolution requesting or approving the involvement of the district in solid waste management. County board approval shall not be required for the management by the district of such solid wastes as are contained within the sewage or storm water transmitted or treated by the district or as are produced as a by-product of sewerage treatment activities.

(9) **EXTRATERRITORIAL SERVICE BY CONTRACT** A district may provide service to territory outside the district, including territory in a county not in that district, under s. 66.30, subject to ss. 66.20

to 66.26 and 66.902, except that s. 66.23 (1) does not require the appointment of a commissioner from that territory.

**History:** 1971 c. 276; Sup. Ct. Order, 67 W (2d) 585, 774 (1975); 1975 c. 425; 1977 c. 29 s. 1654 (8) (c); 1977 c. 379 s. 33; 1981 c. 282 s. 47; 1987 a. 399

Section 66.24 (5) (c) does not exempt sewerage district from requirements of 30.12. Cassidy v Dept. of Natural Resources, 132 W (2d) 153, 390 NW (2d) 81 (Ct. App. 1986)

**66.25 Financing. (1) SPECIAL ASSESSMENT.** (a) The commission may make a special assessment against property which is served by an intercepting or main sewer or any other appropriate facility at any time after the commission votes, by resolution recorded in the minutes of its meeting, to construct the intercepting or main sewer or any other appropriate facility, either before or after the work of constructing the sewer or other appropriate facility is done.

(b) The commission shall view the premises and determine the amount properly assessable against each parcel of land and shall make and file, in their office, a report and schedule of the assessment so made, and file a duplicate copy of the report and schedule in the office of the clerk of the town, village or city wherein the land is situated.

(c) The commission shall give notice that the report and schedule are on file in its office and in the office of the clerk of the town, village or city in which the land is situated, and that the notice will remain in those offices for a period of 10 days after the date on which the notice is issued; that on the date named in the notice, which shall not be more than 3 days after the expiration of the 10 days, the commission will be in session at its office, the location of which shall be specified in the notice, to hear all objections to the report.

(d) The notice shall be published as a class 2 notice, under ch. 985, and a copy of the notice shall be mailed at least 10 days before the hearing or proceeding to every interested person whose post-office address is known, or can be ascertained with reasonable diligence.

(e) No irregularity in the form of the report, nor of such notice, shall affect its validity if it fairly contains the information required to be conveyed thereby.

(f) At the time specified for hearing objections to the report, the commission shall hear all parties interested who may appear for that purpose.

(g) The commission may at the meeting, or at an adjourned meeting, confirm or correct the report, and when the report is so confirmed or corrected, it shall constitute and be the final report and assessment against such lands.

(h) When the final determination has been reached by the commission it shall publish a class 1 notice, under ch. 985, that a final determination has been made as to the amounts assessed against each parcel of real estate.

(i) The owner of any parcel of real estate affected by the determination and assessments may, within 20 days after the date of such determination, appeal to the circuit court of the county in which the land is situated, and s. 66.60 (12) shall apply to and govern such appeal, however the notice therein required to be served upon the city clerk shall be served upon the district, and the bond therein provided for shall be approved by the commission and the duties therein devolving upon the city clerk shall be performed by the president of the commission.

(j) The commission may provide that the special assessment may be paid in annual instalments not more than 10 in number, and may, for the purpose of anticipating collection of the special assessments, and after said instalments have been determined, issue special improvement bonds payable only out of the special assessment, and s. 66.54 shall apply to and govern the instalment payments and the issuance of said bonds, except that the assessment notice shall be substantially in the following form:

#### INSTALMENT ASSESSMENT NOTICE

Notice is hereby given that a contract has been (or is about to be) let for (describe the improvements) and that the amount of the

special assessment therefor has been determined as to each parcel of real estate affected thereby, and a statement of the same is on file with the commission; that it is proposed to collect the same in instalments, as provided by s. 66.54, with interest thereon at % per year; that all assessments will be collected in instalments, as above provided, except such assessments as the owners of the property shall, within 30 days from the date of this notice, file with the commission a statement in writing that they elect to pay in one instalment, in which case the amount of the instalment shall be placed upon the next ensuing tax roll.

(k) The instalment assessment notice shall be published as a class 1 notice, under ch. 985.

(L) The commission shall, on or before October 1 in each year, certify in writing to the clerks of the several cities, towns or villages, the amount of the special assessment against lands located in their respective city, town or village for the ensuing year. Upon receipt of such certificate the clerk of each such city, town or village shall forthwith place the same on the tax roll to be collected as other taxes and assessments are collected. Such moneys when collected shall be paid to the treasurer of the district. The provisions of law applicable to the collection of delinquent taxes upon real estate, including sale of lands for nonpayment of taxes, shall apply to and govern the collection of the special assessments and the collection of general taxes levied by the commission.

(m) Section 66.60 (17) shall be applicable to assessments made under this section.

(n) The commission may provide for a deferred due date on the levy of the special assessment as to real estate which is in agricultural use or which is otherwise not immediately to receive actual service from the sewer or other facility for which the assessment is made. Such assessments shall be payable as soon as such lands receive actual service from the sewer or other facility. Any such special assessments shall be a lien against the property from the date of the levy. For the purpose of anticipating collection of special assessments for which the due date has been deferred, the commission may issue special improvement bonds payable only out of the special assessments. Section 66.54 shall apply to and govern the issuance of bonds, except that the assessment notice shall be substantially in the following form:

#### DEFERRED ASSESSMENT NOTICE

Notice is hereby given that a contract has been (or is about to be) let for (describe the improvements) and that the amount of the special assessment therefor has been determined as to each parcel of real estate affected thereby, and a statement of the same is on file with the commission. It is proposed to collect the same on a deferred basis consistent with actual use of the improvements. All assessments will be collected in instalments, as above provided, except such assessments for which the owners of the property, within 30 days from the date of this notice, file with the commission a statement in writing that they elect not to have the due date deferred, in which case the amount of the levy shall be placed upon the next ensuing tax roll.

**(2) TAX LEVY.** The commission may levy a tax upon the taxable property in the district as equalized by the department of revenue for state purposes for the purpose of carrying out and performing duties under ss. 66.20 to 66.26 but the amount of any such tax in excess of that required for maintenance and operation and for principal and interest on bonds or promissory notes shall not exceed, in any one year, one mill for each dollar of the district's equalized valuation, as determined under s. 70.57. The tax levy may be spread upon the respective real estate and personal property tax rolls of the city, village and town areas included in the district taxes, and shall not be included within any limitation on county or municipality taxes. Such moneys when collected shall be paid to the treasurer of such district.

**(3) SERVICE CHARGES.** (a) The commission may establish service charges in such amount as to meet all or part of the requirements for the construction, reconstruction, improvement, extension, operation, maintenance, repair and depreciation of functions

authorized by ss. 66.20 to 66.26, and for the payment of all or part of the principal and interest of any indebtedness incurred thereof.

(b) The district may charge to the state, county or municipality the cost of service rendered to any state institution, county or municipality.

(4) **BORROWING** A district under ss. 66.20 to 66.26 may borrow money and issue municipal obligations under ss. 66.066 and 66.54 and ch. 67.

(5) **BORROWING; TAX COLLECTION** After the issue of any municipal obligation under ch. 67, the commission shall, on or before October 1 in each year, certify in writing to the clerks of the several cities, villages or towns having territory in the district, the total amount of the tax to be raised by each such municipality, and upon receipt of such certificate the clerk of each such municipality shall place the same on the tax roll to be collected as other taxes are collected, and such moneys, when collected, shall be paid to the treasurer of the district.

(12) **EXEMPTION FROM LEVIES** Lands designated as permanent open space, agricultural protection areas or other undeveloped areas not to be served by public sanitary sewer service in plans adopted by a regional planning commission or other area-wide planning agency organized under s. 66.945 and approved by the board of supervisors of the county in which the lands are located shall not have property taxes, assessments or service charges levied against them by the district.

(13) **APPLICATION OF OTHER LAWS** Section 66.076 shall apply to all districts now or hereafter organized and operating under ss. 66.20 to 66.26.

**History:** 1971 c. 276; 1973 c. 172; 1977 c. 26; 1979 c. 110 s. 60 (13); 1981 c. 314; 1983 a. 24, 27, 207, 294, 538; 1987 a. 197, 403; 1993 a. 246

A metropolitan sewerage district cannot collect a service charge against a vocational school district. *Green Bay Met. S. Dist. v. Voc. T. & A. Ed.* 58 W (2d) 628, 207 NW (2d) 623.

**66.26 Addition of territory.** Territory not originally within a district may be added thereto in the following ways:

(1) Territory outside the district which becomes annexed for municipal purposes to a city or village, or is added to a town sanitary district under s. 60.785 (1), which, prior to the annexation or addition, is located entirely within the original district may be added to the district upon receipt by the commission, and the regional planning commission of the region within which the district or the greatest portion of the district is located, of official notice from the city or village that the municipal annexation has occurred or from the town sanitary district that the addition has occurred, except that such territory shall be added under sub. (2) if, within 30 days after receipt of such notice, that regional planning commission files with the commission a written objection to any part of the annexation or addition or the commission issues a written determination disapproving the addition of the territory under this subsection. Failure of the commission to disapprove the addition of the territory under this subsection is subject to review under ch. 227.

(2) Proceedings leading to the addition of other territory to a district may be initiated by petition from a municipal governing body or upon motion of the commission. Upon receipt of the petition or upon adoption of the motion, the commission shall hold a public hearing preceded by a class 2 notice under ch. 985. The commission may approve the annexation upon a determination that the standards of ss. 66.22 (4) (b) and (c) and 66.26 (3) are met. Approval actions by the commission under this section shall be subject to review under ch. 227.

(3) Annexations under subs. (1) and (2) may be subject to reasonable requirements as to participation by newly annexed areas toward the cost of existing or proposed district facilities.

(4) Section 66.23 (1) does not require the appointment of a commissioner from territory annexed under this section if that territory, on the day before the annexation, has a population of less than 8.5% of the total population served by the district.

**History:** 1971 c. 276; 1987 a. 399; 1991 a. 39

**66.27 Relief from conditions of gifts and dedications.** (1) If the governing body of a county, city, town or village accepts a gift or dedication of land made on condition that the land be devoted to a special purpose, and the condition subsequently becomes impossible or impracticable, such governing body may by resolution or ordinance enacted by a two-thirds vote of its members elect either to grant the land back to the donor or dedicator or the heirs of the donor or dedicator, or accept from the donor or dedicator or the heirs of the donor or dedicator, a grant relieving the county, city, town or village of the condition, pursuant to article XI, section 3a, of the constitution.

(2) (a) If such donor or dedicator or the heirs of the donor or dedicator are unknown or cannot be found, such resolution or ordinance may provide for the commencement of an action under this section for the purpose of relieving the county, city, town or village of the condition of the gift or dedication.

(b) Any such action shall be brought in a court of record in the manner provided in ch. 801. A *lis pendens* shall be filed as provided in s. 840.10 upon the commencement of the action. Service upon persons whose whereabouts are unknown may be made in the manner prescribed in s. 801.12.

(c) The court may render judgment in such action relieving the county, city, town or village of the condition of the gift or dedication.

**History:** 1973 c. 189 s. 20; Sup. Ct. Order, 67 W (2d) 585, 774 (1975); 1991 a. 316

**66.28 Disposal of abandoned property.** (1) Cities, villages, towns and counties may dispose of any personal property which has been abandoned, or remained unclaimed for a period of 30 days after the taking of possession of the property by the city, village, town or county officers by any means determined to be in the best interest of the city, village, town or county. If the property is not disposed of in a sale open to the public, every city, village, town and county shall maintain an inventory of such property; a record of the date and method of disposal, including the consideration received for the property, if any, and the name and address of the person taking possession of the property. Such inventory shall be kept as a public record for a period of not less than 2 years from the date of disposal of the property. Any means of disposal other than public auction shall be specified by ordinance. If the disposal is in the form of a sale, all receipts from the sale, after deducting the necessary expenses of keeping the property and conducting the sale, shall be paid into the city, village, town or county treasury.

(2) Cities, villages, towns and counties may safely dispose of abandoned or unclaimed flammable, explosive or incendiary substances, materials or devices posing a danger to life or property in their storage, transportation or use immediately after taking possession of the substances, materials or devices without a public auction. The city, village, town or county, by ordinance or resolution, may establish disposal procedures. Procedures may include provisions authorizing an attempt to return to the rightful owner substances, materials or devices which have a commercial value in the normal business usage and do not pose an immediate threat to life or property. If enacted, any such provision shall include a presumption that if the substance, material or device appears to be or is reported stolen an attempt will be made to return the substance, material or device to the rightful owner.

(3) Except as provided in s. 968.20 (3), 1st class cities shall dispose of abandoned or unclaimed firearms or ammunition without a public auction 12 months after taking possession of them if the owner has not requested their return. Disposition procedures shall be established by ordinance or resolution and may include provisions authorizing an attempt to return to the rightful owner any firearms or ammunition which appear to be stolen or are reported stolen. If enacted, any such provision shall include a presumption that if the firearms or ammunition appear to be or are reported stolen an attempt will be made to return the firearms or ammunition to the rightful owner. The firearms or ammunition shall be subject to sub. (4).

(4) A city, village, town or county may retain or dispose of any abandoned, unclaimed or seized firearm or ammunition only under s. 968.20.

History: 1979 c 221, 222, 355; 1985 a 29; 1987 a 203; 1991 a 269; 1993 a 90

**66.285 Interest on late payments. (1) DEFINITIONS.** In this section and s. 66.286:

(a) "Agency" means any office, department, board, commission or other body under the control of the governing body of a local governmental unit which expends moneys or incurs obligations on behalf of the local governmental unit.

(b) "Good faith dispute" means any of the following:

1. A contention by an agency, principal contractor or subcontractor that goods delivered or services rendered were of a lesser quantity or quality than ordered or specified by contract, were faulty or were installed improperly.

2. Any other reason giving cause for the withholding of payment by an agency, principal contractor or subcontractor until the dispute is settled.

(c) "Local governmental unit" means a political subdivision of this state, a special purpose district in this state, an agency or corporation of such a political subdivision or special purpose district, or a combination or subunit of any of the foregoing.

(d) "Subcontractor" has the meaning given in s. 66.29 (1) (d).

**(2) INTEREST PAYABLE TO PRINCIPAL CONTRACTORS.** (a) Except as provided in sub. (4) or as otherwise specifically provided, an agency that does not pay timely the amount due on an order or contract shall pay interest on the balance due from the 31st day after receipt of a properly completed invoice or receipt and acceptance of the property or service under the order or contract, whichever is later, or, if the agency does not comply with s. 66.286, from the 31st day after receipt of an improperly completed invoice or receipt and acceptance of the property or service under the order or contract, whichever is later, at the rate specified in s. 71.82 (1) (a) compounded monthly.

(b) For the purposes of par. (a), a payment is timely if the payment is mailed, delivered or transferred by the later of the following:

1. The date specified on a properly completed invoice for the amount specified in the order or contract.

2. Within 30 days after receipt of a properly completed invoice or receipt and acceptance of the property or service under the order or contract, or, if the agency does not comply with s. 66.286; within 30 days after receipt of an improperly completed invoice or receipt and acceptance of the property or service under the order or contract, whichever is later.

**(3) INTEREST PAYABLE TO SUBCONTRACTORS.** (a) Except as provided in sub. (4) (e) or as otherwise specifically provided, principal contractors that engage subcontractors to perform part of the work on an order or contract from an agency shall pay subcontractors for satisfactory work in a timely fashion. A payment is timely if it is mailed, delivered or transferred to the subcontractor no later than 7 days after the principal contractor's receipt of any payment from the agency.

(b) If a subcontractor is not paid in a timely fashion, the principal contractor shall pay interest on the balance due from the 8th day after the principal contractor's receipt of any payment from the agency, at the rate specified in s. 71.82 (1) (a) compounded monthly.

(c) Subcontractors receiving payment under this subsection shall pay lower-tier subcontractors, and be liable for interest on late payments, in the same manner as principal contractors are required to pay subcontractors in pars. (a) and (b).

**(4) EXCEPTIONS.** Subsection (2) does not apply to the following:

(a) Any portion of an order or contract for which the payment, from federal moneys, has not been received.

(b) An order or contract that is subject to late payment interest or another late payment charge required by another law or rule specifically authorized by law.

(c) An order or contract between 2 or more agencies of the same local governmental unit.

(d) An order or contract which provides for the time of payment and the consequences of nontimely payment, if any deviation from the deadlines established in sub. (2) appears in the original bid or proposal.

(e) An order or contract under which the amount due is subject to a good faith dispute if, before the date on which payment is not timely, notice of the dispute is sent by 1st class mail, personally delivered or sent in accordance with the procedure specified in the order or contract.

**(5) APPROPRIATION FROM WHICH PAID.** An agency that pays interest under this section shall pay the interest only from the appropriation for administration of the program under which the order or contract was made or entered into, unless otherwise directed by the governing body of the local governmental unit.

**(6) ATTORNEY FEES.** Notwithstanding s. 814.04 (1), in an action to recover interest due under this section, the court shall award the prevailing party reasonable attorney fees.

History: 1989 a 233

**66.286 Improper invoices.** If an agency receives an improperly completed invoice, the agency shall notify the sender of the invoice within 10 working days after it receives the invoice of the reason that it is improperly completed.

History: 1989 a 233

**66.29 Public works, contracts, bids. (1) DEFINITIONS.**

(a) In this section, "person" means an individual, partnership, association, limited liability company, corporation or joint stock company, lessee, trustee or receiver.

(b) "Municipality" means the state and any town, city, village, school district, board of school directors, sewer district, drainage district, technical college district or any other public or quasi-public corporation, officer, board or other public body charged with the duty of receiving bids for and awarding any public contracts.

(c) The term "public contract" shall mean and include any contract for the construction, execution, repair, remodeling, improvement of any public work, building, furnishing of supplies, material of any kind whatsoever, proposals for which are required to be advertised for by law.

(d) "Subcontractor" means a person whose relationship to the principal contractor is substantially the same as to a part of the work as the latter's relationship is to the proprietor. A "subcontractor" takes a distinct part of the work in such a way that the "subcontractor" does not contemplate doing merely personal service.

**(2) BIDDER'S PROOF OF RESPONSIBILITY.** Every municipality, board or public body upon all contracts subject to this section may, before delivering any form for bid proposals, plans and specifications pertaining thereto to any person, excepting materialmen, suppliers and others not intending to submit a direct bid, require such person to submit a full and complete statement sworn to before an officer authorized by law to administer oaths, of financial ability, equipment, experience in the work prescribed in said public contract, and of such other matters as the municipality, board, public body or officer thereof may require for the protection and welfare of the public in the performance of any public contract; such statement shall be in writing on a standard form of a questionnaire as adopted for such use by the municipality, board or public body or officer thereof, to be furnished by such municipality, board, public body or officer thereof. Such statements shall not be received less than 5 days prior to the time set for opening



of bids. The contents of said statements shall be confidential and shall not be disclosed except upon the written order of such person furnishing the same, or for necessary use by the public body in qualifying such person, or in cases of action against, or by such person or municipality. The governing body of the municipality or such committee, board or employe as is charged with the duty of receiving bids and awarding contracts or to whom the governing body has delegated the power shall properly evaluate the sworn statements filed relative to financial ability, equipment and experience in the work prescribed and shall find the maker of such statement either qualified or unqualified. This subsection shall not apply to cities of the first class.

(3) **PROOF OF RESPONSIBILITY, CONDITION PRECEDENT.** No bid shall be received from any person who has not submitted the sworn statement as provided in sub. (2), provided that any prospective bidder who has once qualified to the satisfaction of the municipality, board, public body or officer, and who wishes to become a bidder upon subsequent public contracts under the jurisdiction of the same, to whose satisfaction the prospective bidder has qualified under sub. (2), need not separately qualify on each public contract unless required so to do by the said municipality, board, public body or officers.

(4) **REJECTION OF BIDS.** Whenever the municipality, board, public body or officer is not satisfied with the sufficiency of the answer contained in the questionnaire and financial statement, it may reject said bid, or disregard the same.

(5) **CORRECTIONS OF ERRORS IN BIDS.** Whenever any person shall submit a bid or proposal for the performance of public work under any public contract to be let by the municipality, board, public body or officer thereof, who shall claim mistake, omission or error in preparing the bid, the bidder shall, before the bids are opened, make known the fact that an error, omission or mistake has been made, and in that case the bid shall be returned to the bidder unopened and the bidder shall not be entitled to bid upon the contract at hand unless the same is readvertised and relet upon the readvertisement. In case any bidder shall make an error or omission or mistake and shall discover the same after the bids are opened, the bidder shall immediately and without delay give written notice and make known the fact of the mistake, omission or error which has been committed and submit to the municipality, board, public body or officers thereof, clear and satisfactory evidence of the mistake, omission or error and that the same was not caused by any careless act or omission on the bidder's part in the exercise of ordinary care in examining the plans, specifications, and conforming with the provisions of this section, and in case of forfeiture, shall not be entitled to recover the moneys or certified check forfeited as liquidated damages unless it shall be proven before a court of competent jurisdiction in an action brought for the recovery of the amount forfeited, that in making the mistake, error or omission the bidder was free from carelessness, negligence or inexcusable neglect.

(6) **SEPARATION OF CONTRACTS.** On those public contracts calling for the construction, repair, remodeling or improvement of any public building or structure, other than highway structures and facilities, the municipality may bid projects based on a single or multiple division of the work. Contracts shall be awarded according to the division of work selected for bidding. The municipality may set out in any public contract reasonable and lawful conditions as to the hours of labor, wages, residence, character and classification of workmen to be employed by any contractor, and to classify such contractors as to their financial responsibility, competency and ability to perform work and to set up a classified list of contractors pursuant thereto; and such municipality may also reject the bid of any person, if such person has not been classified pursuant to the said questionnaire for the kind or amount of work in said bid.

(7) **BIDDER'S CERTIFICATE.** On all contracts the bidder shall incorporate and make a part of the bidder's proposal for the doing of any work or labor or the furnishing of any material in or about any public work or contract of the municipality a sworn statement

by the bidder, or if not an individual by one authorized, that the bidder or authorized person so swearing has examined and carefully prepared the proposal from the plans and specifications and has checked the same in detail before submitting the proposal or bid to the municipality, board, department or officer charged with the letting of bids and also at the same time as a part of the proposal, submit a list of the subcontractors the bidder proposes to contract with, and the class of work to be performed by each, provided that to qualify for inclusion in the bidder's list a subcontractor must first submit a bid in writing, to the general contractor at least 48 hours prior to the time of the bid closing, which list shall not be added to nor altered without the written consent of the municipality. A proposal of a bidder shall not be invalid if any subcontractor and the class of work to be performed by the subcontractor has been omitted from a proposal; such omission shall be considered as inadvertent, or that the bidder will perform the work personally.

(8) **SETTLEMENT OF DISPUTES; DEFAULTS.** Whenever there is a dispute between the contractor or surety or the municipality as to the determination whether there is a compliance with the provisions of the contract as to the hours of labor, wages, residence, character, and classification of workmen employed by any contractor, the determination of the municipality shall be final, and in case of violation of said provisions, the municipality may declare the contract in default and request the surety to perform or relet upon advertisement the remaining portion of the contract.

(9) **ESTIMATES AND RELEASE OF FUNDS.** (a) *Definition.* In this subsection, "municipality" means the state, except the department of transportation, and any town, city, village, county, school district, technical college district, board of school directors, sewer district, drainage district, or any other public or quasi-public corporation, officer, board, or other public body.

(b) *Retained percentages.* As the work progresses under any contract involving \$1,000 or more for the construction, execution, repair, remodeling or improvement of any public work or building or for the furnishing of any supplies or materials, whether or not proposals for which are required to be advertised by law, the municipality, from time to time, shall grant to the contractor an estimate of the amount and proportionate value of the work done, which shall entitle the contractor to receive the amount thereof, less the retainage, from the proper fund. On all such contracts, the retainage shall be an amount equal to 10% of said estimate until 50% of the work has been completed. At 50% completion, further partial payments shall be made in full to the contractor and no additional amounts may be retained unless the architect or engineer certifies that the job is not proceeding satisfactorily, but amounts previously retained shall not be paid to the contractor. At 50% completion or any time thereafter when the progress of the work is not satisfactory, additional amounts may be retained but in no event shall the total retainage be more than 10% of the value of the work completed. Upon substantial completion of the work, an amount retained may be paid to the contractor. When the work has been substantially completed except for work which cannot be completed because of weather conditions, lack of materials or other reasons which in the judgment of the municipality are valid reasons for noncompletion, the municipality may make additional payments, retaining at all times an amount sufficient to cover the estimated cost of the work still to be completed or in the alternative may pay out the entire amount retained and receive from the contractor guarantees in the form of a bond or other collateral sufficient to ensure completion of the job. For the purposes of this section, estimates may include any fabricated or manufactured materials and components specified, previously paid for by contractor and delivered to the work or properly stored and suitable for incorporation in the work embraced in the contract.

**History:** 1971 c 154; 1975 c 390; 1983 a 27; 1991 a 316; 1993 a 112, 399, 490, 491

Under (5), a bidder has no "right" to withdraw its bid or demand that it be amended. Under the terms of the proposal, the commission was entitled to retain the deposit upon plaintiff's failure to execute the contract within 10 days of the notice of award. *Nelson Inc v Sewerage Comm of Milw.* 72 W (2d) 400, 241 NW (2d) 390

Acceptance of the bid is a precondition to forfeiture of the bidder's deposit under (5) *Gaastra v. Village of Fairwater*, 77 W (2d) 7, 252 NW (2d) 60

Where bid error was discovered after contract was let, dispute was governed by arbitration clause in contract, not by (5). *Turtle Lake v. Orvedahl Const.*, 135 W (2d) 385, 400 NW (2d) 475 (Ct. App. 1986).

Where a governmental entity determines that an apparent low bidder is entitled to relief from an erroneous bid under (5), the bidder should be allowed to correct his bid. 62 Atty. Gen. 144.

Police cars need not be purchased by competitive bid since they are "equipment" and not "supplies [or] material" 66 Atty. Gen. 284.

Municipalities may require bidders to include list of subcontractors under (7) 76 Atty. Gen. 29.

**66.293 Contractor's failure to comply with municipal wage scale.** (1) Every city, village, town, county, school board, school district, sewer district, drainage district, commission, public or quasi-public corporation or any other governmental unit, which proposes the making of a contract for any highway, street or bridge construction, shall determine the rate of wage scale which shall be paid by the contractor to the employees upon the project. Reference to such rate of wage scale shall be published in the notice issued for the purpose of securing bids for the project. Whenever any contract for a highway, street or bridge construction is entered into, the rate of wage scale shall be incorporated in and made a part of such contract. All employees working upon the highway, street or bridge construction shall be paid by the contractor in accordance with the rate of wage scale incorporated in the contract. Such rate of wage scale shall not be altered during the time that the contract is in force.

(2) Whenever any city, town, village or county, school board, school district, sewer district, drainage district, commission, public or quasi-public corporation or any governmental unit, by ordinance, resolution, rule or bylaw, establishes a rate of wage scale to be paid to employees upon any highway, street or bridge construction by a contractor and it is found upon due proof that the contractor is not paying or has failed to pay the wage scale established or is directly or indirectly, by a system of rebates or otherwise, violating the ordinance, rule, resolution or bylaw of the city, town, village or county, school board, school district, sewer district, drainage district, commission, public or quasi-public corporation or any governmental unit, the contractor may be fined not to exceed \$500 for each offense. The failure to pay the required wage to an employee for any one week or part thereof constitutes a separate offense.

(3) Every municipality, before making a contract by direct negotiation or soliciting bids on a contract, for any project of public works except highway, street or bridge construction, shall apply to the department of industry, labor and human relations to ascertain the prevailing wage rate, hours of labor and hourly basic pay rates in all trades and occupations required in the work contemplated. The department shall determine the prevailing wage rate, hours of labor and hourly basic pay rates for each trade or occupation under s. 103.49, make its determination within 30 days after receiving the request and file the same with the municipality applying therefor. A request for the review of a wage determination may be made within 30 days from the determination date if evidence is submitted with the request showing that the wage rate or hours of labor for any given trade or occupation included in the determination does not represent the prevailing wage rate or hours of labor for that trade or occupation in the area. Such evidence shall include wage rate and hours of labor information for the contested trade or occupation on at least one similar project located in the municipality where the proposed project is located and on which some work has been performed during the current or any of the previous 12 months. The department shall affirm or modify the original determination within 15 days from the date on which the department receives the request for review. Reference to such prevailing wage rates and hours of labor determined by the department or a municipality exempted under par. (d) shall be published in the notice issued for the purpose of securing bids for the project. If any contract for a project of public works except highway, street or bridge construction is entered into, the wage rates and hours determined by the department or exempted municipality shall be

incorporated into and made a part of the contract. No laborer, worker or mechanic employed directly upon the site of the project by the contractor or by a subcontractor, agent or other person, doing or contracting to do any part of the work, may be paid less than the prevailing wage rate in the same or most similar trade or occupation; nor may he or she be permitted to work a greater number of hours per day or per calendar week than the prevailing hours of labor determined under this subsection, unless he or she is paid for all hours in excess of the prevailing hours at a rate of at least 1-1/2 times his or her hourly basic rate of pay.

(a) Any contractor, subcontractor or agent thereof, who fails to pay the prevailing rate of wages determined by the department under this subsection or pays less than 1-1/2 times the hourly basic rate of pay for hours worked on the project in excess of the prevailing hours determined under this subsection, shall be liable to the employees affected in the amount of their unpaid minimum wages or their unpaid overtime compensation and an additional equal amount as liquidated damages. Action to recover the liability may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of that employee or those employees and other employees similarly situated. No employee shall be a party plaintiff to any such action unless the employee consents in writing to become such a party and the consent is filed in the court in which the action is brought. The court shall, in addition to any judgment awarded to the plaintiff, allow a reasonable attorney's fee and costs to be paid by the defendant.

(b) In this subsection, "municipality" means any city, town, village or county, technical college district, common school district, union high school district, unified school district, county-city hospital established under s. 66.47, sewerage commission organized under s. 144.07 (4), metropolitan sewerage district organized under ss. 66.20 to 66.26, public or quasi-public corporation, or any other unit of government, or any agency or instrumentality of 2 or more units of government in this state.

(c) This subsection does not apply to any highway, street or bridge construction or to any public works project for which the estimated project cost of completion is below \$3,500 where a single trade is involved and \$35,000 where more than one trade is involved on such project (after hearing these dollar amounts shall be adjusted by the department every 2 years, the first adjustment to be made not sooner than January 1, 1976. The adjustments shall be in proportion to any changes in construction costs since the effective date of the dollar amounts established under this subsection immediately prior to each adjustment); nor does this subsection apply to wage rates and hours of employment of laborers, workmen or mechanics engaged in the processing or manufacture of materials or products or to the delivery thereof by or for commercial establishments which have a fixed place of business from which they regularly supply such processed or manufactured materials or products, except that this subsection does apply to laborers, workmen or mechanics delivering mineral aggregate such as sand, gravel or stone which is incorporated into the work under the contract by depositing the material substantially in place, directly or through spreaders, from the transporting vehicle.

(d) The department of industry, labor and human relations, upon petition of any municipality, shall issue an order exempting the municipality from applying to the department for a determination under this subsection when it is shown that an ordinance or other enactment of the municipality sets forth the standards, policy, procedure and practice resulting in standards as high or higher than those under s. 103.49.

(e) Each contractor, subcontractor or agent thereof participating in a project covered by this subsection shall keep full and accurate records clearly indicating the name and trade or occupation of every laborer, workman or mechanic employed by the contractor, subcontractor or agent in connection with the project and an accurate record of the number of hours worked by each employee and the actual wages paid therefor.

(f) For the information of the employees working on the project, the wage rates and hours determined by the department or exempted municipality and the provisions of pars. (a) and (e) shall be kept posted by the employer in at least one conspicuous and easily accessible place at the site of the project.

(g) Each agent or subcontractor shall furnish the contractor with evidence of compliance with this subsection.

(h) Upon completion of the project and prior to final payment therefor, each contractor shall file with the municipality an affidavit stating that the contractor has complied fully with the provisions and requirements of this subsection and that the contractor has received evidence of compliance from each of the contractor's agents and subcontractors. No municipality may authorize final payment until such an affidavit is filed in proper form and order.

(i) The department of industry, labor and human relations or the contracting municipality may demand and examine copies of any payrolls and other records and information relating to the wages paid laborers, workmen or mechanics on work to which this subsection applies. The department may inspect records in the manner provided in ch. 101. Every contractor, subcontractor or agent is subject to the requirements of ch. 101 relating to examination of records.

(j) When the department of industry, labor and human relations finds that a municipality has not requested a prevailing wage rate determination or has not incorporated a prevailing wage rate determination into the contract as required under this subsection, the department shall notify the municipality of such non-compliance and shall file the prevailing wage rate determination with the municipality within 30 days after such notice.

(k) The provisions of s. 101.02 (5) (f), (12), (13) and (14) apply to this subsection. Section 111.322 (2m) applies to discharge or other discriminatory acts arising in connection with any proceeding under this subsection, including proceedings under par. (a).

(m) If requested by any person, the department shall inspect the payroll records of the contractors, subcontractors or agents to ensure compliance with this section. The cost of the inspection shall be paid by the person making the request, if the contractor, subcontractor, or agent subject to the inspection is found to be in compliance.

(n) 1. Except as provided under subds. 2. and 3., the department of industry, labor and human relations shall notify any municipality applying for a determination under sub. (3) (intro.) and any municipality exempted under par. (d) of the names of all persons whom the department has found to have failed to pay the prevailing wage rate determined under this subsection or has found to have paid less than 1.5 times the hourly basic rate of pay for hours worked on a project in excess of the prevailing hours of labor determined under this subsection at any time in the preceding 3 years. The department shall include with any such name the address of such person and shall specify when and how such person has failed to pay the prevailing wage rate determined under this subsection and when and how such person has failed to pay less than 1.5 times the hourly basic rate of pay for hours worked on a project in excess of the prevailing hours of labor determined under this subsection. No municipality may award any contract to such person unless otherwise recommended by the department or unless at least 3 years have elapsed from the date the department issued its findings or the date of final determination by a court of competent jurisdiction, whichever is later.

2. The department may not include in a notification under subd. 1. the name of any person on the basis of having let work to a person whom the department has found to have failed to pay the prevailing wage rate determined under this subsection or has found to have paid less than 1.5 times the hourly basic rate of pay for hours worked on a project in excess of the prevailing hours of labor determined under this subsection.

3. This paragraph does not apply to any contractor, subcontractor or agent who in good faith commits a minor violation of this section, as determined on a case-by-case basis through

administrative hearings with all rights to due process afforded to all parties or who has not exhausted or waived all appeals.

4. Any person submitting a bid on a project subject to this section shall be required, on the date the person submits the bid, to identify any construction business in which the person, or a shareholder, officer, partner or member of the person, if the person is a business, owns, or has owned at least a 25% interest on the date the person submits the bid or at any other time within 3 years preceding the date the person submits the bid, if the business has been found to have failed to pay the prevailing wage rate determined under this subsection or to have paid less than 1.5 times the hourly basic rate of pay for hours worked on a project in excess of the prevailing hours of labor determined under this subsection.

5. The department shall promulgate rules to administer this paragraph.

**History:** 1971 c. 154, 307; 1973 c. 181; 1977 c. 29; 1985 a. 159; 1989 a. 56, 228; 1991 a. 316; 1993 a. 112, 399

This section is inapplicable to private corporation contracting for medical center. 61 Atty. Gen. 426.

See note to 66.521, citing 63 Atty. Gen. 145

Municipalities are subject to (3) on contracts for any project of public works, even if done by the turnkey method. 64 Atty. Gen. 100.

### 66.295 Authority to pay for public work done in good faith. (1)

If any city, village, town or county has received and enjoyed or is enjoying any benefits or improvements furnished prior to March 1, 1973, under any contract which was no legal obligation on such city, village, town or county and which contract was entered into in good faith and has been fully performed and the work has been accepted by the proper officials, so as to impose a moral obligation upon such city, village, town or county to pay therefor, such city, village, town or county, by resolution of its governing body and in consideration of such moral obligation, may pay to the person furnishing such benefits or improvements the fair and reasonable value of such benefits and improvements.

(2) The fair and reasonable value of such benefits and improvements and the funds out of which payment therefor shall be made shall be determined by the governing body of the city, village, town or county. Such payments may be made out of any available funds, and the governing body has authority, if necessary, to levy and collect taxes in sufficient amount to meet such payments.

(3) Where payment for any benefits or improvements under subs. (1) and (2) is authorized by the governing body of the city, village or town and where special assessments shall have been levied for any portion of the benefits or improvements prior to the authorization of such payment, the local authorities shall proceed to make a new assessment of benefits and damages in the manner provided for the original assessment, except that steps required in the laws relating to the original assessment to be taken prior to the ordering or doing of such benefits or improvements may be taken after the authorization of such payment with the same effect as if taken prior to the ordering or doing of such benefits or improvements. The owner of any property affected by a reassessment may appeal in the same manner as from an original assessment. On a reassessment, full credit shall be given for all money collected under an original assessment for the benefits and improvements.

**History:** 1973 c. 97; 1993 a. 246.

See note following 62.15 citing *Blum v. Hillsboro*, 49 W (2d) 667, 183 NW (2d) 47.

### 66.296 Discontinuance of streets and alleys.

(1) The whole or any part of any road, street, slip, pier, lane or alley, in any 2nd, 3rd or 4th class city or in any village or town, may be discontinued by the common council or village or town board upon the written petition of the owners of all the frontage of the lots and lands abutting upon the portion thereof sought to be discontinued, and of the owners of more than one-third of the frontage of the lots and lands abutting on that portion of the remainder thereof which lies within 2,650 feet of the ends of the portion to be discontinued, or lies within so much of that 2,650 feet

as shall be within the corporate limits of the city, village or town. The beginning and ending of an alley shall be considered to be within the block in which it is located. This subsection does not apply to a highway upon the line between 2 towns that is subject to s. 80.11.

(2) (a) As an alternative, proceedings covered by this section may be initiated by the common council or village or town board by the introduction of a resolution declaring that since the public interest requires it, the whole or any part of any road, street, slip, pier, lane or alley in the city, village or town is thereby vacated and discontinued.

(b) A hearing on the passage of such resolution shall be set by the common council or village or town board on a date which shall not be less than 40 days thereafter. Notice of the hearing shall be given as provided in sub. (5), except that in addition notice of such hearing shall be served on the owners of all of the frontage of the lots and lands abutting upon the portion thereof sought to be discontinued in a manner provided for the service of summons in circuit court at least 30 days before such hearing. When such service cannot be made within the city, village or town, a copy of the notice shall be mailed to the owner's last-known address at least 30 days before the hearing.

(c) No discontinuance shall be ordered if a written objection to the proposed discontinuance is filed with the city, village or town clerk by any of the owners abutting on the portion sought to be discontinued or by the owners of more than one-third of the frontage of the lots and lands abutting on that portion of the remainder thereof which lies within 2,650 feet from the ends of the portion proposed to be discontinued; or which lies within so much of said 2,650 feet as shall be within the corporate limits of the city, village or town. The beginning and ending of an alley shall be considered to be within the block in which it is located.

(2m) For the purpose of this section, the narrowing, widening, extending or other alteration of any road, street, lane or alley does not constitute a discontinuance of any part of the former road, street, lane or alley, including any right-of-way, which is included within the right-of-way for the new road, street, lane or alley.

(3) Whenever any of the lots or lands subject to this section is owned by the state, county, city, village or town, or by a minor or incompetent person, or the title thereof is held in trust, as to all lots and lands so owned or held, petitions for discontinuance or objections to discontinuance may be signed by the governor, chairperson of the board of supervisors of the county, mayor of the city, president of the village, chairperson of the town board, guardian of the minor or incompetent person, or the trustee, respectively, and the signature of any private corporation may be made by its president, secretary or other principal officer or managing agent.

(4) The city council or village or town board may by resolution discontinue any alley or any portion thereof which has been abandoned, at any time after the expiration of 5 years from the date of the recording of the plat by which it was dedicated. Failure or neglect to work or use any alley or any portion thereof for a period of 5 years next preceding the date of notice provided for in sub. (5) shall be considered an abandonment for the purpose of this section.

(5) Notice stating when and where the petition or resolution will be acted upon and stating what road, street, slip, pier, lane or alley, or part thereof, is proposed to be discontinued, shall be published as a class 3 notice, under ch. 985.

(6) In proceedings under this section, s. 840.11 shall be considered as a part of the proceedings.

**History:** 1973 c. 189 s. 20; Sup. Ct. Order, 67 W (2d) 585, 774 (1975); 1975 c. 46; 1993 a. 184, 246, 491.

**Cross-reference:** See s. 236.43 for other provisions for vacating streets.

Enactment of (2m) did not eliminate any vested rights of abutting property owners *Miller v. City of Wauwatosa*, 87 W (2d) 676, 275 NW (2d) 876 (1979).

Discussion of who is property owner with veto rights under (2) (c) *Voss v. City of Middleton*, 162 W (2d) 737, 470 NW (2d) 625 (1991).

**66.297 Discontinuance of public grounds.** (1) In every city of the 1st class, the common council may vacate in whole or in part such highways, streets, alleys, grounds, waterways, public walks and other public grounds within the corporate limits of the city as in its opinion the public interest requires to be vacated or are of no public utility, subject to s. 80.32 (4). Such proceedings shall be commenced either by a petition presented to the common council signed by the owners of all property which abuts upon the portion of the public facilities proposed to be vacated, or by a resolution adopted by the common council. The requirements of s. 840.11 shall apply to proceedings under this section.

(2) All petitions or resolutions shall be referred to a committee of the common council for a public hearing on such proposed discontinuance and at least 7 days shall elapse between the date of the last service and the date of such hearing. A notice of such hearing shall be served on the owners of record of all property which abuts upon the portion of the public facilities proposed to be vacated, in the manner provided for service of a summons.

(3) If the common council initiates a discontinuance proceeding by resolution without a petition signed by all of the owners of the property which abuts the public facility proposed to be discontinued, any owner of property abutting such public facility whose property is damaged thereby may recover such damages as provided in ch. 32.

(4) The common council may also order that an assessment of benefits be made and when so ordered the assessment shall be made as provided in s. 66.60.

**History:** 1973 c. 189 s. 20; Sup. Ct. Order, 67 W (2d) 585, 774 (1975).

**66.298 Pedestrian malls.** After referring the matter to the plan commission for report under s. 62.23 (5), or the town zoning committee under s. 60.61 (4), and after holding a public hearing on the matter with publication of a Class 1 notice of the hearing, the governing body of any city or village, or any town board acting under s. 60.61 or 60.62, may by ordinance designate any street, road or public way or any part thereof wholly within its jurisdiction as a pedestrian mall and prohibit or limit the use thereof by vehicular traffic. Creation of such pedestrian malls shall not constitute a discontinuance or vacation of such street, road or public way under s. 66.296 or 236.43.

**History:** 1993 a. 246.

**66.299 Local governmental purchasing.** (1) DEFINITIONS In this section:

(a) "Local governmental unit" means a political subdivision of this state, a special purpose district in this state, an agency or corporation of such a political subdivision or special purpose district, or a combination or subunit of any of the foregoing.

(b) "Recycled or recovered content" has the meaning given in s. 16.70 (13).

(2) INTERGOVERNMENTAL PURCHASES WITHOUT BIDS. Notwithstanding any statute requiring bids for public purchases, any local governmental unit may make purchases from another unit of government, including the state or federal government, without the intervention of bids.

(3) PURCHASE OF RECYCLED MATERIALS (a) 1. A local governmental unit shall, to the extent practicable, make purchasing selections using specifications developed under s. 16.72 (2) (e) to maximize the purchase of products utilizing recycled or recovered materials.

2. Each local governmental unit shall ensure that the average recycled or recovered content of all paper purchased by the local governmental unit measured as a proportion, by weight, of the fiber content of all paper products purchased in a year, is not less than the following:

- a. By 1991, 10% of all purchased paper.
- b. By 1993, 25% of all purchased paper.

c. By 1995, 40% of all purchased paper.

**(4) PURCHASE OF RECYCLABLE MATERIALS** A local governmental unit shall, to the extent practicable, make purchasing selections using specifications prepared under s. 16.72 (2) (f).

**(5) LIFE CYCLE COST ESTIMATE** A local governmental unit shall award each order or contract for materials, supplies or equipment on the basis of life cycle cost estimates whenever that action is appropriate. The terms, conditions and evaluation criteria to be applied shall be incorporated into the solicitation of bids or proposals. The life cycle cost formula may include, but is not limited to, the applicable costs of energy efficiency, acquisition and conversion, money, transportation, warehousing and distribution, training, operation and maintenance, and disposition or resale.

History: 1979 c 122; 1989 a 335

**66.30 Intergovernmental cooperation. (1)** (a) In this section "municipality" means the state or any department or agency thereof, or any city, village, town, county, school district, public library system, public inland lake protection and rehabilitation district, sanitary district, farm drainage district, metropolitan sewerage district, sewer utility district, solid waste management system created under s. 59.07 (135), local exposition district created under subch. II of ch. 229, water utility district, mosquito control district, municipal electric company, county or city transit commission, commission created by contract under this section, taxation district or regional planning commission.

(b) If the purpose of the intergovernmental cooperation is the establishment of a joint transit commission, "municipality" means any city, village, town or county.

**(2)** In addition to the provisions of any other statutes specifically authorizing cooperation between municipalities, unless such statutes specifically exclude action under this section, any municipality may contract with other municipalities and with federally recognized Indian tribes and bands in this state, for the receipt or furnishing of services or the joint exercise of any power or duty required or authorized by law. If municipal or tribal parties to a contract have varying powers or duties under the law, each may act under the contract to the extent of its lawful powers and duties. This section shall be interpreted liberally in favor of cooperative action between municipalities and between municipalities and Indian tribes and bands in this state.

**(2g)** Any municipality, housing authority, development authority or redevelopment authority authorized under ss. 66.40 to 66.435:

(a) To issue bonds or obtain other types of financing in furtherance of its statutory purposes may cooperate with any other municipality, housing authority, development authority or redevelopment authority similarly authorized under ss. 66.40 to 66.435 for the purpose of jointly issuing bonds or obtaining other types of financing.

(b) To plan, undertake, own, construct, operate and contract with respect to any housing project in accordance with its statutory purposes under ss. 66.40 to 66.435, may cooperate for the joint exercise of such functions with any other municipality, housing authority, development authority or redevelopment authority so authorized.

**(2m)** (a) The university of Wisconsin may furnish, and school districts may accept, services for educational study and research projects and they may enter into contracts under this section for that purpose.

(b) A group of school districts, if authorized by each school board, may form a nonprofit-sharing corporation to contract with the state or the university of Wisconsin system for the furnishing of the services specified in par. (a).

(c) The corporation shall be organized under ch. 181 and shall have the powers there applicable. Members of the boards specified in par. (b) may serve as incorporators, directors and officers of the corporation.

(d) The property of the corporation shall be exempt from taxation.

(e) The corporation may receive gifts and grants and be subject to their use, control and investment as provided in s. 118.27, and the transfer of the property to the corporation shall be exempt from income, franchise and death taxes.

**(3)** Any such contract may provide a plan for administration of the function or project, which may include, without limitation because of enumeration, provisions as to proration of the expenses involved, deposit and disbursement of funds appropriated, submission and approval of budgets, creation of a commission, selection and removal of commissioners, formation and letting of contracts.

**(3m)** A commission created by contract under sub. (2) may finance the acquisition, development, remodeling, construction and equipment of land, buildings and facilities for regional projects under s. 66.066. Participating municipalities acting jointly or separately may finance such projects, or an agreed share of the cost thereof, under ch. 67.

**(3n)** No commission created by contract under this section is authorized, directly or indirectly, to acquire, construct or lease facilities used or useful in the business of a public utility engaged in production, transmission, delivery or furnishing of heat, light, power, natural gas or communications service, by any method except those set forth under this chapter or ch. 196, 197 or 198.

**(3p)** The authority now or hereafter conferred by law on commissions created by contract under this section shall not include the right, power or authority to establish, lay out, construct, improve, discontinue, relocate, widen or maintain any road or highway outside the corporate limits of a village or city or to acquire lands for such purposes except upon approval of the department of transportation and the county board of the county and the town board of the town in which the road is to be located.

**(4)** Any such contract may bind the contracting parties for the length of time specified therein.

**(5)** Any municipality may contract with municipalities of another state for the receipt or furnishing of services or the joint exercise of any power or duty required or authorized by statute to the extent that laws of such other state or of the United States permit such joint exercise.

(a) Every agreement made under this subsection shall, prior to and as a condition precedent to taking effect, be submitted to the attorney general who shall determine whether the agreement is in proper form and compatible with the laws of this state. The attorney general shall approve any agreement submitted hereunder unless the attorney general finds that it does not meet the conditions set forth herein and details in writing addressed to the concerned municipal governing bodies the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to disapprove an agreement submitted hereunder within 90 days of its submission shall constitute approval thereof. The attorney general, upon submission of an agreement hereunder, shall transmit a copy of the agreement to the governor who shall consult with any state department or agency affected by the agreement. The governor shall forward to the attorney general any comments the governor may have concerning the agreement.

(b) An agreement entered into under this subsection shall have the status of an interstate compact, but in any case or controversy involving performance or interpretation thereof or liability thereunder, the municipalities party thereto shall be real parties in interest and the state may commence an action to recoup or otherwise make itself whole for any damages or liability which it may incur by reason of being joined as a party therein. Such action may be maintained against any municipality whose act or omission caused or contributed to the incurring of damage or liability by the state.

**(6)** (a) In this subsection:



1. "School board" has the meaning designated for the term in s. 115.001 (7).

2. "School district" means a common, union high, unified or 1st class city school district.

(b) Two or more school boards of school districts may by written contract executed by all participants to the contract, own, construct, lease or otherwise acquire school facilities including real estate located within or outside the boundaries of any participating school district.

(c) School district boards entering into a contract under this subsection may, without limitation because of enumeration:

1. Provide for acquisition, construction, operation and administration of a facility, and establish the functions, projects and services to be provided in the facility, including, without limitation because of enumeration, proration of all expenses involved, operational and fiscal management including deposit and disbursement of funds appropriated, designation of the municipal employer for purposes of compliance with s. 111.70, teacher retirement, worker's compensation and unemployment compensation.

2. Purchase real estate and personal property, including a fractional or other interest in the real estate and personal property and enter into leases for sites, building and equipment for a term not exceeding 50 years.

4. Issue municipal obligations subject to the procedures and limitations of ch. 67.

5. Provide the terms and conditions for accepting additional school districts as participants in the plan and for withdrawal from or termination of the contract including apportionment of assets and liabilities.

(d) A contract entered into under this subsection shall at all times be limited to a period of 50 years but may, by mutual written consent of all participants, be modified or extended beyond the initial term.

(f) A contract or any extension of the contract of over 5 years duration which includes a common or union high school district participant shall be approved by the annual or special school district meeting.

(g) At least 30 days prior to entering into a contract under this subsection or a modification or extension of the contract, the school boards of the districts involved or their designated agent shall file the proposed agreement with the state superintendent to enable the state superintendent or state superintendent's designee to assist and advise the school boards involved in regard to the applicable recognized accounting procedure for the administration of the school aid programs. The state superintendent shall review the terms of the proposed contract to ensure that each participating district's interests are protected.

(h) School district boards entering into a contract under this subsection shall designate for each employe providing services under the contract either a school district entering into the contract or a cooperative educational service agency under ch. 116 as the employer for purposes of compliance with s. 111.70, teacher's retirement, worker's compensation and unemployment compensation.

**History:** 1971 c. 143, 152, 211; 1973 c. 301; 1975 c. 123, 228; 1977 c. 26 s. 75; 1977 c. 29 s. 1654 (8) (c); 1977 c. 418; 1979 c. 122; 1981 c. 20, 190, 247, 282, 390; 1983 a. 189 ss. 55, 329 (17); 1983 a. 207; 1985 a. 29, 225; 1987 a. 27, 403; 1989 a. 335; 1991 a. 39, 316; 1993 a. 246, 263, 406.

**NOTE:** 1993 Wis. Act 406, which amends subs. (1) (b) and (2), contains extensive explanatory notes.

Where municipality's power to contract is improperly or irregularly exercised and municipality receives benefit under contract, it is estopped from asserting invalidity of contract. *Village of McFarland v. Town of Dunn*, 82 W (2d) 469, 263 NW (2d) 167.

There is some latitude under this section for counties to contract with municipalities within the county to furnish or supplement certain law enforcement services in the municipality. 58 Atty. Gen. 72.

No legal authority for the creation of a City-County Metropolitan Police Agency exists at present. 60 Atty. Gen. 85.

Cooperative planning among municipalities allowed by 66.30 includes only planning collateral to the organization, implementation and administration of specific projects; authority for general multi-jurisdictional planning is found in 66.945. 60 Atty. Gen. 313.

A county may contract to furnish certain law enforcement services to cities, villages and towns within the county but cannot take over all law enforcement functions. A deputy sheriff may not be designated as a city police chief. 65 Atty. Gen. 47.

County may contract with city for the joint provision of public health nursing services under (2). 66 Atty. Gen. 54.

Voting members of commission created by 2 villages were public officers protected by 895.46 (1). 74 Atty. Gen. 208.

**66.301 One- and 2-family dwelling code.** Ordinances enacted by any county, city, village or town relating to the construction and inspection of one- and 2-family dwellings shall conform to subch. II of ch. 101.

**History:** 1975 c. 404.

**66.302 Manufactured building code.** Ordinances enacted by any county, city, village or town relating to the on-site inspection of the installation of manufactured buildings shall conform to subch. III of ch. 101.

**History:** 1975 c. 405.

**66.303 Multifamily dwelling code. (1)** Except as provided in sub. (2), any ordinance enacted by a county, city, village or town relating to the construction or inspection of multifamily dwellings, as defined in s. 101.971 (2), shall conform to subch. VI of ch. 101 and s. 101.02 (7m).

(2) If a county, city, village or town has a preexisting stricter sprinkler ordinance, as defined in s. 101.975 (3) (a), that ordinance remains in effect and the county, city, village or town may take any action with regard to that ordinance that a political subdivision may take under s. 101.975 (3) (b).

**History:** 1991 a. 269.

**66.304 Family day care homes. (1)** In this section:

(a) "Family day care home" means a dwelling licensed as a day care center by the department of health and social services under s. 48.65 where care is provided for not more than 8 children.

(b) "Municipality" means a county, city, village or town.

(2) No municipality may prevent a family day care home from being located in a zoned district in which a single-family residence is a permitted use. No municipality may establish standards or requirements for family day care homes different from the licensing standards established under s. 48.65. This subsection does not prevent a municipality from applying to a family day care home the zoning regulations applicable to other dwellings in the zoning district in which it is located.

**History:** 1983 a. 193.

**66.305 Law enforcement; mutual assistance.**

(1) Upon the request of any law enforcement agency, including county law enforcement agencies as provided in s. 59.24 (2), the law enforcement personnel of any other law enforcement agency may assist the requesting agency within the latter's jurisdiction, notwithstanding any other jurisdictional provision. For purposes of ss. 895.35 and 895.46, such law enforcement personnel while acting in response to such request, shall be deemed employes of the requesting agency.

(2) The provisions of s. 66.315 shall apply to this section.

**History:** Sup. Ct. Order, 67 W (2d) 585, 774 (1975).

The statutes do not permit the creation of a separate regional law enforcement agency and neither the sheriff nor the county board has power to delegate supervisory or law enforcement powers to such an agency. 63 Atty. Gen. 596.

Request for assistance may be implicit. *United States v. Mattes*, 687 F (2d) 1039 (1982).

**66.31 Agreement to establish an airport affected area.** Any county, town, city or village may establish by written agreement with an airport, as defined in s. 62.23 (6) (am) 1. a.:

(1) The area which will be subject to ss. 59.97 (4g) and (5) (e) 2 and 5m, 60.61 (2) (e) and (4) (c) 1. and 3. and 62.23 (7) (d) 2. and 2m. b. respectively, except that no part of the area may be more than 3 miles from the boundaries of the airport.

(2) Any requirement related to permitting land use in an airport affected area, as defined in s. 62.23 (6) (am) 1. b., which does not conform to the zoning plan or map under s. 59.97 (4g), 60.61

(2) (e) or 62.23 (6) (am) 2. A county, town, city or village may adopt such requirement by ordinance.

History: 1985 a 136.

NOTE: Section 1 of 85 Act 136 is entitled "Findings and purpose".

**66.312 Law enforcement agency policies on use of force and citizen complaint procedures.** (1) **DEFINITION** In this section, "law enforcement agency" has the meaning given under s. 165.83 (1) (b).

(2) **USE OF FORCE POLICY** Each person in charge of a law enforcement agency shall prepare in writing and make available for public scrutiny a policy or standard regulating the use of force by law enforcement officers in the performance of their duties.

(3) **CITIZEN COMPLAINT PROCEDURE** Each person in charge of a law enforcement agency shall prepare in writing and make available for public scrutiny a specific procedure for processing and resolving a complaint by any person regarding the conduct of a law enforcement officer employed by the agency.

History: 1987 a 131.

**66.315 Police, pay when acting outside county or municipality.** (1) Any chief of police, sheriff, deputy sheriff, county traffic officer or other peace officer of any city, county, village or town, who shall be required by command of the governor, sheriff or other superior authority to maintain the peace or who responds to the request of the authorities of another municipality, to perform police or peace duties outside territorial limits of the city, county, village or town where employed as such officer, shall be entitled to the same wage, salary, pension, worker's compensation, and all other service rights for such service as for service rendered within the limits of the city, county, village or town where regularly employed.

(2) All wage and disability payments, pension and worker's compensation claims, damage to equipment and clothing, and medical expense, shall be paid by the city, county, village or town regularly employing such peace officer. Upon making such payment such city, county, village or town shall be reimbursed by the state, county or other political subdivision whose officer or agent commanded the services out of which the payments arose.

History: 1975 c 147 s 54.

**66.32 Extraterritorial powers.** The extraterritorial powers granted to cities and villages by statute, including ss. 30.745, 62.23 (2) and (7a), 66.052, 236.10 and 254.57, may not be exercised within the corporate limits of another city or village. Whenever these statutory extraterritorial powers overlap, the jurisdiction over the overlapping area shall be divided on a line all points of which are equidistant from the boundaries of each municipality concerned so that not more than one municipality shall exercise power over any area.

History: 1981 c 222 s 2; 1993 a 27.

**66.325 Emergency powers.** (1) Notwithstanding any other provision of law to the contrary, the governing body of any city, village or town is empowered to declare, by ordinance or resolution, an emergency existing within the city, village or town whenever conditions arise by reason of war, conflagration, flood, heavy snow storm, blizzard, catastrophe, disaster, riot or civil commotion, acts of God, and including conditions, without limitation because of enumeration, which impair transportation, food or fuel supplies, medical care, fire, health or police protection or other vital facilities of the city, village or town. The period of the emergency shall be limited by the ordinance or resolution to the time during which the emergency conditions exist or are likely to exist.

(2) The emergency power of the governing body conferred under sub. (1) includes the general authority to order, by ordinance or resolution, whatever is necessary and expedient for the health, safety, welfare and good order of the city, village or town in the emergency and includes without limitation because of enumeration the power to bar, restrict or remove all unnecessary traffic, both vehicular and pedestrian, from the local highways, notwith-

standing any provision of chs. 341 to 349 or any other provisions of law. The governing body of the city, village or town may provide penalties for violation of any emergency ordinance or resolution not to exceed a \$100 forfeiture or, in default of payment of the forfeiture, 6 months' imprisonment for each separate offense.

(3) If, because of the emergency conditions, the governing body of the city, village or town is unable to meet with promptness, the chief executive officer or acting chief executive officer of any city, village or town shall exercise by proclamation all of the powers conferred upon the governing body under sub. (1) or (2) which within the discretion of the officer appear necessary and expedient for the purposes herein set forth. The proclamation shall be subject to ratification, alteration, modification or repeal by the governing body as soon as that body can meet, but the subsequent action taken by the governing body shall not affect the prior validity of the proclamation.

History: 1993 a 246.

**66.33 Aids to municipalities for prevention and abatement of water pollution.** (1) As used in this section "municipality" means any city, town, village, town sanitary district, public inland lake protection and rehabilitation district or metropolitan sewerage district.

(2) Any municipality is authorized to apply for and accept grants or any other aid which the United States Government or any agency thereof has authorized or may hereafter authorize to be given or made to the several states of the United States or to any political subdivisions or agencies thereof within the states for the construction of public improvements, including all necessary action preliminary thereto, the purpose of which is to aid in the prevention or abatement of water pollution.

(3) Any municipality is further authorized to accept contributions and other aid from commercial, industrial and other establishments for the purpose of aiding in the prevention or abatement of water pollution and in furtherance of such purpose to enter into contracts and agreements with such commercial, industrial and other establishments covering the following:

(a) The collection, treatment and disposal of sewage and industrial wastes from commercial, industrial and other establishments;

(b) The use and operation by such municipality of sewage collection, treatment or disposal facilities owned by any such commercial, industrial and other establishment;

(c) The coordination of the sewage collection, treatment or disposal facilities of the municipality with the sewage collection, treatment or disposal facilities of any commercial, industrial and other establishment.

(4) When determined by its governing body to be in the public interest any municipality is authorized to enter into and perform contracts, whether long-term or short-term, with any industrial establishment or establishments providing for sewage or other facilities, including the operation thereof, to abate or reduce the pollution of waters caused in whole or in part by discharges of industrial wastes by the industrial establishment or establishments on such terms as may be reasonable and proper.

(5) Any municipality may participate in the state financial assistance program for soil and water resources protection established under s. 144.21, 144.24 or 144.25 and may enter into agreements with the department of natural resources for that purpose. Any municipality may participate in the clean water fund program under ss. 144.241 and 144.2415 and may enter into agreements with the department of administration and the department of natural resources for that purpose. Any county may participate in the state financial assistance program for soil and water resources protection established under s. 92.14 and may enter into agreements with the department of agriculture, trade and consumer protection for that purpose.

(6) Any municipality is authorized to enter into contracts with a nonprofit-sharing corporation for the municipality to design and

construct the projects it will sublease from the department of natural resources pursuant to s. 144.21 (6) (b).

(7) The provisions of this section shall not be construed by way of limitation or restriction of the powers otherwise granted municipalities but shall be deemed as an addition to and a complete alternative to such powers.

History: 1975 c. 197; 1979 c. 34 s. 2102 (39) (d); 1983 a. 532 s. 36; 1987 a. 27, 197, 399, 403; 1989 a. 56, 366.

**66.34 Soil conservation.** Any city, village or town by its governing body or through a committee designated by it for the purpose, may contract to do soil conservation work on privately owned lands but no contract may involve more than \$1,000 for any one person and the amount of work done for any one person may not exceed \$1,000 annually.

History: 1975 c. 312; 1981 c. 317, 346.

**66.345 Special assessments by towns.** Any town board may levy special assessments against lands or interests specially benefited for the amount expended by the town for removal and disposition of dead animals under s. 60.23 (20), soil conservation work under s. 66.34 and for snow removal under s. 86.105. Such levy shall be a lien on the property against which it is levied on behalf of the town from the date of the determination of the assessment by the board. The board shall provide for the collection of the assessments and may establish penalties for payment after the due date, and shall provide that the assessments thereof which are not paid by the date specified shall be extended upon the tax roll as a delinquent tax against the property and all proceedings in relation to collection, return and sale of property for delinquent real estate taxes shall apply to such special assessment.

History: 1983 a. 27; 1983 a. 532 s. 36.

**66.35 Medical waste incinerator fees. (1)** In this section:

(a) "Medical waste incinerator" has the meaning given in s. 159.07 (7) (c) 1. cr.

(b) "Municipality" means a city, village or town.

(2) A municipality may, by ordinance, impose a fee, in accordance with rules promulgated under s. 159.03 (1) (am), on the operator of a medical waste incinerator located in the municipality to cover the costs incurred because of the presence of the medical waste incinerator, including costs of monitoring emissions and of providing periodic notification to residents concerning the medical waste incinerator. The fee imposed under this section may not exceed \$1 per ton of waste that is incinerated at the medical waste incinerator unless the municipality and the operator of the medical waste incinerator agree to a higher fee.

History: 1989 a. 335.

**66.36 Municipal financing; clean water fund project costs.** Subject to the terms and conditions of its financial assistance agreement, a municipality may repay financial assistance costs received from the clean water fund by any lawful method, including any one of the following methods or any combination thereof:

(1) Payment out of its general funds.

(2) Payment out of the proceeds of the sale of obligations issued by it under ch. 67.

(3) Payment out of the proceeds of the sale of public improvement bonds issued by it under s. 66.059.

(4) Payment out of the proceeds of revenue obligations issued by it under s. 66.066.

(5) Payment as provided under s. 66.54 (2) (c), (d) or (e).

(6) Payment as provided under s. 66.076 (1).

History: 1989 a. 366.

**66.365 Aids to municipalities; environmental damage compensation.** The department of natural resources may make grants to any county, city, village or town for the acquisition or development of recreational lands and facilities from moneys

appropriated under s. 20.370 (2) (fq). Use and administration of the grant shall be consistent with any court order issued under s. 147.23 (3). A county, city, village or town which receives a grant under this section is not required to share in the cost of a project under this section.

History: 1979 c. 221; 1981 c. 314; 1985 a. 29 s. 3202 (39); 1989 a. 31.

**66.37 Bounties, local; false certificates. (1)** The governing body of any county, town, city or village may direct that every person who kills any pocket gopher, or any streaked gopher, or any black, brown, gray or Norway rat, commonly known as the house rat or barn rat, or any mole, or any red or grey fox, or any coyote, or any wildcat, or any weasel shall be entitled to a reward as determined by the governing board of any county, town, city or village.

(2) Any person claiming such reward shall exhibit the ears of the gopher or head of any other animal on which a bounty is payable to an officer designated by such governing body in its ordinance or resolution providing for such reward, and present an affidavit to such officer stating that said ears or head are of the animal the person killed, and that the person has not spared the life of any such animal within the person's power to kill. Such officer shall then issue a certificate in the following form:

STATE OF WISCONSIN,

County of \_\_\_\_\_

I, \_\_\_\_\_ (designation of officer), do certify that \_\_\_\_\_ has this day exhibited to me the head (or ears) of \_\_\_\_\_, which (he, she) claims to have killed in said (town, city, village), and that the head (or ears) of said \_\_\_\_\_ was (were) destroyed in my presence, and that the said \_\_\_\_\_ is on presentation of this certificate to the (town, city, village) clerk within 20 days from the date hereof, entitled to an order on the (town, city, village) treasurer for the sum of \_\_\_\_\_ dollars, to be drawn from the general fund of said (town, city, village).

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

\_\_\_\_\_ (Designation of Officer) \_\_\_\_\_

(3) The town, city or village clerk, respectively, shall on the production of the certificate of such officer, issue to the holder thereof an order on the town, city or village treasurer, respectively, for the amount stated in said certificate.

(4) Whenever any county has authorized the reward provided for in this section, the treasurers of the various towns, cities and villages shall, at the close of their accounts on October 30 in each year certify to the county clerk the amount of money expended by their respective towns, cities and villages under this section. Such treasurer shall attach to the certificate an affidavit stating that the account is just and that his or her town, city or village has actually expended the amount therein stated. The certificate and affidavit shall be placed on file in the office of the county clerk and the account shall be audited by the county board and the amount thereof paid to the treasurers of the respective towns, cities and villages from any money in the general fund of the county not otherwise appropriated. The county board may by ordinance provide an alternative method of reimbursement whereby the county clerk may make direct payment to the claimant of the reward allowed by the county upon the presentation of the affidavit and certificate provided in sub. (2).

(5) Any county, city, village, or town clerk or conservation warden who knowingly makes any untrue or false certificate in respect to any animals on which a bounty is paid, and any person who obtains or endeavors to obtain any such certificate from such clerk or conservation warden by false or fraudulent misrepresentation or practices, and any person who knowingly obtains or endeavors to obtain a reward as provided in this section for the killing of any animal that has been raised, reared, harbored or held in captivity by anyone shall be fined not more than \$500 or imprisoned not more than 9 months or both.

History: 1975 c. 91, 199, 365; 1977 c. 224 s. 11; Stats 1977 s. 66.37; 1991 a. 316.

**66.375 Municipal rent control prohibited.** (1) No city, village, town or county may regulate the amount of rent or fees charged for the use of a residential rental dwelling unit.

(2) This section does not prohibit a city, village, town, county or housing authority or the Wisconsin housing and economic development authority from doing any of the following:

(a) Entering into a rental agreement which regulates rent or fees charged for the use of a residential rental dwelling unit it owns or operates.

(b) Entering into an agreement with a private person who regulates rent or fees charged for a residential rental dwelling unit.

History: 1991 a 39

**66.38 Municipal mortgage housing assistance.** (1) DEFINITIONS In this section:

(a) "Debt service" means the amount due of principal, interest and premium for mortgage revenue bonds or revenue bonds issued under this section.

(b) "Dwelling" means any structure used or intended to be used for habitation with up to 2 separate units certified for occupancy by the city. "Dwelling" also means any housing cooperative incorporated under ch. 185.

(c) "Lending institution" means any private business issuing home mortgages.

(d) "Municipality" means any city with a population greater than 75,000.

(e) "Owner-occupied dwelling" means a dwelling in which the owner occupies or will occupy any unit.

(2) ISSUING LOANS. (a) The legislative body of any municipality may adopt a resolution, authorizing the municipality to:

1. Issue mortgage loans with an interest rate less than the lowest rate available at lending institutions within the municipality, for the purchase or construction of any owner-occupied dwelling located within an area described in sub. (3). Financing for rehabilitation or home improvements may be made available as part of these loans.

2. Issue loans to any lending institution within the municipality that agrees to loan the money at designated terms for the purchase, purchase and rehabilitation or construction of any owner-occupied dwelling located within an area described in sub. (3).

3. Foreclose any mortgage and sell the mortgaged property for collection purposes if the mortgagor defaults on the payment of principal and interest of a loan issued under this section.

(b) The resolution shall designate each area in which dwellings are eligible for loans.

(c) No loan may be issued to purchase, purchase and rehabilitate or construct a dwelling that violates applicable provisions of the one- and 2-family dwelling code under ss. 101.60 to 101.66, or that violates any ordinance the municipality adopts regulating the dwelling. If the dwelling is found to be violating the dwelling code or any ordinance after issuance of the loan, the loan shall default. The municipality may require the full loan to become due or may increase the interest rate to the maximum allowable. The municipality may defer imposing a penalty for up to one year after the violation is found to exist.

(3) ELIGIBLE AREAS. Owner-occupied dwellings in any area of the municipality are eligible for loans under this section if any 2 of the following conditions exist:

(a) The median assessed property value of one- and 2-family dwellings in the area is less than or equal to 80% of the median assessed property value of one- and 2-family dwellings in the municipality.

(b) The median family income of the area is less than or equal to 80% of the median family income of the municipality.

(c) The proportion of owner-occupied dwellings in the area is less than or equal to 80% of the proportion of owner-occupied dwellings in the municipality.

(d) The vacancy rate of dwellings in the area is greater than or equal to 120% of the vacancy rate of dwellings in the municipality.

(4) REVENUE BONDING. (a) The governing body of any municipality may issue revenue bonds by resolution, to finance low-interest mortgage loans under this section. The resolution shall state the maximum dollar amount of authorized bonds and the purpose for which the municipality may issue the bonds. The resolution shall state the terms, form and content of the bonds. These bonds may be registered under s. 67.09.

(b) Debt service is payable solely from revenues received from the loans issued under this section. No mortgage revenue bond or revenue bond issued under this section is a debt of the municipality or a charge against the city's general credit or taxing powers. The municipality shall plainly state the provisions of this paragraph on the face of each mortgage revenue bond or revenue bond.

(c) The municipality shall use revenues from payment of the principal and interest of loans issued under this section to pay debt service. The municipality shall use any excess revenues to pay other costs accruing from the issuance of the loans. The municipality shall deposit any remaining revenues in a revolving fund of the municipal treasury, to use for additional loans under this section.

(d) The resolution may authorize appointment of a receiver to collect interest and principal on loans issued under this section for paying debt service, if the municipality defaults on paying debt service.

History: 1979 c. 221; 1983 a 24, 27, 207

**66.39 Veterans' housing authorities.** (1) VETERANS' HOUSING RESEARCH AND STUDIES. In addition to all the other powers, any housing authority created under ss. 66.40 to 66.408 may, within its area of operation, either by itself or in cooperation with the department of veterans affairs, undertake and carry out studies and analyses of veterans' housing needs and of the meeting of such needs and make the results of such studies available to the public and the building, housing and supply industries.

(2) CREATION OF COUNTY VETERANS' HOUSING AUTHORITIES. (a) In each county of the state there is hereby created a public body corporate and politic to be known as the "Veterans' Housing Authority of — County", (Name of County) hereafter called "county authority"; provided, however, that such housing authority shall not transact any business or exercise its powers hereunder until or unless the board of supervisors, hereafter called the "governing body", of such county, by proper resolution, shall determine at any time hereafter that there is need for a veterans' housing authority to function in such county. The governing body shall give consideration as to the need for a veterans' housing authority (1) on its own motion or (2) upon the filing of a petition signed by 25 resident veterans of the county asserting that there is need for a veterans' housing authority to function in such county and requesting that its governing body so declare.

(b) The governing body may adopt a resolution declaring that there is need for a veterans' housing authority in the county whenever it shall find that (1) there is a shortage of safe or sanitary dwelling accommodations for veterans in such county, (2) that such shortage will not be alleviated within a reasonable length of time without the functioning of a veterans' housing authority.

(3) AREA OF OPERATION. The area of operation of the county authority shall include all of the county for which it is created.

(4) PROOF OF POWERS TO ACT. In any suit, action or proceedings involving the validity or enforcement of or relating to any contract of a county authority, such authority shall be conclusively deemed to have become established and authorized to transact business and exercise its powers hereunder upon proof of the adoption of the resolution required by sub. (2) declaring the need for such authority. Each such resolution shall be deemed sufficient if it declares that there is such need for such authority. A copy of such resolution duly certified by the county clerk shall be admissible in evidence in any such action or proceeding.

(5) APPOINTMENT, QUALIFICATIONS AND TENURE OF COMMISSIONERS (a) When the governing body of a county adopts a resolution creating a county veterans' housing authority, said body shall appoint 5 persons as commissioners of the authority created for said county. The commissioners who are first appointed shall be designated to serve for terms of 1, 2, 3, 4 and 5 years, respectively, from the date of their appointment, but thereafter commissioners shall be appointed as aforesaid for a term of office of 5 years, except that all vacancies shall be filled for the unexpired term, such appointments to be made by the official body making the original appointment. A commissioner may be removed by the body which appointed the commissioner by a two-thirds vote of all of the members elected to that body. Commissioners shall be reimbursed for their reasonable expenses incurred in the discharge of their duties. No such commissioner or employe of the authority shall acquire any interest direct or indirect in any housing project or in any property included or planned to be included in any project or have any interest direct or indirect in any contract or proposed contract for insurance, materials or services to be furnished or used in connection with any veterans' housing project. If any commissioner or employe of the authority owns or controls an interest direct or indirect in any property included or planned to be included in any veterans' housing project the commissioner or employe shall immediately disclose the same in writing to the authority and such disclosure shall be entered upon the minutes of the authority. Failure to so disclose such interest shall constitute misconduct in office.

(b) The powers of the county authority shall be vested in the commissioners thereof in office from time to time. A majority of the commissioners of such an authority shall constitute a quorum of such authority for the purpose of conducting its business and exercising its powers and for all other purposes. Action may be taken by a county authority upon a vote of a majority of the commissioners. Meetings of the commissioners of a county authority may be held anywhere within the county.

(c) At the first meeting of the commissioners after their appointment, they shall select one of their members as chairperson and one as secretary. The county treasurer shall be the treasurer of the board. The official bond of the county treasurer shall extend to cover funds of the authority that may be placed in the charge of the county treasurer. The county treasurer shall disburse money of the authority only upon direction of the commissioners. The county treasurer shall receive no compensation for services as treasurer of the board, but shall be entitled to necessary expenses, including traveling expenses incurred in the discharge of the duties of treasurer of the board. When the office of chairperson or secretary of the commissioners becomes vacant for any reason, the commissioners shall select a new chairperson or secretary as the case may be. The commissioners may employ technical experts, and such other officers, agents and employes, permanent or temporary, as it may require, and may call upon the district attorney of the county for such legal services as it may require.

(6) ADVANCES BY MUNICIPALITIES TO COUNTY VETERANS' HOUSING AUTHORITIES. The county, or any village, town or city within the county, shall have the power, from time to time, to lend or donate money to the county authority. Any such advance made as a loan may be made upon the condition that the housing authority shall repay the loan out of any money which becomes available to it for the construction of projects.

(7) POWERS OF COUNTY VETERANS' HOUSING AUTHORITIES. Each county veterans' housing authority and the commissioners thereof shall, within its area of operation, have the following functions, rights, powers, duties, privileges, immunities and limitations:

(a) To provide for the construction, reconstruction, improvement, alteration or repair of any veterans' housing project or any part thereof.

(b) To purchase, lease, obtain options upon and acquire by gift, grant, bequest, devise or otherwise, any real or personal property or interest therein.

(c) To arrange or contract for the furnishing of services, privileges, works, or facilities for, or in connection with, a veterans' housing project, or the occupants thereof.

(d) To lease or rent any dwellings, houses, accommodations, lands, buildings, structures or facilities embraced in any veterans' housing project and, subject to the limitations contained in ss. 66.39 to 66.404, to establish and revise the rents or charges therefor.

(da) To contract for sale and to sell any part or all of the interest in real estate acquired and to execute such contracts of sale and conveyances as the authority may deem desirable.

(e) To acquire by eminent domain any real property, including improvements and fixtures thereon.

(f) To own, hold, clear and improve property, cause property to be surveyed and platted in its name; to insure or provide for the insurance of the property or operations of the authority against such risks as the authority may deem advisable.

(g) In connection with any loan, to agree to limitations upon its right to dispose of any housing project or part thereof.

(h) To invest any funds held in reserve or sinking funds, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control.

(i) To sue and be sued, to have a seal and to alter the same at its pleasure, to have perpetual succession, to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority.

(j) To make and from time to time amend and repeal bylaws, rules and regulations not inconsistent with ss. 66.39 to 66.404, to carry into effect the powers and purposes of the authority.

(L) To exercise all or any part or combination of powers herein granted. No provisions of law with respect to the acquisition or disposition of property by other public bodies shall be applicable to an authority unless the legislature shall specifically so state.

(m) The bonds, notes, debentures or other evidences of indebtedness executed by an authority shall not be a debt or charge against any county, state or other governmental authority, other than against said housing authority itself and its available property, income or other assets in accordance with the terms thereof and of this section, and no individual liability shall attach for any official act done by any member of such authority. No such authority shall have the power to levy any tax or assessment. Provided, however, that for income or franchise tax purposes such bonds, notes, debentures or other evidences of indebtedness shall be deemed obligations of a political subdivision of this state.

(8) LAW APPLICABLE. Except as otherwise provided in this section, s. 66.40 (10) to (21) and (24) (a) to (am) applies to county veterans' housing authorities and to housing projects, bonds, other obligations and rights and remedies of obligees of the authorities, except that bonds of the authorities may not bear interest in excess of 3% per year.

(9) TAX EXEMPTION ON IMPROVEMENTS. Veterans' housing improvements on property of an authority are declared to be public property and as long as the same remain under the jurisdiction of the authority or of bondholders who have proceeded under s. 66.40 (13) to (20) or 66.39 (8), all such improvements shall be exempt from all taxes of the state or any state public body; all real estate owned by an authority shall be assessed at no higher value than it was assessed for the tax year next preceding the date on which any such real estate was acquired by the authority and this provision shall continue in force as long as said real estate is under the jurisdiction of the authority or of bondholders who have proceeded under s. 66.40 (13) to (20) or 66.39 (8), provided, however, that the municipality in which a veterans' housing project is located may fix a sum to be paid annually for the services, improvements or facilities furnished to such project by such municipality which sum shall not exceed the amount of the tax which would be assessable against such improvements if they were not exempt from tax.



**(11) OPERATION NOT FOR PROFIT.** It is declared to be the policy of this state that each housing authority shall operate in an efficient manner so as to provide veterans with permanent housing at the lowest possible cost and that no housing authority shall realize any profit on its operations. Any veteran who occupies a single dwelling unit shall have an option to purchase such unit within 5 years from the date of occupancy at an amount not to exceed the total costs to the housing authority of the land on which said dwelling unit is located, the improvements and the dwelling unit, less a proportionate amount for such allotment as may be received by the authority under s. 20.036 (12), 1953 stats. and s. 45.354, 1953 stats. The purchase contract shall be in such form and on such terms as may be prescribed by the department of veterans affairs. If a veteran occupant desires to exercise an option to purchase granted by this subsection, the veteran occupant shall notify the housing authority in writing of the veteran occupant's intention to exercise that option and the veteran occupant shall be allowed a credit on said purchase price of an amount equal to that portion of the monthly rentals for said unit paid by the veteran occupant that has been credited to or expended for capital retirement or repayment of the principal amount of any mortgage indebtedness, bond indebtedness, or any other indebtedness incurred for the purpose of acquiring the land, improving the land, or constructing the dwelling unit.

**(12) MONTHLY COST OF OCCUPANCY BY A VETERAN.** Each authority with respect to single dwelling unit veterans' housing projects shall, as soon as the total costs of each dwelling unit including land and improvements have been determined by it, set up a monthly cost of occupancy for said unit. Such cost shall include an amount not exceeding \$6 per thousand for interest charges, mortgage insurance and capital retirement or repayment of the principal amount of mortgage indebtedness, bond indebtedness, or any other indebtedness incurred for the purpose of acquiring land, improving the land, or constructing the dwelling unit, and to such basic costs of occupancy may be added the monthly cost of municipal services as determined by the municipality and a reasonable amount for the costs of insurance, operation, maintenance and repair.

**(13) TENANT SELECTION, DISCRIMINATION.** All tenants selected for veterans' housing projects shall be honorably discharged veterans of wars of the United States of America. Selection between veterans shall be made in accordance with rules and regulations promulgated and adopted by the department of veterans affairs which regulation said department is authorized to make and from time to time change as it deems proper. Such rules and regulations, however, shall give veterans of World War II preference over veterans of all other wars. Notwithstanding such rules and regulations or any law to the contrary a veteran shall not be entitled to or be granted any benefits under ss. 66.39 to 66.404 from a housing authority unless such veteran was at the time of induction into military service a resident of the state. Veterans otherwise entitled to any right, benefit, facility or privilege under this section shall not, with reference thereto, be denied them in any manner for any purpose nor be discriminated against because of sex, race, color, creed, sexual orientation or national origin.

**(14) VETERANS' HOUSING.** Veterans' housing projects shall be submitted to the planning commission in the manner provided in s. 66.404 (3).

History: 1971 c. 40 s. 93; 1975 c. 94; 1977 c. 418 s. 929 (55); 1979 c. 110 s. 60 (13); 1979 c. 221; 1981 c. 112; 1983 a. 444 s. 3; 1991 a. 39, 316

### 66.395 Housing authorities for elderly persons.

**(1) SHORT TITLE.** This section may be referred to as the "housing authority for elderly persons law".

**(2) DECLARATION OF NECESSITY.** It is declared that the lack of housing facilities for elderly persons provided by private enterprise in certain areas creates a public necessity to establish such safe and sanitary facilities for which public moneys may be spent and private property acquired. The legislature declares that to pro-

vide public housing for elderly persons is the performance of a governmental function of state concern.

**(2m) DISCRIMINATION.** Persons otherwise entitled to any right, benefit, facility or privilege under this section shall not, with reference thereto, be denied them in any manner for any purpose nor be discriminated against because of sex, race, color, creed, sexual orientation or national origin.

**(3) DEFINITIONS.** As used in this section unless the text clearly indicates otherwise:

(a) "Authority" or "housing authority" means any of the public corporations established pursuant to sub. (4).

(b) "Bonds" mean any bonds, interim certificates, notes, debentures or other obligations of the authority issued pursuant to this section.

(e) "Commissioner" means one of the members of an authority appointed in accordance with this section.

(f) "Community facilities" include real and personal property, and buildings and equipment for recreational or social assemblies, for educational, health or welfare purposes and necessary utilities, when designed primarily for the benefit and use of the housing authority or the occupants of the dwelling accommodations, or for both.

(h) "Council" means the common council of the city.

(i) "Elderly person" means a person who is 62 years of age or older on the date such person intends to occupy the premises, or a family, the head of which, or that person's spouse, is an elderly person as defined herein.

(j) "Federal government" includes the United States of America, the federal emergency administration of public works or any agency, instrumentality, corporate or otherwise, of the United States of America.

(k) "Government" includes the state and federal governments and any subdivision, agency or instrumentality corporate or otherwise of either of them.

(L) 1. "Housing projects" include all real and personal property, building and improvements, stores, offices, lands for farming and gardening, and community facilities acquired or constructed or to be acquired or constructed pursuant to a single plan or undertaking to do any of the following:

a. Demolish, clear, remove, alter or repair insanitary or unsafe housing for elderly persons.

b. Provide safe and sanitary dwelling accommodations for elderly persons.

c. Fulfill a combination of the purposes under subd. 1. a. and b.

2. "Housing project" may also be applied to the planning of buildings and improvements, the acquisition of property, the demolition of existing structures and the construction, reconstruction, alteration and repair of the improvements for the purpose of providing safe and sanitary housing for elderly persons and all other work in connection therewith. A project shall not be considered housing for the elderly unless it contains at least 8 new or rehabilitated living units which are specifically designed for the use and occupancy of persons 62 years of age or over.

(m) "Mortgage" includes deeds of trust, mortgages, building and loan contracts, land contracts or other instruments conveying real or personal property as security for bonds and conferring a right to foreclose and cause a sale thereof.

(n) "Obligee of the authority" or "obligee" includes any bondholder trustee or trustees for any bondholders, any lessor demising property to the authority used in connection with a housing project or any assignee or assignees or such lessor's interest or any part thereof, and the United States of America, when it is a party to any contract with the authority.

(o) "Real property" includes lands, lands under water, structures, and any and all easements, franchises and incorporeal here-

ditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage or otherwise.

(p) "Slum" means any area where dwellings predominate which, by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light or sanitary facilities, or any combination of these factors, are detrimental to safety, health and morals

(q) "State" means the state of Wisconsin.

(r) "State public body" means any city, town, incorporated village, county, municipal corporation, commission, district, authority, other subdivision or public body of the state.

(s) "Trust indenture" includes instruments pledging the revenues of real or personal properties.

**(4) CREATION OF HOUSING AUTHORITIES** (a) When the council of a city by proper resolution declares at any time hereafter that there is need for an authority to function in the city, a public body corporate and politic shall then exist in the city and be known as the "housing authority" of the city. Such authority shall then be authorized to transact business and exercise any powers herein granted to it.

(b) The council shall adopt a resolution declaring that there is need for a housing authority in the city if it finds that there is a shortage of dwelling accommodations in the city available to elderly persons.

(c) In any suit, action or proceeding involving the validity or enforcement of or relating to any contract of the authority, the authority shall be conclusively deemed to have become established and authorized to transact business and exercise its powers hereunder upon proof of the adoption of a resolution by the council declaring the need for the authority. Such resolution or resolutions shall be deemed sufficient if it declares that there is such need for an authority and finds in substantially the foregoing terms (no further detail being necessary) that either or both of the above enumerated conditions exist in the city. A copy of such resolution duly certified by the city clerk shall be admissible evidence in any suit, action or proceeding.

**(5) SECTION 66.40 APPLIES** The provisions of s. 66.40 (5) to (24) (ag), (25) and (26) shall apply to housing authorities and providing housing for elderly persons under this section without reference to the income of such persons.

**(6) SECTIONS 66.401 TO 66.404 APPLY** The provisions of ss. 66.401 to 66.404 shall apply to housing authorities and providing housing for elderly persons under this section without reference to the income of such persons, except as follows:

(a) As set down by the federal housing authority in the case of housing projects to the financing or subsidizing of which it is a party; or

(b) As set down by the Wisconsin housing and economic development authority in accordance with ch. 234 in the case of housing projects to the financing of which it is a party.

**(7) NOT APPLICABLE TO LOW-RENTAL HOUSING PROJECTS** This section shall not apply to projects required to provide low-rental housing only.

**History:** 1975 c. 94, 221; 1977 c. 418 s. 929 (55); 1981 c. 112; 1983 a. 81 s. 11; 1983 a. 83 s. 20; 1983 a. 189; 1983 a. 444 s. 3; 1991 a. 316; 1993 a. 213, 246.

**66.40 Housing authorities. (1) SHORT TITLE** Sections 66.40 to 66.404 may be referred to as the "Housing Authorities Law".

**(2) FINDING AND DECLARATION OF NECESSITY** It is declared that there exist in the state insanitary or unsafe dwelling accommodations and that persons of low income are forced to reside in such insanitary or unsafe accommodations; that within the state there is a shortage of safe or sanitary dwelling accommodations available at rents which persons of low income can afford and that such persons are forced to occupy overcrowded and congested dwelling accommodations; that the aforesaid conditions cause an increase in and spread of disease and crime and constitute a men-

ace to the health, safety, morals and welfare of the residents of the state and impair economic values; that these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident protection, and other public services and facilities; that these slum areas cannot be cleared, nor can the shortage of safe and sanitary dwellings for persons of low income be relieved, through the operation of private enterprise, and that the construction of housing projects for persons of low income would, therefore, not be competitive with private enterprise; that the clearance, replanning and reconstruction of the areas in which insanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which public money may be spent and private property acquired and are governmental functions of state concern; that it is in the public interest that work on such projects be commenced as soon as possible in order to relieve unemployment which now constitutes an emergency; and the necessity in the public interest for the provisions hereinafter enacted, is declared as a matter of legislative determination.

**(2m) DISCRIMINATION** Persons otherwise entitled to any right, benefit, facility or privilege under ss. 66.40 to 66.404 shall not, with reference thereto, be denied them in any manner for any purpose nor be discriminated against because of sex, race, color, creed, sexual orientation or national origin.

**(3) DEFINITIONS** The following terms, wherever used or referred to in ss. 66.40 to 66.404 shall have the following respective meanings, unless a different meaning clearly appears from the context:

(a) "Area of operation" includes the city for which a housing authority is created and the area within five miles of the territorial boundaries thereof but not beyond the county limits of the county in which such city is located and provided further that in the case of all cities the area of operation shall be limited to the area within the limits of such city unless the city shall annex the area of operation, but the area of operation of a housing authority shall not include any area which lies within the territorial boundaries of any city for which another housing authority is created by this section.

(b) "Authority" or "housing authority" means any of the public corporations established pursuant to sub. (4).

(c) "Bonds" shall mean any bonds, interim certificates, notes, debentures or other obligations of the authority issued pursuant to ss. 66.40 to 66.404.

(d) "City" means any city. "The city" means the particular city for which a particular housing authority is created.

(e) "City clerk" and "mayor" shall mean the clerk and mayor, respectively, of the city or the officers thereof charged with the duties customarily imposed on the clerk and mayor respectively.

(f) "Commissioner" shall mean one of the members of an authority appointed in accordance with ss. 66.40 to 66.404.

(g) "Community facilities" shall include real and personal property, and buildings and equipment for recreational or social assemblies, for educational, health or welfare purposes and necessary utilities, when designed primarily for the benefit and use of the housing authority or the occupants of the dwelling accommodations, or for both.

(h) "Contract" shall mean any agreement of an authority with or for the benefit of an obligee whether contained in a resolution, trust indenture, mortgage, lease, bond or other instrument.

(i) "Council" means the council or other body charged with governing the city.

(j) "Federal government" shall include the United States of America, the federal emergency administration of public works or any agency, instrumentality, corporate or otherwise, of the United States of America.

(k) "Government" includes the state and federal governments and any subdivision, agency or instrumentality corporate or otherwise of either of them.

(L) "Housing projects" shall include all real and personal property, building and improvements, stores, offices, lands for farming and gardening, and community facilities acquired or constructed or to be acquired or constructed pursuant to a single plan or undertaking (a) to demolish, clear, remove, alter or repair insanitary or unsafe housing, or (b) to provide safe and sanitary dwelling accommodations for persons of low income, or for a combination of said (a) and (b). The term "housing project" may also be applied to the planning of buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration and repair of the improvements and all other work in connection therewith.

(m) "Mortgage" shall include deeds of trust, mortgages, building and loan contracts, land contracts or other instruments conveying real or personal property as security for bonds and conferring a right to foreclose and cause a sale thereof.

(n) "Obligee of the authority" or "obligee" shall include any bondholder, trustee or trustees for any bondholders, any lessor demising property to the authority used in connection with a housing project or any assignee or assignees or such lessor's interest or any part thereof, and the United States of America, when it is a party to any contract with the authority.

(o) "Persons of low income" means persons or families who lack the amount of income which is necessary (as determined by the authority undertaking the housing project) to enable them, without financial assistance, to live in decent, safe and sanitary dwellings, without overcrowding.

(p) "Real property" shall include lands, lands under water, structures, and any and all easements, franchises and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage or otherwise.

(q) "Slum" means any area where dwellings predominate which, by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light or sanitary facilities, or any combination of these factors, are detrimental to safety, health and morals.

(r) "State" shall mean the state of Wisconsin.

(s) "State public body" means any city, town, incorporated village, county, municipal corporation, commission, district, authority, other subdivision or public body of the state.

(t) "Trust indenture" shall include instruments pledging the revenues of real or personal properties.

**(4) CREATION OF HOUSING AUTHORITIES** (a) When the council of a city by proper resolution shall declare at any time hereafter that there is need for an authority to function in the city, a public body corporate and politic shall then exist in the city and be known as the "housing authority" of the city. Such authority shall then be authorized to transact business and exercise any powers herein granted to it.

(b) The council shall adopt a resolution declaring that there is need for a housing authority in the city if it shall find that insanitary or unsafe inhabited dwelling accommodations exist in the city or that there is a shortage of safe or sanitary dwelling accommodations in the city available to persons of low income at rentals they can afford. In determining whether dwelling accommodations are unsafe or insanitary said council may take into consideration the degree of overcrowding, the percentage of land coverage, the light, air, space and access available to the inhabitants of such dwelling accommodations, the size and arrangement of the rooms, the sanitary facilities, and the extent to which conditions exist in such buildings which endanger life or property by fire or other causes.

(c) In any suit, action or proceeding involving the validity or enforcement of or relating to any contract of the authority, the authority shall be conclusively deemed to have become established and authorized to transact business and exercise its powers hereunder upon proof of the adoption of a resolution by the council declaring the need for the authority. Such resolution or resolu-

tions shall be deemed sufficient if it declares that there is such need for an authority and finds in substantially the foregoing terms (no further detail being necessary) that either or both of the above enumerated conditions exist in the city. A copy of such resolution duly certified by the city clerk shall be admissible evidence in any suit, action or proceeding.

**(5) APPOINTMENT, QUALIFICATIONS AND TENURE OF COMMISSIONERS** (a) When the council of a city adopts a resolution under sub. (4), it shall promptly notify the mayor of such adoption. Upon receiving such notice, the mayor shall, with the confirmation of the council, appoint five persons as commissioners of the authority, except that the mayor of a 1st class city that has created a housing authority before May 5, 1994, shall appoint 7 commissioners, at least 2 of whom shall be residents of a housing project acquired or constructed by the authority. No commissioner may be connected in any official capacity with any political party nor shall more than two be officers of the city in which the authority is created. The powers of each authority shall be vested in the commissioners thereof in office from time to time.

(b) The first 5 commissioners who are first appointed shall be designated by the mayor to serve for terms of 1, 2, 3, 4 and 5 years respectively from the date of their appointment and the 2 additional commissioners appointed by the mayor of a 1st class city under par. (a) shall be first appointed to terms of 3 and 5 years respectively. Thereafter, the term of office shall be 5 years. A commissioner shall hold office until his or her successor has been appointed and has qualified. Vacancies shall be filled for the unexpired term in the same manner as other appointments. Three commissioners shall constitute a quorum, except that in an authority with 7 commissioners, 4 commissioners shall constitute a quorum. The mayor shall file with the city clerk a certificate of the appointment or reappointment of any commissioner and such certificate shall be conclusive evidence of the proper appointment of that commissioner if that commissioner has been confirmed under this paragraph and has taken and filed the official oath before entering office. The council of a city may pay commissioners a per diem and mileage and other necessary expenses incurred in the discharge of their duties at rates established by the council.

(c) When the office of the first chairperson of the authority becomes vacant, the authority shall select a chairperson from among its members. An authority shall select from among its members a vice chairperson, and it may employ a secretary (who shall be executive director), technical experts and such other officers, agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. An authority may call upon the city attorney or chief law officer of the city for such legal services as it may require. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper.

**(6) DUTY OF THE AUTHORITY AND ITS COMMISSIONERS** The authority and its commissioners shall be under a statutory duty to comply or to cause compliance strictly with all provisions of ss. 66.40 to 66.404 and the laws of the state and in addition thereto, with each and every term, provision and covenant in any contract of the authority on its part to be kept or performed.

**(7) INTERESTED COMMISSIONERS OR EMPLOYEES** No commissioner or employe of an authority shall acquire any interest direct or indirect in any housing project or in any property included or planned to be included in any project or have any interest direct or indirect in any contract or proposed contract for insurance, materials or services to be furnished or used in connection with any housing project. If any commissioner or employe of an authority owns or controls an interest direct or indirect in any property included or planned to be included in any housing project, that person shall immediately disclose the same in writing to the authority and such disclosure shall be entered upon the minutes of the authority. Failure to so disclose such interest shall constitute misconduct in office.

**(8) REMOVAL OF COMMISSIONERS** For inefficiency or neglect of duty or misconduct in office, a commissioner of an authority

may be removed by the mayor, but a commissioner shall be removed only after having been given a copy of the charges at least ten days prior to the hearing thereon and had an opportunity to be heard in person or by counsel. In the event of the removal of any commissioner, a record of the proceedings, together with the charges and findings thereon, shall be filed in the office of the city clerk. To the extent applicable, the provisions of s. 17.16 relating to removal for cause shall apply to any such removal.

**(9) POWERS OF AUTHORITY.** An authority shall constitute a public body and a body corporate and politic, exercising public powers, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of ss. 66.40 to 66.404, including the following powers in addition to others herein granted:

(a) Within its area of operation to prepare, carry out, acquire, lease and operate housing projects approved by the council; to provide for the construction, reconstruction, improvement, alteration or repair of any housing project or any part thereof.

(b) To take over by purchase, lease or otherwise any housing project undertaken by any government and located within the area of operation of the authority when approved by the council; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, or otherwise, any real or personal property or any interest therein.

(c) To act as agent for any government in connection with the acquisition, construction, operation or management of a housing project or any part thereof.

(d) To arrange or contract for the furnishing of services, privileges, works, or facilities for, or in connection with, a housing project or the occupants thereof.

(e) To lease or rent any dwellings, houses, accommodations, lands, buildings, structures or facilities embraced in any housing project and (subject to the limitations contained in this section) to establish and revise the rents or charges therefor.

(f) Within its area of operation to investigate into living, dwelling and housing conditions and into the means and methods of improving such conditions; and to engage in research and studies on the subject of housing.

(h) To acquire by eminent domain any real property, including improvements and fixtures thereon.

(i) To own, hold, clear and improve property, to insure or provide for the insurance of the property or operations of the authority against such risks as the authority may deem advisable, to procure insurance or guarantees from the federal government of the payment of any debts or parts thereof secured by mortgages made or held by the authority on any property included in any housing project.

(j) To contract for sale and sell any part or all of the interest in real estate acquired and to execute such contracts of sale and conveyances as the authority may deem desirable.

(k) In connection with any loan, to agree to limitations upon its right to dispose of any housing project or part thereof.

(L) In connection with any loan by a government, to agree to limitations upon the exercise of any powers conferred upon the authority by ss. 66.40 to 66.404.

(m) To invest any funds held in reserve or sinking funds, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control.

(n) To sue and be sued, to have a seal and to alter the same at pleasure, to have perpetual succession, to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority.

(o) To make and from time to time amend and repeal bylaws, rules and regulations not inconsistent with ss. 66.40 to 66.404, to carry into effect the powers and purposes of the authority.

(p) To exercise all or any part or combination of powers herein granted. No provisions of law with respect to the acquisition or

disposition of property by other public bodies shall be applicable to an authority unless the legislature shall specifically so state.

(q) The bonds, notes, debentures or other evidences of indebtedness executed by a housing authority shall not be a debt or charge against any city, county, state or any other governmental authority, other than against the housing authority itself and its available property, income or other assets in accordance with the terms thereof and of this section, and no individual liability shall attach for any official act done by any member of the authority. No such authority shall have any power whatsoever to levy any tax or assessment.

(r) To provide by all means available under ss. 66.40 to 66.404 housing projects for veterans and their families regardless of their income. Such projects shall not be subject to the limitations of s. 66.402.

(s) Notwithstanding the provisions of any law in conflict herewith, the housing authority of any city is expressly authorized to acquire sites, to prepare, to carry out, acquire, lease, construct and operate housing projects to provide temporary dwelling accommodations for families regardless of income who are displaced under ss. 66.40 to 66.43, to further slum clearance, urban redevelopment, blight elimination, and to provide temporary dwelling accommodations for families displaced by reason of any street widening, expressway or other public works project causing the demolition of dwellings.

(t) To participate in an employe retirement or pension system of the city which has declared the need for the authority and to expend funds of the authority for such purpose.

(u) Any 2 or more authorities may join or cooperate with one another in the exercise, either jointly or otherwise, of any or all of their powers for the purpose of financing (including the issuance of bonds, notes or other obligations and giving security therefor), planning, undertaking, owning, constructing, operating or contracting with respect to a housing project located within the area of operation of any one or more of said authorities. For such purpose an authority may by resolution prescribe and authorize any other housing authority, so joining or cooperating with it, to act on its behalf with respect to any or all powers, as its agent or otherwise, in the name of the authority so joining or cooperating or in its own name.

(v) To establish a procedure for preservation of the records of the authority by the use of microfilm, another reproductive device or optical imaging, if authorized under s. 19.21 (4) (c). Any such procedure shall assure that copies of such records that are open to public inspection continue to be available to members of the public requesting them. A photographic reproduction of a record or copy of a record generated from optical disk storage is deemed the same as an original record for all purposes if it meets the applicable standards established in ss. 16.61 and 16.612.

(w) To exercise any powers of a redevelopment authority operating under s. 66.431 if done in concert with a redevelopment authority under a contract under s. 66.30.

**(10) EMINENT DOMAIN.** (a) The authority shall have the right to acquire by eminent domain any real property, including fixtures and improvements, which it may deem necessary to carry out the purposes of ss. 66.40 to 66.404 after the adoption by it of a resolution declaring that the acquisition of the property described therein is in the public interest and necessary for public use. The authority may exercise the power of eminent domain pursuant to ch. 32 or pursuant to any other applicable statutory provisions, now in force or hereafter enacted for the exercise of the power of eminent domain.

(b) At any time at or after the filing for condemnation, and before the entry of final judgment, the authority may file with the clerk of the court in which the petition is filed, a declaration of taking signed by the duly authorized officer or agent of the authority declaring that all or any part of the property described in the petition is to be taken for the use of the authority. The said declaration of taking shall be sufficient as it sets forth: (1) a description of the

property, sufficient for the identification thereof, to which there may be attached a plat or map thereof; (2) a statement of the estate or interest in said property being taken; (3) a statement of the sum of money estimated by the authority to be just compensation for the property taken, which sum shall be not less than the last assessed valuation for tax purposes of the estate or interest in the property to be taken.

(c) From the filing of the said declaration of taking and the deposit in court to the use of the persons entitled thereto of the amount of the estimated compensation stated in said declaration, title to the property specified in said declaration shall vest in the authority and said property shall be deemed to be condemned and taken for the use of the authority and the right to just compensation for the same shall vest in the persons entitled thereto. Upon the filing of the declaration of taking the court shall designate a day (not exceeding 30 days after such filing, except upon good cause shown) on which the person in possession shall be required to surrender possession to the authority.

(d) The ultimate amount of compensation shall be vested in the manner provided by law. If the amount so vested shall exceed the amount so deposited in court by the authority, the court shall enter judgment against the authority in the amount of such deficiency together with interest at the rate of 6 per cent per year on such deficiency from the date of the vesting of title to the date of the entry of the final judgment (subject, however, to abatement for use, income, rents or profits derived from such property by the owner thereof subsequent to the vesting of title in the authority) and the court shall order the authority to deposit the amount of such deficiency in court.

(e) At any time prior to the vesting of title of property in the authority the authority may withdraw or dismiss its petition with respect to any and all of the property therein described.

(f) Upon vesting of title to any property in the authority, all the right, title and interest of all persons having an interest therein or lien thereupon, shall be divested immediately and such persons thereafter shall be entitled only to receive compensation for such property.

(g) Except as hereinabove provided with reference to the declaration of taking, the proceedings shall be as is or may hereafter be provided by law for condemnation, and the deposit in court of the amount estimated by the authority upon a declaration of taking, shall be disbursed as is or may hereafter be provided by law for an award in condemnation proceedings.

(h) Property already devoted to a public use may be acquired, provided that no property belonging to any city or municipality or to any government may be acquired without its consent and that no property belonging to a public utility corporation may be acquired without the approval of the commission or other officer or tribunal, if any there be, having regulatory power over such corporation.

**(11) ACQUISITION OF LAND FOR GOVERNMENT.** The authority may acquire by purchase or by the exercise of its power of eminent domain as aforesaid, any property, real or personal, for any housing project being constructed or operated by a government. The authority upon such terms and conditions, with or without consideration, as it shall determine, may convey title or deliver possession of such property so acquired or purchased to such government for use in connection with such housing project.

**(12) ZONING AND BUILDING LAWS.** All housing projects of an authority shall be subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality in which the housing project is situated.

**(13) TYPES OF BONDS.** (a) An authority shall have power to issue bonds from time to time in its discretion, for any of its corporate purposes. An authority may issue such types of bonds as it may determine, including (without limiting the generality of the foregoing) bonds on which the principal and interest are payable: (1) exclusively from the income and revenues of the housing pro-

ject financed with the proceeds of such bonds, or with such proceeds together with a grant from the federal government in aid of such project; (2) exclusively from the income and revenues of certain designated housing projects whether or not they were financed in whole or in part with the proceeds of such bonds; or (3) from its revenues generally. Any of such bonds may be additionally secured by a pledge of any revenues or (subject to the limitation hereinafter imposed) a mortgage of any housing project, projects or other property of the authority.

(b) Neither the commissioners of the authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof.

(c) The bonds and other obligations of the authority (and such bonds and obligations shall so state on their face) shall not be a debt of any city or municipality located within its boundaries or of the state and neither the state nor any such city or municipality shall be liable thereon, nor in any event shall they be payable out of any funds or properties other than those of the authority.

**(14) FORM AND SALE OF BONDS.** (a) Bonds of an authority shall be authorized by its resolution and may be issued in one or more series and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in the form of coupon bonds or of bonds registered under s. 67.09, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption, with or without premium, as such resolution, its trust indenture or mortgage may provide. Any bond reciting in substance that it has been issued by an authority to aid in financing a housing project to provide dwelling accommodations for persons of low income shall be conclusively deemed, in any suit, action or proceeding involving the validity or enforceability of such bond or the security therefor, to have been issued for a housing project of such character. Bonds of an authority are declared to be issued for an essential public and governmental purpose and to be public instrumentalities and, together with interest thereon and income therefrom, shall be exempt from taxes.

(b) The bonds may be sold at public or private sale as the authority may provide. The bonds may be sold at such price or prices as the authority shall determine.

(c) The bonds shall be executed as provided in s. 67.08 (1).

(d) The authority shall have power out of any funds available therefor to purchase any bonds issued by it at a price not more than the principal amount thereof and the accrued interest; provided, however, that bonds payable exclusively from the revenues of a designated project or projects shall be purchased only out of any such revenues available therefor. All bonds so purchased shall be canceled. This paragraph shall not apply to the redemption of bonds.

(e) Any provision of any law to the contrary notwithstanding, any bonds, interim certificates, or other obligations issued pursuant to ss. 66.40 to 66.404 shall be fully negotiable.

**(15) PROVISIONS OF BONDS, TRUST INDENTURES, AND MORTGAGES.** In connection with the issuance of bonds or the incurring of any obligation under a lease and in order to secure the payment of such bonds or obligations, the authority shall have power:

(a) To pledge by resolution, trust indenture, mortgage (subject to the limitations hereinafter imposed), or other contract all or any part of its rents, fees, or revenues.

(b) To covenant against mortgaging all or any part of its property, real or personal, then owned or thereafter acquired, or against permitting or suffering any lien thereon.

(c) To covenant with respect to limitations on its right to sell, lease or otherwise dispose of any housing project or any part thereof, or with respect to limitations on its right to undertake additional housing projects.



(d) To covenant against pledging all or any part of its rents, fees and revenues to which its right then exists or the right to which may thereafter come into existence or against permitting or suffering any lien thereon.

(e) To provide for the release of property, rents, fees and revenues from any pledge or mortgage, and to reserve rights and powers in, or the right to dispose of, property which is subject to a pledge or mortgage.

(f) To covenant as to the bonds to be issued pursuant to any resolution, trust indenture, mortgage or other instrument and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof.

(g) To provide for the terms, form, registration, exchange, execution and authentication of bonds.

(h) To provide for the replacement of lost, destroyed or mutilated bonds.

(i) To covenant that the authority warrants the title to the premises.

(j) To covenant as to the rents and fees to be charged, the amount to be raised each year or other period of time by rents, fees and other revenues and as to the use and disposition to be made thereof.

(k) To covenant as to the use of any or all of its property, real or personal.

(L) To create or to authorize the creation of special funds in which there shall be segregated (a) the proceeds of any loan or grant or both; (b) all of the rents, fees and revenues of any housing project or projects or parts thereof; (c) any moneys held for the payment of the costs of operations and maintenance of any such housing projects or as a reserve for the meeting of contingencies in the operation and maintenance thereof; (d) any moneys held for the payment of the principal and interest on its bonds or the sums due under its leases or as a reserve for such payments; and (e) any moneys held for any other reserves or contingencies; and to covenant as to the use and disposal of the moneys held in such funds.

(m) To redeem the bonds, and to covenant for their redemption and to provide the terms and conditions thereof.

(n) To covenant against extending the time for the payment of its bonds or interest thereon, directly or indirectly, by any means or in any manner.

(o) To prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given.

(p) To covenant as to the maintenance of its property, the replacement thereof, the insurance to be carried thereon and the use and disposition of insurance moneys.

(q) To vest in an obligee of the authority the right, in the event of the failure of the authority to observe or perform any covenant on its part to be kept or performed, to cure any such default and to advance any moneys necessary for such purpose, and the moneys so advanced may be made an additional obligation of the authority with such interest, security and priority as may be provided in any trust indenture, mortgage, lease or contract of the authority with reference thereto.

(r) To covenant and prescribe as to the events of default and terms and conditions upon which any or all of its bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived.

(s) To covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition or obligation.

(t) To covenant to surrender possession of all or any part of any housing project or projects upon the happening of an event of default (as defined in the contract) and to vest in an obligee the right to take possession and to use, operate, manage and control such housing projects or any part thereof, and to collect and

receive all rents, fees and revenues arising therefrom in the same manner as the authority itself might do and to dispose of the moneys collected in accordance with the agreement of the authority with such obligee.

(u) To vest in a trust or trustees the right to enforce any covenant made to secure, to pay, or in relation to the bonds, to provide for the powers and duties of such trustee or trustees, to limit liabilities thereof and to provide the terms and conditions upon which the trustee or trustees or the holders of bonds or any proportion of them may enforce any such covenant.

(v) To make covenants other than and in addition to the covenants herein expressly authorized, of like or different character.

(w) To execute all instruments necessary or convenient in the exercise of the powers herein granted or in the performance of its covenants or duties, which may contain such covenants and provisions, in addition to those above specified as the government or any purchaser of the bonds of the authority may reasonably require.

(x) To make such covenants and to do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds, or in the absolute discretion of the authority tend to make the bonds more marketable; notwithstanding that such covenants, acts or things may not be enumerated herein; it being the intention hereof to give the authority power to do all things in the issuance of bonds, in the provisions for their security that are not inconsistent with the constitution of the state and no consent or approval of any judge or court shall be required thereof; provided, however, that the authority shall have no power to mortgage all or any part of its property, real or personal, except as provided in sub. (16).

**(16) POWER TO MORTGAGE WHEN PROJECT FINANCED WITH AID OF GOVERNMENT.** In connection with any project financed in whole or in part, or otherwise aided by a government (whether through a donation of money or property, a loan, the insurance or guarantee of a loan, or otherwise), the authority shall also have power to mortgage all or any part of its property, real or personal, then owned or thereafter acquired, to grant security interests in such property, and to issue its note or other obligation as may be required by the government. For purposes of this subsection, "government" includes the Wisconsin housing and economic development authority.

**(17) REMEDIES OF AN OBLIGEE OF AUTHORITY.** An obligee of the authority shall have the right in addition to all other rights which may be conferred on such obligee subject only to any contractual restrictions binding upon such obligee:

(a) By mandamus, suit, action or proceeding in law or equity (all of which may be joined in one action) to compel the authority, and the commissioners, officers, agents or employees thereof to perform each and every term, provision and covenant contained in any contract of the authority, and to require the carrying out of any or all covenants and agreements of the authority and the fulfillment of all duties imposed upon the authority by ss. 66.40 to 66.404.

(b) By suit, action or proceeding in equity to enjoin any acts or things which may be unlawful, or the violation of any of the rights of such obligee of the authority.

(c) By suit, action or proceeding in any court of competent jurisdiction to cause possession of any housing project or any part thereof to be surrendered to any obligee having the right to such possession pursuant to any contract of the authority.

**(18) ADDITIONAL REMEDIES CONFERRABLE BY MORTGAGE OR TRUST INDENTURE.** Any authority shall have power by its trust indenture, mortgage, lease or other contract to confer upon any obligee holding or representing a specified amount in bonds, lease or other obligations, the right upon the happening of an "event of default" as defined in such instrument:

(a) By suit, action or proceeding in any court of competent jurisdiction to obtain the appointment of a receiver of any housing project of the authority or any part or parts thereof. Upon appoint-

ment, a receiver may enter and take possession of such housing project or any part or parts thereof and operate and maintain same, and collect and receive all fees, rents, revenues or other charges thereafter arising therefrom in the same manner as the authority itself might do and shall keep such moneys in a separate account or accounts and apply the same in accordance with the obligations of the authority as the court shall direct.

(b) By suit, action or proceeding in any court of competent jurisdiction to require the authority and the commissioners thereof to account as if it and they were the trustees of an express trust.

**(19) REMEDIES CUMULATIVE** All the rights and remedies hereinabove conferred shall be cumulative and in addition to all other rights and remedies that may be conferred upon such obligee of the authority by law or by any contract with the authority.

**(20) SUBORDINATION OF MORTGAGE TO AGREEMENT WITH GOVERNMENT** The authority may agree in any mortgage made by it that such mortgage shall be subordinate to a contract for the supervision by a government of the operation and maintenance of the mortgaged property and the construction of improvements thereon; in such event, any purchaser or purchasers at a sale of the property of an authority pursuant to a foreclosure of such mortgage or any other remedy in connection therewith shall obtain title subject to such contract.

**(21) CONTRACTS WITH FEDERAL GOVERNMENT** In addition to the powers conferred upon the authority by other provisions of ss. 66.40 to 66.404, the authority is empowered to borrow money or accept grants from the federal government for or in aid of any housing project which such authority is authorized to undertake, to take over any land acquired by the federal government for the construction or operation of a housing project, to take over or lease or manage any housing project constructed or owned by the federal government, and to these ends, to enter into such contracts, mortgages, trust indentures, leases or other agreements as the federal government may require including agreements that the federal government shall have the right to supervise and approve the construction, maintenance and operation of such housing project. It is the purpose and intent of this section to authorize every council to do any and all things necessary to secure the financial aid and the cooperation of the federal government in the undertaking, construction, maintenance and operation of any housing project which the authority is empowered to undertake.

**(22) TAX EXEMPTION AND PAYMENTS IN LIEU OF TAXES** The property of an authority is declared to be public property used for essential public and governmental purposes and such property and an authority shall be exempt from all taxes of the state or any state public body; provided, however, that the city in which a project or projects are located may fix a sum to be paid annually in lieu of such taxes by the authority for the services, improvements or facilities furnished to such project or projects by such city, but in no event shall such sum exceed the amount that would be levied as the annual tax of such city upon such project or projects.

**(23) REPORTS** The authority shall at least once a year file with the mayor of the city a report of its activities for the preceding year.

**(24) BIDS** (a) When a housing authority has the approval of the council for any project authorized under sub. (9) (a) or (b), the authority shall complete and approve plans, specifications and conditions in connection therewith for carrying out such project, and shall then advertise by publishing a class 2 notice, under ch. 985, for bids for all work which the authority must do by contract. The authority is not required to submit for bidding any contract in an amount of \$25,000 or less, but if the estimated cost of the contract is between \$10,000 and \$25,000, the authority shall give a class 2 notice, under ch. 985, of the proposed work before the contract is entered into. A contract subject to bidding shall be awarded to the lowest qualified and competent bidder. Section 66.29 shall apply to such bidding.

(ag) As an alternative to the advertising and bidding procedure under par. (a), an authority may contract under any purchase procedure authorized for the authority by the federal government.

(am) The authority may reject any bid required under par. (a).

(b) An authority may contract for the acquisition of a housing project without submitting the contract for bids as required by par. (a) if:

1. The contract provides for undertaking of the housing project on land not owned at the time of the contract by the authority except the contract may provide for undertaking of the housing project on land acquired and owned by a community development authority for the purpose of ss. 66.405 to 66.425, 66.43, 66.431 or 66.46 if the community development authority is proceeding under this paragraph as provided by s. 66.4325 (4);

2. The contract provides for conveyance or lease of the project to the authority after completion of the project; and

3. The authority invites developers to submit proposals to provide a completed project and evaluates proposals according to site, cost, design, the developer's experience and other criteria specified by the authority.

**(25) LIQUIDATION AND DISPOSAL OF HOUSING PROJECTS** (a) In any city or village the city council or village board by resolution or ordinance, or the electors by referendum under s. 9.20, may provide that the authority shall liquidate and dispose of a particular project or projects held and operated under ss. 66.40 to 66.404 or 66.43.

(b) Whenever liquidation and disposal of a project is provided for under par. (a) the housing authority or other designated agency shall sell such project to the highest bidder after public advertisement, or transfer it to any state public body authorized by law to acquire such project. No such project shall be sold for less than its fair market value as determined by a board of 3 licensed appraisers appointed by the city council or village board.

(c) The arrangements for the liquidation and disposal of a project shall provide for the payment and retirement of all outstanding obligations in connection with the project, together with interest thereon and any premiums prescribed for the redemption of any bonds, notes or other obligations before maturity.

(d) Any proceeds remaining after payment of such obligations under par. (c) shall be distributed in accordance with the federal law applicable at the time of the liquidation and disposal of the project. If no federal law is applicable to the liquidation and disposal of the project all of such remaining proceeds shall be paid to the city or village.

(e) If the highest bid received is insufficient for the payment of all obligations set forth in par. (c) the project shall not be sold unless the city or village provides sufficient additional funds to discharge such obligations.

(f) In order to carry out this subsection an authority or other designated agency shall exercise any option available to it for the payment and redemption of outstanding obligations set forth in par. (c) before maturity, if the city or village provides funds for such payment and redemption.

(g) No actions taken under this subsection shall affect or diminish the rights of any bondholders or other obligees of the authority.

(h) The term "outstanding obligations" or "obligations" as used herein includes bonds, notes or evidences of indebtedness, as well as aids, grants, contributions or loans made by or received from any federal, state or local political government or agency.

**(26) DISSOLUTION OF HOUSING AUTHORITY** Any housing authority may be dissolved upon adoption of an ordinance or resolution by the council or village board concerned declaring that the need therefor no longer exists, that all projects under such authority's jurisdiction have been disposed of, that there are no outstanding obligations or contracts and that no further business remains to be transacted by such authority.

**History:** 1973 c. 172; 1975 c. 94, 221, 350; 1977 c. 418; 1979 c. 89; 1979 c. 110 s. 60 (13); 1979 c. 221; 1981 c. 112, 190, 232; 1983 a. 24; 1983 a. 81 s. 11; 1983 a. 83 s. 20; 1983 a. 189, 444; 1987 a. 27, 163; 1991 a. 316; 1993 a. 172, 184, 268, 379.

The office of county planning and zoning commission member is incompatible with the position of executive director of the county housing authority. OAG 14-93.

**66.401 Housing authorities; operation not for profit.**

(1) It is declared to be the policy of this state that each housing authority shall manage and operate its housing projects in an efficient manner so as to enable it to fix the rentals for dwelling accommodations at the lowest possible rates consistent with its providing decent, safe and sanitary dwelling accommodations, and that no housing authority shall construct or operate any such project for profit, or as a source of revenue to the city.

(2) To this end an authority shall fix the rentals for dwellings in its projects at no higher rates than it shall find to be necessary in order to produce revenues which (together with all other available moneys, revenues, income and receipts of the authority from whatever sources derived) will be sufficient:

(a) To pay, as the same become due, the principal and interest on the bonds of the authority;

(b) To meet the cost of, and to provide for, maintaining and operating the projects (including the cost of any insurance) and the administrative expenses of the authority;

(c) To create (during not less than the 6 years immediately succeeding its issuance of any bonds) a reserve sufficient to meet the largest principal and interest payments which will be due on such bonds in any one year thereafter and to maintain such reserve.

**66.402 Housing authorities; rentals and tenant selection.** (1) In the operation or management of housing projects an authority shall at all times observe the following duties with respect to rentals and tenant selection:

(a) It may rent or lease the dwelling accommodations therein only to persons of low income and at rentals within the financial reach of such persons of low income.

(b) It may rent or lease to a tenant dwelling accommodations consisting of the number of rooms (but no greater number) which it deems necessary to provide safe and sanitary accommodations to the proposed occupants thereof, without overcrowding.

(c) It shall not accept any person as a tenant in any housing project if the person or persons who would occupy the dwelling accommodations have an aggregate annual income in excess of 5 times the annual rental of the quarters to be furnished such person or persons, except that in the case of families with minor dependents such aggregate annual income may exceed 5 times the annual rental of the quarters to be furnished by \$100 for each minor dependent or by an amount equal to the annual income of the minor dependents; in computing the rental for this purpose of selecting tenants, there shall be included in the rental the average annual cost (as determined by the authority) to the occupants, of heat, water, electricity, gas, cooking range and other necessary services or facilities, whether or not the charge for such services and facilities is in fact included in the rental. For the purposes of this subsection, a minor shall mean a person less than 18 years of age.

(2) Nothing contained in the housing authorities law, as hereby amended, shall be construed as limiting the power of an authority:

(a) To invest in an obligee the right, in the event of a default by the authority, to take possession of a housing project or cause the appointment of a receiver thereof, free from all the restrictions imposed by said law, as amended, with respect to rentals, tenant selection, manner of operation, or otherwise; or

(b) Pursuant to s. 66.40 (16) to vest in obligees the right, in the event of a default by the authority, to acquire title to a housing project or the property mortgaged by the housing authority, free from all the restrictions imposed by ss. 66.401 and 66.402.

(3) Subsection (1) (a) and (c) does not apply in the case of housing projects to the financing of which the Wisconsin housing and economic development authority is a party, as to which ch. 234 shall be controlling.

History: 1971 c. 213 s. 5; 1975 c. 221; 1983 a. 81 s. 11; 1983 a. 83 s. 20.

**66.4025 Penalties; evidence.** (1) (a) Any person who secures or assists in securing dwelling accommodations under s. 66.402 by intentionally making false representations in order to receive more than \$1,000 and less than \$2,500 in financial assistance for which the person would not otherwise be entitled shall be fined not more than \$10,000 or imprisoned for not more than 9 months or both.

(b) Any person who secures or assists in securing dwelling accommodations under s. 66.402 by intentionally making false representations in order to receive at least \$2,500 but not more than \$25,000 in financial assistance for which the person would not otherwise be entitled shall be fined not more than \$10,000 or imprisoned for not more than 2 years or both.

(c) Any person who secures or assists in securing dwelling accommodations under s. 66.402 by intentionally making false representations in order to receive more than \$25,000 in financial assistance for which the person would not otherwise be entitled shall be fined not more than \$10,000 or imprisoned for not more than 5 years or both.

(2) Any administrator or employe of an authority under s. 66.402 who receives or solicits any commission or derives or seeks to obtain any personal financial gain through any contract for the rental or lease of dwelling accommodations under s. 66.402 shall be punished under s. 946.13.

(3) Any person who receives assistance for dwelling accommodations under s. 66.402, who has been notified by the authority of the obligation to report an increase in income or assets that would reduce the amount of that assistance and who intentionally fails to notify the authority of the receipt of such income or assets is subject to:

(a) The penalty under sub. (1) (a) if the failure to report results in the receipt of more than \$1,000 and less than \$2,500 in financial assistance for which the person would not otherwise be entitled.

(b) The penalty under sub. (1) (b) if the failure to report results in the receipt of at least \$2,500 but not more than \$25,000 in financial assistance for which the person would not otherwise be entitled.

(c) The penalty under sub. (1) (c) if the failure to report results in the receipt of more than \$25,000 in financial assistance for which the person would not otherwise be entitled.

History: 1987 a. 173, 403.

**66.403 Housing authorities; cooperation in housing projects.** For the purpose of aiding and cooperating in the planning, undertaking, construction or operation of housing projects located within the area in which it is authorized to act, any state public body may upon such terms, with or without consideration, as it may determine:

(1) Dedicate, sell, convey or lease any of its property to a housing authority or the federal government;

(2) Cause parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities, or any other works which it is otherwise empowered to undertake, to be furnished adjacent to or in connection with housing projects;

(3) Cause services to be furnished to the authority of the character which it is otherwise empowered to furnish;

(4) Subject to the approval of the council, furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, roadways, alleys, sidewalks or other places which it is otherwise empowered to undertake;

(5) Enter into agreements, (which may extend over any period, notwithstanding any provision or rule of law to the contrary) with a housing authority or the federal government respecting action to be taken by such state public body pursuant to any of the powers granted by ss. 66.40 to 66.404;

(6) Do any and all things, necessary or convenient to aid and cooperate in the planning, undertaking, construction or operation of such housing projects;

(7) Purchase or legally invest in any of the bonds of a housing authority and exercise all of the rights of any holder of such bonds;

(8) With respect to any housing project which a housing authority has acquired or taken over from the federal government and which the housing authority by resolution has found and declared to have been constructed in a manner that will promote the public interest and afford necessary safety, sanitation and other protection, no state public body shall require any changes to be made in the housing project or the manner of its construction or take any other action relating to such construction;

(9) In connection with any public improvements made by a state public body in exercising the powers herein granted, such state public body may incur the entire expense thereof. Any law or statute to the contrary notwithstanding, any sale, conveyance, lease or agreement provided for in ss. 66.40 to 66.404 may be made by a state public body without appraisal, public notice, advertisement or public bidding.

**66.404 Housing authorities; contracts with city; assistance to counties and municipalities.** (1) **CONTRACTS BETWEEN AUTHORITY AND CITY** In connection with any housing project located wholly or partly within the area in which it is authorized to act, any city may agree with an authority or government that a certain sum (subject to the limitations imposed by s. 66.40 (22)), or that no sum, shall be paid by the authority in lieu of taxes for any year or period of years.

(2) **ADVANCES TO HOUSING AUTHORITY** When any housing authority which is created for any city becomes authorized to transact business and exercise its powers therein, the governing body of the city, may immediately make an estimate of the amount of money necessary for the administrative expenses and overhead of such housing authority during the first year thereafter, and may appropriate such amount to the authority out of any moneys in such city treasury not appropriated to some other purposes. The moneys so appropriated may be paid to the authority as a donation. Any city, town or incorporated village located in whole or in part within the area of operation of a housing authority shall have the power from time to time to lend or donate money to the authority or to agree to take such action. The housing authority, when it has money available therefor, shall make reimbursements for all such loans made to it.

(3) **PROJECT SUBMITTED TO PLANNING COMMISSION** Before any housing project of the character designated in s. 66.40 (9) (a) be determined upon by the authority, or any real estate acquired or agreed to be acquired for such project or the construction of any of the buildings begins or any application made for federal loan or grant for such project, the extent thereof and the general features of the proposed layout indicating in a general way the proposed location of buildings and open spaces shall be submitted to the planning commission, if any, of the city or political subdivision in which the proposed project is located, for the advice of such planning commission upon the proposed location, extent, and general features of the layout.

(4) **COOPERATION WITH CITIES, VILLAGES AND COUNTIES** For the purpose of cooperating with and assisting cities, villages and counties, a housing authority may exercise its powers in the territory within the boundaries of any city, village or county not included in the area in which such housing authority is then authorized to function, or in any designated portion of such territory, after the governing body of such city, village or county, as the case may be, adopts a resolution declaring that there is a need for the authority to function in such territory or in such designated portion thereof. If a housing authority has previously been authorized to exercise its powers in such territory or designated portion, such a resolution shall not be adopted unless such housing authority finds that ultimate economy would thereby be promoted, and such

housing authority shall not initiate any housing project in such territory or designated portion after the adoption of such a resolution.

(6) **CONTROLLING STATUTES** Insofar as ss. 66.40 to 66.404 are inconsistent with any other law, the provisions of ss. 66.40 to 66.404 shall be controlling.

(7) **SUPPLEMENTAL NATURE OF STATUTE** The powers conferred by ss. 66.40 to 66.404 shall be in addition and supplemental to the powers conferred by any other law.

**66.405 Urban redevelopment.** (1) **SHORT TITLE** Sections 66.405 to 66.425 shall be known and may be cited and referred to as the "Urban Redevelopment Law".

(2) **FINDING AND DECLARATION OF NECESSITY** It is declared that in the cities of the state substandard and insanitary areas exist which have resulted from inadequate planning, excessive land coverage, lack of proper light, air and open space, defective design and arrangement of buildings, lack of proper sanitary facilities, and the existence of buildings, which, by reason of age, obsolescence, inadequate or outmoded design, or physical deterioration have become economic or social liabilities, or both; that such conditions are prevalent in areas where substandard, insanitary, outworn or outmoded industrial, commercial or residential buildings prevail; that such conditions impair the economic value of large areas, infecting them with economic blight, and that such areas are characterized by depreciated values, impaired investments, and reduced capacity to pay taxes, that such conditions are chiefly in areas which are so subdivided into small parcels in divided ownerships and frequently with defective titles, that their assembly for purposes of clearance, replanning, rehabilitation and reconstruction is difficult and costly; that the existence of such conditions and the failure to clear, replan, rehabilitate or reconstruct these areas results in a loss of population by the areas and further deterioration, accompanied by added costs to the communities for creation of new public facilities and services elsewhere; that it is difficult and uneconomic for individual owners independently to undertake to remedy such conditions; that it is desirable to encourage owners of property or holders of claims thereon in such areas to join together and with outsiders in corporate groups for the purpose of the clearance, replanning, rehabilitation and reconstruction of such areas by joint action; that it is necessary to create, with proper safeguards, inducements and opportunities for the employment of private investment and equity capital in the clearance, replanning, rehabilitation and reconstruction of such areas; that such conditions require the employment of such capital on an investment rather than a speculative basis, allowing however, the widest latitude in the amortization of any indebtedness created thereby; that such conditions further require the acquisition at fair prices of adequate areas, the gradual clearance of such areas through demolition of existing obsolete, inadequate, unsafe and insanitary buildings and the redevelopment of such areas under proper supervision with appropriate planning, land use and construction policies; that the clearance, replanning, rehabilitation and reconstruction of such areas on a large scale basis are necessary for the public welfare; that the clearance, replanning, reconstruction and rehabilitation of such areas are public uses and purposes for which private property may be acquired; that such substandard and insanitary areas constitute a menace to the health, safety, morals, welfare and reasonable comfort of the citizens of the state; that such conditions require the aid of redevelopment corporations for the purpose of attaining the ends herein recited; that the protection and promotion of the health, safety, morals, welfare and reasonable comfort of the citizens of the state are matters of public concern; and the necessity in the public interest for the provisions hereinafter enacted is hereby declared as a matter of legislative determination.

(2m) **DISCRIMINATION** Persons otherwise entitled to any right, benefit, facility or privilege under ss. 66.405 to 66.425 shall not, with reference thereto, be denied them in any manner for any

purpose nor be discriminated against because of sex, race, color, creed, sexual orientation or national origin.

(3) **DEFINITIONS.** The following terms, as used in ss. 66.405 to 66.425, shall, unless a different intent clearly appears from the context, be construed as follows:

(a) "Area" means a portion of a city which its planning commission finds to be substandard or insanitary, so that the clearance, replanning, rehabilitation or reconstruction thereof is necessary or advisable to effectuate the public purposes declared in sub. (2); and may include any buildings or improvements not in themselves substandard or insanitary, and any real property, whether improved or unimproved, the inclusion of which is deemed necessary for the effective clearance, replanning, reconstruction or rehabilitation of the area of which such buildings, improvements or real property form a part; and also includes vacant land which is in such proximity to other land or structures so as to impair the economic value thereof.

(c) "City" shall mean any city in the state.

(d) "Development" shall mean a specific work, repair or improvement to put into effect a development plan and shall include the real property, buildings and improvements owned, constructed, managed or operated by a redevelopment corporation.

(e) "Development area" shall mean that portion of an area to which a development plan is applicable.

(f) "Development cost" shall mean the amount determined by the planning commission to be the actual cost of the development, or of the part thereof for which such determination is made, and shall include, among other costs, the reasonable costs of planning the development, including preliminary studies and surveys, neighborhood planning, and architectural and engineering services, legal and incorporation expense, the actual cost, if any, of alleviating hardship to families occupying dwelling accommodations in the development area where such hardship results from the execution of the development plan, the reasonable costs of financing the development, including carrying charges during construction, working capital in an amount not exceeding 5 per cent of development cost, the actual cost of the real property included in the development, the actual cost of demolition of existing structures, the actual cost of utilities, landscaping and roadways, the amount of special assessments subsequently paid, the actual cost of construction, equipment and furnishing of buildings and improvements, including architectural, engineering and builder's fees, the actual cost of reconstruction, rehabilitation, remodeling or initial repair of existing buildings and improvements, reasonable management costs until the development is ready for use, and the actual cost of improving that portion of the development area which is to remain as open space, together with such additions to development cost as shall equal the actual cost of additions to or changes in the development in accordance with the original development plan or after approved changes in or amendments thereto.

(g) "Development plan" shall mean a plan for the redevelopment of all or any part of an area, and shall include any amendments thereto approved in accordance with the requirements of s. 66.407 (1).

(h) "Local governing body" shall mean the board of alderpersons, common council, council, commission or other board or body vested by the charter of the city or other law with jurisdiction to adopt or enact ordinances or local laws.

(n) "Mortgage" shall mean a mortgage, trust indenture, deed of trust, building and loan contract or other instrument creating a lien on real property, and the indebtedness secured by each of them.

(o) "Neighborhood unit" shall mean a primarily residential district having the facilities necessary for well-rounded family living, such as schools, parks, playgrounds, parking areas and local shopping districts.

(p) "Planning commission" shall mean the official bureau, board, commission or agency of the city established under the general city law or under a general or special charter and authorized to prepare, adopt and amend or modify a master plan for the development of the city.

(q) "Real property" shall include lands, buildings, improvements, land under water, waterfront property, and any and all easements, franchises and hereditaments, corporeal or incorporeal, and every estate, interest, privilege, easement, franchise and right therein, or appurtenant thereto, legal or equitable, including rights-of-way, terms for years and liens, charges, or incumbrances by mortgage, judgment or otherwise.

(r) "Redevelopment" shall mean the clearance, replanning, reconstruction or rehabilitation of an area or part thereof, and the provision of such industrial, commercial, residential or public structures or spaces as may be appropriate, including recreational and other facilities incidental or appurtenant thereto.

(s) "Redevelopment corporation" shall mean a corporation carrying out a redevelopment plan under ss. 66.405 to 66.425.

History: 1975 c. 94; 1981 c. 112; 1989 a. 31; 1993 a. 184.

#### **66.406 Urban redevelopment; plans, approval.**

(1) A development plan shall contain such information as the planning commission shall, by rule or regulation require, including:

(a) A metes and bounds description of the development area;

(b) A statement of the real property in the development area fee title to which the city proposes to acquire and a statement of the interests to be acquired in any other real property by the city;

(c) A statement of the various stages, if more than one is intended, by which the development is proposed to be constructed or undertaken, and the time limit for the completion of each stage, together with a metes and bounds description of the real property to be included in each stage;

(d) A statement of the existing buildings or improvements in the development area, to be demolished immediately, if any;

(e) A statement of the existing buildings or improvements, in the development area not to be demolished immediately, if any, and the approximate period of time during which the demolition, if any, of each such building or improvement is to take place;

(f) A statement of the proposed improvements, if any, to each building not to be demolished immediately, any proposed repairs or alterations to such building, and the approximate period of time during which such improvements, repairs or alterations are to be made;

(g) A statement of the type, number and character of each new industrial, commercial, residential or other building or improvement to be erected or made; and a statement of the maximum limitations upon the bulk of such buildings or improvements to be permitted at various stages of the development plan;

(h) A statement of those portions, if any, of the development area which may be permitted or will be required to be left as open space, the use to which each such open space is to be put, the period of time each such open space will be required to remain an open space and the manner in which it will be improved and maintained, if at all;

(i) A statement of the proposed changes, if any, in zoning ordinances or maps, necessary or desirable for the development and its protection against blighting influences;

(j) A statement of the proposed changes, if any, in streets or street levels and any proposed street closings;

(k) A statement of the character of the existing dwelling accommodations, if any, in the development area, the approximate number of families residing therein, together with a schedule of the rentals being paid by them, and a schedule of the vacancies in such accommodations, together with the rental demanded therefor;



(L) A statement of the character, approximate number of units, approximate rentals and approximate date of availability of the proposed dwelling accommodations, if any, to be furnished during construction and upon completion of the development;

(m) A statement of the proposed method of financing the development, in sufficient detail to evidence the probability that the redevelopment corporation will be able to finance or arrange to finance the development;

(n) A statement of persons who it is proposed will be active in or associated with the management of the corporation during a period of at least one year from the date of the approval of the development plan.

(o) The development plan, and any application to the planning commission or local governing body for approval thereof, may contain in addition such other statements or material as may be deemed relevant by the proposer thereof, including suggestions for the clearance, replanning, reconstruction or rehabilitation of one or more areas which may be larger than the development area but which include it, and any other provisions for the redevelopment of such area or areas.

(2) No development shall be actually initiated until the adoption of a resolution of approval of the development plan therefor by both the planning commission and the local governing body.

(3) The planning commission may approve a development plan after a public hearing, and shall determine:

(a) That the area within which the development area is included is substandard or insanitary and that the redevelopment of the development area in accordance with the development plan is necessary or advisable to effectuate the public purposes declared in s. 66.405 (2); if the area is comprised of vacant land it shall be established that such vacant land impairs the economic value of surrounding areas in accordance with the general purposes expressed in s. 66.405 (2);

(b) That the development plan is in accord with the master plan, if any, of the city;

(c) That the development area is not less than 100,000 square feet in area, except that it may be smaller in area when undertaken in connection with a public improvement, but in any event of sufficient size to allow its redevelopment in an efficient and economically satisfactory manner and to contribute substantially to the improvement of the area in which the development is located; but whenever the local governing body makes a finding to the effect that an area is in urgent need of development, and that such development will contribute to the progress and expansion of an area whose economic growth is vital to the community, then in such instance the development area shall not be less than 25,000 square feet subject to the requirements of par. (d);

(d) That the various stages, if any, by which the development is proposed to be constructed or undertaken, as stated in the development plan, are practicable and in the public interest and where the area to be developed consists either of vacant land or of substandard or insanitary buildings or structures as provided in s. 66.405 (3) (a), and such area is less than 100,000 square feet but more than 25,000 square feet as provided in par. (c) then the new structures to be constructed on such vacant land shall not be less than 1,000,000 cubic feet in area;

(e) That the public facilities based on whether the development be a residential, industrial or commercial one are presently adequate or will be adequate at the time that the development is ready for use to serve the development area;

(f) That the proposed changes, if any, in the city map, in zoning ordinances or maps and in streets and street levels, or any proposed street closings, are necessary or desirable for the development and its protection against blighting influences and for the city as a whole;

(g) Upon data submitted by or on behalf of the redevelopment corporation, or upon data otherwise available to the planning commission, that there will be available for occupation by families, if any, then occupying dwelling accommodations in the

development area legal accommodations at substantially similar rentals in the development area or elsewhere in a suitable location in the city, and that the carrying into effect of the development plan will not cause undue hardship to such families. The notice of the public hearing to be held by the planning commission prior to approval by it of the development plan shall contain separate statements to the effect that before the development plan is approved, the planning commission must make the determination required in this paragraph, and that if the development plan is approved, real property in the development area is subject to condemnation.

(h) Any such determination upon approval by the local governing body, shall be conclusive evidence of the facts so determined except upon proof of fraud or wilful misfeasance. In arriving at such determination, the planning commission shall consider only those elements of the development plan relevant to such determination under pars. (a) to (g) and to the type of development which is physically desirable for the development area concerned from a city planning viewpoint, and from a neighborhood unit viewpoint if the development plan provides that the development area is to be primarily residential.

(4) The local governing body, by a two-thirds vote of the members elect thereof, may approve a development plan, but no resolution of approval shall be adopted by it unless and until the planning commission shall first have approved thereof and there has been filed with the local governing body the development plan; the determination by the planning commission, and unless and until the local governing body shall determine:

(a) That the proposed method of financing the development is feasible and that it is probable that the redevelopment corporation will be able to finance or arrange to finance the development.

(b) That the persons who it is proposed will be active in or associated with the management of the redevelopment corporation during a period of at least one year from the date of the approval of the development plan have sufficient ability and experience to cause the development to be undertaken, consummated and managed in a satisfactory manner.

(c) Any such determination shall be conclusive evidence of the facts so determined except upon proof of fraud or wilful misfeasance. In considering whether or not a resolution of approval of the development plan shall be adopted, the local governing body shall consider those elements of the development plan relevant to such determination under pars. (a) and (b).

(5) The planning commission and the local governing body, by a two-thirds vote of the members elect thereof, may approve an amendment or amendments to a development plan, but no such amendment to a development plan which has theretofore been approved by the planning commission and the local governing body shall be approved unless and until an application therefor has been filed with the planning commission by the redevelopment corporation containing that part of the material required by sub. (1) which shall be relevant to the proposed amendment, and unless and until the planning commission and the local governing body shall make the determinations required by sub. (3) or (4) which shall be relevant to the proposed amendment.

(6) The planning commission and the local governing body may, for the guidance of prospective proponents of development plans, fix general standards to which a development plan shall conform. Variations from such standards may be allowed for the accomplishment of the purposes of ss. 66.405 to 66.425. Such standards may contain provisions more restrictive than those imposed by applicable planning, zoning, sanitary and building laws, ordinances and regulations.

(7) Local housing authorities organized under ss. 66.40 to 66.404, redevelopment authorities organized under s. 66.431, and community development authorities organized under s. 66.4325 may render such advisory services in connection with the preliminary surveys, studies and preparation of a development plan as may be requested by the city planning commission or the local

governing body and charge fees for such services based on the actual cost thereof.

(8) Notwithstanding any other provision of law, the local legislative body may designate, by ordinance or resolution, the local housing authority, the local redevelopment authority, or both jointly, or the local community development authority, to perform all acts, except the development of the general plan of the city, which are otherwise performed by the planning commission under ss. 66.405 to 66.425.

History: 1975 c. 311.

**66.407 Redevelopment corporations; limitations; incubator. (1)** No redevelopment corporation shall:

(a) Undertake any clearance, reconstruction, improvement, alteration or construction in connection with any development until the approvals required by s. 66.406 have been made;

(b) Change, alter, amend, add to or depart from the development plan until the planning commission and the local governing body have approved that portion of such change, alteration, amendment, addition or departure relevant to the determination required to be made by it as set forth in s. 66.406;

(c) After a development has been commenced, sell, transfer or assign any real property in the development area without first obtaining the consent of the local governing body, which consent may be withheld only if the sale, transfer or assignment is made for the purpose of evading the provisions of ss. 66.405 to 66.425;

(d) Pay as compensation for services to, or enter into contracts for the payment of compensation for services to, its officers or employes in an amount greater than the limit thereon contained in the development plan, or in default thereof, then in an amount greater than the reasonable value of the services performed or to be performed by such officers or employes;

(e) Lease an entire building or improvement in the development area to any person or corporation without obtaining the approval of the local governing body which may be withheld only if the lease is being made for the purpose of evading the provisions of ss. 66.405 to 66.425;

(f) Mortgage any of its real property without obtaining the approval of the local governing body;

(g) Make any guarantee without obtaining the approval of the local governing body;

(h) Dissolve without obtaining the approval of the local governing body, which may be given upon such conditions as said body may deem necessary or appropriate to the protection of the interest of the city in the proceeds of the sale of the real property as to any property or work turned into the development by the city. Such approval is to be indorsed on the certificate of dissolution and such certificate is not to be filed in the office of the secretary of state in the absence of such indorsement;

(i) Reorganize without obtaining the approval of the local governing body.

(2) (a) In this subsection:

1. "Arts incubator" has the meaning given in s. 44.60(1)(a).

2. "Technology-based incubator" has the meaning given in s. 560.14(1)(h).

(b) A redevelopment corporation may do all of the following:

1. Study the feasibility and initial design for an arts incubator in the development area where the redevelopment corporation operates.

2. Develop and operate an arts incubator in the development area where the redevelopment corporation operates.

3. Apply for a grant or loan under s. 44.60 in connection with an arts incubator.

(c) A redevelopment corporation may, if consistent with a development plan, do all of the following:

1. Study the feasibility and initial design for a technology-based incubator in the development area where the redevelopment corporation operates.

2. Develop and operate a technology-based incubator in the development area where the redevelopment corporation operates.

3. Apply for a grant under s. 560.14(3) in connection with a technology-based incubator.

History: 1981 c. 314; 1989 a. 31; 1993 a. 16.

**66.408 Urban redevelopment; regulation of corporations. (1)** APPLICATION OF OTHER CORPORATION LAWS TO REDEVELOPMENT CORPORATIONS The provisions of the general corporation law as presently in effect and as hereafter from time to time amended, shall apply to redevelopment corporations, except where such provisions are in conflict with the provisions of ss. 66.405 to 66.425.

(2) CONSIDERATION FOR ISSUANCE OF STOCK, BONDS OR INCOME DEBENTURES No redevelopment corporation shall issue stocks, bonds or income debentures, except for money or property actually received for the use and lawful purposes of the corporation or services actually performed for the corporation.

(3) DETERMINATION OF DEVELOPMENT COST. (a) Upon the completion of a development a redevelopment corporation shall, or upon the completion of a principal part of a development a redevelopment corporation may, file with the planning commission an audited statement of the development cost thereof. Within a reasonable time after the filing of such statement, the planning commission shall determine the development cost applicable to the development or such portion thereof and shall issue to the redevelopment corporation a certificate stating the amount thereof as so determined.

(b) A redevelopment corporation may, at any time, whether prior or subsequent to the undertaking of any contract or expense, apply to the planning commission for a ruling as to whether any particular item of cost therein may be included in development cost when finally determined by the planning commission, and the amount thereof. The planning commission shall, within a reasonable time after such application, render a ruling thereon, and in the event that it shall be ruled that any item of cost may be included in development cost, the amount thereof as so determined shall be so included in development cost when finally determined.

(4) REGULATION OF REDEVELOPMENT CORPORATIONS A redevelopment corporation shall:

(a) Furnish to the planning commission from time to time, as required by it, but with respect to regular reports not more often than once every 6 months, such financial information, statements, audited reports or other material as such commission shall require, each of which shall conform to such standards of accounting and financial procedure as the planning commission may by general regulation prescribe.

(b) Establish and maintain such depreciation and other reserves, surplus and other accounts as the planning commission reasonably requires.

**66.41 Urban redevelopment; limitation on payment of interest and dividends.** No redevelopment corporation shall pay any interest on its income debentures or dividends on its stock during any dividend year, unless there shall exist at the time of any such payment no default under any amortization requirements with respect to its indebtedness.

**66.411 Urban redevelopment; enforcement of duties.** Whenever a redevelopment corporation shall not have substantially complied with the development plan within the time limits for the completion of each stage thereof as therein stated, reasonable delays caused by unforeseen difficulties excepted, or shall do, permit to be done or fail or omit to do anything contrary to or required of it, as the case may be, by ss. 66.405 to 66.425, or shall be about so to do, permit to be done or fail or omit to have done, as the case may be, then any such fact may be certified by the planning commission to the city attorney of the city, who may thereupon commence a proceeding in the circuit court of the county in which the city is in whole or in part situated in the name

of the city for the purpose of having such action, failure or omission, or threatened action, failure or omission, established by order of the court or stopped, prevented or otherwise rectified by mandamus, injunction or otherwise. Such proceeding shall be commenced by a petition to the circuit court alleging the violation complained of and praying for appropriate relief. It shall thereupon be the duty of the court to specify the time, not exceeding 20 days after service of a copy of the petition, within which the redevelopment corporation complained of must answer the petition. The court, shall, immediately after a default in answering or after answer, as the case may be, inquire into the facts and circumstances in such manner as the court shall direct without other or formal proceedings, and without respect to any technical requirements. Such other persons or corporations as it shall seem to the court necessary or proper to join as parties in order to make its order or judgment effective may be joined as parties. The final judgment or order in any such action or proceeding shall dismiss the action or proceeding or establish the failure complained of or direct that a mandamus order, or an injunction, or both, issue, or grant such other relief as the court may deem appropriate.

**66.412 Urban redevelopment; transfer of land.** Notwithstanding any requirement of law to the contrary or the absence of direct provision therein in the instrument under which a fiduciary is acting, every executor, administrator, trustee, guardian or other person, holding trust funds or acting in a fiduciary capacity, unless the instrument under which such fiduciary is acting expressly forbids, the state, its subdivisions, cities, all other public bodies, all public officers, corporations organized under or subject to the provisions of the banking law, the commissioner of banking as conservator, liquidator or rehabilitator of any such person, partnership or corporation, persons, partnerships and corporations organized under or subject to the provisions of the banking law, the commissioner of insurance as conservator, liquidator or rehabilitator of any such person, partnership or corporation, any of which owns or holds any real property within a development area, may grant, sell, lease or otherwise transfer any such real property to a redevelopment corporation, and receive and hold any cash, stocks, income debentures, mortgages, or other securities or obligations, secured or unsecured, exchanged therefor by such redevelopment corporation, and may execute such instruments and do such acts as may be deemed necessary or desirable by them or it and by the redevelopment corporation in connection with the development and the development plan.

**66.413 Urban redevelopment; acquisition of land.**

(1) A redevelopment corporation may whether before or after the development plan has been approved, acquire real property or secure options in its own name or in the name of nominees to acquire real property, by gift, grant, lease, purchase or otherwise.

(2) A city may, upon request by the redevelopment corporation, acquire, or obligate itself to acquire, for such redevelopment corporation any real property included in such certificate of approval of condemnation, by gift, grant, lease, purchase, condemnation, or otherwise, according to the provisions of any appropriate general, special or local law applicable to the acquisition of real property by the city. Real property acquired by a city for a redevelopment corporation shall be conveyed by such city to the redevelopment corporation upon payment to the city of all sums expended or required to be expended by the city in the acquisition of such real property, or leased by such city to such corporation, all upon such terms as may be agreed upon between the city and the redevelopment corporation to carry out the purposes of ss. 66.405 to 66.425.

(3) The provisions of ss. 66.405 to 66.425 with respect to the condemnation of real property by a city for a redevelopment corporation shall prevail over the provisions of any other general, special or local law.

**66.414 Urban redevelopment; condemnation for.**

(1) Condemnation proceedings for a redevelopment corporation

shall be initiated by a petition to the city to institute proceedings to acquire for the redevelopment corporation any real property in the development area. Such petition shall be granted or rejected by the local governing body, and the resolution or resolutions granting such petition shall contain a requirement that the redevelopment corporation shall pay to the city all sums expended or required to be expended by the city in the acquisition of such real property, or for any real property to be conveyed to the corporation by the city in connection with the plan, and the time of payment and manner of securing payment thereof, and may require that the city shall receive, before proceeding with the acquisition of such real property, such assurances as to payment or reimbursement by the redevelopment corporation, or otherwise, as the city may deem advisable. Upon the passage of a resolution or resolutions by the local governing body granting the petition, the redevelopment corporation shall cause to be made 3 copies of surveys or maps of the real property described in the petition, one of which shall be filed in the office of the redevelopment corporation, one in the office of the city attorney of the city, and one in the office in which instruments affecting real property in the county are recorded. The filing of such copies of surveys or maps shall constitute the acceptance by the redevelopment corporation of the terms and conditions contained in such resolution or resolutions. The city may conduct any condemnation proceedings either under ch. 32 or at its option, under other laws applicable to such city. When title to the real property shall have vested in the city, it shall convey or lease the same, with any other real property to be conveyed or leased to the corporation by the city in connection with said plan, to the redevelopment corporation upon payment by the redevelopment corporation of the sums and the giving of the security required by the resolution granting the petition.

(2) The following provisions shall apply to any proceedings for the assessment of compensation and damages for real property in a development area taken or to be taken by condemnation for a redevelopment corporation:

(a) For the purpose of ss. 66.405 to 66.425, the award of compensation shall not be increased by reason of any increase in the value of the real property caused by the assembly, clearance or reconstruction, or proposed assembly, clearance or reconstruction for the purposes of ss. 66.405 to 66.425 of the real property in the development area. No allowance shall be made for improvements begun on real property after notice to the owner of such property of the institution of the proceedings to condemn such property.

(b) Evidence shall be admissible bearing upon the insanitary, unsafe or substandard condition of the premises, or the illegal use thereof, or the enhancement of rentals from such illegal use, and such evidence may be considered in fixing the compensation to be paid, notwithstanding that no steps to remedy or abate such conditions have been taken by the department or officers having jurisdiction. If a violation order is on file against the premises in any such department, it shall constitute prima facie evidence of the existence of the condition specified in such order.

(c) If any of the real property in the development area which is to be acquired by condemnation has, prior to such acquisition, been devoted to another public use, it may nevertheless be acquired provided that no real property belonging to the city or to any other governmental body, or agency or instrumentality thereof, corporate or otherwise, may be acquired without its consent. No real property belonging to a public utility corporation may be acquired without the approval of the commission or other officer or tribunal having regulatory power over such corporation.

(d) Upon the trial a statement, affidavit, deposition, report, transcript of testimony in an action or proceeding, or appraisal made or given by any owner or prior owner of the premises taken, or by any person on the owner's or prior owner's behalf, to any court, governmental bureau, department or agency respecting the value of the real property for tax purposes, shall be relevant, material and competent upon the issue of value of damage and shall be admissible on direct examination.

(e) The term "owner", as used in this section, shall include a person having an estate, interest or easement in the real property to be acquired or a lien, charge or incumbrance thereon.

History: 1991 a 316

**66.415 Urban redevelopment; continued use of land by prior owner.**

(1) When title to real property has vested in a redevelopment corporation or city by gift, grant, devise, purchase or in condemnation proceedings or otherwise, the redevelopment corporation or city, as the case may be, may agree with the previous owners of such property, or any tenants continuing to occupy or use it, or any other persons who may occupy or use or seek to occupy or use such property, that such former owner, tenant or other persons may occupy or use such property upon the payment of a fixed sum of money for a definite term or upon the payment periodically of an agreed sum of money. Such occupation or use shall not be construed as a tenancy from month to month, nor require the giving of notice by the redevelopment corporation or the city, as the case may be, for the termination of such occupation or use or the right to such occupation or use, but immediately upon the expiration of the term for which payment has been made the redevelopment corporation or city, as the case may be, shall be entitled to possession of the real property and may maintain summary proceedings, obtain a writ of assistance, and shall be entitled to such other remedy as may be provided by law for obtaining immediate possession thereof. A former owner, tenant or other person occupying or using such property shall not be required to give notice to the redevelopment corporation or city, as the case may be, at the expiration of the term for which that person has made payment for such occupation or use, as a condition to that person's cessation of occupation or use and termination of liability therefor.

(2) In the event that a city has acquired real property for a redevelopment corporation, the city shall, in transferring title to the redevelopment corporation, deduct from the consideration or other moneys which the redevelopment corporation has become obligated to pay to the city for such purpose, and credit the redevelopment corporation with, the amounts received by the city as payment for temporary occupation and use of the real property by a former owner, tenant, or other person, as in this section provided, less the cost and expense incurred by the city for the maintenance and operation of such real property.

History: 1991 a 316

**66.416 Urban redevelopment; borrowing; mortgages.** (1) Any redevelopment corporation may borrow funds and secure the repayment thereof by mortgage. Every such mortgage shall contain reasonable amortization provisions and shall be a lien upon no other real property except that forming the whole or a part of a single development area.

(2) Certificates, bonds and notes, or part interests therein, or any part of an issue thereof, which are issued by a redevelopment corporation and secured by a first mortgage on the real property of the redevelopment corporation, or any part thereof, shall be securities in which all the following persons, partnerships or corporations and public bodies or public officers may legally invest the funds within their control, but the principal amount thereof shall not exceed the limits, if any, imposed by law for such investments by the person, partnership, corporation, public body or public officer making the investment: Every executor, administrator, trustee, guardian, committee or other person or corporation holding trust funds or acting in a fiduciary capacity; the state, its subdivisions, cities, all other public bodies, all public officers; persons, partnerships and corporations organized under or subject to the provisions of the banking law (including savings banks, savings and loan associations, trust companies, bankers and private banking corporations); the commissioner of banking as conservator, liquidator or rehabilitator of any such person, partnership or corporation; persons, partnerships or corporations organized under or subject to chs. 600 to 646; and the commissioner of insurance as

conservator, liquidator or rehabilitator of any such person, partnership or corporation.

(3) Any mortgage on the real property in a development area, or any part thereof, may create a first lien, or a second or other junior lien, upon such real property.

(4) The limits as to principal amount secured by mortgage referred to in sub. (2) shall not apply to certificates, bonds and notes, or part interests therein, or any part of an issue thereof, which are secured by first mortgage on real property in a development area, or any part thereof, which the federal housing administrator has insured or has made a commitment to insure under the national housing act. Any such person, partnership, corporation, public body or public officer may receive and hold any debentures, certificates or other instruments issued or delivered by the federal housing administrator, pursuant to the national housing act, in compliance with the contract of insurance of a mortgage on real property in the development area, or any part thereof.

History: 1977 c 339 s 43; 1979 c 89

**66.417 Urban redevelopment; sale or lease of land.**

(1) The local governing body may by resolution determine that real property, title to which is held by the city, specified and described in such resolution, is not required for use by the city and may authorize the city to sell or lease such real property to a redevelopment corporation; provided, that the title of the city to such real property be not declared inalienable by charter of the city, or other similar law or instrument.

(2) Notwithstanding the provisions of any general, special or local law or ordinance, such sale or lease may be made without appraisal, public notice or public bidding for such price or rental and upon such terms (and, in case of a lease, for such term not exceeding 60 years with a right of renewal upon such terms) as may be agreed upon between the city and the redevelopment corporation to carry out the purposes of ss. 66.405 to 66.425.

(3) Before any sale or lease to a redevelopment corporation shall be authorized, a public hearing shall be held by the local governing body to consider the proposed sale or lease.

(4) Notice of such hearing shall be published as a class 2 notice, under ch. 985.

(5) The deed or lease of such real property shall be executed in the same manner as a deed or lease by the city of other real property owned by it and may contain appropriate conditions and provisions to enable the city to reenter the real property in the event of a violation by the redevelopment corporation of any of the provisions of ss. 66.405 to 66.425 relating to such redevelopment corporation or of the conditions or provisions of such deed or lease.

(6) A redevelopment corporation purchasing or leasing real property from a city shall not, without the written approval of the city, use such real property for any purpose except in connection with its development. The deed shall contain a condition that the redevelopment corporation will devote the real property granted only for the purposes of its development subject to the restrictions of ss. 66.405 to 66.425, for breach of which the city shall have the right to reenter and repossess itself of the real property.

**66.418 Urban redevelopment; city lease to, terms.**

If real property of a city be leased to a redevelopment corporation:

(1) The lease may provide that all improvements shall be the property of the lessor;

(2) The lessor may grant to the redevelopment corporation the right to mortgage the fee of such property and thus enable the redevelopment corporation to give as security for its notes or bonds a first lien upon the land and improvements;

(3) The execution of a lease shall not impose upon the lessor any liability or obligation in connection with or arising out of the financing, construction, management or operation of a development involving the land so leased. The lessor shall not, by executing such lease, incur any obligation or liability with respect to such leased premises other than may devolve upon the lessor with

respect to premises not owned by it. The lessor, by consenting to the execution by a redevelopment corporation of a mortgage upon the leased land, shall not thereby assume, and such consent shall not be construed as imposing upon the lessor, any liability upon the note or bond secured by the mortgage;

(4) The lease may reserve such easements or other rights in connection with the real property as may be deemed necessary or desirable for the future planning and development of the city and the extension of public facilities therein (including also the construction of subways and conduits, the widening and change of grade of streets); and it may contain such other provisions for the protection of the parties as are not inconsistent with the provisions of ss. 66.405 to 66.425.

**66.419 Urban redevelopment; aids by city.** In addition to the powers conferred upon the city by other provisions of ss. 66.405 to 66.425, the local governing body is empowered to appropriate moneys for the purpose of and to borrow or to accept grants from the federal or state governments or any agency thereof for and in aid of the acquisition of any lands required to carry out the plan or the purposes mentioned in s. 66.42; and to these ends, to enter into such contracts, mortgages, trust indentures or other agreements as the federal government may require.

**66.42 Urban redevelopment; city improvements.** For the purpose of aiding and cooperating in the planning, undertaking, construction or operation of any such plan located within the area in which it is authorized to act, any local governing body may upon such terms, with or without consideration, as it may determine:

(1) Cause parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities, or any other works which it is otherwise empowered to undertake, to be furnished adjacent to or in connection with housing projects;

(2) Furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, roadways, alleys, sidewalks or other places which it is otherwise empowered to undertake.

**66.421 Urban redevelopment; appropriations.** The city is authorized to appropriate moneys for the purpose of making plans and surveys to carry out such redevelopment, and for any purpose required to carry out the intention of ss. 66.405 to 66.425.

**66.422 Urban redevelopment; construction of statute.** Sections 66.405 to 66.425 shall be construed liberally to effectuate the purposes hereof, and the enumeration therein of specific powers shall not operate to restrict the meaning of any general grant of power contained in ss. 66.405 to 66.425 or to exclude other powers comprehended in such general grant.

**66.424 Urban redevelopment; conflict of laws.** Insofar as ss. 66.405 to 66.425 are inconsistent with any other law, the provisions of these sections shall be controlling.

**66.425 Urban redevelopment; supplemental powers.** The powers conferred by ss. 66.405 to 66.425 shall be in addition and supplemental to the powers conferred by any other law.

**66.43 Blighted area law. (1) SHORT TITLE.** This section shall be known and may be cited and referred to as the "blighted area law."

(2) **FINDINGS AND DECLARATION OF NECESSITY.** It is hereby found and declared that there have existed and continue to exist in cities within the state, substandard, insanitary, deteriorated, slum and blighted areas which constitute a serious and growing menace, injurious and inimical to the public health, safety, morals and welfare of the residents of the state; that the existence of such areas contributes substantially and increasingly to the spread of disease and crime (necessitating excessive and disproportionate expenditures of public funds for the preservation of the public

health and safety, for crime prevention, correction, prosecution, punishment, and the treatment of juvenile delinquency and for the maintenance of adequate police, fire and accident protection, and other public services and facilities), constitutes an economic and social liability, substantially impairs or arrests the sound growth of cities, and retards the provision of housing accommodations; that this menace is beyond remedy and control solely by regulatory process in the exercise of the police power and cannot be dealt with effectively by the ordinary operations of private enterprise without the aids herein provided; that the acquisition of property for the purpose of eliminating substandard, insanitary, deteriorated, slum or blighted conditions thereon or preventing recurrence of such conditions in the area, the removal of structures and improvement of sites, the disposition of the property for redevelopment incidental to the foregoing, and any assistance which may be given by cities or any other public bodies in connection therewith, are public uses and purposes for which public money may be expended and the power of eminent domain exercised; and that the necessity in the public interest for the provisions herein enacted is hereby declared as a matter of legislative determination. Nothing herein contained shall be deemed to contravene, repeal or rescind the finding and declaration of necessity heretofore set forth in s. 66.43 (2) prior to the recreation thereof on July 10, 1953.

(2m) **DISCRIMINATION.** Persons otherwise entitled to any right, benefit, facility or privilege under this section shall not, with reference thereto, be denied them in any manner for any purpose nor be discriminated against because of sex, race, color, creed, sexual orientation or national origin.

(3) **DEFINITIONS.** The following terms whenever used or referred to in this section shall, for the purposes of this section and unless a different intent clearly appears from the context, be construed as follows:

(a) "Blighted area" means any area (including a slum area) in which a majority of the structures are residential (or in which there is a predominance of buildings or improvements, whether residential or nonresidential), and which, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency and crime, and is detrimental to the public health, safety, morals or welfare.

(b) "City" means any city in the state.

(c) "Housing" includes housing, dwelling, habitation and residence.

(d) "Land" includes bare or vacant land, or the land under buildings, structures or other improvements, also water and land under water. When employed in connection with "use", as for instance, "use of land" or "land use", "land" also includes buildings, structures and improvements existing or to be placed thereon.

(e) "Lessee" includes the successors or assigns and successors in title of the lessee.

(f) "Local legislative body" means the board of alderpersons, common council, council, commission or other board or body vested by the charter of the city or other law with jurisdiction to enact ordinances or local laws.

(g) "Planning commission" means the board, commission or agency of the city authorized to prepare, adopt or amend or modify a master plan of the city.

(h) "Project area" means a blighted area (as defined in this section), or portion thereof, of such extent and location as adopted by the planning commission and approved by the local legislative body as an appropriate unit of redevelopment planning for a redevelopment project, separate from the redevelopment projects in other parts of the city. In the provisions of this section relating to leasing or sale by the city, for abbreviation "project area" is used



for the remainder of the project area after taking out those pieces of property which shall have been or are to be transferred for public uses

(i) "Public body" means the state or any city, county, town, village, board, commission, authority, district or any other subdivision or public body of the state.

(j) "Purchaser" includes the successors or assigns and successors in title of the purchaser

(k) "Real property" includes land; also includes land together with the buildings, structures, fixtures and other improvements thereon; also includes liens, estates, easements and other interests therein; and also includes restrictions or limitations upon the use of land, buildings or structures, other than those imposed by exercise of the police power.

(L) "Redevelopment company" means a private or public corporation or body corporate (including a public housing authority) carrying out a plan under this section.

(m) "Redevelopment project" means any work or undertaking to acquire blighted areas or portions thereof, and lands, structures, or improvements, the acquisition of which is necessary or incidental to the proper clearance or redevelopment of such areas or to the prevention of the spread or recurrence of slum conditions or conditions of blight in such areas; to clear any such areas by demolition or removal of existing buildings, structures, streets, utilities, or other improvements thereon and to install, construct, or reconstruct streets, utilities, and site improvements essential to the preparation of sites for uses in accordance with a redevelopment plan; or to sell, lease or otherwise make available land in such areas for residential, recreational, commercial, industrial or other use or for public use, or to retain such land for public use, in accordance with a redevelopment plan. The term "redevelopment project" may also include the preparation of a redevelopment plan, the planning, surveying, and other work incident to a redevelopment project, and the preparation of all plans and arrangements for carrying out a redevelopment project. "Redevelopment plan" means a plan for the acquisition, clearance, reconstruction, rehabilitation or future use of a redevelopment project area.

(n) "Rentals" means rents specified in a lease to be paid by the lessee to the city.

**(4) POWER OF CITIES.** (a) Every city is hereby granted (in addition to its other powers) all powers necessary or convenient to carry out and effectuate the purposes and provisions of this section, including the following powers in addition to others herein granted:

1. To prepare or cause to be prepared redevelopment plans and to undertake and carry out redevelopment projects within its corporate limits.

2. To enter into any contracts determined by the local legislative body to be necessary to effectuate the purposes of this section.

3. Within its boundaries, to acquire by purchase, eminent domain or otherwise, any real or personal property or any interest therein, together with any improvements thereon, necessary or incidental to a redevelopment project; to hold, improve, clear or prepare for redevelopment any such property; to sell, lease, subdivide, retain for its own use, mortgage, or otherwise incur or dispose of any such property or any interest therein; to enter into contracts with redevelopers of property containing covenants, restrictions, and conditions regarding the use of such property in accordance with a redevelopment plan and such other covenants, restrictions and conditions as it may deem necessary to prevent a recurrence of blighted areas or to effectuate the purposes of this section; to make any of such covenants, restrictions, conditions or covenants running with the land, and to provide appropriate remedies for any breach thereof.

4. To borrow money and issue bonds, and to apply for and accept advances, loans, grants, contributions, and any other form of financial assistance from the federal, state or county government, or other public body or from any sources, for the purpose

of this section; to give such security as may be required, and to enter into and carry out contracts in connection therewith.

(b) Condemnation proceedings for the acquisition of real property necessary or incidental to a redevelopment project shall be conducted in accordance with ch. 32 or any other laws applicable to the city.

(c) Notwithstanding any other provision of law, the local legislative body may designate, by ordinance or resolution, any local housing authority existing under ss. 66.40 to 66.404, any local redevelopment authority existing under s. 66.431, or both jointly, or any local community development authority existing under s. 66.4325, as the agent of the city to perform any act, except the development of the general plan of the city, which may otherwise be performed by the planning commission under this section.

**(5) GENERAL AND PROJECT AREA REDEVELOPMENT PLANS.** (a) The planning commission is hereby directed to make and, from time to time, develop a comprehensive or general plan of the city, including the appropriate maps, charts, tables and descriptive, interpretive and analytical matter, which plan is intended to serve as a general framework or guide of development within which the various area and redevelopment projects under this section may be more precisely planned and calculated, and which comprehensive or general plan shall include at least a land use plan which designates the proposed general distribution and general locations and extents of the uses of the land for housing, business, industry, recreation, education, public buildings, public reservations and other general categories of public and private uses of the land.

(b) For the exercise of the powers granted and for the acquisition and disposition of real property for the redevelopment of a project area, the following steps and plans shall be requisite, namely:

1. Designation by the planning commission of the boundaries of the project area proposed by it for redevelopment, submission of such boundaries to the local legislative body and the adoption of a resolution by said local legislative body declaring such area to be a blighted area in need of redevelopment.

2. Adoption by the planning commission and approval by the local legislative body of the redevelopment plan of the project area. Such redevelopment plan shall conform to the general plan of the city and shall be sufficiently complete to indicate its relationship to definite local objectives as to appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements in the project area, and shall include, without being limited to, a statement of the boundaries of the project area; a map showing existing uses and conditions of real property therein; a land use plan showing proposed uses of the area; information showing the standards of population density, land coverage, and building intensity in the area after redevelopment; a statement of proposed changes, if any, in zoning ordinances or maps and building codes and ordinances; a statement as to the kind and number of site improvements and additional public utilities which will be required to support the new land uses in the area after redevelopment; and a statement of a feasible method proposed for the relocation of families to be displaced from the project area.

3. Approval of a redevelopment plan of a project area by the local legislative body may be given only after a public hearing conducted by it, and a finding by it that said plan is feasible and in conformity with the general plan of the city. Notice of such hearing, describing the time, date, place and purpose of the hearing and generally identifying the project area, shall be published as a class 2 notice, under ch. 985, the last insertion to be at least 10 days prior to the date set for the hearing. All interested parties shall be afforded a reasonable opportunity at the hearing to express their views respecting the proposed plan, but the hearing shall be only for the purpose of assisting the local legislative body in making its determination.

(c) In relation to the location and extent of public works and utilities, public buildings and other public uses in the general plan

or in a project area plan, the planning commission is directed to confer with such other public officials, boards, authorities and agencies under whose administrative jurisdictions such uses respectively fall.

(d) After a project area redevelopment plan of a project area shall have been adopted by the planning commission and approved by the local legislative body, the planning commission may at any time certify said plan to the local legislative body, whereupon said body shall proceed to exercise the powers granted to it in this section for the acquisition and assembly of the real property of the area. Following such certification, no new construction shall be authorized by any agencies, boards or commissions of the city, in such area, unless as authorized by the local legislative body including substantial remodeling or conversion or rebuilding, enlargement or extension of major structural improvements on existing buildings, but not including ordinary maintenance or remodeling or changes necessary to continue the occupancy.

(6) **TRANSFER, LEASE OR SALE OF REAL PROPERTY IN PROJECT AREAS FOR PUBLIC AND PRIVATE USES.** (a) After the real property in the project area shall have been assembled, the city shall have power to lease or sell all or any part of said real property (including streets or parts thereof to be closed or vacated in accordance with the plan) to a redevelopment company or to an individual, a limited liability company or a partnership for use in accordance with the redevelopment plan. Such real property shall be leased or sold at its fair value for uses in accordance with the redevelopment plan notwithstanding such value may be less than the cost of acquiring and preparing such property for redevelopment. In determining such fair value, a city shall take into account and give consideration to the uses and purposes required by the plan; the restrictions upon and covenants, conditions and obligations assumed by the purchaser or lessee, the objectives of the redevelopment plan for the prevention of the recurrence of slum or blighted areas; and such other matters as the city shall deem appropriate.

(b) Any such lease or sale may be made without public bidding, but only after a public hearing by the planning commission upon the proposed lease or sale and the provisions thereof; and notice of the hearing shall be published as a class 2 notice, under ch. 985.

(c) The terms of such lease or sale shall be fixed by the planning commission and approved by the local legislative body and the instrument of lease may provide for renewals upon reappraisals and with rentals and other provisions adjusted to such reappraisals. Every such lease or sale shall provide that the lessee or purchaser shall carry out or cause to be carried out the approved project area redevelopment plan or approved modifications thereof and that no use shall be made of any land or real property included in the lease or sale nor any building or structure erected thereon which does not conform to such approved plan or approved modifications thereof. In the instrument or instruments of lease or sale, the planning commission, with the approval of the local legislative body, may include such other terms, conditions and provisions as in its judgment will provide reasonable assurance of the priority of the obligations of the lease or sale and of conformance to the plan over any other obligations of the lessee or purchaser and also assurance of the financial and legal ability of the lessee or purchaser to carry out and conform to the plan and the terms and conditions of the lease or sale; also, such terms, conditions and specifications concerning buildings, improvements, subleases or tenancy, maintenance and management and any other matters as the planning commission, with the approval of the local legislative body, may impose or approve, including provisions whereby the obligations to carry out and conform to the project area plan shall run with the land. In the event that maximum rentals to be charged to tenants of housing be specified, provision may be made for periodic reconsideration of such rental bases.

(d) Until the planning commission certifies, with the approval of the local legislative body, that all building constructions and

other physical improvements specified to be done and made by the purchaser of the area have been completed, the purchaser shall have no power to convey the area, or any part thereof, without the consent of the planning commission and the local legislative body, and no such consent shall be given unless the grantee of the purchaser is obligated, by written instrument, to the city to carry out that portion of the redevelopment plan which falls within the boundaries of the conveyed property and also that the grantee, and the heirs, representatives, successors and assigns of the grantee shall have no right or power to convey, lease or let the conveyed property or any part thereof, or erect or use any building or structure erected thereon free from obligation and requirement to conform to the approved project area redevelopment plan or approved modifications thereof.

(f) The planning commission may, with the approval of the local legislative body, cause to have demolished any existing structure or clear the area of any part thereof, or may specify the demolition and clearance to be performed by a lessee or purchaser and the time schedule for same. The planning commission, with the approval of the local legislative body, shall specify the time schedule and conditions for the construction of buildings and other improvements.

(g) In order to facilitate the lease or sale of a project area or, in the event that the lease or sale is of parts of an area, the city shall have the power to include in the cost payable by it the cost of the construction of local streets and sidewalks within the area or of grading and other local public surface or subsurface facilities necessary for shaping the area as the site of the redevelopment of the area. The city may arrange with the appropriate federal, state or county agencies for the reimbursement of such outlays from funds or assessments raised or levied for such purposes.

(7) **HOUSING FOR DISPLACED FAMILIES.** In connection with every redevelopment plan the housing authority shall formulate a feasible method for the temporary relocation of persons living in areas that are designated for clearance and redevelopment. In addition the housing authority and the local legislative body will assure that decent, safe and sanitary dwellings substantially equal in number to the number of substandard dwellings to be removed in carrying out the redevelopment are available, or will be provided, at rents or prices within the financial reach of the income groups displaced.

(8) **USE-VALUE APPRAISALS.** After the city shall have assembled and acquired the real property of the project area, it shall, as an aid to it in determining the rentals and other terms upon which it will lease or the price at which it will sell the area or parts thereof, place a use value upon each piece or tract of land within the area which, in accordance with the plan, is to be used for private uses or for low-rent housing, such use value to be based on the planned use; and, for the purposes of this use valuation, it shall cause a use valuation appraisal to be made by the local commissioner of assessments or assessor; but nothing contained in this section shall be construed as requiring the city to base its rentals or selling prices upon such appraisal.

(9) **PROTECTION OF REDEVELOPMENT PLAN.** (a) Previous to the execution and delivery by the city of a lease or conveyance to a redevelopment company, or previous to the consent by the city to an assignment or conveyance by a lessee or purchaser to a redevelopment company, the articles or certificate of incorporation or association or charter or other basic instrument of such company shall contain provisions so defining, limiting and regulating the exercise of the powers of the company that neither the company nor its stockholders, its officers, its directors, its members, its beneficiaries, its bondholders or other creditors or other persons shall have any power to amend or to effect the amendment of the terms and conditions of the lease or the terms and conditions of the sale without the consent of the planning commission, together with the approval of the local legislative body, or, in relation to the project area development plan, without the approval of any proposed modification in accordance with sub. (10); and no action of stockholders, officers, directors, bondholders, creditors, members,

partners or other persons, nor any reorganization, dissolution, receivership, consolidation, foreclosure or any other change in the status or obligation of any redevelopment company, partnership, limited liability company or individual in any litigation or proceeding in any federal or other court shall effect any release or any impairment or modification of the lease or terms of sale or of the project area redevelopment plan unless such consent or approval be obtained.

(b) Redevelopment corporations may be organized under the general corporation law of the state and shall have the power to be a redevelopment company under this section, and to acquire and hold real property for the purposes set forth in this section, and to exercise all other powers granted to redevelopment companies in this section, subject to the provisions, limitations and obligations herein set forth.

(c) A redevelopment company, individual, limited liability company or partnership to which any project area or part thereof is leased or sold under this section shall keep books of account of its operations or transactions relating to such area or part entirely separate and distinct from accounts of and for any other project area or part thereof or any other real property or enterprise; and no lien or other interest shall be placed upon any real property in said area to secure any indebtedness or obligation of the redevelopment company, individual, limited liability company or partnership incurred for or in relation to any property or enterprise outside of said area.

**(10) MODIFICATION OF DEVELOPMENT PLANS** An approved project area redevelopment plan may be modified at any time or times after the lease or sale of the area or part thereof provided that the modification be consented to by the lessee or purchaser, and that the proposed modification be adopted by the planning commission and then submitted to the local legislative body and approved by it. Before approval, the local legislative body shall hold a public hearing on the proposed modification, notice of the time and place of which shall be given by mail sent at least 10 days prior to the hearing to the then owners of the real properties in the project area and of the real properties immediately adjoining or across the street from the project area. The local legislative body may refer back to the planning commission any project area redevelopment plan, project area boundaries or modification submitted to it, together with its recommendation for changes in such plan, boundaries or modification and, if such recommended changes be adopted by the planning commission and in turn formally approved by the local legislative body, the plan, boundaries or modification as thus changed shall be and become the approved plan, boundaries or modification.

**(11) LIMITATION UPON TAX EXEMPTION.** Nothing contained in this section shall be construed to authorize or require the exemption of any real property from taxation, except real property sold, leased or granted to and acquired by a public housing authority. No real property acquired pursuant to this section by a private redevelopment company, individual, limited liability company or partnership either by lease or purchase shall be exempt from taxation by reason of such acquisition.

**(12) FINANCIAL ASSISTANCE.** The city may accept grants or other financial assistance from the federal, state and county governments or from other sources to carry out the purposes of this section, and may do all things necessary to comply with the conditions attached to such grants or loans.

**(13) COOPERATION AND USE OF CITY FUNDS.** (a) To assist any redevelopment project located in the area in which it is authorized to act, any public body may, upon such terms as it may determine: Furnish services or facilities, provide property, lend or contribute funds, and perform any other action of a character which it is authorized to perform for other purposes.

(b) Every city may appropriate and use its general funds to carry out the purposes of this section and to obtain such funds may, in addition to other powers set forth in this section, incur indebtedness, and issue bonds in such amount or amounts as the local legis-

lative body determines by resolution to be necessary for the purpose of raising funds for use in carrying out the purposes of this section; provided, that any issuance of bonds by a city pursuant to this provision shall be in accordance with such statutory and other legal requirements as govern the issuance of obligations generally by the city.

**(14) LIMITED OBLIGATIONS.** For the purpose of carrying out or administering a redevelopment plan or other functions authorized under this section, any city may issue municipal obligations payable solely from and secured by a pledge of and lien upon any or all of the income, proceeds, revenues, funds and property of the city derived from or held by it in connection with redevelopment projects, including the proceeds of grants, loans, advances or contributions from any public or private source. Municipal obligations issued under this subsection may be registered under s. 67.09 but shall otherwise be in such form, mature at such time or times, bear interest at such rate or rates, be issued and sold in such manner, and contain such terms, covenants, and conditions as the local legislative body of the city shall, by resolution, determine. The municipal obligations shall be fully negotiable, shall not require a referendum, and shall not be subject to the provisions of any other law or charter relating to the issuance or sale of municipal obligations. Obligations under this section sold to the United States government need not be sold at public sale. In this subsection, "municipal obligation" has the meaning specified in s. 67.01 (6).

**(15) CONSTRUCTION.** This section shall be construed liberally to effectuate the purposes hereof and the enumeration therein of specific powers shall not operate to restrict the meaning of any general grant of power contained in this section or to exclude other powers comprehended in such general grant.

**(16) VALIDATION.** All contracts, agreements, obligations and undertakings of cities entered into before July 10, 1953 and all proceedings, acts and things undertaken before such date, performed or done pursuant to, or purporting to be pursuant to, the blighted area law and s. 67.04, are hereby validated, ratified, confirmed, approved and declared legal in all respects, notwithstanding any defect or irregularity therein or any want of statutory authority.

**(17) LIQUIDATION AND DISPOSAL.** Projects held under this section may be liquidated and disposed of under s. 66.40 (25).

**History:** 1975 c. 94, 311; 1981 c. 112; 1983 a. 24; 1983 a. 189 ss. 58, 329 (7); 1983 a. 207 s. 95; 1991 a. 156, 316; 1993 a. 112, 184, 213.

#### **66.431 Blight elimination and slum clearance.**

**(1) SHORT TITLE.** This section shall be known and may be cited as the "Blight Elimination and Slum Clearance Act".

**(2) FINDINGS.** In addition to the findings and declarations made in ss. 66.43 (2) and 66.435, which findings and declarations are in all respects affirmed, restated and incorporated herein, it is further found and declared that the existence of substandard, deteriorated, slum and blighted areas and blighted properties is a matter of statewide concern; that it is the policy of this state to protect and promote the health, safety, morals and general welfare of the people of the state in which such areas and blighted properties exist by the elimination and prevention of such areas and blighted properties through the utilization of all means appropriate for that purpose, thereby encouraging well-planned, integrated, stable, safe and healthful neighborhoods, the provision of healthful homes, a decent living environment and adequate places for employment of the people of this state and its communities in such areas and blighted properties; that the purposes of this section are to provide further for the elimination and prevention of substandard, deteriorated, slum and blighted areas and blighted properties through redevelopment and other activities by state-created agencies and the utilization of all other available public and private agencies and resources, thereby carrying out the policy of this state as heretofore declared; that state agencies are necessary in order to carry out in the most effective and efficient manner the state's policy and declared purposes for the prevention and elimi-

nation of substandard, deteriorated, slum and blighted areas and blighted properties; and that such state agencies shall be available in all the cities in the state to be known as the redevelopment authorities of the particular cities, to carry out and effectuate the provisions of this section when the local legislative bodies of the cities determine there is a need for them to carry out within their cities the powers and purposes of this section; and any assistance which may be given by cities or any other public bodies in connection therewith, are public uses and purposes for which public money may be expended; and that the necessity in the public interest for the provisions herein enacted is declared a matter of legislative determination. Nothing contained herein is deemed to contravene, repeal or rescind the finding or declaration of necessity prior to the recreation thereof on June 1, 1958.

**(3) REDEVELOPMENT AUTHORITY** (a) It is hereby found and declared that a redevelopment authority, functioning within a city in which there exists substandard, deteriorating, deteriorated, insanitary, slum and blighted areas, constitutes a more effective and efficient means for preventing and eliminating slums and blighted areas in the city and preventing the recurrence thereof. Therefore, there is created in every such city a redevelopment authority, known as the redevelopment authority of the city of \_\_\_\_\_ (which in this section shall be referred to as "authority", and when so referred to, means and applies to a redevelopment authority) for the purpose of carrying out blight elimination, slum clearance, and urban renewal programs and projects as set forth in this section, together with all powers necessary or incidental to effect adequate and comprehensive blight elimination, slum clearance and urban renewal programs and projects. The authority may transact business and exercise any of the powers granted to it in this section following the adoption by the local legislative body of a resolution declaring in substance that there exists within such city a need for blight elimination, slum clearance and urban renewal programs and projects. Upon the adoption of the resolution by the local legislative body by a two-thirds vote of its members present, a certified copy thereof shall be transmitted to the mayor or other head of the city government. Upon receiving the certified copy of such resolution, the mayor or other head of the city government shall, with the confirmation of four-fifths of the local legislative body, appoint 7 residents of the city as commissioners of the authority. No more than 2 of such commissioners may be officers of the city in which the authority is created. The powers of the authority shall be vested in the commissioners. In making appointments of commissioners, the appointing power shall give due consideration to the general interest of the appointee in a redevelopment, slum clearance or urban renewal program and shall, insofar as is possible, designate representatives from the general public, labor, industry, finance or business group, and civic organizations. Appointees shall have sufficient ability and experience in related fields, especially in the fields of finance and management, to assure efficiency in the redevelopment program, its planning and direction. One of such 7 commissioners shall be a member of the local legislative body. Commissioners shall receive their actual and necessary expenses, including local traveling expenses incurred in the discharge of their duties.

(b) The commissioners who are first appointed shall be designated by the appointing power to serve for the following terms: 2 for one year, 2 for 2 years, 1 for 3 years, 1 for 4 years, and 1 for 5 years, from the date of their appointment. Thereafter, the term of office shall be for 5 years. A commissioner shall hold office until a successor has been appointed and qualified. Removals with respect to commissioners of the authority shall be governed by s. 66.40. Vacancies and new appointments shall be filled in the same manner as provided in par. (a).

(c) The filing of a certified copy of the resolution above referred to with the city clerk shall be prima facie evidence of the authority's right to proceed, and such resolution shall not be subject to challenge because of any technicality. In any suit, action or proceeding commenced against the authority, a certified copy of such resolution shall be deemed conclusive evidence that such

authority is established and authorized to transact business and exercise its powers hereunder.

(d) Following the adoption of such resolution, such city shall thereafter be precluded from exercising the powers provided in s. 66.43 (4), and the authority has exclusive power to proceed to carry on the blight elimination, slum clearance and urban renewal projects in such city, except that such city is not precluded from applying, accepting and contracting for federal grants, advances and loans under the housing and community development act of 1974 (P.L. 93-383).

(e) 1. Such authority shall have no power, whatsoever, in connection with any public housing project;

2. Persons otherwise entitled to any right, benefit, facility or privilege under this section shall not, with reference thereto, be denied such right, benefit, facility or privilege in any manner for any purpose nor be discriminated against because of sex, race, color, creed, sexual orientation or national origin.

(f) In carrying out this section, the authority is deemed an independent, separate and distinct public body and a body corporate and politic, exercising public powers determined to be necessary by the state to protect and promote the health, safety and morals of its residents, and is authorized to take title to real and personal property in its own name; and such authority shall proceed with the acquisition of property by eminent domain under ch. 32, or any other law relating specifically to eminent domain procedures of redevelopment authorities.

(g) The authority may employ personnel as required to perform its duties and responsibilities under civil service. The authority may appoint an executive director whose qualifications shall be determined by the authority. The director shall also act as secretary of the authority and may have the duties, powers and responsibilities delegated by the authority. All of the employees, including the director of the authority, shall be eligible to participate in the same pension system, health and life insurance programs and deferred compensation programs provided for city employees and are eligible for any other benefits provided to city employees.

**(4) DEFINITIONS.** As used or referred to in this section unless the context clearly indicates otherwise:

(a) "Abandoned highway corridor" means land in any city designated by the department of transportation for use as part of an expressway or a freeway, which is no longer designated by the department for that purpose.

(am) "Arts incubator" has the meaning given in s. 44.60 (1) (a).

(b) "Blighted area" means any area (including a slum area) in which there is a predominance of buildings or improvements, whether residential or nonresidential, which by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime, and is detrimental to the public health, safety, morals or welfare, or any area which by reason of the presence of a substantial number of substandard, slum, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, insanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of a city, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use, or any area which is predominantly open and which because of obsolete platting, diversity of ownership, deterioration

of structures or of site improvements, or otherwise, substantially impairs or arrests the sound growth of the community.

(bm) "Blighted property" means any property within a city, whether residential or nonresidential, which by reason of dilapidation, deterioration, age or obsolescence, inadequate provisions for ventilation, light, air or sanitation, high density of population and overcrowding, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency or crime, and is detrimental to the public health, safety, morals or welfare, or any property which by reason of faulty lot layout in relation to size, adequacy, accessibility or usefulness, insanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair market value of the land, defective or unusual conditions of title, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of a city, retards the provisions of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals or welfare in its present condition and use, or any property which is predominantly open and which because of obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or otherwise, substantially impairs or arrests the sound growth of the community.

(c) "Blight elimination, slum clearance and urban renewal program", "blight elimination and urban renewal program", "redevelopment, slum clearance and urban renewal program", "redevelopment or urban renewal program", and "redevelopment program", mean undertakings and activities for the elimination and for the prevention of the development or spread of blighted areas.

(d) "Blight elimination, slum clearance and urban renewal project", "redevelopment and urban renewal project", "redevelopment or urban renewal project", "redevelopment project", "urban renewal project" and "project" mean undertakings and activities in a project area for the elimination and for the prevention of the development or spread of slums and blight, and may involve clearance and redevelopment in a project area, or rehabilitation or conservation in a project area, or any combination or part thereof in accordance with a "redevelopment plan", "urban renewal plan", "redevelopment or urban renewal plan", "project area plan" or "redevelopment and urban renewal plan" (either one of which means the redevelopment plan of the project area prepared and approved as provided in sub. (6)). Such undertakings and activities may include:

1. Acquisition of a blighted area or portions thereof;
2. Demolition and removal of buildings and improvements;
3. Installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the project area the objectives of this section in accordance with the redevelopment plan;
4. Disposition of any property acquired in the project area (including sale, initial leasing or retention by the authority itself) at its fair value for uses in accordance with the redevelopment plan;
5. Carrying out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements in accordance with the redevelopment plan; and
6. Acquisition of any other real property in the project area where necessary to eliminate unhealthful, insanitary or unsafe conditions, lessen density, eliminate obsolete or other uses detrimental to the public welfare, or otherwise to remove or prevent the spread of blight or deterioration, or to provide land for needed public facilities
7. Studying the feasibility of and initial design for an arts incubator, developing and operating an arts incubator and apply-

ing for a grant or loan under s. 44.60 in connection with an arts incubator.

8. Studying the feasibility of an initial design for a technology-based incubator, developing and operating a technology-based incubator and applying for a grant under s. 560.14 (3) in connection with a technology-based incubator.

(e) "Bonds" means any bonds (including refunding bonds), notes, interim certificates, certificates of indebtedness, debentures or other obligations.

(f) "City" means any city in the state.

(g) "Local legislative body" means the board of alderpersons, common council, council, commission or other board or body vested by the charter of the city or other law with jurisdiction to enact ordinances or local laws.

(h) "Project area" means a blighted area which the local legislative body declares to be in need of a blight elimination, slum clearance and urban renewal project.

(i) "Public body" means the state or any city, county, town, village, town board, commission, authority, district, or any other subdivision or public body of the state.

(j) "Real property" includes all lands, together with improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest, right and use, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise.

(t) "Technology-based incubator" has the meaning given in s. 560.14 (1) (h).

(5) POWERS OF REDEVELOPMENT AUTHORITIES (a) Every authority is granted, in addition to any other powers, all powers necessary or incidental to carry out and effectuate the purposes of this section, including the following powers:

1. To prepare or cause to be prepared redevelopment plans and urban renewal plans and to undertake and carry out redevelopment and urban renewal projects within the corporate limits of the city in which it functions.

2. To enter into any contracts determined by the authority to be necessary to effectuate the purposes of this section. All contracts, other than those for personal or professional services, in excess of \$25,000 shall be subject to bid and awarded to the lowest qualified and competent bidder. The authority may reject any bid required under this paragraph. The authority shall advertise for bids by a class 2 notice, under ch. 985, published in the city in which the project is to be developed. If the estimated cost of a contract, other than a contract for personal or professional services, is between \$3,000 and \$25,000, the authority shall give a class 2 notice, under ch. 985, of the proposed work before the contract is entered into.

3. Within the boundaries of the city to acquire by purchase, lease, eminent domain, or otherwise, any real or personal property or any interest therein, together with any improvements thereon, necessary or incidental to a redevelopment or urban renewal project; to hold, improve, clear or prepare for redevelopment or urban renewal any such property; to sell, lease, subdivide, retain or make available for the city's use; to mortgage or otherwise encumber or dispose of any such property or any interest therein; to enter into contracts with redevelopers of property containing covenants, restrictions and conditions regarding the use of such property in accordance with a redevelopment or urban renewal plan, and such other covenants, restrictions and conditions as the authority deems necessary to prevent a recurrence of blighted areas or to effectuate the purposes of this section; to make any of such covenants, restrictions, conditions or covenants running with the land and to provide appropriate remedies for any breach thereof; to arrange or contract for the furnishing of services, privileges, works or facilities for, or in connection with a project; to temporarily operate and maintain real property acquired by it in a project area for or in connection with a project pending the disposition of the property for such uses and purposes as may be deemed desir-



able even though not in conformity with the redevelopment plan for the area; within the boundaries of the city to enter into any building or property in any project area in order to make inspections, surveys, appraisals, soundings or test borings, and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted; to own and hold property and to insure or provide for the insurance of any real or personal property or any of its operations against any risks or hazards, including the power to pay premiums on any such insurance; to invest any project funds held in reserves or sinking funds or any such funds not required for immediate disbursement in property or securities in which savings banks may legally invest funds subject to their control; to redeem its bonds issued under this section at the redemption price established therein or to purchase such bonds at less than redemption price, all such bonds so redeemed or purchased to be canceled; to develop, test and report methods and techniques, and carry out demonstrations and other activities, for the prevention and elimination of slums and blight; and to disseminate blight elimination, slum clearance and urban renewal information.

4. a. To borrow money and issue bonds; to execute notes, debentures and other forms of indebtedness; and to apply for and accept advances, loans, grants, contributions and any other form of financial assistance from the city in which it functions, from the federal government, the state, county, or other public body, or from any sources, public or private for the purposes of this section, and to give such security as may be required and to enter into and carry out contracts or agreements in connection therewith, and to include in any contract for financial assistance with the federal government for or with respect to blight elimination and slum clearance and urban renewal such conditions imposed pursuant to federal laws as the authority deems reasonable and appropriate and which are not inconsistent with the purposes of this section.

b. Any debt or obligation of the authority shall not be deemed the debt or obligation of the city, county, state or any other governmental authority other than the redevelopment authority itself.

c. To issue bonds in its discretion to finance its activities under this section, including the payment of principal and interest upon any advances for surveys and plans, and may issue refunding bonds for the payment or retirement of such bonds previously issued by it. Such bonds shall be made payable, as to both principal and interest, solely from the income, proceeds, revenues, and funds of the authority derived from or held in connection with its undertaking and carrying out of projects or activities under this section; provided that payment of such bonds, both as to principal and interest, may be further secured by a pledge of any loan, grant or contribution from the federal government or other source, in aid of any projects or activities of the authority under this section, and by a mortgage of any such projects or activities, or any part thereof. Bonds issued under this section shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction of the state, city or of any public body other than the authority issuing the bonds, and shall not be subject to any other law or charter relating to the authorization, issuance or sale of bonds. Bonds issued under this section are declared to be issued for an essential public and governmental purpose and, together with interest thereon and income therefrom, shall be exempt from all taxes. Bonds issued under this section shall be authorized by resolution of the authority and may be issued in one or more series and shall bear such date, be payable upon demand or mature at such time, bear interest at such rate, be in such denomination, be in such form either with or without coupon or registered, carry such conversion or registration privileges, have such rank or priority, be payable in such medium of payment, at such place, and be subject to such terms of redemption, with or without premium, be secured in such manner, and have such other characteristics, as is provided by the resolution, trust indenture or mortgage issued pursuant thereto. Bonds issued under this section shall be executed as provided in s. 67.08 (1) and may be registered under s. 67.09. The bonds may be sold or exchanged at public sale

or by private negotiation with bond underwriters as the authority may provide. The bonds may be sold or exchanged at such price or prices as the authority shall determine. If sold or exchanged at public sale, the sale shall be held after a class 2 notice, under ch. 985, published prior to such sale in a newspaper having general circulation in the city and in such other medium of publication as the authority determines. Such bonds may be sold to the federal government at private sale, without publication of any notice, at not less than par, and, if less than all of the authorized principal amount of such bonds is sold to the federal government, the balance may be sold at private sale at not less than par at an interest cost to the authority of not to exceed the interest cost to the authority of the portion of the bonds sold to the federal government. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this section shall be fully negotiable. In any suit, action or proceeding involving the validity or enforceability of any bond issued under this section or the security therefor, any such bond reciting in substance that it has been issued by the authority in connection with a project or activity under this section shall be conclusively deemed to have been issued for such purpose and such project or activity shall be conclusively deemed to have been planned, located and carried out in accordance with this section.

5. To establish a procedure for preservation of the records of the authority by the use of microfilm, another reproductive device or optical imaging, if authorized under s. 19.21 (4) (c). Any such procedure shall assure that copies of such records that are open to public inspection continue to be available to members of the public requesting them. A photographic reproduction of a record or copy of a record generated from optical disk storage is deemed the same as an original record for all purposes if it meets the applicable standards established in ss. 16.61 and 16.612.

6. The chairperson of the authority or the vice chairperson in the absence of the chairperson, selected by vote of the commissioners, and the executive director or the assistant director in the absence of the executive director is authorized to execute on behalf of the authority all contracts, notes and other forms of obligation when authorized by at least 4 of the commissioners of the authority to do so.

7. The authority is authorized to commence actions in its own name and shall be sued in the name of the authority. The authority shall have an official seal.

8. To exercise such other and further powers as may be required or necessary in order to effectuate the purposes hereof.

9. To exercise any powers of a housing authority under s. 66.40 if done in concert with a housing authority under a contract under s. 66.30.

(b) 1. Condemnation proceedings for the acquisition of real property necessary or incidental to a redevelopment project shall be conducted in accordance with ch. 32, or any other law relating specifically to eminent domain procedures of redevelopment authorities.

3. Where a public hearing has been held with respect to a project area under this section the authority may proceed with such project and the redevelopment plan by following the procedure set forth in ch. 32. Any owner of property who has filed objections to the plan as provided under sub. (6) may be entitled to a remedy as determined by s. 32.06 (5).

4. The authority may acquire by purchase real property within any area designated for urban renewal or redevelopment purposes under this section prior to the approval of either the redevelopment or urban renewal plans or prior to any modification of the plan, providing approval of such acquisition is granted by the local governing body. In the event of the acquisition of such real property the authority may demolish or remove structures so acquired with the approval of the local governing body. In the event that real property so acquired is not made part of the urban renewal project the authority shall bear any loss that may arise as a result of the acquisition, demolition or removal of structures acquired

under this section; however, the local legislative body if it has given its approval to the acquisition of such property shall reimburse the authority for any loss sustained as provided for in this subsection. Any real property acquired in a redevelopment or in an urban renewal area pursuant to this subsection may be disposed of in accordance with the provisions of this section providing the local governing body has approved the acquisition of the property for the project.

(c) 1. Notwithstanding sub. (6), the authority of a 1st class city may acquire any property determined by the authority to be blighted property without designating a boundary or adopting a redevelopment plan. The authority may not acquire property under this subdivision without the approval of the local legislative body of the city in which the authority is located.

1g. Notwithstanding sub. (6), the authority of any 2nd, 3rd or 4th class city may acquire blighted property without designating a boundary or adopting a redevelopment plan, if all of the following occur:

a. The authority obtains advance approval for the acquisition by at least a two-thirds vote of the members of the local legislative body in which the authority is located.

b. The two-thirds approval in subd. 1g. a. shall be by resolution and the resolution shall contain a finding of the local legislative body that a comprehensive redevelopment plan is not necessary to determine the need for the acquisition, the uses of the property after acquisition and the relation of the acquisition to other property redevelopment by the authority.

1r. Condemnation proceedings for the acquisition of blighted property shall be conducted under ch. 32 or under any other law relating specifically to eminent domain procedures of authorities. The authority may hold, clear, construct, manage, improve or dispose of the blighted property, for the purpose of eliminating its status as blighted property. Notwithstanding sub. (9), the authority may dispose of the blighted property in any manner. The authority may assist private acquisition, improvement and development of blighted property for the purpose of eliminating its status as blighted property, and for that purpose the authority shall have all the duties, rights, powers and privileges given to the authority under this section, as if it had acquired the blighted property.

2. Prior to acquiring blighted property under subd. 1. or 1g., the authority shall hold a public hearing to determine if the property is blighted property. Notice of such hearing, describing the time, date, place and purpose of the hearing and generally identifying the property involved shall be given to each owner of the property, at least 20 days prior to the date set for the hearing, by certified mail with return receipt requested. If the notice cannot be delivered by certified mail with return receipt requested, or if the notice is returned undelivered, notice may be given by posting the notice at least 10 days prior to the date of hearing on any structure located on the property which is the subject of the notice. If the property which is the subject of the notice consists of vacant land, a notice may be posted in some suitable and conspicuous place on that property. For the purpose of ascertaining the name of the owner or owners of record of property which is subject to a public hearing under this subdivision, the records of the register of deeds of the county in which such property is located, as of the date of the notice required under this subdivision, shall be deemed conclusive. An affidavit of mailing or posting the notice which is filed as a part of the records of the authority shall be deemed prima facie evidence of that notice. In the hearing under this subdivision, all interested parties may express their views respecting the authority's proposed determination, but the hearing is only for informational purposes. Any technical omission or error in the procedure specified under this subdivision does not invalidate the designation or subsequent acquisition. If any owner of property subject to the authority's determination that the property is blighted property objects to that determination or to the authority's acquisition of that property, that owner shall file a written statement of his or her objections and the reasons for those objections with the authority prior to, at the time of, or within 15 days

after the public hearing under this subdivision. Such statement shall contain the mailing address of the person filing the statement and be signed by or on behalf of that person. The filing of that statement shall be a condition precedent to the commencement of an action to contest the authority's actions under this paragraph.

(5m) BONDS TO FINANCE MORTGAGE LOANS ON OWNER-OCCUPIED DWELLINGS. (a) Subject to par. (b), an authority may issue bonds to finance mortgage loans on owner-occupied dwellings. Bonds issued under this paragraph may be sold at a private sale at a price determined by the authority.

(b) The redevelopment authority shall submit the resolution authorizing the issuance of bonds under par. (a) to the common council for review. If the common council disapproves the resolution within 45 days after its submission, no bonds may be issued under the authority of the resolution.

(c) The redevelopment authority may:

1. Issue mortgage loans for the rehabilitation, purchase or construction of any owner-occupied dwelling in the city.

2. Issue loans to any lending institution within the city which agrees to make mortgage loans for the rehabilitation, purchase or construction of any owner-occupied dwelling in the city.

3. Purchase loans agreed to be made under subd. 2.

(6) COMPREHENSIVE PLAN OF REDEVELOPMENT; DESIGNATION OF BOUNDARIES; APPROVAL BY LOCAL LEGISLATIVE BODY. (a) The authority may make or cause to be made and prepare or cause to be prepared a comprehensive plan of redevelopment and urban renewal which shall be consistent with the general plan of the city, including the appropriate maps, tables, charts and descriptive and analytical matter. Such plan is intended to serve as a general framework or guide of development within which the various area and redevelopment and urban renewal projects may be more precisely planned and calculated. The comprehensive plan shall include at least a land use plan which designates the proposed general distribution and general locations and extents of the uses of the land for housing, business, industry, recreation, education, public buildings, public reservations and other general categories of public and private uses of the land. The authority is authorized to make or have made all other surveys and plans necessary under this section, and to adopt or approve, modify and amend such plans.

(b) For the exercise of the powers granted and for the acquisition and disposition of real property in a project area, the following steps and plans shall be requisite:

1. Designation by the authority of the boundaries of the proposed project area, submission of such boundaries to the local legislative body, and adoption of a resolution by two-thirds of such local legislative body declaring such area to be a blighted area in need of a blight elimination, slum clearance and urban renewal project. Thereafter, the local legislative body may, by resolution by two-thirds vote, prohibit for an initial period of not to exceed 6 months from enactment of such resolution any new construction in such area except upon resolution by the local legislative body that such proposed new construction, on such reasonable conditions as may be fixed therein, will not substantially prejudice the preparation or processing of a plan for the area and is necessary to avoid substantial damage to the applicant. Such order of prohibition shall be subject to successive renewals for like periods by like resolutions; but no new construction contrary to any such resolution of prohibition shall be authorized by any agency, board or commission of the city in such area except as herein provided. No such prohibition of new construction shall be construed to forbid ordinary repair or maintenance, or improvement necessary to continue occupancy under any regulatory order.

2. Approval by the authority and by two-thirds of the local legislative body of the redevelopment plan of the project area which has been prepared by the authority. Such redevelopment plan shall conform to the general plan of the city and shall be sufficiently complete to indicate its relationship to definite local objectives as to appropriate land uses, improved traffic, public transport-

tation, public utilities, recreational and community facilities, and other public improvements in the project area, and shall include, without being limited to, a statement of the boundaries of the project area; a map showing existing uses and conditions of real property therein; a land use plan showing proposed uses of the area; information showing the standards of population density, land coverage and building intensity in the area after redevelopment; present and potential equalized value for property tax purposes; a statement of proposed changes, if any, in zoning ordinances or maps and building codes and ordinances; a statement as to the kind and number of site improvements and additional public utilities which will be required to support the new land uses in the area after redevelopment; and a statement of a feasible method proposed for the relocation of families to be displaced from the project area.

3. Approval of a redevelopment plan of a project area by the authority may be given only after a public hearing conducted by the authority and a finding by the authority that such plan is feasible and in conformity with the general plan of the city. Notice of such hearing, describing the time, date, place and purpose of the hearing and generally identifying the project area, shall be published as a class 2 notice, under ch. 985, the last insertion to be at least 10 days prior to the date set for the hearing. In addition thereto, at least 20 days prior to the date set for the hearing on the proposed redevelopment plan of the project area a notice shall be transmitted by certified mail, with return receipt requested, to each owner of real property of record within the boundaries of the redevelopment plan. If transmission of such notice by certified mail with return receipt requested cannot be accomplished, or if the letter is returned undelivered, then notice may be given by posting the same at least 10 days prior to the date of hearing on any structure located on the property; or if such property consists of vacant land, a notice may be posted in some suitable and conspicuous place on such land. Such notice shall state the time and place at which the hearing will be held with respect to the redevelopment plan and that the owner's property might be taken for urban renewal. For the purpose of ascertaining the name of the owner of record of the real property within such project boundaries, the records, at the time of the approval by the redevelopment authority of the project boundaries, of the register of deeds of the county in which such property is located shall be deemed conclusive. Failure to receive such notice shall not invalidate the plan. An affidavit of mailing of such notice or posting thereof filed as a part of the records of the authority shall be deemed prima facie evidence of the giving of such notice. All interested parties shall be afforded a full opportunity to express their views respecting the proposed plan at such public hearing, but the hearing shall only be for the purpose of assisting the authority in making its determination and in submitting its report to the local legislative body. Any technical omission in the procedure outlined herein shall not be deemed to invalidate the plan. Any owner of property included within the boundaries of the redevelopment plan and objecting to such plan shall be required to state the owner's objections and the reasons therefor, in writing, and file the same with the authority either prior to, at the time of the public hearing, or within 15 days thereafter, but not subsequently thereto. The owner shall state his or her mailing address and sign his or her name thereto. The filing of such objections in writing shall be a condition precedent to the commencement of an action to contest the right of the redevelopment authority to condemn the property under s. 32.06 (5).

(c) In relation to the location and extent of public works and utilities, public buildings and public uses in a comprehensive plan or a project area plan, the authority is directed to confer with the planning commission and with such other public officials, boards, authorities and agencies of the city under whose administrative jurisdictions such uses respectively fall.

(d) At any time after such redevelopment plan has been approved both by the authority and the local legislative body, it may be amended by resolution adopted by the authority, and such amendment shall be submitted to the local legislative body for its

approval by a two-thirds vote before the same shall become effective. It shall not be required in connection with any amendment to the redevelopment plan, unless the boundaries described in the plan are altered to include other property that the provisions with respect to public hearing and notice be followed.

(e) After a project area redevelopment plan of a project area has been adopted by the authority, and the local legislative body has by a two-thirds vote approved the redevelopment plan the authority may at any time certify said plan to the local legislative body, whereupon the authority shall proceed to exercise the powers granted to it for the acquisition and assembly of the real property of the area. The local legislative body shall upon the certification of such plan by the authority direct that no new construction shall be permitted, and thereafter no new construction shall be authorized by any agencies, boards or commissions of the city in such area unless as authorized by the local legislative body, including substantial remodeling or conversion or rebuilding, enlargement, or extension or major structural improvements on existing buildings, but not including ordinary maintenance or remodeling or changes necessary to continue the occupancy.

(f) Any city in which a redevelopment authority is carrying on redevelopment under this section may make grants, loans, advances or contributions for the purpose of carrying on redevelopment, urban renewal and any other related purposes.

(9) TRANSFER, LEASE OR SALE OF REAL PROPERTY IN PROJECT AREAS FOR PUBLIC AND PRIVATE USES (a) 1. Upon the acquisition of any or all of the real property in the project area, the authority has power to lease, sell or otherwise transfer all or any part of said real property (including streets or parts thereof to be closed or vacated in accordance with the plan) to a redevelopment company, association, corporation or public body, or to an individual, limited liability company or partnership, for use in accordance with the redevelopment plan. No such assembled lands of the project area shall be either sold or leased by the authority to a housing authority created under s. 66.40 for the purpose of constructing public housing projects upon such land unless the sale or lease of such lands has been first approved by the local legislative body by a vote of not less than four-fifths of the members elected. Such real property shall be leased or sold at its fair market value for uses in accordance with the redevelopment plan, notwithstanding such value may be less than the cost of acquiring and preparing such property for redevelopment. In determining such fair market value, an authority shall give consideration to the uses and purposes required by the plan; the restrictions upon and covenants, conditions and obligations assumed by the purchaser or lessee, the objectives of the redevelopment plan for the prevention or recurrence of slum and blighted areas; and such other matters as the authority deems appropriate. A copy of the plan shall be recorded in the office of the register of deeds in the county where such redevelopment project is located, and any amendment to such redevelopment plan, approved as herein provided for, shall also be recorded in the office of the register of deeds of such county. Before the transfer, lease or sale of any real property in the project area occurs, a report as to the terms, conditions and other material provisions of the proposed sale, lease or other disposition of either a part (where only a part of the land assembled is to be disposed) or of all of the land assembled shall be submitted to the local legislative body, and such local legislative body shall approve such report prior to the authority proceeding with the disposition of such real property.

2. Any lease, including renewal options, which can total more than 5 years shall be approved by the local legislative body.

(b) Any such lease or sale may be made without public bidding, but only after public hearing is held by the authority after notice to be published as a class 2 notice, under ch. 985, and the hearing shall be predicated upon the proposed sale or lease and the provisions thereof.

(c) The terms of such lease or sale shall be fixed by the authority, and the instrument of lease may provide for renewals upon

reappraisals and with rentals and other provisions adjusted to such reappraisals. Every such lease or sale shall provide that the lessee or purchaser shall carry out or cause to be carried out the approved project area redevelopment plan or approved modifications thereof, and that the use of such land or real property included in the lease or sale, and any building or structure erected thereon, shall conform to such approved plan or approved modifications thereof. In the instrument of lease or sale, the authority may include such other terms, provisions and conditions as in its judgment will provide reasonable assurance of the priority of the obligations of the lease or sale and of conformance to the plan over any other obligations of the lessee or purchaser, and also assurance of the financial and legal ability of the lessee or purchaser to carry out and conform to the plan and the terms and conditions of the lease or sale; also, such terms, conditions and specifications concerning buildings, improvements, subleases or tenancy, maintenance and management, and any other matters as the authority may impose or approve, including provisions whereby the obligations to carry out and conform to the project area plan shall run with the land. If maximum rentals to be charged to tenants are specified, provision may be made for periodic reconsideration of such rental bases.

(d) Until the authority certifies that all building constructions and other physical improvements specified by the purchaser have been completed, the purchaser shall have no power to convey the area, or any part thereof, without the consent of the authority and no such consent shall be given unless the grantee of the purchaser is obligated, by written instrument, to the authority to carry out that portion of the redevelopment plan which falls within the boundaries of the conveyed property and also that the grantee and the heirs, representatives, successors and assigns of the grantee, shall have no right or power to convey, lease or let the conveyed property or any part thereof, or erect or use any building or structure erected thereon free from obligation and requirement to conform to the approved project area redevelopment plan or approved modifications thereof.

(e) The authority may cause to have demolished any existing structure or clear the area of any part thereof, or specify the demolition and clearance to be performed by a lessee or purchaser and a time schedule for the same. The authority shall specify the time schedule and conditions for the construction of buildings and other improvements.

(f) In order to facilitate the lease or sale of a project area, or if the lease or sale is part of an area, the authority has the power to include in the cost payable by it the cost of the construction of local streets and sidewalks in the area, or of grading and any other local public surface or subsurface facilities or any site improvements necessary for shaping the area as the site of the redevelopment of the area. The authority may arrange with the appropriate federal, state, county or city agencies for the reimbursement of such outlays from funds or assessments raised or levied for such purposes.

**(10) HOUSING FOR DISPLACED FAMILIES; RELOCATION PAYMENTS.** In connection with every redevelopment plan, the authority shall formulate a feasible method for the temporary relocation of persons living in areas that are designated for clearance and redevelopment. In addition, the authority shall prepare a plan which shall be submitted to the local legislative body for approval which shall assure that decent, safe and sanitary dwellings substantially equal in number to the number of substandard dwellings to be removed in carrying out the redevelopment are available or will be provided at rents or prices within the financial reach of the income groups displaced. The authority is authorized to make relocation payments to or with respect to persons (including families, business concerns and others) displaced by a project for moving expenses and losses of property for which reimbursement or compensation is not otherwise made, including the making of such payments financed by the federal government.

**(11) MODIFICATION OF REDEVELOPMENT PLAN.** (a) An approved project area redevelopment plan may be modified at any time after the lease or sale of the area or part thereof provided that

the modification is consented to by the lessee or purchaser, and that the proposed modification is adopted by the authority and then submitted to the local legislative body and approved by it. Before approval, the authority shall hold a public hearing on the proposed modification, and notice of the time and place of hearing shall be sent by mail at least 10 days prior to the hearing to the owners of the real properties in the project area and of the real properties immediately adjoining or across the street from the project area. The local legislative body may refer back to the authority any project area redevelopment plan, project area boundaries or modifications submitted to it, together with recommendations for changes in such plan, boundaries or modification, and if such recommended changes are adopted by the authority and in turn approved by the local legislative body, the plan, boundaries or modifications as thus changed shall be the approved plan, boundaries or modification.

(b) Whenever the authority determines that a redevelopment plan with respect to a project area that has been approved and recorded in the register of deed's office is to be modified to permit land uses in the project area, other than those specified in the redevelopment plan, the authority shall notify all purchasers of property within the project area of the authority's intention to modify the redevelopment plan, and it shall hold a public hearing with respect to the modification. Notice shall be given to the purchasers of the property by personal service at least 20 days prior to the holding of the public hearing, or if the purchasers cannot be found notice shall be given by registered mail to the purchasers at their last-known address. Notice of the public hearing shall also be given by publication as a class 2 notice, under ch. 985. The notice shall specify the project area and recite the proposed modification and its purposes. The public hearing shall be merely advisory to the authority. After the authority, following the public hearing, determines that the modification of the redevelopment plan will not affect the original objectives of the plan and that it will not produce conditions leading to a reoccurrence of slums or blight within the project area, the authority may by resolution act to modify the plan to permit additional land uses in the project area, subject to approval by the legislative body by a two-thirds vote of the members elect. If the local legislative body approves the modification to the redevelopment plan, an amendment to the plan containing the modification shall be recorded with the register of deeds of the county in which the project area is located and shall supplement the redevelopment plan previously recorded. Following the action with respect to modification of the redevelopment plan, the plan shall be considered amended and no legal rights shall accrue to any person or to any owner of property in the project area by reason of the modification of the redevelopment plan.

(c) The provisions herein shall be construed liberally to effectuate the purposes hereof and substantial compliance shall be deemed adequate. Technical omissions shall not invalidate the procedure set forth herein with respect to acquisition of real property necessary or incidental to a redevelopment project.

**(12) LIMITATION UPON TAX EXEMPTION.** The real and personal property of the authority is declared to be public property used for essential public and governmental purposes, and such property and an authority shall be exempt from all taxes of the state or any state public body; but the city in which a redevelopment or urban renewal project is located may fix a sum to be paid annually in lieu of such taxes by the authority for the services, improvements or facilities furnished to the project by the city if the authority is financially able to do so, but such sum shall not exceed the amount which would be levied as the annual tax of the city upon such project. However, no real property acquired under this section by a private company, corporation, individual, limited liability company or partnership, either by lease or purchase, shall be exempt from taxation by reason of such acquisition.

**(13) COOPERATION BY PUBLIC BODIES AND USE OF CITY FUNDS.** To assist any redevelopment or urban renewal project located in the area in which the authority is authorized to act, any public body may, upon such terms as it determines: furnish services or facili-

ties, provide property, lend or contribute funds, and perform any other action of a character which it is authorized to perform for other general purposes, and to enter into cooperation agreements and related contracts in furtherance of the purposes enumerated. Any city and any public body may levy taxes and assessments and appropriate such funds and make such expenditures as may be necessary to carry out the purposes of this subsection, but taxes and assessments shall not be levied under this subsection by a public body which has no power to levy taxes and assessments for any other purpose.

**(14) OBLIGATIONS.** For the purpose of financially aiding an authority to carry out blight elimination, slum clearance and urban renewal programs and projects, the city in which such authority functions is authorized (without limiting its authority under any other law) to issue and sell general obligation bonds in the manner and in accordance with the provisions of ch. 67, except that no referendum shall be required, and to levy taxes without limitation for the payment thereof, as provided in s. 67.035. Such bonds shall be fully negotiable and except as provided in this subsection shall not be subject to any other law or charter pertaining to the issuance or sale of bonds.

**(15) BUDGET.** The local legislative body shall approve the budget for each fiscal year of the authority, and shall have the power to alter or modify any item of said budget relating to salaries, office operation or facilities.

**(16) LEGAL SERVICES TO AUTHORITY.** The legal department of any city in which the authority functions can provide legal services to such authority and a member of the legal department having the necessary qualifications may, subject to approval of the authority, be its counsel; the authority may also retain specialists to render legal services as required by it.

**(17) CONSTRUCTION.** This section shall be construed liberally to effectuate the purposes hereof and the enumeration therein of specific powers shall not operate to restrict the meaning of any general grant of power contained in this section or to exclude other powers comprehended in such general grant.

**History:** 1973 c. 172; 1975 c. 4, 94, 350; 1979 c. 89, 110, 221; 1981 c. 20, 112, 232; 1983 a. 24, 189; 1985 a. 219; 1987 a. 27, 403; 1989 a. 31, 89; 1991 a. 316; 1993 a. 16, 112, 172, 184, 268, 301.

Obligations, including notes, issued by a redevelopment authority under 66.431, Stats. 1969, to evidence a direct loan from the federal government are subject to the provisions of said statute which limit the interest rate thereon to 6% per annum. 59 Atty Gen. 256.

See note to 895.35, citing 63 Atty Gen. 421.

Redevelopment authority may condemn any property within the project area even though some portions of the urban renewal area are not in fact blighted. 65 Atty Gen. 116.

Certain local governments and public agencies may issue obligations to provide mortgage loans on owner-occupied residences. However, compliance with mortgage subsidy bond tax act of 1980 is necessary to allow exemption of interest from federal taxation. 71 Atty Gen. 74.

**66.432 Local equal opportunities. (1) DECLARATION OF POLICY.** The right of all persons to have equal opportunities for housing regardless of their sex, race, color, physical condition, disability as defined in s. 101.22 (1m) (g), sexual orientation as defined in s. 111.32 (13m), religion, national origin, marital status, family status as defined in s. 101.22 (1m) (k), lawful source of income, age or ancestry is a matter both of statewide concern under s. 101.22 and also of local interest under this section and s. 66.433. The enactment of s. 101.22 by the legislature shall not preempt the subject matter of equal opportunities in housing from consideration by political subdivisions, and shall not exempt political subdivisions from their duty, nor deprive them of their right, to enact ordinances which prohibit discrimination in any type of housing solely on the basis of an individual being a member of a protected class.

**(1m) DEFINITIONS.** In this section:

- (a) "Aggrieved person" has the meaning given in s. 101.22 (1m) (b).
- (b) "Complainant" has the meaning given in s. 101.22 (1m) (c).
- (c) "Discriminate" has the meaning given in s. 101.22 (1m) (h).

(d) "Member of a protected class" has the meaning given in s. 101.22 (1m) (nm).

(e) "Political subdivision" means a city, village, town or county.

**(2) ANTIDISCRIMINATION HOUSING ORDINANCES.** Political subdivisions may enact ordinances prohibiting discrimination in housing within their respective boundaries solely on the basis of an individual being a member of a protected class. Such an ordinance may be similar to s. 101.22 (1) to (8) or may be more inclusive in its terms or in respect to the different types of housing subject to its provisions, but any such ordinance establishing a forfeiture as a penalty for violation shall not be for an amount that is less than the statutory forfeitures under s. 101.22. Such an ordinance may permit a complainant, aggrieved person or respondent to elect to remove the action to circuit court after a finding has been made that there is reasonable cause to believe that a violation of the ordinance has occurred. Such an ordinance may also authorize the political subdivision, at any time after a complaint has been filed alleging an ordinance violation, to file a complaint in circuit court seeking a temporary injunction or restraining order pending final disposition of the complaint.

**(3) CONTINGENCY RESTRICTION.** No political subdivision shall enact an ordinance under sub. (2), which contains a provision making its effective date or the operation of any of its provisions contingent on the enactment of an ordinance on the same or similar subject matter by one or more other political subdivisions.

**History:** 1971 c. 185 s. 7; 1975 c. 94, 275, 422; 1977 c. 418 s. 929 (55); 1981 c. 112; 1981 c. 391 s. 210; 1985 a. 29; 1989 a. 47; 1991 a. 295.

**NOTE:** 1991 Wis. Act 295, which affected this section, contains extensive legislative council notes.

Ordinance provision banning discrimination against "cohabitants" was outside the authority of sub. (2) and invalid. *County of Dane v. Norman*, 174 W (2d) 683, 497 NW (2d) 714 (1993).

Authority of counties and municipalities to enact and enforce ordinances under this section discussed. 74 Atty Gen. 234.

County board lacks statutory authority to enact ordinances directing register of deeds to refuse to record documents containing restrictive covenants or requiring register of deeds to place notices on liber volumes and copies of real estate documents, directing public's attention to possibility that such covenants may be legally unenforceable. 77 Atty Gen. 262.

**66.4325 Housing and community development authorities. (1) AUTHORIZATION.** Any city may, by a two-thirds vote of the members of the city council present at the meeting, adopt an ordinance or resolution creating a housing and community development authority which shall be known as the "Community Development Authority" of such city. It shall be deemed a separate body politic for the purpose of carrying out blight elimination, slum clearance, urban renewal programs and projects and housing projects. The ordinance or resolution creating a housing and community development authority may also authorize such authority to act as the agent of the city in planning and carrying out community development programs and activities approved by the mayor and common council under the federal housing and community development act of 1974 and as agent to perform all acts, except the development of the general plan of the city, which may be otherwise performed by the planning commission under s. 66.405 to 66.425, 66.43, 66.435 or 66.46. A certified copy of such ordinance or resolution shall be transmitted to the mayor. The ordinance or resolution shall also:

(a) Provide that any redevelopment authority created under s. 66.431 operating in such city and any housing authority created under s. 66.40 operating in such city, shall terminate its operation as provided in sub. (5); and

(b) Declare in substance that a need for blight elimination, slum clearance, urban renewal and community development programs and projects and housing projects exists in the city.

**(2) APPOINTMENT OF MEMBERS.** Upon receipt of a certified copy of such ordinance or resolution, the mayor shall, with the confirmation of the council, appoint 7 resident persons having sufficient ability and experience in the fields of urban renewal,



community development and housing, as commissioners of the community development authority.

(a) Two of the commissioners shall be members of the council and shall serve during their term of office as council members.

(b) The first appointments of the 5 noncouncil members shall be for the following terms: 2 for one year and one each for terms of 2, 3 and 4 years. Thereafter the terms of noncouncil members shall be 4 years and until their successors are appointed and qualified.

(c) Vacancies shall be filled for the unexpired term as provided in this subsection.

(d) Commissioners shall be reimbursed their actual and necessary expenses including local travel expenses incurred in the discharge of their duties, and may, in the discretion of the city council, receive other compensation.

**(3) EVIDENCE OF AUTHORITY** The filing of a certified copy of the ordinance or resolution referred to in sub. (1) with the city clerk shall be prima facie evidence of the community development authority's right to transact business and such ordinance or resolution is not subject to challenge because of any technicality. In any suit, action or proceeding commenced against the community development authority, a certified copy of such ordinance or resolution is conclusive evidence that such community development authority is established and authorized to transact business and exercise its powers under this section.

**(4) POWERS AND DUTIES** The community development authority shall have all powers, duties and functions set out in ss. 66.40 and 66.431 for housing and redevelopment authorities and as to all housing projects initiated by the community development authority it shall proceed under s. 66.40, and as to all projects relating to blight elimination, slum clearance, urban renewal and redevelopment programs it shall proceed under s. 66.405 to 66.425, 66.43, 66.431, 66.435 or 66.46 as determined appropriate by the common council on a project by project basis. As to all community development programs and activities undertaken by the city under the federal housing and community development act of 1974, the community development authority shall proceed under all applicable laws and ordinances not inconsistent with the laws of this state. In addition, if provided in the resolution or ordinance, the community development authority may act as agent of the city to perform all acts, except the development of the general plan of the city, which may be otherwise performed by the planning commission under s. 66.405 to 66.425, 66.43, 66.435 or 66.46.

**(5) TERMINATION OF HOUSING AND REDEVELOPMENT AUTHORITIES** Upon the adoption of an ordinance or resolution creating a community development authority, all housing and redevelopment authorities previously created in such city under ss. 66.40 and 66.431 shall terminate.

(a) Any programs and projects which have been begun by housing and redevelopment authorities shall, upon adoption of such ordinance or resolution be transferred to and completed by the community development authority. Any procedures, hearings, actions or approvals taken or initiated by the redevelopment authority under s. 66.431 on pending projects is deemed to have been taken or initiated by the community development authority as though the community development authority had originally undertaken such procedures, hearings, actions or approvals.

(b) Any form of indebtedness issued by a housing or redevelopment authority shall, upon the adoption of such ordinance or resolution, be assumed by the community development authority except as indicated in par. (e).

(c) Upon the adoption of such ordinance or resolution, all contracts entered into between the federal government and a housing or redevelopment authority, or between such authorities and other parties shall be assumed and discharged by the community development authority except for the termination of operations by housing and redevelopment authorities. Housing and redevelopment authorities may execute any agreements contemplated by this subsection. Contracts for disposition of real property entered

into by the redevelopment authority with respect to any project shall be deemed contracts of the community development authority without the requirement of amendments thereto. Contracts entered into between the federal government and the redevelopment authority or the housing authority shall bind the community development authority in the same manner as though originally entered into by the community development authority.

(d) A community development authority may execute appropriate documents to reflect its assumption of the obligations set forth in this subsection.

(e) A housing authority which has outstanding bonds or other securities that require the operation of the housing authority in order to fulfill its commitments with respect to the discharge of principal or interest or both, may continue in existence solely for such purpose. The ordinance or resolution creating the community development authority shall delineate the duties and responsibilities which shall devolve upon the housing authority with respect thereto.

(f) The termination of housing and redevelopment authorities pursuant to this section shall not be subject to s. 66.40 (26).

**(5m) TAX EXEMPTION** Community development authority bonds issued on or after January 28, 1987, are declared to be issued for an essential public and governmental purpose and to be public instrumentalities and, together with interest thereon and income therefrom, are exempt from taxes.

**(6) CONTROLLING STATUTE** The powers conferred under this section shall be in addition and supplemental to the powers conferred by any other law. Insofar as this section is inconsistent with any other law, this section shall control.

**(7) CONSTRUCTION** This section shall be construed liberally to effectuate its purposes and the enumeration of specific powers herein does not restrict the meaning of any general grant of power contained in this section nor does it exclude other powers comprehended in such general grant.

History: 1975 c. 311; 1979 c. 110; 1987 a. 27.

**66.433 Community relations-social development commissions.** **(1) DEFINITION** "Municipality" as used herein means a city, village, town, school district or county.

**(2) CREATION** Each municipality is authorized and urged to either establish by ordinance a community relations-social development commission or to participate in such a commission established on an intergovernmental basis within the county pursuant to enabling ordinances adopted by the participating municipalities; but a school district may establish or participate in such a commission by resolution instead of by ordinance. Such intergovernmental commission may be established in cooperation with any nonprofit corporation located in the county and composed primarily of public and private welfare agencies devoted to any of the purposes set forth in this section. Every such ordinance or resolution shall substantially embody the language of sub. (3). Each municipality may appropriate money to defray the expenses of such commission. If such commission is established on an intergovernmental basis within the county, the provisions of s. 66.30, relating to local cooperation, are applicable thereto as optional authority and may be utilized by participating municipalities to effectuate the purposes of this section, but a contract between municipalities is not necessary for the joint exercise of any power authorized for the joint performance of any duty required herein.

**(3) PURPOSE AND FUNCTIONS OF COMMISSION** (a) The purpose of the commission is to study, analyze and recommend solutions for the major social, economic and cultural problems which affect people residing or working within the municipality including, without restriction because of enumeration, problems of the family, youth, education, the aging, juvenile delinquency, health and zoning standards, and discrimination in housing, employment and public accommodations and facilities on the basis of sex, class, race, religion, sexual orientation or ethnic or minority status.

(b) The commission may:

1. Include within its studies problems related to pornography, industrial strife and the inciting or fomenting of class, race or religious hatred and prejudice.

2. Encourage and foster participation in the fine arts.

(c) The commission shall:

1. Recommend to the municipal governing body and chief executive or administrative officer the enactment of such ordinances or other action as they deem necessary:

a. To establish and keep in force proper health standards for the community and beneficial zoning for the community area in order to facilitate the elimination of blighted areas and to prevent the start and spread of such areas;

b. To ensure to all municipal residents, regardless of sex, race, sexual orientation or color, the rights to possess equal housing accommodations and to enjoy equal employment opportunities.

2. Cooperate with state and federal agencies and nongovernmental organizations having similar or related functions.

3. Examine the need for publicly and privately sponsored studies and programs in any field of human relationship which will aid in accomplishing the foregoing objectives, and initiate such public programs and studies and participate in and promote such privately sponsored programs and studies.

4. Have authority to conduct public hearings within the municipality and to administer oaths to persons testifying before it.

5. Employ such staff as is necessary to implement the duties assigned to it.

**(4) COMPOSITION OF COMMISSION.** The commission shall be nonpartisan and composed of citizens residing in the municipality, including representatives of the clergy and minority groups, and the composition thereof, number and method of appointing and removing the members thereof shall be determined by the governing body of the municipality creating or participating in the commission. Notwithstanding s. 59.03 (4) or 66.11 (2), a member of such governing body may serve on the commission, except that a county board member in a county having a population over 500,000 may not accept compensation for serving on the commission. Of the persons first appointed, one-third shall hold office for one year, one-third for 2 years, and one-third for 3 years from the first day of February next following their appointment, and until their respective successors are appointed and qualified. All succeeding terms shall be for 3 years. Any vacancy shall be filled for the unexpired term in the same manner as original appointments. Every person appointed as a member of the commission shall take and file the official oath.

**(5) ORGANIZATION.** The commission shall meet in January, April, July and October of each year, and may meet at such additional times as the members determine or the chairperson directs. Annually, it shall elect from its membership a chairperson, vice chairperson and secretary. A majority of the commission shall constitute a quorum. Members of the commission shall receive no compensation, but each member shall be entitled to actual and necessary expenses incurred in the performance of commission duties. The commission may appoint consulting committees consisting of either members or nonmembers or both, the appointees of which shall be reimbursed their actual and necessary expenses. All expense accounts shall be paid by the commission on certification by the chairperson or acting chairperson.

**(6) OPEN MEETINGS.** All meetings of the commission and its consulting committees shall be publicly held and open to all citizens at all times as required by subch. V of ch. 19.

**(7) DESIGNATION OF COMMISSIONS AS COOPERATING AGENCIES UNDER FEDERAL LAW.** (a) The commission may be the official agency of the municipality to accept assistance under title II of the federal economic opportunity act of 1964. No assistance shall be accepted with respect to any matter to which objection is made by the legislative body creating such commission, but if the commission is established on an intergovernmental basis and such objec-

tion is made by any participating legislative body said assistance may be accepted with the approval of a majority of the legislative bodies participating in such commission.

(b) The commission may be the official agency of the municipality to accept assistance from the community relations service of the U.S. department of justice under title X of the federal civil rights act of 1964 to provide assistance to communities in resolving disputes, disagreements or difficulties relating to discriminatory practices based on sex, race, color or national origin which may impair the rights of persons in the municipality under the constitution or laws of the United States or which affect or may affect interstate commerce.

**(8) OTHER POWERS OF THE COUNTY BOARD OF SUPERVISORS.** County boards may appropriate county funds for the operation of community relations-social development commissions established or reconstituted under this section, including those participated in on an equal basis by nonprofit corporations located in the county and comprised primarily of public and private welfare agencies devoted to any of the purposes set forth in this section. The legislature finds that the expenditure of county funds for the establishment or support of such commissions is for a public purpose.

**(9) INTENT.** It is the intent of this section to promote fair and friendly relations among all the people in this state, and to that end race, creed, sexual orientation or color ought not to be made tests in the matter of the right of any person to sell, lease, occupy or use real estate or to earn a livelihood or to enjoy the equal use of public accommodations and facilities.

**(10) SHORT TITLE.** This section shall be known and may be cited as "The Wisconsin Bill of Human Rights".

**History:** 1975 c. 94; 1975 c. 426 s. 3; 1979 c. 34; 1981 c. 112; 1991 a. 39, 316; 1993 a. 184.

Functions of a community relations-social development commission are not limited to study, analysis and planning, but have authority to carry out some human relations programs providing services directly to citizens. 63 Atty. Gen. 182.

Vocational, technical and adult education districts are subject to city equal employment opportunity ordinances only within boundaries of city. 70 Atty. Gen. 226.

**66.434 Community action agencies.** A city, village or town may appropriate funds for promoting and assisting any community action agency under s. 46.30.

**History:** 1977 c. 29; 1983 a. 27 s. 2200 (20).

**66.435 Urban renewal.** **(1) SHORT TITLE.** This section shall be known and may be cited as the "Urban Renewal Act".

**(2) FINDINGS.** It is hereby found and declared that there exists in municipalities of the state slum, blighted and deteriorated areas which constitute a serious and growing menace injurious to the public health, safety, morals and welfare of the residents of the state, and the findings and declarations made before August 3, 1955 in s. 66.43 (2) are in all respects affirmed and restated; that while certain slum, blighted or deteriorated areas, or portions thereof, may require acquisition and clearance, as provided in s. 66.43, since the prevailing condition of decay may make impracticable the reclamation of the area by conservation or rehabilitation in such a manner that the conditions and evils hereinbefore enumerated may be eliminated, remedied or prevented, and to the extent feasible salvable slum and blighted areas should be conserved and rehabilitated through voluntary action and the regulatory process; and all acts and purposes provided for by this section are for and constitute public uses and are for and constitute public purposes, and that moneys expended in connection with such powers are declared to be for public purposes and to preserve the public interest, safety, health, morals and welfare. Any municipality in carrying out the provisions of this section shall afford maximum opportunity consistent with the sound needs of the municipality as a whole to the rehabilitation or redevelopment of areas by private enterprise.

**(3) URBAN RENEWAL PROJECTS.** In addition to its authority under any other section, a municipality is authorized to plan and undertake urban renewal projects. As used in this section, an urban renewal project may include undertakings and activities for

the elimination and for the prevention of the development or spread of slums or blighted, deteriorated or deteriorating areas and may involve any work or undertaking for such purpose constituting a redevelopment project or any rehabilitation or conservation work, or any combination of such undertaking or work. For this purpose, "rehabilitation or conservation work" may include (a) carrying out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements; (b) acquisition of real property and demolition, removal or rehabilitation of buildings and improvements thereon where necessary to eliminate unhealthful, insanitary or unsafe conditions, lessen density, reduce traffic hazards, eliminate obsolete or other uses detrimental to the public welfare, or to otherwise remove or prevent the spread of blight or deterioration, or to provide land for needed public facilities; (c) installation, construction or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out the objectives of the urban renewal project; and (d) the disposition, for uses in accordance with the objectives of the urban renewal project, of any property or part thereof acquired in the area of such project, provided, that such disposition shall be in the manner prescribed in this section for the disposition of property in a redevelopment project area.

(4) **WORKABLE PROGRAM.** (a) The governing body of the municipality, or such public officer or public body as it designates, including a housing authority organized and created under s. 66.40, a redevelopment authority created under s. 66.431 or a community development authority created under s. 66.4325, is authorized to prepare a workable program for utilizing appropriate private and public resources to eliminate, and prevent the development or spread of, slums and urban blight and deterioration; to encourage needed urban rehabilitation, to provide for the redevelopment of blighted, deteriorated or slum areas, or to undertake those activities or other feasible activities that may be suitably employed to achieve the objectives of such a program. The governing body may by resolution or ordinance provide the specific means by which a workable program can be effectuated and may confer upon its officers and employees the power required to carry out a program of rehabilitation and conservation for the restoration and removal of blighted, deteriorated or deteriorating areas. If a municipality finds that there exists in the municipality dwellings or other structures that are unfit for human habitation due to dilapidation, defects that increase the hazards of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities or other conditions, rendering the dwellings or other structures unsanitary, dangerous or detrimental to the health, safety or morals, or otherwise inimical to the welfare of the residents of the municipality, the municipality may enact the resolutions or ordinances that it considers appropriate and effectual in order to prevent those conditions and may require or cause the repair, closing, demolition or removal of the dwellings or other structures. For the purposes of the resolutions or ordinances, a "dwelling" means any building, structure or part of the building or structure that is used and occupied for human habitation or intended to be so used and includes any appurtenances belonging to it or usually enjoyed with it. The term "structure" also includes fences, garages, sheds, and any type of store or commercial, industrial or manufacturing building. The ordinances or resolutions shall require that, if there are reasonable grounds to believe that there has been a violation of the ordinances or resolutions, notice of the alleged violation shall be given to the alleged responsible person by appropriately designated public officers or employees of such municipality. Every such notice shall be in writing; include a description of the real estate sufficient for identification; include a statement of the reason for issuance; specify a time for the performance of any act that the notice requires; and be served upon the alleged responsible person. The notice of violation is properly served on the person if a copy of it is delivered to the person personally; is left at the person's usual place of abode, in the presence of someone in the family of suitable age and discretion who shall be informed of the contents of the notice; is sent by registered mail or by certified

mail with return receipt requested to the person's last-known address; or, if the registered or certified letter with the copy of the notice is returned showing the letter has not been delivered to the person, by posting a copy of the notice in a conspicuous place in or about the dwelling or other structure affected by the notice. Any person affected by such a notice may request and shall be granted a hearing on the matter before a board or commission established by the governing body of such municipality or before a local health officer. The person shall file in the office of the designated board or commission or the local health officer a written petition requesting the hearing and setting forth a statement of the grounds for it within 20 days after the day the notice was served. Within 10 days after receipt of the petition, the designated board or commission or the local health officer shall set a time and place for the hearing and shall give the petitioner written notice of it. At the hearing the petitioner shall have an opportunity to be heard and to show cause why the notice should be modified or withdrawn. The hearing before the designated board or commission or the local health officer shall be commenced not later than 30 days after the date on which the petition was filed. Upon written application of the petitioner to the designated board or commission or the local health officer, the date of the hearing may be postponed for a reasonable time beyond the 30-day period, if, in the judgment of the board, commission or local health officer, the petitioner has submitted a good and sufficient reason for such postponement. Any notice served under this section shall become an order if a written petition for a hearing is not filed in the office of the designated board or commission or the local health officer within 20 days after such notice is served. The designated board or commission or the local health officer may administer oaths and affirmations in connection with the conduct of any hearing held under this section. After the hearing the designated board or commission or the local health officer shall sustain, modify or cancel the notice, depending upon its findings as to whether the provisions of the resolutions or ordinances have been complied with. The designated board or commission or the local health officer may also modify any notice so as to authorize a variance from the provisions of the resolutions or ordinances when, because of special conditions, enforcement of the provisions of the resolutions or ordinances will result in practical difficulty or unnecessary hardship, if the intent of the resolutions or ordinances will be observed and public health and welfare secured. If the designated board or commission or the local health officer sustains or modifies the notice, the sustained or modified notice is an order, and the persons affected by the order shall comply with all provisions of the order within a reasonable period of time, as determined by the board, commission or local health officer. The proceedings at the hearing, including the findings and decisions of the board, commission or local health officer, shall be reduced to writing and entered as a matter of public record in the office of the board, commission or local health officer. The record shall also include a copy of every notice or order issued in connection with the matter. A copy of the written decision of the board, commission or local health officer shall then be served, in the same manner prescribed for service of notice, on the person who filed the petition for hearing. If the local health officer finds that an emergency exists that requires immediate action to protect the public health, the local health officer may, without notice or hearing, issue an order reciting the existence of such an emergency and requiring that action be taken that the local health officer determines is necessary to meet the emergency. This order shall be effective immediately. Any person to whom the order is directed shall comply with it, but shall be afforded a hearing as specified in this section if the person immediately files a written petition with the local health officer requesting the hearing. After the hearing, depending upon the findings of the local health officer as to whether an emergency still exists that requires immediate action to protect the public health, the local health officer shall continue the order in effect or modify or revoke it.

(b) Any person aggrieved by the determination of any board, commission or local health officer, following review of an order issued under this section, may appeal directly to the circuit court of the county in which the dwelling or other structure is located by filing a petition for review with the clerk of the circuit court within 30 days after a copy of the order of the board, commission or local health officer has been served upon the person. The petition shall state the substance of the order appealed from and the grounds upon which the person believes the order to be improper. A copy of the petition shall be served upon the board, commission or local health officer whose determination is appealed. The copy shall be served personally or by registered or certified mail within the 30-day period provided in this paragraph. A reply or answer shall be filed by the board, commission or local health officer within 15 days after the receipt of the petition. A copy of the written proceedings of the hearing held by the board, commission or local health officer which led to service of the order being appealed shall be included with the reply or answer when filed. If it appears to the court that the petition is filed for purposes of delay, the court shall, upon application of the municipality, promptly dismiss the petition. Either party to the proceedings may then petition the court for an immediate hearing on the order. The court shall review the order and the copy of written proceedings of the hearing conducted by the board, commission or local health officer, shall take testimony that the court determines is appropriate, and, following a hearing upon the order without a jury, shall make its determination. If the court affirms the determination made by the board, commission or local health officer, the court shall fix a time within which the order appealed from shall become operative.

(5) **GENERAL POWERS CONFERRED UPON MUNICIPALITIES.** The governing body of any municipality shall have and there is hereby expressly conferred upon it all powers necessary and incidental to effect a program of urban renewal, including functions with respect to rehabilitation and conservation for the restoration and removal of blighted, deteriorated or deteriorating areas, and such local governing body is hereby authorized to adopt such resolutions or ordinances as may be required for the purpose of carrying out that program and the objectives and purposes of this section. In connection with the planning, undertaking and financing of the urban renewal program or projects, the governing body of any municipality and all public officers, agencies and bodies shall have all the rights, powers, privileges and immunities which they have with respect to a redevelopment project under s. 66.43.

(6) **ASSISTANCE TO URBAN RENEWAL BY MUNICIPALITIES AND OTHER PUBLIC BODIES.** Any public body is hereby authorized to enter into agreements (which may extend over any period, notwithstanding any provision or rule of law to the contrary) with any other public body or bodies respecting action to be taken pursuant to any of the powers granted by this section, including the furnishing of funds or other assistance in connection with an urban renewal plan or urban renewal project.

(7) **POWERS HEREIN GRANTED TO BE SUPPLEMENTAL AND NOT IN DEROGATION** (a) Nothing in this section shall be construed to abrogate or impair the powers of the courts or of any department of any municipality to enforce any provisions of its charter or its ordinances or regulations, nor to prevent or punish violations thereof.

(b) Nothing in this section shall be construed to impair or limit in any way the power of the municipality to define and declare nuisances and to cause their removal or abatement, by summary proceedings or otherwise.

(c) The powers conferred by this section shall be in addition and supplemental to the powers conferred by any other law; and this section shall be construed liberally to effectuate the purposes hereof and the enumeration therein of specific powers shall not operate to restrict the meaning of any general grant of power contained in this section or to exclude other powers comprehended in such general grant.

History: 1975 c. 311; 1977 c. 187; 1979 c. 89; 1983 a. 219; 1991 a. 316; 1993 a. 27.

**66.436 Villages to have certain city powers.** Villages shall have all of the powers of cities under ss. 66.395 to 66.425, 66.43, 66.431, 66.4325, 66.435 and 66.46.

History: 1975 c. 105, 311; 1993 a. 300

**66.437 Towns to have certain city powers.** Towns shall have all of the powers of cities under ss. 66.40 to 66.425, 66.43, 66.431, 66.4325, 66.505 and 66.508, except the powers under s. 66.40(10) and any other powers that conflict with statutes relating to towns and town boards.

History: 1993 a. 246

**66.44 War housing by housing authorities. (1)** Any housing authority established pursuant to ss. 66.40 to 66.404 may undertake the development or administration or both of projects to provide housing for persons (and their families) engaged or to be engaged in war industries or activities and may exercise any of its rights, powers, privileges and immunities to aid and cooperate with the federal government (or any agency thereof) in making housing available for persons (and their families) engaged or to be engaged in war industries or activities; may act as agent for the federal government in developing and administering such housing; may lease such housing from the federal government (or any agency thereof); and may arrange with public bodies and private agencies for such services and facilities as may be needed for such housing; provided, that any such housing shall not be subject to ss. 66.401(2) and 66.402. Without limiting any existing power, the powers of any public body in the state pursuant to s. 66.403 may be exercised with respect to such housing. With the consent, by resolution, of the governing body of any city or county adjacent but outside of the area of operation of a housing authority, the housing authority may exercise its powers under this section within the territorial boundaries of such city or county.

(2) Any project of a housing authority, for which the federal government has heretofore made or contracted to make financial assistance available, may be administered to provide housing for persons engaged or to be engaged in war industries or activities.

**66.45 Municipal cooperation; federal rivers, harbors or water resources projects.** Any county, town, city or village acting under its powers and in conformity with state law may enter into an agreement with an agency of the federal government to cooperate in the construction, operation or maintenance of any federally authorized rivers, harbors or water resources management or control project or to assume any potential liability appurtenant to such a project and may do all things necessary to consummate the agreement. If such a project will affect more than one municipality, the municipalities affected may jointly enter into such an agreement with an agency of the federal government carrying such terms and provisions concerning the division of costs and responsibilities as may be mutually agreed upon. The municipalities concerned may by agreement submit any determinations of the division of construction costs, responsibilities, or any other liabilities among them to an arbitration board. The determination of such a board shall be final. This section shall not be construed as a grant or delegation of power or authority to any county, town, city, village or other local municipality to do any work in or place any structures in or on any navigable water except as it is otherwise expressly authorized by state law to do.

**66.46 Tax increment law. (1) SHORT TITLE** This section shall be known and may be cited as the "Tax Increment Law".

(2) **DEFINITIONS.** In this section, unless a different intent clearly appears from the context:

(a) "Blighted area" means any area (including slum area) in which the structures, buildings or improvements, which by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors is conducive to ill

health, transmission of disease, infant mortality, juvenile delinquency, or crime, and is detrimental to the public health, safety, morals or welfare, or any area which is predominantly open and which consists primarily of an abandoned highway corridor, as defined in s. 66.431 (4) (a), or that consists of land upon which buildings or structures have been demolished and which because of obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or otherwise, substantially impairs or arrests the sound growth of the community. "Blighted area" does not include predominantly open land area that has been developed only for agricultural purposes.

(am) "Environmental pollution" has the meaning given in s. 144.01 (3).

(bm) "Highway" has the meaning provided in s. 340.01 (22).

(c) "Local legislative body" means the common council.

(d) "Personal property" has the meaning prescribed in s. 70.04.

(e) "Planning commission" means a plan commission created under s. 62.23, a board of public land commissioners if the city has no plan commission, or a city plan committee of the local legislative body, if the city has neither such a commission nor such a board.

(f) 1. "Project costs" mean any expenditures made or estimated to be made or monetary obligations incurred or estimated to be incurred by the city which are listed in a project plan as costs of public works or improvements within a tax incremental district or, to the extent provided in subd. 1. k., without the district, plus any costs incidental thereto, diminished by any income, special assessments, or other revenues, including user fees or charges, other than tax increments, received or reasonably expected to be received by the city in connection with the implementation of the plan. For any tax incremental district for which a project plan is approved on or after July 31, 1981, only a proportionate share of the costs permitted under this subdivision may be included as project costs to the extent that they benefit the tax incremental district. To the extent the costs benefit the municipality outside the tax incremental district, a proportionate share of the cost is not a project cost. The project costs include, but are not limited to:

a. Capital costs including, but not limited to, the actual costs of the construction of public works or improvements, new buildings, structures, and fixtures; the demolition, alteration, remodeling, repair or reconstruction of existing buildings, structures and fixtures other than the demolition of listed properties as defined in s. 44.31 (4); the acquisition of equipment to service the district; the removal or containment of, or the restoration of soil or groundwater affected by, environmental pollution; and the clearing and grading of land.

b. Financing costs, including, but not limited to, all interest paid to holders of evidences of indebtedness issued to pay for project costs and any premium paid over the principal amount thereof because of the redemption of such obligations prior to maturity.

c. Real property assembly costs, meaning any deficit incurred resulting from the sale or lease as lessor by the city of real or personal property within a tax incremental district for consideration which is less than its cost to the city.

d. Professional service costs, including, but not limited to, those costs incurred for architectural, planning, engineering, and legal advice and services.

e. Imputed administrative costs, including, but not limited to, reasonable charges for the time spent by city employes in connection with the implementation of a project plan.

f. Relocation costs, including, but not limited to, those relocation payments made following condemnation under ss. 32.19 and 32.195.

g. Organizational costs, including, but not limited to, the costs of conducting environmental impact and other studies and the costs of informing the public with respect to the creation of tax incremental districts and the implementation of project plans.

h. The amount of any contributions made under s. 66.431 (13) in connection with the implementation of the project plan.

i. Payments made, in the discretion of the local legislative body, which are found to be necessary or convenient to the creation of tax incremental districts or the implementation of project plans.

j. That portion of costs related to the construction or alteration of sewerage treatment plants, water treatment plants or other environmental protection devices, storm or sanitary sewer lines, water lines, or amenities on streets or the rebuilding or expansion of streets the construction, alteration, rebuilding or expansion of which is necessitated by the project plan for a district and is within the district.

k. That portion of costs related to the construction or alteration of sewerage treatment plants, water treatment plants or other environmental protection devices, storm or sanitary sewer lines, water lines, or amenities on streets outside the district if the construction, alteration, rebuilding or expansion is necessitated by the project plan for a district, and if at the time the construction, alteration, rebuilding or expansion begins there are improvements of the kinds named in this subdivision on the land outside the district in respect to which the costs are to be incurred.

2. Notwithstanding subd. 1., none of the following may be included as project costs for any tax incremental district for which a project plan is approved on or after July 31, 1981:

a. The cost of constructing or expanding administrative buildings, police and fire buildings, libraries, community and recreational buildings and school buildings.

b. The cost of constructing or expanding any facility, if the city generally finances similar facilities only with utility user fees.

c. General government operating expenses, unrelated to the planning or development of a tax incremental district.

(g) "Project plan" means the properly approved plan for the development or redevelopment of a tax incremental district, including all properly approved amendments thereto.

(h) "Real property" has the meaning prescribed in s. 70.03.

(i) "Tax increment" means that amount obtained by multiplying the total county, city, school and other local general property taxes levied on all taxable property within a tax incremental district in a year by a fraction having as a numerator the value increment for that year in such district and as a denominator that year's equalized value of all taxable property in the district. In any year, a tax increment is "positive" if the value increment is positive; it is "negative" if the value increment is negative.

(j) "Tax incremental base" means the aggregate value, as equalized by the department of revenue, of all taxable property located within a tax incremental district on the date as of which such district is created, determined as provided in sub (5) (b). The base of districts created before October 1, 1980, shall exclude the value of property exempted under s. 70.111 (17).

(k) "Tax incremental district" means a contiguous geographic area within a city defined and created by resolution of the local legislative body, consisting solely of whole units of property as are assessed for general property tax purposes, other than railroad rights-of-way, rivers or highways. Railroad rights-of-way, rivers or highways may be included in a tax incremental district only if they are continuously bounded on either side, or on both sides, by whole units of property as are assessed for general property tax purposes which are in the tax incremental district. "Tax incremental district" does not include any area identified as a wetland on a map under s. 23.32.

(L) "Taxable property" means all real and personal taxable property located in a tax incremental district.

(m) "Value increment" means the equalized value of all taxable property in a tax incremental district in any year minus the tax incremental base. In any year "value increment" is positive if the tax incremental base is less than the aggregate value of taxable



property as equalized by the department of revenue; it is negative if that base exceeds that aggregate value.

**(3) POWERS OF CITIES** In addition to any other powers conferred by law, a city may exercise any powers necessary and convenient to carry out the purposes of this section, including the power to:

(a) Create tax incremental districts and to define the boundaries of such districts;

(b) Cause project plans to be prepared, to approve such plans, and to implement the provisions and effectuate the purposes of such plans;

(c) Issue tax incremental bonds and notes;

(d) Deposit moneys into the special fund of any tax incremental district; or

(e) Enter into any contracts or agreements, including agreements with bondholders, determined by the local legislative body to be necessary or convenient to implement the provisions and effectuate the purposes of project plans. Such contracts or agreements may include conditions, restrictions, or covenants which either run with the land or which otherwise regulate the use of land.

(f) Designate, by ordinance or resolution, the local housing authority, the local redevelopment authority, or both jointly, or the local community development authority, as agent of the city, to perform all acts, except the development of the master plan of the city, which are otherwise performed by the planning commission under this section and s. 66.435.

**(4) CREATION OF TAX INCREMENTAL DISTRICTS AND APPROVAL OF PROJECT PLANS** In order to implement the provisions of this section, the following steps and plans are required:

(a) Holding of a public hearing by the planning commission at which interested parties are afforded a reasonable opportunity to express their views on the proposed creation of a tax incremental district and the proposed boundaries thereof. Notice of such hearing shall be published as a class 2 notice, under ch. 985. Prior to such publication, a copy of the notice shall be sent by first class mail to the chief executive officer or administrator of all local governmental entities having the power to levy taxes on property located within the proposed district and to the school board of any school district which includes property located within the proposed district. For any county with no chief executive officer or administrator, this notice shall be sent to the county board chairperson.

(b) Designation by the planning commission of the boundaries of a tax incremental district recommended by it to be created and submission of such recommendation to the local legislative body.

(c) Identification of the specific property to be included under par. (gm) 4 as blighted or in need of rehabilitation or conservation work. Owners of the property identified shall be notified of the proposed finding and the date of the hearing to be held under par. (e) at least 15 days prior to the date of the hearing. In cities with a redevelopment authority under s. 66.431, the notification required under this paragraph may be provided with the notice required under s. 66.431 (6) (b) 3., if the notice is transmitted at least 15 days prior to the date of the hearing to be held under par. (e).

(d) Preparation and adoption by the planning commission of a proposed project plan for each tax incremental district.

(e) At least 30 days before adopting a resolution under par. (gm), holding of a public hearing by the planning commission at which interested parties are afforded a reasonable opportunity to express their views on the proposed project plan. The hearing may be held in conjunction with the hearing provided for in par. (a). Notice of the hearing shall be published as a class 2 notice, under ch. 985. The notice shall include a statement advising that a copy of the proposed project plan will be provided on request. Prior to such publication, a copy of the notice shall be sent by 1st class mail to the chief executive officer or administrator of all local governmental entities having the power to levy taxes on property within

the district and to the school board of any school district which includes property located within the proposed district. For any county with no chief executive officer or administrator, this notice shall be sent to the county board chairperson.

(f) Adoption by the planning commission of a project plan for each tax incremental district and submission of the plan to the local legislative body. The plan shall include a statement listing the kind, number and location of all proposed public works or improvements within the district or, to the extent provided in sub. (2) (f) 1. k., outside the district, an economic feasibility study, a detailed list of estimated project costs, and a description of the methods of financing all estimated project costs and the time when the costs or monetary obligations related thereto are to be incurred. The plan shall also include a map showing existing uses and conditions of real property in the district; a map showing proposed improvements and uses in the district; proposed changes of zoning ordinances, master plan, if any, map, building codes and city ordinances; a list of estimated nonproject costs; and a statement of the proposed method for the relocation of any persons to be displaced. The plan shall indicate how creation of the tax incremental district promotes the orderly development of the city. The city shall include in the plan an opinion of the city attorney or of an attorney retained by the city advising whether the plan is complete and complies with this section.

(g) Approval by the local legislative body of a project plan prior to or concurrent with the adoption of a resolution under par. (gm). The approval shall be by resolution which contains findings that the plan is feasible and in conformity with the master plan, if any, of the city.

(gm) Adoption by the local legislative body of a resolution which:

1. Describes the boundaries, which may, but need not, be the same as those recommended by the planning commission, of a tax incremental district with sufficient definiteness to identify with ordinary and reasonable certainty the territory included therein. The boundaries shall include only those whole units of property as are assessed for general property tax purposes. Property standing vacant for an entire 7-year period immediately preceding adoption of the resolution creating a tax incremental district may not comprise more than 25% of the area in the tax incremental district, unless the tax incremental district is suitable for industrial sites under subd. 4. a. and the local legislative body implements an approved project plan to promote industrial development within the meaning of s. 66.52. In this subdivision, "vacant property" includes property where the fair market value or replacement cost value of structural improvements on the parcel is less than the fair market value of the land. In this subdivision, "vacant property" does not include property acquired by the local legislative body under ch. 32 or property included within the abandoned Park East freeway corridor or the abandoned Park West freeway corridor in Milwaukee county.

2. Creates such district as of a date therein provided. If the resolution is adopted during the period between January 2 and September 30, then such date shall be the next preceding January 1. If such resolution is adopted during the period between October 1 and December 31, then such date shall be the next subsequent January 1. If the resolution is adopted on January 1, the district shall have been created as of the date of the resolution.

3. Assigns a name to such district for identification purposes. The first such district created shall be known as "Tax Incremental District Number One, City of \_\_\_\_\_". Each subsequently created district shall be assigned the next consecutive number.

4. Contains findings that:

a. Not less than 50%, by area, of the real property within such district meets at least one of the following criteria: 1) is a "blighted area"; 2) is in need of "rehabilitation or conservation work" within the meaning of s. 66.435 (3); or 3) is suitable for "industrial sites" within the meaning of s. 66.52 and has been zoned for industrial use; and

b. The improvement of such area is likely to enhance significantly the value of substantially all of the other real property in such district. It shall not be necessary to identify the specific parcels meeting such criteria; and

bm. The project costs relate directly to eliminating blight, directly serve to rehabilitate or conserve the area or directly serve to promote industrial development, consistent with the purpose for which the tax incremental district is created under subd. 4. a.; and

c. Either the equalized value of taxable property of the district plus all existing districts does not exceed 7% of the total equalized value of taxable property within the city or the equalized value of taxable property of the district plus the value increment of all existing districts within the city does not exceed 5% of the total equalized value of taxable property within the city.

5. Confirms that any real property within the district that is found suitable for industrial sites and is zoned for industrial use under subd. 4. a. will remain zoned for industrial use for the life of the tax incremental district.

(gs) Review by a joint review board, acting under sub. (4m), that results in its approval of the resolution under par. (gm).

(h) The planning commission may at any time, by resolution, adopt an amendment to a project plan, which amendment shall be subject to approval by the local legislative body and approval of the amendment shall require the same findings as provided in par. (g).

(g) Any amendment to a project plan is also subject to review by a joint review board, acting under sub. (4m). Adoption of an amendment to a project plan shall be preceded by a public hearing held by the plan commission at which interested parties shall be afforded a reasonable opportunity to express their views on the amendment. Notice of the hearing shall be published as a class 2 notice, under ch. 985. The notice shall include a statement of the purpose and cost of the amendment and shall advise that a copy of the amendment will be provided on request. Prior to such publication, a copy of the notice shall be sent by 1st class mail to the chief executive officer or administrator of all local governmental entities having the power to levy taxes on property within the district and to the school board of any school district which includes property located within the proposed district. For any county with no chief executive officer or administrator, this notice shall be sent to the county board chairperson.

(i) The local legislative body shall provide the joint review board with the following information and projections:

1. The specific items that constitute the project costs, the total dollar amount of these project costs to be paid with the tax increments, and the amount of tax increments to be generated over the life of the tax incremental district.

2. The amount of the value increment when the project costs in subd. 1. are paid in full and the tax incremental district is terminated.

3. The reasons why the project costs in subd. 1. may not or should not be paid by the owners of property that benefits by improvements within the tax incremental district.

4. The share of the projected tax increments in subd. 1. estimated to be paid by the owners of taxable property in each of the taxing jurisdictions overlying the tax incremental district.

5. The benefits that the owners of taxable property in the overlying taxing jurisdictions will receive to compensate them for their share of the projected tax increments in subd. 4.

(k) Calculation by the local assessor of the value of all tax-exempt city-owned property, except property described in sub. (5) (bm), in the proposed tax incremental district, as of the day of the district's creation. This information shall be sent to the department of revenue for inclusion in the tax incremental district's initial tax incremental base under sub. (5) (b).

(4m) JOINT REVIEW BOARD (a) Any city that seeks to create a tax incremental district or amend a project plan shall convene a joint review board to review the proposal. The board shall consist of one representative chosen by the school district that has power

to levy taxes on the property within the tax incremental district, one representative chosen by the technical college district that has power to levy taxes on the property within the tax incremental district, one representative chosen by the county that has power to levy taxes on the property within the tax incremental district, one representative chosen by the city and one public member. If more than one school district, more than one technical college district or more than one county has the power to levy taxes on the property within the tax incremental district, the unit in which is located property of the tax incremental district that has the greatest value shall choose that representative to the board. The public member and the board's chairperson shall be selected by a majority of the other board members before the public hearing under sub. (4) (a) or (h) is held. All board members shall be appointed and the first board meeting held within 14 days after the notice is published under sub. (4) (a) or (h). Additional meetings of the board shall be held upon the call of any member. The city that seeks to create the tax incremental district or to amend its project plan shall provide administrative support for the board. By majority vote, the board may disband following approval or rejection of the proposal.

(b) 1. The board shall review the public record, planning documents and the resolution passed by the local legislative body or planning commission under sub. (4) (gm) or (h). As part of its deliberations the board may hold additional hearings on the proposal.

2. No tax incremental district may be created and no project plan may be amended unless the board approves the resolution adopted under sub. (4) (gm) or (h) by a majority vote not less than 10 days nor more than 30 days after receiving the resolution.

3. The board shall submit its decision to the city no later than 7 days after the board acts on and reviews the items in subd. 2.

(c) 1. The board shall base its decision to approve or deny a proposal on the following criteria:

a. Whether the development expected in the tax incremental district would occur without the use of tax incremental financing.

b. Whether the economic benefits of the tax incremental district, as measured by increased employment, business and personal income and property value, are insufficient to compensate for the cost of the improvements.

c. Whether the benefits of the proposal outweigh the anticipated tax increments to be paid by the owners of property in the overlying taxing districts.

2. The board shall issue a written explanation describing why any proposal it rejects fails to meet one or more of the criteria specified in subd. 1.

(5) DETERMINATION OF TAX INCREMENT AND TAX INCREMENTAL BASE (a) Upon the creation of a tax incremental district or upon adoption of any amendment subject to par. (c), its tax incremental base shall be determined as soon as reasonably possible.

(b) Upon application in writing by the city clerk, in such form as the department of revenue may prescribe, the department shall determine according to its best judgment from all sources available to it the full aggregate value of the taxable property and, except as provided in par. (bm), of the city-owned property in the tax incremental district. The department shall certify this aggregate valuation to the city clerk, and the aggregate valuation shall constitute the tax incremental base of the tax incremental district. The city clerk shall complete these forms and submit the application on or before December 31 of the year the tax incremental district is created, as defined in sub. (4) (gm) 2.

(bm) The value of real property owned by a city and used for police and fire buildings, administrative buildings, libraries, community and recreational buildings, parks, streets and improvements within any street right-of-way, parking facilities and utilities shall not be included in the tax incremental base established under par. (b).

(c) If the city adopts an amendment to the original project plan for any district which includes additional project costs at least part

of which will be incurred after the period specified in sub. (6) (am) 1, the tax incremental base for the district shall be redetermined under par. (b) as of the January 1 following the effective date of the amendment, except that if the effective date of the amendment is January 1 of any year, the redetermination shall be made on that date. The tax incremental base as redetermined under this paragraph is effective for the purposes of this section only if it exceeds the original tax incremental base determined under par. (b).

(cm) The city clerk shall annually, after May 1 but before May 21, by written notice, inform the department of revenue of any amendment to the project plan which has been adopted. The city clerk shall also give written notice of the adoption of an amendment to the department of revenue within 60 days after its adoption. The department of revenue may prescribe forms to be used by the city clerk when giving notice as required by this paragraph.

(d) The department of revenue shall not certify the tax incremental base as provided in par. (b) until it determines that each of the procedures and documents required by sub. (4) (a), (b), (gm) or (h) and par. (b) has been timely completed and all notices required under sub. (4) (a), (b), (gm) or (h) timely given. The facts supporting any document adopted or action taken to comply with sub. (4) (a), (b), (gm) or (h) shall not be subject to review by the department of revenue under this paragraph.

(e) It is a rebuttable presumption that any property within a tax incremental district acquired or leased as lessee by the city, or any agency or instrumentality thereof, within the one year immediately preceding the date of the creation of such district was so acquired or leased in contemplation of the creation of such district. Such presumption may be rebutted by the city with proof that such property was so leased or acquired primarily for a purpose other than to reduce the tax incremental base. If such presumption is not rebutted, in determining the tax incremental base of such district, but for no other purpose, the taxable status of such property shall be determined as though such lease or acquisition had not occurred.

(f) The city assessor shall identify upon the assessment roll returned and examined under s. 70.45 those parcels of property which are within each existing tax incremental district, specifying thereon the name of each district. A similar notation shall also appear on the tax roll made by the city clerk under s. 70.65.

(g) The department of revenue shall annually give notice to the designated finance officer of all governmental entities having the power to levy taxes on property within each district as to the equalized value of such property and the equalized value of the tax increment base. Such notice shall also explain that the tax increment allocated to a city shall be paid to the city as provided under sub. (6) (b) from the taxes collected.

**(6) ALLOCATION OF POSITIVE TAX INCREMENTS** (a) If the joint review board approves the creation of the tax incremental district under sub. (4m), positive tax increments with respect to a tax incremental district are allocated to the city which created the district for each year commencing after the date when a project plan is adopted under sub. (4) (g). The department of revenue shall not authorize allocation of tax increments until it determines from timely evidence submitted by the city that each of the procedures and documents required under sub. (4) (d) to (f) have been completed and all related notices given in a timely manner. The department of revenue may authorize allocation of tax increments for any tax incremental district only if the city clerk and assessor annually submit to the department all required information on or before the 2nd Monday in June. The facts supporting any document adopted or action taken to comply with sub. (4) (d) to (f) shall not be subject to review by the department of revenue under this paragraph. Thereafter, the department of revenue shall annually authorize allocation of the tax increment to the city that created such a district until the department of revenue receives a notice under sub. (8) and the notice has taken effect under sub. (8) (b) or 23 years after the tax incremental district is created, whichever is sooner.

(am) 1. No expenditure may be made later than 7 years after the tax incremental district is created.

2. The limitations on the period during which expenditures may be made under subd. 1. do not apply to:

a. Expenditures to pay project costs incurred under ch. 32.

b. Expenditures authorized by the adoption of an amendment to the project plan under sub. (5) (c).

3. For tax incremental districts for which the resolution under sub. (4) (gm) is adopted on or after July 31, 1981, no expenditure may be made before the date the project plan is approved, except for costs directly related to planning the tax incremental district. In this subdivision "expenditure" means the exchange of money for the delivery of goods or services.

4. For purposes of this paragraph, the date of creation of a tax incremental district is:

a. The May 1 date set under s. 66.46 (4) (c) 2., 1975 stats., if the local legislative body adopts a resolution to create the tax incremental district on or before May 1, 1978.

b. The January 1 date set under sub. (4) (gm) 2., if the local legislative body adopts a resolution to create the tax incremental district after May 1, 1978, and prior to July 31, 1981.

c. The date the local legislative body adopts the resolution under sub. (4) (gm), if the local legislative body adopts a resolution to create the tax incremental district on or after July 31, 1981.

(b) Notwithstanding any other provision of law, every officer charged by law to collect and pay over or retain local general property taxes shall, on the settlement dates provided by law, pay over to the city treasurer out of all the taxes which the officer has collected the proportion of the tax increment due the city that the general property taxes collected in the city bears to the total general property taxes levied by the city for all purposes included in the tax roll, exclusive of levies for state trust fund loans, state taxes and state special charges.

(c) Except for tax increments allocated under par. (d), all tax increments received with respect to a tax incremental district shall, upon receipt by the city treasurer, be deposited into a special fund for that district. The city treasurer may deposit additional moneys into such fund pursuant to an appropriation by the common council. No moneys may be paid out of such fund except to pay project costs with respect to that district, to reimburse the city for such payments, to pay project costs of a district under par. (d) or to satisfy claims of holders of bonds or notes issued with respect to such district. Subject to par. (d), moneys paid out of the fund to pay project costs with respect to a district may be paid out before or after the district is terminated under sub. (7). Subject to any agreement with bondholders, moneys in the fund may be temporarily invested in the same manner as other city funds if any investment earnings are applied to reduce project costs. After all project costs and all bonds and notes with respect to the district have been paid or the payment thereof provided for, subject to any agreement with bondholders, if there remain in the fund any moneys that are not allocated under par. (d), they shall be paid over to the treasurer of each county, school district or other tax levying municipality or to the general fund of the city in the amounts that belong to each respectively, having due regard for that portion of the moneys, if any, that represents tax increments not allocated to the city and that portion, if any, that represents voluntary deposits of the city into the fund.

(d) 1. After the date on which a tax incremental district pays off the aggregate of all of its project costs under its project plan, but not later than the date on which a tax incremental district terminates under sub. (7) (am), a planning commission may amend under sub. (4) (h) the project plan of such a tax incremental district to allocate positive tax increments generated by that tax incremental district to another tax incremental district created by that planning commission in which soil affected by environmental pollution exists to the extent that development has not been able to

proceed according to the project plan because of the environmental pollution.

2. No tax increments may be allocated under this paragraph later than 16 years after the last expenditure identified in the project plan of the tax incremental district, the positive tax increments of which are to be allocated, is made.

3. This paragraph applies only in a city with a population of at least 80,000 that was incorporated in 1850 and that is in a county with a population of less than 150,000 which is adjacent to one of the Great Lakes.

4. This paragraph does not apply after January 1, 2002.

**(6c) NOTIFICATION OF POSITION OPENINGS** (a) Any person who operates for profit and is paid project costs under sub. (2) (f) 1. a., d., j. and k. in connection with the project plan for a tax incremental district shall notify the department of industry, labor and human relations and the area private industry council under the job training partnership act, 29 USC 1501 to 1798, of any positions to be filled in the county in which the city which created the tax incremental district is located during the period commencing with the date the person first performs work on the project and ending one year after receipt of its final payment of project costs. The person shall provide this notice at least 2 weeks prior to advertising the position.

(b) Any person who operates for profit and buys or leases property in a tax incremental district from a city for which the city incurs real property assembly costs under sub. (2) (f) 1. c. shall notify the department of industry, labor and human relations and the area private industry council under the job training partnership act, 29 USC 1501 to 1798, of any position to be filled in the county in which the city creating the tax incremental district is located within one year after the sale or commencement of the lease. The person shall provide this notice at least 2 weeks prior to advertising the position.

**(6m) REVIEW** (a) The city shall cause a certified public accountant to conduct audits of each tax incremental district to determine if all financial transactions are made in a legal and proper manner and to determine if the tax incremental district is complying with its project plan and with this section. Any city that creates a tax incremental district under this section and has an annual general audit may include the audits required under this subsection as part of the annual general audit.

(b) Audits shall be conducted no later than:

1. Twelve months after 30% of the project expenditures are made;

2. Twelve months after the end of the expenditure period specified in sub. (6) (am) 1.; and

3. Twelve months after the termination of the tax incremental district under sub. (7).

(c) The city shall prepare and make available to the public updated annual reports describing the status of each existing tax incremental district, including expenditures and revenues. The city shall send a copy of the report to each overlying district by May 1 annually.

**(7) TERMINATION OF TAX INCREMENTAL DISTRICTS** The existence of a tax incremental district shall terminate when the earlier of the following occurs:

(a) That time when the city has received aggregate tax increments with respect to such district in an amount equal to the aggregate of all project costs under the project plan and any amendments to the project plan for such district, except that this paragraph does not apply to a district whose positive tax increments have been allocated under sub. (6) (d) until the district to which the allocation is made has paid off the aggregate of all of its project costs under its project plan.

(am) Sixteen years after the last expenditure identified in the project plan is made.

(b) The local legislative body, by resolution, dissolves the district at which time the city shall become liable for all unpaid pro-

ject costs actually incurred which are not paid from the special fund under sub. (6) (c), except this paragraph does not make the city liable for any tax incremental bonds or notes issued.

**(8) NOTICE OF DISTRICT TERMINATION** (a) A city which creates a tax incremental district under this section shall give the department of revenue written notice within 10 days of the termination of the tax incremental district under sub. (7).

(b) If the department of revenue receives a notice under par. (a) during the period from January 1 to May 15, the effective date of the notice is the date the notice is received. If the notice is received during the period from May 16 to December 31, the effective date of the notice is the first January 1 after the department of revenue receives the notice.

**(9) FINANCING OF PROJECT COSTS** (a) Payment of project costs may be made by any one or more of the following methods or any combination thereof:

1. Payment by the city from the special fund of the tax incremental district;

2. Payment out of its general funds;

3. Payment out of the proceeds of the sale of bonds or notes issued by it under ch. 67;

4. Payment out of the proceeds of the sale of public improvement bonds issued by it under s. 66.059;

5. Payment as provided under s. 66.54 (2) (c), (d) or (e);

6. Payment out of the proceeds of revenue bonds or notes issued by it under s. 66.066;

7. Payment out of the proceeds of revenue bonds issued by it under s. 66.51;

8. Payment out of the proceeds of the sale of tax incremental bonds or notes issued by it under this subsection; or

9. Payment out of the proceeds of revenue bonds issued by the city as provided by s. 66.521, for a purpose specified in that section.

(b) 1. For the purpose of paying project costs or of refunding municipal obligations issued under ch. 67 or this subsection for the purpose of paying project costs, the local legislative body may issue tax incremental bonds or notes payable out of positive tax increments. Each bond or note and accompanying interest coupon, if any, is a negotiable instrument. The bonds and notes shall not be included in the computation of the constitutional debt limitation of the city. Bonds and notes issued under this subsection, together with their interest and income, shall be taxed in the same manner as are municipal obligations issued under s. 67.04.

2. Tax incremental bonds or notes shall be authorized by resolution of the local legislative body without the necessity of a referendum or any elector approval, but such referendum or election may be held, through the procedures provided in s. 66.521 (10)

(d) Such resolution shall state the name of the tax incremental district, the amount of bonds or notes authorized, and the interest rate or rates to be borne by such bond or notes. Such resolution may prescribe the terms, form and content of such bonds or notes and such other matters as the local legislative body deems useful.

3. Tax incremental bonds or notes may not be issued in an amount exceeding the aggregate project costs. Such bonds or notes shall mature over a period not exceeding 23 years from the date thereof or a period terminating with the date of termination of the tax incremental district, whichever period terminates earlier. Such bonds or notes may contain a provision authorizing the redemption thereof, in whole or in part, at stipulated prices, at the option of the city, on any interest payment date and shall provide the method of selecting the bonds or notes to be redeemed. The principal and interest on such bonds and notes may be payable at any time and at any place. Such bonds or notes may be payable to bearer or may be registered as to the principal or principal and interest. Such bonds or notes may be in any denominations. Such bonds or notes may be sold at public or private sale. Insofar as they are consistent with this subsection, the provisions of ch. 67 relating to procedures for issuance, form, contents, execution, negotia-

tion, and registration of municipal bonds and notes are incorporated herein by reference.

4. Tax incremental bonds or notes are payable only out of the special fund created under sub. (6) (c). Each such bond or note shall contain such recitals as are necessary to show that it is only so payable and that it does not constitute an indebtedness of such city or a charge against its general taxing power. The local legislative body shall irrevocably pledge all or a part of such special fund to the payment of such bonds or notes. Such special fund or the designated part thereof may thereafter be used only for the payment of such bonds or notes and interest thereon until the same have been fully paid; and a holder of such bonds or notes or of any coupons appertaining thereto shall have a lien against such special fund for payment of such bonds or notes and interest thereon and may either at law or in equity protect and enforce such lien.

5. To increase the security and marketability of tax incremental bonds or notes, the city may:

a. Create a lien for the benefit of the bondholders upon any public improvements or public works financed thereby or the revenues therefrom; or

b. Make such covenants and do any and all such acts, not inconsistent with the Wisconsin constitution, as may be necessary or convenient or desirable in order to additionally secure such bonds or notes or tend to make the bonds or notes more marketable according to the best judgment of the local legislative body.

(10) **OVERLAPPING TAX INCREMENTAL DISTRICTS** (a) Subject to any agreement with bondholders, a tax incremental district may be created, the boundaries of which overlap one or more existing districts, except that districts created as of the same date may not have overlapping boundaries.

(b) If the boundaries of 2 or more tax incremental districts overlap, in determining how positive tax increments generated by that area which is within 2 or more districts are allocated among such districts, but for no other purpose, the aggregate value of the taxable property in such area as equalized by the department of revenue in any year as to each earlier created district is deemed to be that portion of the tax incremental base of the district next created which is attributable to such overlapped area.

(11) **EQUALIZED VALUATION FOR APPORTIONMENT OF PROPERTY TAXES** (a) With respect to the county, school districts and any other local governmental body having the power to levy taxes on property located within a tax incremental district, if the allocation of positive tax increments has been authorized by the department of revenue under sub. (6) (a), the calculation of the equalized valuation of taxable property in a tax incremental district for the apportionment of property taxes may not exceed the tax incremental base of the district until the district is terminated.

(13) The department of development, in cooperation with other state agencies and local governments, shall make a comprehensive report to the governor and the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (2), at the beginning of each biennium, beginning with the 1977 biennium, as to the effects and impact of tax incremental financing projects socially, economically and financially.

(14) **USE OF TAX INCREMENTAL FINANCING FOR INLAND LAKE PROTECTION AND REHABILITATION PROHIBITED** Notwithstanding sub. (9), no tax incremental financing project plan may be approved and no payment of project costs may be made for an inland lake protection and rehabilitation district or a county acting under s. 59.07 (140).

**History:** 1975 c. 105, 199, 311; 1977 c. 29 ss. 724m, 725, 1646 (1), (3); 1977 c. 418; 1979 c. 221, 343; 1979 c. 361 s. 112; 1981 c. 20, 317; 1983 a. 27, 31, 207, 320, 405, 538; 1985 a. 29, 39, 285; 1987 a. 27, 186, 395; 1989 a. 31, 336; 1993 a. 293, 337, 399.

Tax Increment Law constitutionally authorizes financing of described public improvements, but does not authorize acquisition of private property by condemnation. *Sigma Tau Gamma Fraternity House v. Menomonie*, 93 W (2d) 392, 288 NW (2d) 85 (1980).

TIF bonds which city proposed to issue under this section constituted debt under art. XI, s. 3 and are subject to its debt limits. *City of Hartford v. Kirley*, 172 W (2d) 191, 493 NW (2d) 45 (1992).

Tax increment law appears constitutional on its face 65 Atty. Gen. 194.

**66.465 Reinvestment neighborhoods. (1) DEFINITIONS.** In this section:

(a) An "area in need of rehabilitation" is a neighborhood or area in which buildings, by reason of age, obsolescence, inadequate or outmoded design, or physical deterioration have become economic or social liabilities, or both; in which such conditions impair the economic value of such neighborhood or area, infecting it with economic blight, and which is characterized by depreciated values, impaired investments, and reduced capacity to pay taxes; in which the existence of such conditions and the failure to rehabilitate such buildings results in a loss of population from the neighborhood or area and further deterioration, accompanied by added costs for creation of new public facilities and services elsewhere; in which it is difficult and uneconomic for individual owners independently to undertake to remedy such conditions; in which it is necessary to create, with proper safeguards, inducements and opportunities for the employment of private investment and equity capital in the rehabilitation of such buildings; and in which the presence of such buildings and conditions has resulted, among other consequences, in a severe shortage of financial resources available to finance the purchase and rehabilitation of housing and an inability or unwillingness on the part of private lenders to make loans for and an inability or unwillingness on the part of present and prospective owners of such housing to invest in the purchase and rehabilitation of housing in such neighborhood or area.

(b) "Local legislative body" means the common council, village board of trustees or town board of supervisors.

(c) "Municipality" means any city, village or town in this state.

(d) "Planning commission" means a plan commission created under s. 62.23 or a plan committee of the local legislative body.

(e) "Reinvestment neighborhood or area" means a geographic area within any municipality not less than one-half of which, by area, meets 3 of the 5 following conditions:

1. It is an area in need of rehabilitation as defined in par. (a).  
2. It has a rate of owner-occupancy of residential buildings substantially below the average rate for the municipality as a whole.

3. It is an area within which the market value of residential property, as measured by the rate of change during the preceding 5 years in the average sale price of residential property, has decreased or has increased at a rate substantially less than the rate of increase in average sale price of residential property in the municipality as a whole.

4. It is an area within which the number of persons residing has decreased during the past 5 years, or in which the number of persons residing has increased during that period at a rate substantially less than the rate of population increase in the municipality as a whole.

5. It is an area within which the effect of such detrimental conditions as may exist is to discourage private lenders from making loans for and present or prospective property owners from investing in the purchase and rehabilitation of housing.

(2) **DESIGNATION OF REINVESTMENT NEIGHBORHOODS OR AREAS.** Any municipality may designate reinvestment neighborhoods or areas after complying with the following steps:

(a) Holding of a public hearing by the planning commission or by the local governing body at which interested parties are afforded a reasonable opportunity to express their views on the proposed designation of a reinvestment neighborhood or area and the proposed boundaries thereof. Notice of such hearing shall be published as a class 2 notice, under ch. 985. Prior to such publication, a copy of the notice shall be sent by 1st class mail to the Wisconsin housing and economic development authority, and a copy shall be posted in each school building and in at least 3 other places



of public assembly within the reinvestment neighborhood or area proposed to be designated.

(b) Designation by the planning commission of the boundaries of a reinvestment neighborhood or area recommended by it to be designated and submission of such recommendation to the local legislative body.

(c) Adoption by the local legislative body of a resolution which:

1. Describes the boundaries of a reinvestment neighborhood or area with sufficient definiteness to identify with ordinary and reasonable certainty the territory included therein. Such boundaries may, but need not, be the same as those recommended by the planning commission.

2. Designates such reinvestment neighborhood or area as of a date provided in the resolution.

3. Contains findings that the area to be designated constitutes a reinvestment neighborhood or area.

History: 1977 c 418; 1979 c 361 s 112; 1985 a 29 s 3200 (14)

**66.47 County-city hospitals; village and town powers. (1) DEFINITIONS.** In this section:

(a) "Board" means the joint county-city hospital board established under this section.

(b) "Ordinance" means an ordinance adopted by the governing body of a city or county and concurred in by the other governing body or bodies.

(2) COUNTY-CITY HOSPITALS. Any county and city or cities partly or wholly within the county may by ordinance jointly construct or otherwise acquire, equip, furnish, operate and maintain a general county-city hospital. Such hospital is subject to ch. 150.

(3) FINANCING. The governing bodies of the respective county and city or cities shall have the power to borrow money, appropriate funds, and levy taxes needed to carry out the purposes of this section. Funds to be used for the purposes specified in this section may be provided by the respective county, city or cities by general obligation bonds issued under ch. 67 or by revenue bonds issued under s. 66.51. Any bonds issued pursuant to this section shall be executed on behalf of the county by the county board chairperson and the county clerk and on behalf of a city by the mayor or other chief executive officer thereof and by the city clerk.

(4) COST SHARING. The ordinance shall provide for a sharing of all of the cost of construction or other acquisition, equipment, furnishing, operation and maintenance of such hospital on an agreed percentage basis.

(5) HOSPITAL BOARD. The ordinance shall provide for the establishment of a joint county-city hospital board to be composed as follows: 2 to be appointed by the county board chairperson and confirmed by the county board, one for a one-year and one for a 2-year term; 2 by the mayor or other chief executive officer and confirmed by the city council, one for a one-year and one for a 2-year term; and one jointly by the county board chairperson and the mayor or other chief executive officer of the city or cities, for a term of 3 years, confirmed by the county board and the city council or councils. Their respective successors shall be appointed and confirmed in like manner for terms of 3 years. All appointees shall serve until their successors are appointed and qualified. Terms shall begin as specified in the ordinance. Vacancies shall be filled for the unexpired term in the manner in which the original appointment was made.

(6) VALIDATION OF PRIOR ACTIONS. The actions of any county and city or cities taken before April 17, 1949 in the construction or other acquisition, equipment, furnishing, operation and maintenance of a joint county-city hospital which would have been valid if this section had then been in effect are hereby validated.

(7) ORGANIZATION OF BOARDS; OFFICERS; COMPENSATION; OATHS; BONDS. (a) When all members have qualified the board shall meet at the place designated in the ordinance and organize by electing from its membership a president, a vice president, a

secretary and a treasurer, each to hold office for one year. The offices of secretary and treasurer may be combined if the board so decides. Members shall receive such compensation as shall be provided in the ordinance, and shall be reimbursed their actual and necessary expenses. With the approval of the board, the treasurer may appoint an assistant treasurer, who need not be a member of the board, to perform such services as shall be specified by the board.

(b) Members, and any assistant treasurer, shall qualify by taking the official oath, and the treasurer and any assistant treasurer shall furnish a bond in such sum as shall be specified by the board and be in the form and conditioned as provided in s. 19.01 (2) and (3). The oaths and bonds shall be filed with the county clerk. The cost of the bond shall be paid by the board.

(8) POWERS OF BOARD. The board shall have power subject to provisions of the ordinance:

(a) To contract for the construction or other acquisition, equipment or furnishing of a general county-city hospital.

(b) To contract for the construction or other acquisition of additions or improvements to, or alterations in, such hospital and the equipment or furnishing of any such addition.

(c) To employ a manager of the hospital and other necessary personnel and fix their compensation.

(d) To enact, amend and repeal rules and regulations, not inconsistent with law, for the admission to, and government of patients at, the hospital, for the regulation of the board's meetings and deliberations, and for the government, operation and maintenance of the hospital and the employes thereof.

(e) To contract for and purchase all fuel, food, equipment, furnishings and supplies reasonably necessary for the proper operation and maintenance of the hospital.

(f) To audit all accounts and claims against the hospital or against the board, and, if approved, pay the same from the fund specified in sub. (10). All expenditures made pursuant to this section shall be within the limits of the ordinance.

(g) To sue and be sued, and to collect or compromise any and all obligations due to the hospital; all money received shall be paid into the joint hospital fund.

(h) To make such studies and recommendations to the county board and city council or city councils relating to the operation of the hospital or the building of facilities therefor as the board may deem advisable or said governing bodies request.

(i) To employ counsel on either a temporary or permanent basis.

(9) BUDGET. The board shall annually, prior to the time of the preparation of either the county or city budget under s. 65.90, prepare a budget of its anticipated receipts and expenditures for the ensuing fiscal year and determine the proportionate cost to the county and the participating city or cities pursuant to the terms of the ordinance. A certified copy of the budget, which shall include a statement of the net amount required from the county and city or cities, shall be delivered to the clerks of the respective municipalities. It shall be the duty of the county board and the common council of the city or cities to consider such budget, and determine the amount to be raised by the respective municipalities in the proportions determined by the ordinance. Thereupon the county and city or cities respectively shall levy a tax sufficient to produce the amount to be raised by said county and city or cities.

(10) HOSPITAL FUND. A joint county-city hospital fund shall be created and established in a public depository to be specified in the ordinance. The treasurer of the respective county and city or cities shall pay or cause to be paid into such fund the respective amounts to be paid thereto by such county and city or cities as specified by the ordinance and resolutions of the respective municipalities when such amounts have been collected. All of the moneys which shall come into said fund are hereby appropriated to the board for the execution of its functions as provided by the ordinance and the resolutions of the respective municipalities.

The moneys in the fund shall be paid out by the treasurer of the hospital board only upon the approval or direction of the board.

**(11) CORRELATION OF LAWS.** (a) In any case where a bid is a prerequisite to contract in connection with a county or city hospital under s. 66.29, it shall also be a prerequisite to a valid contract by the board; and for such purpose the board shall be deemed a municipality and the contract a public contract under s. 66.29.

(b) All statutory requirements, not inconsistent with the provision of this section, applicable to general county or city hospitals shall apply to hospitals referred to in this section.

**(12) REPORTS.** The board shall report its activities to the county board and the city council or councils annually, or oftener as either of said municipalities may require.

**(14) POWERS OF VILLAGES.** Villages shall have all the powers granted to cities under subs. (1) to (12) and whenever any village shall exercise such powers the word "city" wherever it appears in subs. (1) to (12) means "village" unless the context otherwise requires. Any village participating in the construction or other acquisition of a general county-village hospital or in the operation thereof, pursuant to this section, shall have the power to enter into lease agreements leasing such hospital and the equipment and furnishings therein to a nonprofit corporation.

**(15) POWERS OF TOWNS.** Towns shall have all of the powers granted to cities under subs. (1) to (12) and whenever any town shall exercise such powers the word "city" wherever it appears in subs. (1) to (12) means "town" unless the context otherwise requires. Any town participating in the construction or other acquisition of a general county-town hospital or in the operation thereof, pursuant to this section, shall have the power to enter into lease agreements leasing such hospital and the equipment and furnishings therein to a nonprofit corporation.

History: 1977 c. 29; 1983 a. 189; 1983 a. 192 s. 303 (1); 1993 a. 246

**66.48 Art museums.** Any city, village or town may establish, purchase land and erect buildings for, and equip, manage and control an art museum or museums; or enter into a contract with any art museum or art institute located in the city, village or town for the education of the people thereof in art, for such compensation as shall be determined by the governing body of the city, village or town. Any city, village or town may levy taxes, issue bonds, or appropriate money for the purposes in this section.

History: 1971 c. 152 s. 28; 1993 a. 246

**66.49 Civic centers.** **(1) RECREATION AND AMUSEMENT.** Any city, village or town may by ordinance, enacted by a majority of all the members—elect, as defined in s. 59.001 (2m), of the board or council, provide for the erection, maintenance and operation of a public auditorium, opera house, or other recreation and amusement building. The erection and contracts therefor shall be governed by the provisions of law applicable to other public buildings therein. The board or council shall adopt regulations for maintenance and operation.

**(2) REST ROOMS.** Any city, village or town may erect, purchase, lease, or take by gift or devise, land and buildings for public rest rooms, and may equip, maintain and operate the same.

**(3) COMFORT STATIONS.** Every city, village and town may provide and maintain a sufficient number of public comfort stations for both sexes. The department of health and social services shall establish regulations governing their location, construction, equipment and maintenance and may prescribe minimum standards that shall be uniform throughout the state. The board or council may establish further regulations.

**(4) COMFORT STATIONS AND REST ROOMS.** The state, every county, city, village, and town maintaining places of public assemblage or camp sites may also provide and maintain a sufficient number of suitable and adequate public comfort stations for both sexes and may establish rest rooms separate or in connection with such comfort stations.

**(5) PUBLIC CONCERTS.** Any town, village or city may conduct public concerts in auditoriums and such other public places within

its boundaries as the board or council shall determine. Such concerts shall be conducted by the department having charge of such place and the expenses thereof above receipts, if any, shall be paid out of such fund as the board or council shall determine. A fee to said concerts may be charged for the purpose of defraying the expenses thereof in whole or in part.

History: 1971 c. 152 s. 30; Stats. 1971 s. 66.49; 1993 a. 246

**66.50 Municipal hospital board.** **(1)** In any city, village or town, however organized, in which a municipal hospital is located, the board of trustees or other governing board of the municipal hospital shall have power and authority, except as otherwise provided by ordinance:

(a) To prescribe rules of order for the regulation of their own meetings and deliberations and to alter, amend or repeal the same from time to time;

(b) To promulgate, amend and repeal rules relating to the government, operation and maintenance of the hospital and relating to the employes of the hospital;

(c) To contract for and purchase all fuel, food and other supplies reasonably necessary for the operation and maintenance of the hospital;

(d) To promulgate, amend and repeal rules for the admission to and government of patients at the hospital;

(e) To contract for the construction, installation or making of additions or improvements to or alterations of such hospital whenever such additions, improvements or alterations have been ordered and funds provided therefor by the city council or village or town board;

(f) To engage all necessary employes at the hospital for a period not to exceed one year under any one contract and at a salary not to exceed the sum of twenty-five dollars per week, excluding board and laundry, unless a larger salary is expressly authorized by the city council or village or town board;

(g) To audit all accounts and claims against the hospital or against the board of trustees and, if approved, the city, village or town clerk and treasurer shall pay the accounts and claims in the manner provided by s. 66.042.

**(2)** All expenditures made under this section shall be within the limits authorized by the governing body of the municipality.

History: 1993 a. 246

**66.501 Hospital facilities lease from nonprofit corporation.** **(1) POWERS AND DUTIES OF GOVERNING BODY.** For the purpose of providing adequate hospital facilities in the state of Wisconsin to serve cities, villages and towns and the hospital service area, and all lands, buildings, improvements, facilities or equipment or other capital items necessary or desirable in connection with the hospital and the ultimate acquisition of the hospital by the city, village or town, for the acquisition of lands for future hospital development, and to refinance indebtedness created by a nonprofit corporation for the purpose of acquiring lands or providing hospital buildings or additions or improvements to the hospital buildings, or for any one or more of these purposes, the governing body of any city, village or town shall have the following powers:

(a) Without limitation by any other statute, to sell and convey title to a nonprofit corporation any land and any existing buildings on the land owned by the city, village or town for such consideration and upon such terms and conditions as in the judgment of the governing body of the city, village or town are in the public interest.

(b) To lease to a nonprofit corporation for terms not exceeding 40 years each any land and existing buildings on the land that are owned by the city, village or town upon such terms, conditions and rentals as in the judgment of the governing body of the city, village or town are in the public interest.

(c) To lease or sublease from the nonprofit corporation, for terms not exceeding 40 years, and to make available for public use, any lands or any such land and existing buildings conveyed or leased to the corporation under pars. (a) and (b), and any new

buildings erected upon the land or upon any other land owned by the corporation, upon the terms, conditions and rentals, subject to available appropriations, and ultimate acquisition, that in the judgment of the governing body of the city, village or town are in the public interest. With respect to any property conveyed to the nonprofit corporation under par. (a), the lease from the nonprofit corporation may be subject or subordinated to one or more mortgages of such property granted by the corporation.

(d) To apply all net revenues derived from the operation of any lands or buildings to the payment of rentals due and to become due under any lease or sublease made under par. (c).

(e) To pledge and assign all or any part of the revenues derived from the operation of any lands or new buildings as security for the payment of rentals due and to become due under any lease or sublease of the new buildings made under par. (c).

(f) To covenant and agree in any lease or sublease made under par. (c) to impose fees, rentals or other charges for the use and occupancy or other operation of the new buildings in an amount which together with other moneys of the city, village or town available for such purpose will produce net revenue sufficient to pay the rentals due and to become due under the lease or sublease.

(g) To apply all or any part of the revenues derived from the operation of any lands or existing buildings to the payment of rentals due and to become due under any lease or sublease made under par. (c).

(h) To pledge and assign all or any part of the revenues derived from the operation of any lands or existing buildings to the payment of rentals due and to become due under any lease or sublease made under par. (c).

(i) To covenant and agree in any lease or sublease made under par. (c) to impose fees, rentals or other charges for the use and occupancy or other operation of any lands or existing buildings in an amount calculated to produce net revenues sufficient to pay the rentals due and to become due under such lease or sublease.

(j) To operate the hospital, until it is ultimately acquired in such a manner as to provide revenues sufficient to pay the costs of operation and maintenance of the hospital and to provide for the payments due the nonprofit corporation.

**(2) MUNICIPAL LIABILITY** The city, village or town shall be liable for accrued rentals and for any other default under any lease or sublease made under sub. (1) (c) and may be sued therefor on contract.

**(3) NO DEBT INCLUSION** Nothing under this section shall be considered to incur any municipal debt. No obligation under this section shall be included in arriving at constitutional debt limitations.

**(4) POWERS AND DUTIES OF NONPROFIT CORPORATION** In addition to all other powers granted to nonprofit corporations, the nonprofit corporation shall have the following additional powers and duties when leasing hospital facilities to a city, village or town:

(a) To acquire by purchase, gift or lease real property and buildings on the property from a city, village or town or other person, to construct hospital facilities on the property and to lease the real property and buildings to a city, village or town for terms not exceeding 40 years, and to transfer the land and buildings to the city, village or town upon termination of the lease.

(b) To borrow money and pledge income and rentals as security.

**(5) BIDS FOR CONSTRUCTION** The nonprofit corporation shall let all contracts exceeding \$1,000 for the construction, maintenance or repair of hospital facilities to the lowest responsible bidder after advertising for bids by the publication of a class 2 notice under ch. 985. Sections 66.29 and 66.293 shall apply to such bids and contracts.

**(6) DEFINITIONS** Unless context otherwise requires, the terms "buildings", "new buildings" and "existing buildings" as used in this section include all buildings, structures, improvements, facilities, equipment or other capital items which the governing body

of the city, village or town determines to be necessary or desirable for the purpose of providing hospital facilities. The term "nonprofit corporation" means a nonstock, nonprofit corporation organized under ch. 181.

History: 1993 a 246.

**66.504 Joint civic buildings. (1) DEFINITIONS.** In this section:

(a) "Municipality" means a county, city, village, town, technical college district and school district.

(b) "Nonprofit corporation" means a nonstock, nonprofit corporation organized under ch. 181.

**(2) FACILITIES AUTHORIZED** A municipality may enter into a joint contract with a nonprofit corporation organized for civic purposes and located in the municipality to construct or otherwise acquire, equip, furnish, operate and maintain a facility to be used for municipal and civic activities if a majority of the voters voting in a referendum at a special election or at a spring primary or election or September primary or general election approve the question of entering into the joint contract.

**(3) FINANCING** A municipality may borrow money, appropriate funds and levy taxes needed to carry out the purposes of this section. Funds to be used for the purposes specified in this section may be provided by a municipality by general obligation bonds issued under ch. 67. Funds to be used for the purposes specified in this section may be provided by a county, city, village or town by revenue bonds issued under s. 66.066. Any bonds issued under this section shall be executed on behalf of the municipality by the chief executive officer and clerk thereof.

**(4) COST SHARING** Any contract under this section shall provide that all of the cost of construction or other acquisition, equipment, furnishing, operation and maintenance of a facility shall be paid by the municipality and nonprofit corporation on an agreed percentage basis.

History: 1983 a 27; 1985 a 39; 1993 a 399.

**66.505 County-city auditoriums. (1) DEFINITIONS.** In this section:

(a) "Auditorium" includes a building of arena or music hall type construction or a combination of both, including facilities for sports, dances, convention exhibitions, trade shows, meetings, rallies, theatrical exhibitions, concerts and other events attracting spectators and participants.

(b) "Board" means the joint county-city auditorium board established under this section.

(c) "Ordinance" means an ordinance adopted by the governing body of a city or county and concurred in by the other governing body.

**(2) COUNTY-CITY AUDITORIUMS** Any county and city partly or wholly within the county may by ordinance jointly construct or otherwise acquire, equip, furnish, operate and maintain a county-city auditorium.

**(3) FINANCING** The governing bodies of the respective county and city or cities shall have the power to borrow money, appropriate funds, and levy taxes needed to carry out the purposes of this section. Funds to be used for the purposes specified in this section may be provided by the respective county, city or cities by general obligation bonds issued under ch. 67 or by revenue bonds issued under s. 66.51 or by the issuance of both general obligation bonds under ch. 67 and revenue bonds issued under s. 66.51. Any bonds issued pursuant to this section shall be executed on behalf of the county by the county board chairperson and the county clerk and on behalf of a city by the mayor or other chief executive officer thereof and by the city clerk.

**(4) COST SHARING** The ordinance shall provide for a sharing of all of the cost of construction or other acquisition, equipment, furnishing, operation and maintenance of such auditorium on an agreed percentage basis.

(5) **AUDITORIUM BOARD** The ordinance shall provide for the establishment of a joint county-city auditorium board to be composed as follows: The mayor, or chief executive of the city and the chairperson of the county board, who shall serve as members of the board during their respective terms of office; in addition the board shall be composed of 4 members to be appointed by the county board chairperson and confirmed by the county board, one for a one-year, one for a 2-year, one for a 3-year and one for a 4-year term, and 4 members to be appointed by the mayor or other chief executive officer of the city and confirmed by the city council, one for a one-year, one for a 2-year, one for a 3-year and one for a 4-year term; in the case of the members of the board appointed by the mayor or chief executive of the city, not more than 2 public officials (either elected or appointed) shall be eligible to be members of the board, and in the case of the members of the board appointed by the county board chairperson, not more than 2 public officials (either elected or appointed) shall be eligible to be members of the board. Their respective successors shall be appointed and confirmed in like manner for terms of 4 years. All appointees shall serve until their successors are appointed and qualified. Terms shall begin as specified in the ordinance. Vacancies shall be filled for the unexpired term in the manner in which the original appointment was made.

(6) **ORGANIZATION OF BOARDS; OFFICERS; COMPENSATION; OATHS; BONDS** (a) When all members have qualified the board shall meet at the place designated in the ordinance and organize by electing from its membership a president, a vice president, a secretary and a treasurer, each to hold office for one year. The offices of secretary and treasurer may be combined if the board so decides. Members may receive such compensation as may be provided in the ordinance and shall be reimbursed their actual and necessary expenses for their services. However, members serving on the board because of holding another office or position shall not receive compensation other than any actual and necessary expenses for their services. With the approval of the board, the treasurer may appoint an assistant secretary and assistant treasurer, who need not be members of the board, to perform such services as shall be specified by the board.

(b) Members, and any assistant secretary and assistant treasurer, shall qualify by taking the official oath, and the treasurer and any assistant treasurer shall furnish a bond in such sum as shall be specified by the board and be in the form and conditioned as provided in s. 19.01 (2) and (3). The oaths and bonds shall be filed with the county clerk. The cost of the bond shall be paid by the board.

(7) **POWERS OF BOARD** The board shall have power subject to provisions of the ordinance:

(a) To contract for the construction or other acquisition, equipping or furnishing of a county-city auditorium, and may accept donated services and gifts, grants or donations of money or property and use the same for the purposes given and consistent with this section, and may contract for and authorize the installation of equipment and furnishings of the auditorium, or any part thereof by private individuals, persons or corporations by donations, loan, lease or concession.

(b) To contract for the construction or other acquisition of additions or improvements to, or alterations in, such auditorium and the equipment or furnishing of any such addition; and may contract for or authorize the installation of equipment and furnishings in such addition, or any part thereof, by private individuals, persons or corporations by donation, loan or concession.

(c) To employ a manager of the auditorium and other necessary personnel and fix their compensation.

(d) To enact, amend and repeal rules and regulations, not inconsistent with law, for the leasing of, charges for admission to, and government of audiences and participants in events at the auditorium, for the regulation of the board's meetings and deliberations, and for the government, operation and maintenance of the auditorium and the employes thereof.

(e) To contract for, purchase or hire all fuel, equipment, furnishings, and supplies, services and help reasonably necessary for the proper operation and maintenance of the auditorium, and to contract for, purchase, hire, promote, conduct and operate, either by lease of the auditorium building or parts thereof or by direct operation by the auditorium board, meetings, concerts, theatricals, sporting events, conventions and other entertainment or events suitable to be held at the auditorium; and to handle and make all proper arrangements for the sale and disposition of admission tickets to auditorium events and the establishment of seating arrangements and priorities.

(f) To audit all accounts and claims against the auditorium or against the board, and, if approved, pay the same from the fund specified in sub. (9). All expenditures made pursuant to this section shall be within the limits of the ordinance.

(g) To sue and be sued, and to collect or compromise any and all obligations due to the auditorium; all money received shall be paid into the joint auditorium fund.

(h) To make such studies and recommendations to the county board and city council relating to the operation of the auditorium or the building of facilities therefor as the board may deem advisable or said governing bodies request.

(i) To employ counsel on either a temporary or permanent basis.

(8) **BUDGET** The board shall annually, prior to the time of the preparation of either the county or city budget under s. 65.90, prepare a budget of its anticipated receipts and expenditures for the ensuing fiscal year and determine the proportionate cost to the county and the participating city pursuant to the terms of the ordinance. A certified copy of the budget, which shall include a statement of the net amount required from the county and city, shall be delivered to the clerks of the respective municipalities. It shall be the duty of the county board and the common council of the city to consider such budget, and determine the amount to be raised by the respective municipalities in the proportions determined by the ordinance. Thereupon the county and city respectively shall levy a tax sufficient to produce the amount to be raised by said county and city.

(9) **AUDITORIUM FUND** A joint county-city auditorium fund shall be created and established in a public depository to be specified in the ordinance. The treasurer of the respective county and city shall pay or cause to be paid into such fund the respective amounts to be paid thereto by such county and city as specified by the ordinance and resolutions of the respective municipalities when such amounts have been collected. All of the moneys which shall come into said fund are hereby appropriated to the board for the execution of its functions as provided by the ordinance and the resolutions of the respective municipalities. The moneys in the fund shall be paid out by the treasurer of the auditorium board only upon the approval or direction of the board.

(10) **CORRELATION OF LAWS** (a) In any case where a bid is a prerequisite to contract in connection with a county or city auditorium under s. 66.29, it shall also be a prerequisite to a valid contract by the board; and for such purpose the board shall be deemed a municipality and the contract a public contract under s. 66.29.

(b) All statutory requirements, not inconsistent with the provisions of this section, applicable to city auditoriums shall apply to auditoriums provided for in this section.

(11) **REPORTS** The board shall report its activities to the county board and the city council annually, or oftener as either of said municipalities may require.

History: 1979 c. 110; 1983 a. 189; 1983 a. 192 s. 303 (1)

**66.508 County-city safety building. (1) DEFINITIONS** In this section:

(a) "Board" means the joint county-city safety building board established under this section.

(b) "Ordinance" means an ordinance adopted by the governing body of a city or county and concurred in by the other governing body.

(2) COUNTY-CITY SAFETY BUILDING Any county and city partly or wholly within the county may by ordinance jointly construct or otherwise acquire, equip, furnish, operate and maintain a county-city safety building.

(3) FINANCING The governing bodies of the respective county and city shall have the power to borrow money, appropriate funds, and levy taxes needed to carry out the purposes of this section. Funds to be used for the purposes specified in this section may be provided by the respective county or city by general obligation bonds issued under ch. 67 or by revenue bonds issued under s. 66.51 or by the issuance of both general obligation bonds under ch. 67 and revenue bonds issued under s. 66.51. Any bonds issued pursuant to this section shall be executed on behalf of the county by the county board chairperson and the county clerk and on behalf of a city by the mayor or other chief executive officer thereof and by the city clerk.

(4) COST SHARING The ordinance shall provide for a sharing of all of the cost of construction or other acquisition, equipment, furnishing, operation and maintenance of such safety building on an agreed percentage basis.

(5) SAFETY BUILDING BOARD The ordinance shall provide for the establishment of a joint county-city safety building board to be composed of 3 members to be appointed by the county board, one for a one-year, one for a 2-year and one for a 3-year term, and 3 members to be appointed by the city council, one for a one-year, one for a 2-year and one for a 3-year term, and one additional member appointed by the other members for a 3-year term. The membership of such board shall include the chairperson of the county board and the mayor of the city, who shall be initially designated as members for the 3-year terms. Their respective successors shall be appointed and confirmed in like manner for terms of 3 years. All appointees shall serve until their successors are appointed and qualified. Terms shall begin as specified in the ordinance. If a member of the board ceases to hold a city or county office, membership on the board also terminates. Vacancies shall be filled for the unexpired term in the manner in which the original appointment was made. Members of the board shall be officials of the county or city.

(6) ORGANIZATION OF BOARDS; OFFICERS; COMPENSATION; OATHS; BONDS. (a) When all members have qualified the board shall meet at the place designated in the ordinance and organize by electing from its membership a president, a vice president, a secretary and a treasurer, each to hold office for one year. The offices of secretary and treasurer may be combined if the board so decides. Members may receive such compensation as may be provided in the ordinance and shall be reimbursed their actual and necessary expenses for their services. The board may appoint an assistant secretary and assistant treasurer, who need not be members of the board, to perform such services as shall be specified by the board.

(b) Members, and any assistant secretary and assistant treasurer, shall qualify by taking the official oath, and the treasurer and any assistant treasurer shall furnish a bond in such sum as shall be specified by the board and be in the form and conditioned as provided in s. 19.01 (2) and (3). The oaths and bonds shall be filed with the county clerk. The cost of the bond shall be paid by the board.

(7) POWERS OF BOARD The board shall have power subject to provisions of the ordinance:

(a) To contract for the construction or other acquisition, equipping or furnishing of a county-city safety building, and may accept donated services and gifts, grants or donations of money or property and use the same for the purposes given and consistent with this section, and may contract for and authorize the installation of equipment and furnishings of the safety building, or any

part thereof by private individuals, persons or corporations by donations, loan, lease or concession.

(b) To contract for the construction or other acquisition of additions or improvements to, or alterations in, such safety building and the equipment or furnishing of any such addition; and may contract for or authorize the installation of equipment and furnishings in such addition, or any part thereof, by private individuals, persons or corporations by donation, loan or concession.

(c) To employ a superintendent of the safety building and other necessary personnel and fix their compensation.

(d) To enact, amend and repeal rules and regulations, not inconsistent with law, for the regulation of the board's meetings and deliberations, and for the government, operation and maintenance of the safety building and the employees thereof.

(e) To contract for, purchase or hire all fuel, equipment, furnishings, and supplies, services and help reasonably necessary for the proper operation and maintenance of the safety building.

(f) To audit all accounts and claims against the safety building or against the board, and, if approved, pay the same from the fund specified in sub. (9). All expenditures made pursuant to this section shall be within the limits of the ordinance.

(g) To sue and be sued, and to collect or compromise any and all obligations due to the safety building; all money received shall be paid into the joint safety building fund.

(h) To make such studies and recommendations to the county board and city council relating to the operation of the safety building or the building of facilities therefor as the board may deem advisable or said governing bodies request.

(i) To employ counsel on either a temporary or permanent basis.

(8) BUDGET The board shall annually, prior to the time of the preparation of either the county or city budget under s. 65.90, prepare a budget of its anticipated receipts and expenditures for the ensuing fiscal year and determine the proportionate cost to the county and the city pursuant to the terms of the ordinance. A certified copy of the budget, which shall include a statement of the net amount required from the county and city, shall be delivered to the clerks of the respective municipalities. It shall be the duty of the county board and the common council of the city to consider such budget, and determine the amount to be raised by the respective municipalities in the proportions determined by the ordinance. Thereupon the county and city respectively shall levy a tax sufficient to produce the amount to be raised by said county and city.

(9) SAFETY BUILDING FUND A joint county-city safety building fund shall be created and established in a public depository to be specified in the ordinance. The treasurer of the respective county and city shall pay or cause to be paid into such fund the respective amounts to be paid thereto by such county and city as specified by the ordinance and resolutions of the respective municipalities when such amounts have been collected. All of the moneys which shall come into said fund are hereby appropriated to the board for the execution of its functions as provided by the ordinance and the resolutions of the respective municipalities. The moneys in the fund shall be paid out by the treasurer of the safety building board only upon the approval or direction of the board.

(10) CORRELATION OF LAWS In any case where a bid is a prerequisite to contract in connection with a county or city safety building under s. 66.29, it shall also be a prerequisite to a valid contract by the board; and for such purpose the board shall be deemed a municipality and the contract a public contract under s. 66.29.

(11) REPORTS The board shall report its activities to the county board and the city council annually, or oftener as either of said municipalities may require.

(13) INSURANCE The board may procure and enter contracts for any type of insurance and indemnity against loss or damage to



property from any cause, including loss of use and occupancy, against death or injury of any person, against employers' liability, against any act of any member, officer or employee of the board in the performance of his or her duties, or any other insurable risk.

**(14) CONSTRUCTION.** Nothing in this section shall be construed as relieving, modifying or interfering with the responsibilities for operating jails which are vested in sheriffs under s. 59.23 (1) and chiefs of police under s. 62.09 (13) (b).

History: 1983 a. 189; 1983 a. 192 ss. 151, 303 (1); 1991 a. 316.

#### 66.51 Revenue bonds for counties and cities.

**(1) (a)** Every county or city, or both jointly, may construct, purchase, acquire, develop, improve, operate or maintain a county or city building, or both jointly, for a courthouse, safety building, city hall, hospital, armory, library, auditorium and music hall, municipal parking lots or other parking facilities, or municipal center or any combination thereof, or a university of Wisconsin center, if the operation of such center has been approved by the board of regents of the university of Wisconsin system.

**(b)** The county board, common council of any city, or both jointly, are authorized in their discretion, for any of its corporate purposes as set forth in this subsection, to issue bonds on which the principal and interest are payable from the income and revenues of such project financed with the proceeds of such bonds or with such proceeds together with the proceeds of a grant from the federal government to aid in the financing and construction thereof. In the case of municipal parking lots or other parking facilities such bonds may in addition be payable as to both principal and interest from income and revenues from other similar projects, parking meters, parking fees, or any other income or revenue obtained through parking, or any combination thereof.

**(c)** The credit of the county, or city, or both jointly, shall not be pledged to the payment of such bonds, but shall be payable only from the income and revenues described in par. (b) or the funds received from the sale or disposal thereof. If the county board, or common council of a city, or both jointly, so determine, such bonds shall be secured either by a trust indenture pledging such revenues or by a mortgage on the property comprising such project and the revenues therefrom.

**(2)** The bonds and other evidences of indebtedness shall state upon their face that the county, or city, or both jointly, shall not be a debt thereof or be liable therefor. Any indebtedness created by this section shall not be considered an indebtedness of such county or city and shall not be included in such amounts of determining the constitutional five per cent debt limitations.

**(3)** The provisions of s. 66.066 relating to the issuance of revenue bonds by cities for public utility purposes, insofar as applicable, and the provisions of ss. 67.08 (1) and 67.09 relating to the execution and registration of municipal obligations apply to the issuance of revenue bonds under this section.

**(4)** All actions of any county or city, including all contracts, agreements, obligations and undertakings entered into pursuant to such actions, before December 4, 1955, in connection with the construction or other acquisition, equipment, furnishing, operation and maintenance of a joint county-city safety building, which would have been valid if sub. (1) and s. 66.508 had been in effect when such actions were taken, are hereby validated.

History: 1971 c. 100 s. 23; 1977 c. 26; 1979 c. 89; 1983 a. 24.

**66.52 Promotion of industry.** **(1)** It is declared to be the policy of the state to encourage and promote the development of industry to provide greater employment opportunities and to broaden the state's tax base to relieve the tax burden of residents and home owners. It is recognized that the availability of suitable sites is a prime factor in influencing the location of industry but that existing available sites may be encroached upon by the development of other uses unless protected from such encroachment by purchase and reservation. It is further recognized that cities, villages and towns have broad power to act for the commercial benefit and the health, safety and public welfare of the public. How-

ever, to implement that power, legislation authorizing borrowing is necessary. It is, therefore, declared to be the policy of the state to authorize cities, villages and towns to borrow for the reservation and development of industrial sites, and the expenditure of funds therefor is determined to be a public purpose.

**(2)** For financing purposes, the purchase, reservation and development of industrial sites undertaken by any city, village or town is a public utility within the meaning of s. 66.066. In financing under that section, rentals and fees shall be considered as revenue. Any indebtedness created hereunder shall not be included in arriving at the constitutional debt limitation.

**(3)** Sites purchased for industrial development under this section or pursuant to any other authority may be developed by the city, village or town by the installation of utilities and roadways but not by the construction of buildings or structures. Any such sites may be sold or leased for industrial purposes but only for a fair consideration to be determined by the governing body.

#### 66.521 Industrial development revenue bonding.

**(1) FINDINGS.** **(a)** It is found and declared that industries located in this state have been induced to move their operations in whole or in part to, or to expand their operations in, other states to the detriment of state, county and municipal revenue raising through the loss or reduction of income and franchise taxes, real estate and other local taxes, and thereby causing an increase in unemployment; that such conditions now exist in certain areas of the state and may well arise in other areas; that economic insecurity due to unemployment is a serious menace to the general welfare of not only the people of the affected areas but of the people of the entire state; that unemployment results in obligations to grant public assistance and in the payment of unemployment compensation; that the absence of new economic opportunities has caused workers and their families to migrate elsewhere to find work and establish homes, which has resulted in a reduction of the tax base of counties, cities and other local governmental jurisdictions impairing their financial ability to support education and other local governmental services; that security against unemployment and the preservation and enhancement of the tax base can best be provided by the promotion, attraction, stimulation, rehabilitation and revitalization of commerce, industry and manufacturing; that there is a need to stimulate a larger flow of private investment funds from banks, investment houses, insurance companies and other financial institutions. It is therefore declared to be the policy of this state to promote the right to gainful employment, business opportunities and general welfare of the inhabitants thereof and to preserve and enhance the tax base by authorizing municipalities to acquire industrial buildings and to finance such acquisition through the issuance of revenue bonds for the purpose of fulfilling the aims of this section and such purposes are hereby declared to be public purposes for which public money may be spent and the necessity in the public interest for the provisions herein enacted is declared a matter of legislative determination.

**(b)** It is found and declared that the control of pollution of the environment of this state, the provision of medical, safe employment, telecommunications and telegraph, research, industrial park, dock, wharf, airport, recreational, convention center, trade center, headquarters and mass transit facilities in this state, and the furnishing of electric energy, gas and water in this state, are necessary to retain existing industry in, and attract new industry to, this state, and to protect the health, welfare and safety of the citizens of this state.

**(c)** It is found and declared that the revitalization of the central business districts of the municipalities of this state is necessary to retain existing industry in, and attract new industry to, this state and to protect the health, welfare and safety of residents of this state.

**(2) DEFINITIONS.** As used in this section, unless the context otherwise requires:

**(a)** "Authorized developer" means a corporation organized under ch. 180 or 181 which the governing body designates as an

authorized developer after making a finding that the principal purpose of the corporation is the general promotion of business development in the municipality or in the local area containing the municipality.

(b) "Distributor" includes any person engaged primarily in the business of making sales of any products of agriculture, forestry, mining or manufacture in the ordinary course of business to purchasers for purposes of resale or further processing or manufacturing.

(c) "Eligible participant" includes any person, other than the state or any other governmental unit, who enters into a revenue agreement with a municipality with respect to an industrial project. If more than one eligible participant is a party to a revenue agreement, the undertaking of each shall be either several or joint and several as the revenue agreement provides. An eligible participant need not be directly or indirectly a user of the project.

(d) "Equip" means to install or place on or in any building or improvements or the site thereof equipment of any kind, including, without limiting the generality of the foregoing, machinery, utility service connections, pollution control facilities, building service equipment, fixtures, heating equipment and air conditioning equipment.

(e) "Governing body" means the board, council or other body in which the legislative powers of the municipality are vested.

(f) "Improve", "improving", "improvements" and "facilities" embrace any real or personal property or mixed property of any kind of whatever useful life that can be used or that will be useful in an industrial project including, but not limited to, sites for buildings, equipment or other improvements, rights-of-way, roads, streets, sidings, foundations, tanks, structures, pipes, pipelines, reservoirs, lagoons, utilities, materials, equipment, fixtures, machinery, furniture, furnishings, improvements, instrumentalities, pollution control facilities, and other real, personal or mixed property of every kind.

(g) "Indenture" means an instrument under which bonds may be issued and the rights and security of the bondholders are defined, whether such instrument is in the form of an indenture of trust, deed of trust, resolution of the governing body, mortgage, security agreement, instrument of pledge or assignment or any similar instrument or any combination of the foregoing and whether or not such instrument creates a lien on property.

(h) "Initial resolution" means a resolution of the governing body expressing an intention, which may be subject to conditions therein stated, to issue revenue bonds under this section in an amount stated, or a sum not to exceed a stated amount, on behalf of a specified eligible participant, for a stated purpose.

(i) "Municipality" means any city, village or town in this state.

(j) "Pollution control facilities" include, without limitation because of enumeration, any facilities, temporary or permanent, which are reasonably expected to abate, reduce or aid in the prevention, measurement, control or monitoring of noise, air or water pollutants, solid waste and thermal, radiation or other pollutants, including facilities installed principally to supplement or to replace existing property or equipment not meeting or allegedly not meeting acceptable pollution control standards or which are to be supplemented or replaced by other pollution control facilities.

(k) "Project" and "industrial project" mean any of the following:

1. Assembling, fabricating, manufacturing, mixing or processing facilities for any products of agriculture, forestry, mining or manufacture, even though such products may require further treatment before delivery to the ultimate consumer;
2. Generating, manufacturing, transmission or distributing facilities for electric energy, gas or water;
3. Telecommunications and telegraph facilities;
4. Pollution control facilities, including any environmental studies and monitoring systems connected therewith;

5. Sewage and solid and liquid waste disposal facilities;
6. Printing facilities;
7. Hospital, clinic or nursing home facilities;
- 7m. Animal hospitals and veterinary clinics;
8. Industrial park facilities;
9. Dock, wharf, airport, railroad or mass transit facilities;
10. National or regional headquarters facilities;
11. Recreational facilities, convention centers and trade centers, as well as hotels, motels or marinas related thereto;
12. Facilities to provide service activities, including but not limited to warehousing, storage, distribution, research and data processing, which are directly related to and used in conjunction with a project enumerated in this paragraph having the same principal user;

13. Facilities required for compliance with a lawful order of the U.S. occupational safety and health administration or any similar governmental agency; and

14. In addition to subd. 12, facilities used primarily for the storage or distribution of products described under subd. 1, materials, components or equipment, but not including facilities regularly used for the sale of goods or services to ultimate consumers for personal, family or household purposes.

15. Facilities for compliance with a lawful order of any state or federal governmental agency controlling the use of land with respect to any of the industries, activities or facilities enumerated in this paragraph.

16. Repair or new construction of dry dock facilities, storage facilities or other harbor improvements.

17. Nonresidential facilities including, but not limited to, one or more shopping centers, office buildings, convention or trade centers, hotels, motels or other nonresidential buildings, with respect to which an urban development action grant has been made under 42 USC 5318 as in effect on April 30, 1980.

18. Alcohol fuel production facilities.

19. Facilities for research and development activities relating to the production of products described under subd. 1, regardless of whether the user of the facilities is also engaged in the production of one or more of those products.

20. A shopping center, or an office building, convention or trade center, hotel, motel or other nonresidential facility, which is located in or adjacent to a blighted area as defined by s. 66.43 (3) (a), 66.431 (4) (b) or 66.46 (2) (a) or in accordance with a redevelopment plan or urban renewal plan adopted under s. 66.43 (5) or 66.431 (6).

21. Cable television facilities which provide services only in a municipality having a population of 2,500 or less.

22. Child care centers, as defined in s. 231.01 (3c), except that this subdivision does not apply on or after March 31, 1994.

(L) "Revenue agreement" includes any lease, sublease, installment or direct sales contract, service contract, take or pay contract, loan agreement or similar agreement wherein an eligible participant agrees to pay the municipality an amount of funds sufficient to provide for the prompt payment of the principal of, and interest on, the revenue bonds and agrees to cause the project to be constructed.

(m) "Revenue bonds" and "bonds" means bonds, notes or any other contract or instrument evidencing a debt or providing for the payment of money entered into or issued in connection with a revenue agreement.

(n) "Trustee" means any corporation, bank or other entity authorized under any law of the United States or of any state to exercise trust powers or any natural person, or any one or more of them, acting as trustee, cotrustee or successor trustee under an indenture pursuant to designation of the governing body.

(3) POWERS. Any municipality may:

(a) Construct, equip, reequip, acquire by gift, lease or purchase, install, reconstruct, rebuild, rehabilitate, improve, supple-

ment, replace, maintain, repair, enlarge, extend or remodel industrial projects.

(b) Borrow money and issue revenue bonds:

1. To finance all or any part of the costs of the construction, equipping, reequipping, acquisition, purchase, installation, reconstruction, rebuilding, rehabilitation, improving, supplementing, replacing, maintaining, repairing, enlarging, extending or remodeling of industrial projects and the improvement of sites therefor;

2. To fund the whole or any part of any revenue bonds theretofore issued by such municipality, including any premium payable with respect thereto and any interest accrued or to accrue thereon; or

3. For any combination of the purposes under subd. 1. or 2.

(c) Enter into revenue agreements with eligible participants with respect to industrial projects.

(d) Mortgage all or any part of the industrial project or assign the revenue agreements in favor of the holders of the bonds issued therefor and in connection therewith may irrevocably waive any rights it would otherwise have to redeem the mortgaged premises in the event of foreclosure.

(e) Sell and convey the industrial project and site, including without limitation the sale and conveyance thereof subject to a mortgage, for such price and at such time as the governing body determines, but no sale or conveyance of any industrial project or site shall be made in any manner as to impair the rights or interests of the holders of any bonds issued for the industrial project.

(f) Finance an industrial project which is located entirely within the geographic limits of the municipality or some contiguous part of which is located within and some contiguous part outside the geographic limits of the municipality; or, finance an industrial project which is located entirely outside the geographic limits of the municipality, but only if the revenue agreement with respect to such project also relates to another project of the same eligible participant some part of which is located within such limits. Exercise of the power granted by this subsection shall not give rise to any power on the part of such municipality to annex, tax, zone or exercise any other municipal power with respect to that part of such project located outside of the geographic limits of such municipality.

(g) Consent, whenever it deems it necessary or desirable in fulfillment of the purposes of this section, to a modification of a rate of interest, a time of payment of any instalment of principal or interest or any other term of the revenue agreement, indenture or bonds.

(h) Provide for any type of insurance against any risk including, without limitation, insurance on the revenues to be derived pursuant to the revenue agreement or on the obligation to make payment of the principal of or interest on the bonds.

**(4) BONDS.** (a) All bonds issued by a municipality under the authority of this section shall be limited obligations of the municipality. The principal of and interest on such bonds shall be payable solely out of the revenues derived pursuant to the revenue agreement pertaining to the project to be financed by the bonds so issued under this section, or, in the event of default of such agreement and to the extent that the municipality so provides in the proceedings of the governing body whereunder the bonds are authorized to be issued, out of any revenues derived from the sale, releasing or other disposition of the project, or out of any collateral securing the revenue agreement, or out of the proceeds of the sale of bonds. Bonds and interest coupons issued under this section do not constitute an indebtedness of the municipality, within the meaning of any state constitutional provision or statutory limitation. Bonds and interest coupons issued under this section do not constitute nor give rise to a charge against the municipality's general credit or taxing powers or a pecuniary liability of the municipality or a redevelopment authority under s. 66.431, including but not limited to:

1. Liability for failure to investigate or negligence in the investigation of the financial position or prospects of an eligible participant, a user of a project or any other person or for failure to consider, or negligence concerning, the adequacy of terms of, or collateral security for, the bonds or any related agreement to protect interests of holders of the bonds; and

2. Any liability in connection with the issuance or sale of bonds, for representations made, or for the performance of the obligation of any person who is a party to a related transaction or agreement except as specifically provided in this section or by an express provision of the bond or a related written agreement to which the municipality is a party.

(b) The limitation of liability provided by par. (a) (intro.) shall be plainly stated on the face of each bond.

(c) The bonds may be executed and delivered at any time; be in such form and denominations, without limitation as to the denomination of any bond, any other law to the contrary notwithstanding; be registered under s. 67.09; be payable in one or more instalments and at such time, not exceeding 35 years from their date; be payable prior to maturity on such terms and conditions; be payable both with respect to principal and interest at such place in or out of this state; bear interest at such rate, either fixed or variable in accordance with such formula; be evidenced in such manner; and may contain other provisions not inconsistent with this section as specified by the governing body.

(d) Unless otherwise expressly or implicitly provided in the proceedings of the governing body whereunder the bonds are authorized to be issued, bonds issued under this section shall be subject to the general provisions of law, not inconsistent with this section, presently existing or that may hereafter be enacted, respecting the authorization, execution and delivery of the bonds of such municipality.

(e) Any bonds, issued under the authority of this section, may be sold at public or private sale in such manner, at such price and at such time as may be determined by the governing body. The municipality may pay all expenses, premiums and commissions which the governing body may deem necessary or advantageous in connection with the authorization, sale and issuance thereof.

(f) All bonds, issued under the authority of this section and all interest coupons applicable thereto, shall be construed to be negotiable instruments, even though they are payable solely from a specified source.

**(4m) JOB PROTECTION ESTIMATES.** (a) A municipality may not enter into a revenue agreement with any person unless:

1. The person, at least 30 days prior to entering into the revenue agreement, has given a notice of intent to enter into the agreement, on a form prescribed under s. 560.034 (1), to the department of development and to any collective bargaining agent in this state with whom the person has a collective bargaining agreement; and

2. The municipality has received an estimate issued under s. 560.034 (5) (a), and the department of development has estimated whether the project which the municipality would finance under the revenue agreement is expected to eliminate, create or maintain jobs on the project site and elsewhere in this state and the net number of jobs expected to be eliminated, created or maintained as a result of the project.

(b) Any revenue agreement which an eligible participant enters into with a municipality to finance a project shall require the eligible participant to submit to the department of development within 12 months after the project is completed or 2 years after a revenue bond is issued to finance the project, whichever is sooner, on a form prescribed under s. 560.034 (1), the net number of jobs eliminated, created or maintained on the project site and elsewhere in this state as a result of the project.

(c) Nothing in this subsection may be deemed to require a person with whom a municipality has entered into a revenue agreement to satisfy an estimate under par. (a) 2.

**(4s) JOB SHIFTING REQUIREMENTS.** (a) In this subsection:

1. "Department" means the department of development.
2. "Employer" means an eligible participant, as defined in sub. (2) (c).
3. "Lost job" means an employment position with an employer that is eliminated at a site in this state other than a project site when the employer moves any part of its operation to a project site.
4. "New job" means an employment position with an employer that meets all of the following requirements:
  - a. Is created at a project site when the employer moves any part of its operation to a project site from another site in this state.
  - b. Increases the employer's total number of jobs at a project site after the construction of the project compared to the employer's total number of jobs at that project site before the construction of the project.
  - c. Is created within one year after the construction of the project is completed.
  - d. Is substantially similar in tasks performed and skills required as a lost job.
  - e. Is not a construction job or other nonpermanent job at a project site that is required only during and because of the construction of the project.

5. "Project site" means the location of a project that is the subject of a revenue agreement.

(b) A municipality may not enter into a revenue agreement with any employer that employs individuals in this state at a site other than a project site unless the employer certifies that the project is not expected to result in any lost jobs or the employer agrees to all of the following:

1. Notwithstanding sub. (6m), the employer shall offer employment at any new job first to persons who were formerly employed at lost jobs.
2. The offer of employment for the new job shall have compensation and benefit terms at least as favorable as those of the lost job.
3. The employer shall certify compliance with this subsection to the department, to the governing body of each municipality within which a lost job exists and to any collective bargaining agent in this state with which the employer has a collective bargaining agreement at the project site or at a site where a lost job exists.
4. The employer shall submit a report to the department every 3 months during the first year after the construction of the project is completed. The reports shall provide information about new jobs, lost jobs and offers of employment made to persons who were formerly employed at lost jobs. The 4th report shall be the final report. The form and content of the reports shall be prescribed by the department under par. (d).

(c) A determination of whether the job offer required under par. (b) is an offer of suitable work under s. 108.04 (8) may not take into consideration the requirements of this subsection. Whether the job offer is an offer of suitable work under ch. 108 may be determined only by the same standards and requirements that apply to any other job offer under ch. 108, including any standards relating to the relative location of the offered work and the location of the employee's domicile.

(d) The department shall administer this subsection and shall prescribe forms for certification and reports under par. (b).

(5) PLEDGE OF REVENUES AND PROCEEDINGS FOR ISSUANCE OF BONDS. (a) The principal of, and interest on, any bonds issued under authority of this section shall be secured by a pledge of the revenues out of which such bonds shall be made payable. They may, but need not, be secured by any one or more of the following:

1. A real estate mortgage or a security interest covering all or any part of the project from which the revenues so pledged may be derived;
2. A pledge of the revenue agreement; or

3. An assignment of the revenue agreement and any security given therefor.

(b) The proceedings under which the bonds are authorized to be issued under this section, and any indenture given to secure the same, may contain any agreements and provisions customarily contained in instruments securing bonds, including, but not limited to:

1. Provisions respecting custody of the proceeds from the sale of the bonds including their investment and reinvestment until used to defray the cost of the project;
2. Provisions respecting the fixing and collection of the proceeds under the revenue agreement pertaining to any project covered by such proceedings or indenture;
3. The terms to be incorporated in the revenue agreement pertaining to such project;
4. The maintenance and insurance of such project;
5. The creation, maintenance, custody, investment and reinvestment and use of special funds from the revenues of such project; and
6. The rights and remedies available in case of a default to the bondholders or to any trustee for the bondholders.

(c) A municipality may provide that proceeds from the sale of bonds and special funds from the revenues of the project and any funds held in reserve or debt service funds shall be invested and reinvested in such securities and other investments as are provided in the proceedings under which the bonds are authorized to be issued. The municipality may also provide that such proceeds or funds or investments and the revenues derived pursuant to the revenue agreement shall be received, held and disbursed by one or more banks or trust companies located in or out of this state. A municipality may also provide that the project and improvements shall be constructed or installed by the municipality, the eligible participant or the eligible participant's designee or any one or more of them on real estate owned by the municipality, the eligible participant or the eligible participant's designee and that the bond proceeds shall be disbursed by the trustee bank or trust company during construction upon the estimate, order or certificate of the eligible participant or the eligible participant's designee. In making such agreements or provisions, a municipality shall not obligate itself, except with respect to the project and the application of the revenues therefrom, and shall not incur a pecuniary liability or a charge upon its general credit or against its taxing powers.

(d) The proceedings authorizing any bonds under this section, or any indenture securing such bonds, may provide that if there is a default in the payment of the principal of, or the interest on, such bonds or in the performance of any agreement contained in such proceedings or indenture, the payment and performance may be enforced by the appointment of a receiver with power to charge, collect and apply the revenues from the project in accordance with such proceedings or the provisions of such indenture.

(e) Any indenture made under this section to secure bonds and which constitutes a lien on property may also provide that if there is a default in the payment thereof or a violation of any agreement contained therein, it may be foreclosed and the collateral sold under proceedings in any manner permitted by law. Such indenture may also provide that any trustee thereunder or any pledgee or assignee thereof or the holder of any bonds secured thereby may become the purchaser at any foreclosure sale if that person is the highest bidder therefor.

(f) The revenue agreement may include such provisions as the municipality deems appropriate to effect the financing of the project, including a provision for payments thereunder to be made in instalments and the securing of the obligation for any such payments by lien or security interest in the undertaking either senior or junior to, or ranking equally with, any lien, security interest or rights of others.

**(6) DETERMINATION OF REVENUE PAYMENT.** (a) Prior to the execution of a revenue agreement with respect to any project, the governing body must determine:

1. The amount necessary in each year to pay the principal of, and the interest on, the bonds proposed to be issued to finance such project;

2. The amount necessary to be paid each year into any reserve funds which the governing body deems advisable to establish in connection with the retirement of the proposed bonds and the maintenance of the project; and

3. Unless the terms of the revenue agreement provide that the eligible participant shall provide for maintenance of the project and the carrying of all proper insurance with respect thereto, the estimated cost of maintaining the project in good repair and keeping it properly insured.

(b) The determination and findings of the governing body shall be embodied in the proceedings under which the proposed bonds are to be issued; but the foregoing amounts need not be expressed in dollars and cents in the revenue agreement and proceedings under which the bonds are authorized to be issued, but may be set forth in the form of a formula. Prior to the issuance of the bonds authorized by this section the municipality shall enter into a revenue agreement providing for payment to the municipality or to the trustee for the account of the municipality of such amounts as, upon the basis of such determination and findings, will be sufficient to pay the principal of, and interest on, the bonds issued to finance the project; to build up and maintain any reserves deemed advisable by the governing body, in connection therewith; and, unless the revenue agreement obligates the eligible participant to provide for the maintenance of and insurance on the project, to pay the costs of maintaining the project in good repair and keeping it properly insured.

(c) A governing body may not adopt an initial resolution authorizing issuance of bonds to finance a project specified under sub. (2) (k) 11. unless the governing body finds and states in the initial resolution that the project will significantly increase the number of persons traveling to the municipality for business or recreation. The statement shall be included in the public notice required under sub. (10) (b).

**(6m) NOTIFICATION OF POSITION OPENINGS.** A municipality may not enter into a revenue agreement with any person who operates for profit unless that person has agreed to notify the department of industry, labor and human relations and the area private industry council under the job training partnership act, 29 USC 1501 to 1798, of any position to be filled in that municipality within one year after issuance of the revenue bonds. The person shall provide this notice at least 2 weeks before advertising the position. The notice required by this subsection does not affect the offer of employment requirements of sub. (4s).

**(7) APPLICATION OF PROCEEDS LIMITED.** The proceeds from the sale of any bonds, issued under this section, shall be applied only for the purpose for which the bonds were issued and if, for any reason, any portion of such proceeds are not needed for the purpose for which the bonds were issued, such unneeded portion of said proceeds shall be applied, directly or indirectly, to the payment of the principal or the interest on the bonds. The following costs may be financed as part of any bond issue:

(a) The actual cost of the construction of any part of a project which may be constructed including but not limited to, permit and license fees, preparation of cost estimates, feasibility studies, consultants, architects', engineers' and similar fees;

(b) The purchase price and installation cost of any part of a project that may be acquired by purchase;

(c) The costs of environmental studies and monitoring systems in connection with the industrial project;

(d) The costs of moving to the situs of the project property previously owned or leased by an eligible participant;

(e) The current fair market value of any real property and improvements thereto acquired as a part of the project and any costs directly related to such real property;

(f) The current fair market value of any personal property acquired as a part of the project;

(g) All expenses in connection with the authorization, sale and issuance of the bonds;

(h) The interest on the bonds, or on any debt which is replaced by the proceeds of the bonds, for a reasonable time prior to construction or acquisition, during construction or acquisition and for not exceeding 6 months after completion of construction or acquisition; and

(i) A reserve for payment of the principal of and interest on the bonds.

(j) The financing of the acquisition cost, incurred after the date of adoption of the initial resolution, of property acquired from an authorized developer which is substantially completed or under construction on July 25, 1980, and which is substantially unused prior to the acquisition, except the authorized developer may have leased the property prior to its acquisition, for a period not to exceed 2 years, for the purpose of deriving revenue from the property pending its sale.

**(8) PURCHASE.** The municipality may, by or with the consent of the eligible participant, accept any bona fide offer to purchase the project which is sufficient to pay all the outstanding bonds, interest, taxes, special levies and other costs that have been incurred. The municipality may also, by or with the consent of the eligible participant, accept any bona fide offer to purchase any unimproved land which is a part of the project, if the purchase price is not less than the cost of such land to the municipality computed on a prorated basis and if such purchase price is applied directly or indirectly to the payment of the principal or interest on the bonds.

**(9) PAYMENT OF TAXES.** When any industrial project acquired by a municipality under this section is used by a private person as a lessee, sublessee or in any capacity other than owner, that person shall be subject to taxation in the same amount and to the same extent as though that person were the owner of the property. Taxes shall be assessed to such private person using the real property and collected in the same manner as taxes assessed to owners of real property. When due, the taxes shall constitute a debt due from such private person to the taxing unit and shall be recoverable as provided by law, and such unpaid taxes shall become a lien against the property with respect to which they were assessed, superior to all other liens, except a lien under s. 144.442 (9) (i), 144.76 (13) or 144.77 (6) (d), and shall be placed on their tax roll when there has been a conveyance of the property in the same manner as are other taxes assessed against real property.

**(10) PROCEDURE.** (a) Any action required or permitted by this section to be taken by a governing body may be taken at any lawful meetings thereof. A simple majority of a quorum of such governing body shall be sufficient for any such action. The ayes and noes need not be taken with respect to any such action and such action need not be officially read prior to adoption. Failure to publish any such action shall not affect the validity thereof.

(b) Upon the adoption of an initial resolution under this section, public notice of such adoption shall be given to the electors of the municipality prior to the issuance of the bonds therein described, by publication as a class 1 notice, under ch. 985. The notice need not set forth the full contents of the resolution, but shall state the maximum amount of the bonds; the name of the eligible participant; the purpose of the bonds; the net number of jobs which the project which the municipality would finance with the bond issue is expected to eliminate, create or maintain on the project site and elsewhere in this state which is required to be shown by the proposed eligible participant on the form submitted under sub. (4m) (a) 1.; and that the resolution was adopted under this sec-



tion. A form of the public notice shall be attached to the initial resolution. Prior to adoption of the initial resolution, the open meeting notice given to members of the public under s. 19.84 shall indicate that information with respect to the job impact of the project will be available at the time of consideration of the initial resolution. No other public notice of the authorization, issuance or sale of bonds under this section is required.

(c) A copy of the initial resolution together with a statement indicating when the public notice required under par. (b) was published shall be filed with the secretary of development within 20 days following publication of notice. Prior to the closing of the bond issue, the secretary may require additional information from the eligible participant or the municipality. After the closing of the bond issue, the secretary shall be notified of the closing date, any substantive changes made to documents previously filed with the secretary and the principal amount of the financing.

(d) The governing body may issue bonds under this section without submitting the proposition to the electors of the municipality for approval unless within 30 days from the date of publication of notice of adoption of the initial resolution for such bonds, a petition conforming to the requirements of s. 8.40, signed by not less than 5% of the registered electors of the municipality, or, if there is no registration of electors in the municipality, by 10% of the number of electors of the municipality voting for the office of governor at the last general election as determined under s. 115.01 (13), is filed with the clerk of the municipality requesting a referendum upon the question of the issuance of the bonds. If such a petition is filed, the bonds shall not be issued until approved by a majority of the electors of the municipality voting thereon at a general or special election.

(e) Members of a governing body and officers and employees of a municipality are not personally liable on bonds and are not personally liable for any act or omission related to the authorization or issuance of bonds.

(g) Bonds may not be issued unless prior to adoption of an initial resolution a document which provides a good faith estimate of attorney fees which will be paid from bond proceeds is filed with the clerk of the municipality and the department of development.

(h) Bonds may not be issued unless prior to issuance all prerequisite conditions contained in the initial resolution are satisfied.

**(11) CERTAIN LAWS NOT APPLICABLE** (a) With respect to the enforcement of any construction lien or other lien under ch. 779 arising out of the construction of projects financed under this section, no deficiency judgment or judgment for costs may be entered against the municipality. Projects financed under this section shall not be deemed to be public works, public improvements or public construction within the meaning of ss. 59.08, 60.47, 61.55, 62.15, 779.14, 779.15 and 779.155 and contracts for the construction of such projects shall not be deemed to be public contracts within the meaning of ss. 59.08 and 66.29 unless factors such as and including municipal control over the costs, construction and operation of the project and the beneficial ownership of the project warrant such conclusion.

(b) 1. Except as provided by subd. 2., construction work which is let by contract and which has an estimated cost exceeding \$5,000 may be financed with bonds only if the contract is let to the lowest responsible bidder and proposals for the contract are advertised by publishing a class 2 notice under ch. 985.

1m. The contract shall include a clause prohibiting discrimination in employment and subcontracting. No facility constructed with industrial revenue bonds shall be used for any purpose which includes any act of employment discrimination as specified under s. 111.322.

2. The governing body of a municipality may waive subd. 1. with respect to a particular project by adopting an ordinance or resolution containing a statement of the reasons for the waiver and a description of the project for which waiver is made and publishing it as a class 1 notice under ch. 985.

**(12) VALIDATION OF CERTAIN BONDS AND PROCEEDINGS.** Notwithstanding this section or any other law:

(a) In the absence of fraud, all bonds issued prior to July 25, 1980 purportedly pursuant to this section, and all proceedings taken purportedly pursuant to this section prior to that date for the authorization and issuance of those bonds or of bonds not yet issued, and the sale, execution and delivery of bonds issued prior to July 25, 1980, are hereby validated, ratified, approved and confirmed, notwithstanding any lack of power, however patent, other than constitutional, of the issuing municipality or the governing body or officer thereof, to authorize and issue the bonds, or to sell, execute or deliver the same, and notwithstanding any defects or irregularities, however patent, other than constitutional, in the proceeding or in the sale, execution or delivery of bonds issued prior to July 25, 1980. All such bonds are binding, legal obligations in accordance with their terms.

(b) Any proceedings for the authorization and issuance of bonds under this section in process prior to July 25, 1980 may be continued under this section as in effect prior to July 25, 1980 or under this section as in effect on and after July 25, 1980 if the governing body so elects and the initial resolution is published or republished after July 25, 1980. All such continued proceedings are validated, ratified, approved and confirmed; and all bonds issued as a result of such proceedings are binding, legal obligations in accordance with their terms.

**(13) COST OF INDUSTRIAL PROJECT ELIGIBLE FOR FINANCING** (a) In this subsection:

1. "Placed into service" means having become a completed part of a facility which is in fact operational at the level of pollution control for which it was designed.

2. "Substantially" refers to an expenditure of 15% or more of the financed cost of acquiring the property involved.

(b) This section may be used to finance all or any part of the cost, tangible or intangible, whenever incurred, of providing an industrial project under this section, whether or not such industrial project is in existence on the date of adoption of the initial resolution or of issuance of the bonds; whether new or previously used; whether or not previously owned by the eligible participant, the eligible participant's designee or a party affiliated with either; and notwithstanding that this section was not in effect or did not permit such financing on the date of such adoption or at the time such ownership was acquired, except as follows:

1. No part of the costs of constructing or acquiring personal property owned by the eligible participant, the eligible participant's designee or a party affiliated with either at any time prior to the date of adoption of the initial resolution may be so financed except such costs for:

a. Pollution control facilities which have not been placed into service on the date of adoption of the initial resolution; or

b. Personal property which will either be substantially reconstructed, rehabilitated, rebuilt or repaired in connection with the financing or which represents less than 10% of the entire financing. Personal property shall be deemed owned only after 50% of the acquisition cost thereof has been paid and such property has been delivered and installed.

2. No part of the costs of acquiring real property or of acquiring or constructing improvements thereto may be so financed except such costs:

a. For pollution control facilities which have not been placed into service on the date of adoption of the initial resolution;

b. For real property which will be substantially improved or rehabilitated in connection with the project or which represents less than 25% of the entire financing;

c. For acquiring improvements which will themselves be substantially improved or rehabilitated in connection with the project, which represent less than 25% of the entire financing, or the cost

of which is less than 33% of the cost of the real property to which they are appurtenant which is also being acquired; or

d. As are incurred after the date of adoption of the initial resolution for constructing improvements.

**History:** 1973 c. 265; 1977 c. 28; 1979 c. 32 s. 92 (9); 1979 c. 34, 221, 350, 355; 1979 c. 361 s. 112; 1979 c. 362 ss. 3 to 12, 16, 17, 18; 1981 c. 314; 1983 a. 24, 27; 1983 a. 189 ss. 63 to 65, 329 (14); 1983 a. 207 s. 93 (8); 1983 a. 532 s. 36; 1985 a. 29, 222, 285; 1985 a. 297 s. 76; 1985 a. 299; 1987 a. 27; 1989 a. 192; 1991 a. 39, 316; 1993 a. 122, 124, 453.

This section is constitutional. It does not constitute a denial of equal protection of the law because the legislative classification is proper. *State ex rel. Hammermill Paper Co. v. La Plante*, 58 W (2d) 32, 205 NW (2d) 784.

This section is not unconstitutional upon its face. 59 Atty. Gen. 106

Industrial development revenue bonding is not available for a project for a new automobile showroom, warehouse, and repair facility of a retail automobile dealership. 62 Atty. Gen. 141

Typical turnkey projects financed by industrial development revenue bonds under 66.521 are not subject to 66.293 (3), concerning prevailing wage rates. 63 Atty. Gen. 145

Sub. (11) does not require a municipality to obtain performance bonds for typical industrial revenue bond projects constructed by private industry. 64 Atty. Gen. 169.

Chiropractic clinic may qualify for financing under this section. 70 Atty. Gen. 133.

The financing of corporate expansion through industrial revenue bonds. *Mulcahy, Guskowski*, 57 MLR 201

**66.526 Uniform salaries in first class cities.** The common council of any city of the first class, however incorporated, may at any regular or special meeting, at any time during the calendar year, adopt a uniform and comprehensive salary or wage ordinance, or both, based on a classification of officers, employments and positions in the city service and of and including any and all offices and positions whatsoever in the employment of such city, whether previously so classified or not, provided provision has been made in the budget of the current year for the total sum of money required for the payment of salaries and wages for such employment and a tax levied to include the same, with the following exception: That wages may be fixed at any such time by resolution alone and that the common council may, at any time during the calendar year, at any such meeting determine a cost-of-living increment or deduction, to be paid in addition to such wages or salaries, based on a proper finding of the United States bureau of labor statistics. Any such common council may, at any such meeting, provide for overtime pay and compensatory time under s. 103.025 for employees who work in excess of 40 hours per week.

**History:** 1993 a. 144.

**66.527 Recreation authority. (1)** Funds for the establishment, operation and maintenance of a department of recreation may be provided by the governing body of any town or school district after compliance with s. 65.90.

(2) (a) Any such governmental unit may delegate the power to establish, maintain and operate a department of public recreation to a board of recreation, which shall consist of 3 members and shall be appointed by the chairperson or other presiding officer of the governing body. The first appointments shall be made so that one member will serve one year, one for 2 years and one for 3 years; thereafter appointments shall be for terms of 3 years.

(b) When 2 or more of the aforesaid governing units desire to conduct, jointly, a department of public recreation, the joint recreation board shall consist of not less than 3 members who shall be selected by the presiding officers of such governmental units acting jointly. Appointments shall be made for terms as provided in par. (a).

(c) The members of any such recreation board shall serve gratuitously.

(d) Such recreation board is authorized to conduct the activities of such public recreation department, to expend funds therefor, to employ a supervisor of recreation, to employ assistants, to purchase equipment and supplies, and generally to supervise the administration, maintenance and operation of such department and recreational activities authorized by the board.

(3) (a) The public recreation board has the right to conduct public recreation activities on property purchased or leased by any

such governing unit for recreational purposes and under its own custody, on other public property under the custody of any other public authority, body or board with the consent of such public authority, body or board, or on private property with the consent of its owner, and such board with the approval of the appointing board, may accept gifts and bequests of land, money or other personal property, and use the same in whole or in part, or the income therefrom or the proceeds from the sale of any such property in the establishment, maintenance and operation of recreational activities.

(b) The board shall annually submit to the governing body a report of its activities and showing receipts and expenditures. Such reports shall be submitted not less than 15 days prior to the annual meeting of such governmental unit.

(c) An audit shall be made of the accounts of such recreational board in the same manner as provided for audits for towns or school districts as the case may be.

(d) The persons selected by the recreation board shall furnish a surety bond in such amount as shall be fixed by the governing body.

**History:** 1975 c. 233; 1993 a. 184

### 66.53 Repayment of assessments in certain cases.

If in any city or town any contract for improvements is declared void by any court of last resort on the following grounds: want of power to make such contract; made contrary to a prohibition against contracting in any other than a specified way; or forbidden by statute, and if the governing body of the city or town has not adopted the resolution referred to in s. 66.295 (1) relating to payment of any person who has furnished any benefits under the void contract, the governing body of the city or town may provide that all persons who have paid all or any part of any assessment levied against the abutting property owners by reason of the improvement may be reimbursed the amount of the assessment, paid from the fund, as the governing body may determine.

**History:** 1993 a. 246

### 66.54 Special improvement bonds; certificates.

(1) DEFINITIONS. Wherever used or referred to in this section, unless a different meaning clearly appears from the context:

(a) "Contractor" means the person, firm or corporation performing the work or furnishing the materials, or both, for a public improvement.

(am) "Debt service fund" means the fund, however derived, set aside for the payment of principal and interest on contractor's certificates or bonds issued under this section.

(b) "Governing body" means the body or board vested by statute with the power to levy special assessments for public improvements.

(c) "Municipality" means county, city, village, town, farm drainage board, sanitary districts, utility districts, public inland lake protection and rehabilitation districts, and all other public boards, commissions or districts, except 1st class cities, authorized by law to levy special assessments for public improvements against the property benefited by the special improvements.

(d) "Public improvement" means the result of the performance of work or the furnishing of materials or both, for which special assessments are authorized to be levied against the property benefited thereby.

(2) METHODS OF PAYMENT FOR PUBLIC IMPROVEMENTS. In addition to the other methods prescribed by law, payment of the cost of any public improvement authorized by the governing body of any municipality on or after July 1, 1943, may be made by any one of the following methods or a combination thereof:

(a) Payment by the municipality out of its general funds.

(b) Payment out of the proceeds of the sale of municipal obligations under s. 66.066 and ch. 67, including revenue obligations under s. 66.066.

- (c) Contractor's certificates, constituting a lien against a specific parcel of real estate.
- (d) General obligation-local improvement bonds, or the proceeds thereof.
- (e) Special assessment B bonds, or the proceeds thereof.

**(3) PRELIMINARY PAYMENT ON COST OF PUBLIC IMPROVEMENTS**  
Whenever it is determined that the cost of any public improvement about to be made is to be paid, wholly or in part, by special assessments against the property to be benefited by the improvement, the resolution authorizing such public improvement shall provide and require that the whole, or any stated proportion, or no part of the estimated aggregate cost of such public improvement, which is to be levied as special assessments, shall be paid into the municipal treasury in cash. No such public improvement shall be commenced nor any contract let therefor unless and until such payment, if any, required by said resolution, is paid into the treasury of the municipality by the owner or persons having an interest in the property to be benefited, which payment shall be credited on the amount of the special assessments levied or to be levied against benefited property designated by the payer. In the event that a preliminary payment is required by said resolution, the refusal of one or more owners or persons having an interest in the property to be benefited to pay such preliminary payments shall not prevent the making of such improvement, if the entire specified sum is obtained from the remaining owners or interested parties.

**(4) DISCOUNT ON CONTRACT PRICE** Every bid hereafter received for any public improvement which is not to be paid wholly in cash shall contain a provision that all payments made in cash by the municipality as provided by contract or made on special assessments as hereinafter provided shall be subject to a specified rate of discount. The municipal treasurer shall issue a receipt for every such payment made on any special assessment, stating the date and amount of the cash payment, the discount and the total credit including such discount, on a specified special assessment or assessments. The treasurer shall on the same day deliver a duplicate of such receipt to the clerk, who shall credit the specified assessments accordingly. All moneys so received shall be paid to the contractor as provided by the contract.

**(5) PAYMENT BY MUNICIPALITY** Whenever any such public improvement has been paid for by the municipality, contractor's certificates as provided for in sub. (6), or general obligation-local improvement bonds as provided for in sub. (9), or special assessment B bonds as provided for in sub. (10) may be issued to the municipality as the owner thereof. All of the provisions of subs. (6), (9) and (10) applicable to the contractor or to the owner of such contractor's certificates or to such general obligation-local improvement bonds or to such special assessment B bonds shall be deemed to include the municipality which has paid for such improvement and to which such contractor's certificates, general obligation-local improvement bonds or special assessment B bonds have been issued, except as in this section otherwise provided.

**(6) PAYMENT BY CONTRACTOR'S CERTIFICATE** (a) Whenever any public improvement has been made and has been accepted by the governing body of the municipality, it may cause to be issued to the contractor for such public improvement, a contractor's certificate as to each parcel of land against which special assessments have been levied for the unpaid balance of the amount chargeable thereto, describing each parcel. Such certificate shall be substantially in the following form:

\$ \_\_\_\_\_ No. \_\_\_\_\_  
 \_\_\_\_\_  
 (name of municipality)  
 CONTRACTOR'S CERTIFICATE  
 FOR CONSTRUCTION OF  
 \_\_\_\_\_  
 (name of municipality)  
 ISSUED PURSUANT TO  
 SECTION 66.54 (6) WIS. STATS.

We, the undersigned officers of the (name of municipality), hereby certify that (name and address of contractor) has performed the work of constructing \_\_\_\_\_ in \_\_\_\_\_ benefiting the following premises, to wit: (insert legal description) in the (name of municipality) \_\_\_\_\_ County, Wisconsin, pursuant to a contract entered into by said (name of municipality) with the said (name of contractor), dated \_\_\_\_\_, and that \_\_\_\_\_ entitled to the sum of \_\_\_\_\_ dollars, being the unpaid balance due for said work chargeable to the property hereinabove described.

NOW, THEREFORE, If the said sum shall not be paid to the treasurer of (name of municipality) before the first day of December, next, the same shall be extended upon the tax roll of the (name of municipality) against the property above described as listed therein, and collected for, as provided by law.

This certificate is transferable by indorsement but such assignment or transfer shall be invalid unless the same shall be recorded in the office of the clerk of the (name of municipality) and the fact of such recording is indorsed on this certificate. THE HOLDER OF THIS CERTIFICATE SHALL HAVE NO CLAIM UPON THE (Name of municipality) IN ANY EVENT, EXCEPT FROM THE PROCEEDS OF THE SPECIAL ASSESSMENTS LEVIED FOR SAID WORK AGAINST THE ABOVE DESCRIBED LAND.

This certificate shall bear interest from its date to January 1 next succeeding.

Given under our hands at (name of municipality), this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

(Mayor, President, Chairperson)

Countersigned:

Clerk, (name of municipality)

ASSIGNMENT RECORD

Assigned by \_\_\_\_\_ (Original Contractor) to \_\_\_\_\_ (Name of Assignee) of \_\_\_\_\_ (Address of Assignee) \_\_\_\_\_ (Date and signature of clerk)

(b) Such certificate shall in no event be a municipal liability and shall so state in boldface type printed on the face thereof. Upon issuance of said certificate, the clerk of the municipality shall at once deliver to the municipal treasurer a schedule of each such certificate showing the date, amount, number, date of maturity, person to whom issued and parcel of land against which the assessment is made. The treasurer shall thereupon notify, by mail, the owner of said parcel as the same appears on the last assessment roll, that payment is due on said certificate at the office of said treasurer, and if such owner shall pay such amount or part thereof so due, said clerk shall cause the same to be paid to the registered holder of said certificate, and shall indorse such payment on the face of said certificate and on the clerk's record thereof. The clerk shall keep a record of the names of the persons, firms or corporations to whom such contractor's certificates shall be issued and of the assignees thereof when the fact of assignment is made known to such clerk. Assignments of such contractor's certificates shall be invalid unless recorded in the office of the clerk of the municipality and the fact of such recording be indorsed on said certificate. Upon final payment of the certificate, the same shall be delivered to the treasurer of the municipality and by the treasurer delivered to such clerk. On the first of each month, to and including December 1, the treasurer shall certify to the clerk a detailed statement of all payments made on such certificates.

(c) After the expiration of 90 days from the date of such certificate or any general obligation-local improvement bond or special assessment B bond hereinafter provided for, the same shall be conclusive evidence of the legality of all proceedings up to and including the issue thereof and prima facie evidence of the proper construction of the improvement.

(d) If said certificates are not paid before December 1 in the year in which they are issued, the comptroller or clerk of the municipality shall thereupon include in the statement of special assessments to be placed in the next tax roll an amount sufficient

to pay such certificates, with interest thereon from the date of such certificates to January 1 next succeeding, and thereafter the same proceedings shall be had as in the case of general property taxes, except as in this section otherwise provided. Such delinquent taxes shall be returned to the county treasurer in trust for collection and not for credit. All moneys collected by the municipal treasurer or by the county treasurer and remitted to the municipal treasurer on account of such special assessments shall be delivered to the owner of the contractor's certificate on demand.

(7) ANNUAL INSTALMENTS OF SPECIAL ASSESSMENTS. (a) The governing body of any municipality may provide that special assessments levied to defray the cost of any public improvement or project constituting part of a general public improvement, except sprinkling or oiling streets, may be paid in annual instalments.

(b) The first instalment shall include a proportionate part of the principal of the special assessment, determined by the number of instalments, together with interest on the whole assessment from such date, not prior to the date of the notice hereinafter provided for, and to such date, not later than December 31, in the year in which same is to be collected as shall be determined by the governing body, and each subsequent instalment shall include a like proportion of the principal and one year's interest upon the unpaid portion of such assessment.

(c) The first instalment shall be entered in the first tax roll prepared after said instalments shall have been determined as a special tax on the property upon which the special assessment was levied, and thereafter this tax shall be treated in all respects as any other municipal tax, except as in this section otherwise provided. One of the subsequent instalments shall be entered in a like manner and with like effect in each of the annual tax rolls thereafter until all are levied.

(d) If any instalment so entered in the tax roll shall not be paid to the municipal treasurer with the other taxes it shall be returned to the county as delinquent and accepted and collected by the county in the same manner as delinquent general taxes on real estate, except as in this section otherwise provided.

(e) Whenever the governing body determines to permit any special assessments for any local improvements to be paid in instalments it shall publish a class 1 notice, under ch. 985. Such notice shall be substantially in the following form:

#### INSTALMENT ASSESSMENT NOTICE

Notice is hereby given that a contract has been (or is about to be) let for (describe the improvement) and that the amount of the special assessment therefor has been determined as to each parcel of real estate affected thereby and a statement of the same is on file with the... clerk; it is proposed to collect the same in... instalments, as provided for by section 66.54 of the Wisconsin statutes, with interest thereon at... per cent per year; that all assessments will be collected in instalments as above provided except such assessments on property where the owner of the same shall file with the... clerk within 30 days from date of this notice a written notice that the owner elects to pay the special assessment on the owner's property, describing the same, to the... treasurer on or before the next succeeding November 1, unless the election is revoked. If, after making such election, said property owner fails to make the payment to the... treasurer, the... clerk shall place the entire assessment on the next succeeding tax roll.

Dated.....

..... [Clerk of (name of municipality)]

(f) After the time for making an initial election expires, any assessment may be paid in full before due, only upon the payment of such portion of the interest to become due thereon as the governing body shall determine.

(fm) 1. Between the time that a property owner elects to pay the special assessment in full under par. (e) and 30 days before the time that payment is due, the property owner may revoke his or her initial election and, subject to subds. 2. and 3., shall pay the special assessment in instalments if the governing body that levied the

special assessment adopts a resolution consenting to the revocation.

2. If the first instalment has been paid by property owners under par. (c) before the date on which payment in full would have been due for a property owner who initially elected to pay the special assessment in one lump sum, the next property tax bill sent to a person who revoked his or her initial election to make a lump sum payment shall include all of the following amounts:

a. An amount equal to what the first instalment would have been under par. (b) if the property owner's initial election had been to pay the special assessment in instalments.

b. Interest on that amount at the rate used by the municipality for instalment payments under par. (b), covering the period between the date that the initial election was made under par. (e) and the date on which the instalment is paid.

c. The amount of the 2nd instalment, as calculated under par. (b).

3. If the first instalment has not been paid by property owners under par. (c) before the date on which payment in full would have been due for a property owner who initially elected to pay the special assessment in one lump sum, the next property tax bill sent to a person who revoked his or her initial election to make a lump sum payment shall be an amount calculated under par. (b) plus interest on that amount at the rate used by the municipality for instalment payments under par. (b), covering the period between the date that the initial election was made under par. (e) and the date on which the instalment is paid.

(g) A schedule of the assessments and instalments thereof shall be recorded in the office of the clerk of the municipality forthwith.

(h) All special assessments and instalments of special assessments which are returned to the county as delinquent by any municipal treasurer under this section shall be accepted by the county in accordance with this section and shall be set forth in a separate column of the delinquent return.

(8) SPECIAL ASSESSMENT BONDS, INSTALMENTS. In order to provide immediately the cash for the payment of the cost of any public improvement, the municipality may issue bonds payable in instalments of like number as the instalments of the underlying special assessment levied to pay for such public improvement. Such bonds may be:

(a) General obligation-local improvement bonds.

(b) Special assessment B bonds.

(9) GENERAL OBLIGATION-LOCAL IMPROVEMENT BONDS. (a) For the purpose of anticipating the collection of special assessments payable in instalments as provided in this section and after such instalments have been determined, the governing body may issue general obligation-local improvement bonds as more particularly described in this subsection.

(b) The issue of such bonds shall be in an amount not to exceed the aggregate unpaid special assessments levied for the public improvement which such issue is to finance. A single issue of such bonds may be used to finance one or more different local improvements for which special assessments are authorized to be made in the same year. Sections 67.035, 67.06, 67.07, 67.08 and 67.11, where not contrary to the provisions of this section, shall be applicable to such bonds. Such bonds shall mature in the same number of instalments as said special assessments, but the date of maturity of each instalment of said bonds shall be fixed in October, November or December. The first maturity of such bonds may be in the second year following the date of levy of the first instalment of the underlying special assessment. At the time of the authorization of such bonds, the governing body of the municipality shall levy a tax upon all the taxable property of said municipality sufficient to provide for the payment of the principal and interest of said bonds at maturity, which tax levy shall be irrevocable. All collections of instalments of the special assessments levied to pay for such public improvement, either before or after delinquency thereof, shall be placed by the municipal treasurer in a special debt service fund, designated and identified for such issue of

such bonds, and shall be used only for the payment of said bonds and interest of such issue. The annual instalment of the irrevocable tax levied for the purpose of payment of such bonds and interest thereon, shall be diminished by the amount on hand in such debt service fund on November 1 of each tax levy year after deducting any unpaid interest and principal due in that year, and said amount so on hand in said fund shall be applied to the payment of the next succeeding instalment of principal and interest named on said bonds. Any deficiency in the debt service fund for the payment of such bonds and interest thereon at maturity shall be paid out of the general fund of the municipality and such general fund shall be reimbursed from the collection of such part of the aforesaid irrevocable tax as is actually levied. Any surplus in said debt service fund after all bonds and interest thereon are fully paid, shall be paid into the general fund.

(c) If any instalment of the aforesaid special assessment so entered in the tax roll shall not be paid to the municipal treasurer with the other taxes, it shall be returned to the county treasurer as delinquent in trust for collection.

**(10) SPECIAL ASSESSMENT B BONDS.** (a) For the purpose of anticipating the collection of special assessments payable in instalments, as provided in this section and after said instalments have been determined, the governing body may issue special assessment B bonds payable out of the proceeds of such special assessments as provided in this section. Such bonds shall in no event be a general municipal liability.

(b) The issue of such bonds shall be in an amount not to exceed the aggregate unpaid special assessments levied for the public improvement which such issue is to finance. A separate bond shall be issued for each separate assessment and said bond shall be secured by and be payable out of only the assessment against which it is issued. Such bonds shall mature in the same number of instalments as said special assessments. Such bonds shall carry coupons equal in number to the number of special assessments, which coupons shall be detachable and entitle the owner thereof to the payment of principal and interest collected on the underlying special assessments. Such bond shall be executed as provided in s. 67.08 (1) and may be registered under s. 67.09. Each bond shall include a statement that it is payable only out of the special assessment on the particular property against which it is issued and the purpose for which same was levied and such other provisions as the governing body shall deem proper to insert.

(ba) Payments of principal and interest shall conform as nearly as may be to the payments to be made on the instalments of the assessment, and the principal and interest to be paid on the bonds shall not exceed the principal and interest to be received, on the assessment. All collections of instalments of the special assessments levied to pay for such public improvement, either before or after delinquency thereof shall be placed by the municipal treasurer in a special debt service fund designated and identified for such issue of bonds and shall be used only for the payment of said bonds and interest of such issue. Any surplus in said debt service fund after all bonds and interest thereon are fully paid, shall be paid into the general fund.

(c) Such bonds must be registered in the name of the owner thereof on the records of the clerk of the municipality by which said bonds were issued. Upon transfer of the ownership of such bonds the fact of such transfer must be noted upon the bond and on the record of the clerk of such municipality. Any transfer not so recorded shall be null and void and the clerk of the municipality shall be entitled to make payments of principal and interest to the owner of the bond as registered on the books of the municipality.

(d) Principal and interest collected on the underlying special assessments as well as interest collected on the delinquent special assessments and on delinquent tax certificates issued therefor shall be paid by the treasurer of the municipality out of the debt service fund created for the issue of such bonds to the registered holder thereof upon the presentation and surrender of the coupons due attached to said bonds. If any instalment of the aforesaid special assessment entered in the tax roll shall not be paid to the

municipal treasurer with the other taxes, it shall be returned to the county treasurer as delinquent in trust for collection.

(e) If the tax certificate resulting from the delinquent special assessment is redeemed by any person, firm or corporation other than the county, the county treasurer shall pay to the municipality, the full amount received therefor, including interest, and the municipal treasurer shall thereupon pay the amount of such remittance into a special debt service fund created for the payment of such special assessment B bonds.

**(11) AREA GROUPING OF SPECIAL ASSESSMENTS** (a) Whenever the governing body determines to issue bonds pursuant to subs. (9) and (10), it may group the special assessments levied against benefited lands and issue such bonds against such special assessments so grouped as a whole. All such bonds shall be equally secured by such assessments without priority one over the other.

(b) The following provisions shall be applicable to area-grouped special assessment B bonds issued under this section:

1. For the purpose of anticipating the collection of special assessments payable in instalments under this section and after said instalments have been determined, the governing body may issue area-grouped special assessment B bonds payable out of the proceeds of such special assessments as provided herein. Such bonds shall in no event be a general municipal liability.

2. The issue of such bonds shall be in an amount not to exceed the aggregate unpaid special assessments levied for the public improvement or projects which such issue is to finance. Such bonds shall mature over substantially the same period of time in which the special assessment instalments are to be paid. Such bonds shall be bearer bonds or may be registered bonds under s. 67.09. The bonds shall be executed as provided in s. 67.08 (1) and shall include a statement that they are payable only from the special debt service fund provided for in subd. 4. and a fund created under sub. (15) for the collection and payment of such special assessment and such other provisions as the governing body deems proper to insert.

4. All collections of principal and interest on the underlying special assessments and instalments thereof, either before or after delinquency and after issuance of a tax certificate under s. 74.57, shall be placed by the municipal treasurer in a special debt service fund created, designated and identified for the issue of such bonds and used only for payment of said bonds and interest thereon to the holders of the bonds or coupons in accordance with the terms of the issue. Any surplus in the debt service fund, after all bonds and interest thereon are fully paid, shall be paid into the general fund.

5. If the tax certificate is redeemed by any person other than the county, the county treasurer shall pay to the municipality the full amount received therefor, including interest, and the municipal treasurer shall thereupon pay the amount of such remittance into the special debt service fund created for the payment of such bonds.

7. A holder of the bonds or of any coupons attached thereto shall have a lien against the special debt service fund created under subd. 4. for payment of said bonds and interest thereon and against any reserve fund created under sub. (15) and may either at law or in equity protect and enforce such lien and compel performance of all duties required by this section of the municipality issuing said bonds.

**(12) DISPOSITION OF SPECIAL ASSESSMENT PROCEEDS WHERE IMPROVEMENT PAID FOR OUT OF GENERAL FUND OR MUNICIPAL OBLIGATIONS.** If a special assessment is levied for any public improvement, any amount collected on that special assessment or received from the county shall be deposited in the general fund of the municipality if the payment for the improvement was made out of its general fund, deposited in the funds and accounts of a public utility established under s. 66.066 (2) (c) if such improvement was paid out of the proceeds of revenue obligations of the municipality or deposited in the debt service fund required for the payment of bonds or notes issued under ch. 67 if such improve-



ment was paid out of the proceeds thereof. That special assessment, when delinquent, shall be returned in trust for collection and the municipality shall have the same rights as provided in sub. (9) (c).

**(15) RESERVE FUND FOR SPECIAL ASSESSMENT B BONDS AND REFUNDING B BONDS** If the governing body determines to issue special assessment B bonds under sub. (10) or refunding B bonds under sub. (16), it may establish in its treasury a fund to be designated as a reserve fund for the particular bond issue to be maintained until such obligation is paid or otherwise extinguished. Any surplus in the reserve fund after all the bonds have been paid or canceled shall be carried into the general fund of the municipal treasury. The source of said fund shall be established either from proceeds of the bonds, the general fund of the municipal treasury or by the levy of an irrevocable and irrevocable general tax. Such bonds shall in no event be a general municipal liability.

**(15m) PAYMENT OF B BONDS FROM TAX LEVY** Any municipality authorized to issue special assessment B bonds, in addition to the special assessments or bond proceeds or other sources, may appropriate funds out of its annual tax levy for the payment of the bonds. The payment of such bonds out of funds from a tax levy, however, may not be construed as constituting an obligation of such municipality to make any other such appropriation.

**(16) REFUNDING B BONDS** Any municipality may issue refunding B bonds to refund any outstanding special assessment B bonds issued under sub. (10) or (11). These refunding B bonds shall be secured by and payable only from the special assessments levied to pay for the public improvements financed by the bonds to be refunded, and shall not be a general municipal liability. If bonds issued under sub. (10) are to be refunded, the provisions of sub. (10) (b) to (e) shall apply to the refunding B bonds; if bonds issued under sub. (11) are to be refunded, the provisions of sub. (11) (b) shall apply to the refunding B bonds. If the governing body determines that it is necessary to amend the prior assessments in connection with the issuance of refunding B bonds under this section, it may reconsider and reopen the assessments under s. 66.60 (10). The notice and hearing provided for under s. 66.60 (10) may be waived under s. 66.60 (18) by the owners of the property affected. If the assessments are amended, the refunding B bonds shall be secured by and payable from the special assessments as amended. If the assessments are amended, all direct and indirect costs reasonably attributable to the refunding of the bonds may be included in the cost of the public improvements being financed. If the governing body determines to issue refunding B bonds, it may create a reserve fund for the issue under sub. (15).

**History:** 1973 c. 172; 1977 c. 29 s. 1646 (3); 1977 c. 391; 1979 c. 110 s. 60 (13); 1981 c. 390 s. 252; 1983 a. 24; 1983 a. 189 ss. 66, 329 (14); 1983 a. 192; 1983 a. 207 ss. 32, 33, 93 (8); 1987 a. 197, 378, 403; 1991 a. 237, 316; 1993 a. 184

### 66.55 Impact fees. (1) DEFINITIONS. In this section:

(a) "Capital costs" means the capital costs to construct, expand or improve public facilities, including the cost of land, and including legal, engineering and design costs to construct, expand or improve public facilities, except that not more than 10% of capital costs may consist of legal, engineering and design costs unless the political subdivision can demonstrate that its legal, engineering and design costs which relate directly to the public improvement for which the impact fees were imposed exceed 10% of capital costs. "Capital costs" does not include other noncapital costs to construct, expand or improve public facilities or the costs of equipment to construct, expand or improve public facilities.

(b) "Developer" means a person that constructs or creates a land development.

(c) "Impact fees" means cash contributions, contributions of land or interests in land or any other items of value that are imposed on a developer by a political subdivision under this section.

(d) "Land development" means the construction or modification of improvements to real property that creates additional resi-

dential dwelling units within a political subdivision or that results in nonresidential uses that create a need for new, expanded or improved public facilities within a political subdivision.

(e) "Political subdivision" means a city, village, town or county.

(f) "Public facilities" means highways, as defined in s. 340.01 (22), and other transportation facilities, traffic control devices, facilities for collecting and treating sewage, facilities for collecting and treating storm and surface waters, facilities for pumping, storing and distributing water, parks, playgrounds and other recreational facilities, solid waste and recycling facilities, fire protection facilities, law enforcement facilities, emergency medical facilities and libraries. "Public facilities" does not include facilities owned by a school district.

(g) "Service area" means a geographic area delineated by a political subdivision within which there are public facilities.

(h) "Service standard" means a certain quantity or quality of public facilities relative to a certain number of persons, parcels of land or other appropriate measure, as specified by the political subdivision.

**(2) GENERAL** (a) A political subdivision may enact an ordinance under this section that imposes impact fees on developers to pay for the capital costs that are necessary to accommodate land development.

(b) Subject to par. (c), this section does not prohibit or limit the authority of a political subdivision to finance public facilities by any other means authorized by law, except that the amount of an impact fee imposed by a political subdivision shall be reduced, under sub. (6) (d), to compensate for any other costs of public facilities imposed by the political subdivision on developers to provide or pay for capital costs.

(c) Beginning on May 1, 1995, a political subdivision may impose and collect impact fees only under this section.

**(3) PUBLIC HEARING; NOTICE** Before enacting an ordinance that imposes impact fees, or amending an existing ordinance that imposes impact fees, a political subdivision shall hold a public hearing on the proposed ordinance or amendment. Notice of the public hearing shall be published as a class 1 notice under ch. 985, and shall specify where a copy of the proposed ordinance or amendment and the public facilities needs assessment may be obtained.

**(4) PUBLIC FACILITIES NEEDS ASSESSMENT** (a) Before enacting an ordinance that imposes impact fees or amending an ordinance that imposes impact fees by revising the amount of the fee or altering the public facilities for which impact fees may be imposed, a political subdivision shall prepare a needs assessment for the public facilities for which it is anticipated that impact fees may be imposed. The public facilities needs assessment shall include, but not be limited to, the following:

1. An inventory of existing public facilities, including an identification of any existing deficiencies in the quantity or quality of those public facilities, for which it is anticipated that an impact fee may be imposed.

2. An identification of the new public facilities, or improvements or expansions of existing public facilities, that will be required because of land development for which it is anticipated that impact fees may be imposed. This identification shall be based on explicitly identified service areas and service standards.

3. A detailed estimate of the capital costs of providing the new public facilities or the improvements or expansions in existing public facilities identified in subd. 2., including an estimate of the effect of recovering these capital costs through impact fees on the availability of affordable housing within the political subdivision.

(b) A public facilities needs assessment or revised public facilities needs assessment that is prepared under this subsection shall be available for public inspection and copying in the office of the

clerk of the political subdivision at least 20 days before the hearing under sub. (3).

(5) **DIFFERENTIAL FEES, IMPACT FEE ZONES.** (a) An ordinance enacted under this section may impose different impact fees on different types of land development.

(b) An ordinance enacted under this section may delineate geographically defined zones within the political subdivision and may impose impact fees on land development in a zone that differ from impact fees imposed on land development in other zones within the political subdivision. The public facilities needs assessment that is required under sub. (4) shall explicitly identify the differences, such as land development or the need for those public facilities, which justify the differences between zones in the amount of impact fees imposed.

(6) **STANDARDS FOR IMPACT FEES.** Impact fees imposed by an ordinance enacted under this section:

(a) Shall bear a rational relationship to the need for new, expanded or improved public facilities that are required to serve land development.

(b) May not exceed the proportionate share of the capital costs that are required to serve land development, as compared to existing uses of land within the political subdivision.

(c) Shall be based upon actual capital costs or reasonable estimates of capital costs for new, expanded or improved public facilities.

(d) Shall be reduced to compensate for other capital costs imposed by the political subdivision with respect to land development to provide or pay for public facilities, including special assessments, special charges, land dedications or fees in lieu of land dedications under ch. 236 or any other items of value.

(e) Shall be reduced to compensate for moneys received from the federal or state government specifically to provide or pay for the public facilities for which the impact fees are imposed.

(f) May not include amounts necessary to address existing deficiencies in public facilities.

(g) Shall be payable by the developer to the political subdivision, either in full or in instalment payments that are approved by the political subdivision, before a building permit may be issued or other required approval may be given by the political subdivision.

(7) **LOW-COST HOUSING.** An ordinance enacted under this section may provide for an exemption from, or a reduction in the amount of, impact fees on land development that provides low-cost housing, except that no amount of an impact fee for which an exemption or reduction is provided under this subsection may be shifted to any other development in the land development in which the low-cost housing is located or to any other land development in the political subdivision.

(8) **REQUIREMENTS FOR IMPACT FEE REVENUES.** Revenues from impact fees shall be placed in a segregated, interest-bearing account and shall be accounted for separately from the other funds of the political subdivision. Impact fee revenues and interest earned on impact fee revenues may be expended only for capital costs for which the impact fees were imposed.

(9) **REFUND OF IMPACT FEES.** An ordinance enacted under this section shall specify that impact fees that are imposed and collected by a political subdivision but are not used within a reasonable period of time after they are collected to pay the capital costs for which they were imposed shall be refunded to the current owner of the property with respect to which the impact fees were imposed. The ordinance shall specify, by type of public facility, reasonable time periods within which impact fees must be spent or refunded under this subsection. In determining the length of the time periods under the ordinance, a political subdivision shall consider what are appropriate planning and financing periods for the particular types of public facilities for which the impact fees are imposed.

(10) **APPEAL.** A political subdivision that enacts an impact fee ordinance under this section shall, by ordinance, specify a procedure under which a developer upon whom an impact fee is imposed has the right to contest the amount, collection or use of the impact fee to the governing body of the political subdivision.

**History:** 1993 a 305

**66.60 Special assessments and charges.** (1) (a) Except as provided in sub. (6m), as a complete alternative to all other methods provided by law, any city, town or village may, by resolution of its governing body, levy and collect special assessments upon property in a limited and determinable area for special benefits conferred upon such property by any municipal work or improvement; and may provide for the payment of all or any part of the cost of the work or improvement out of the proceeds of such special assessments.

(b) The amount assessed against any property for any work or improvement which does not represent an exercise of the police power shall not exceed the value of the benefits accruing to the property therefrom, and for those representing an exercise of the police power, the assessment shall be upon a reasonable basis as determined by the governing body of the city, town or village.

(2) Prior to the exercise of any powers conferred by this section, the governing body shall declare by preliminary resolution its intention to exercise such powers for a stated municipal purpose. Such resolution shall describe generally the contemplated purpose, the limits of the proposed assessment district, the number of instalments in which the special assessments may be paid, or that the number of instalments will be determined at the hearing required under sub. (7), and direct the proper municipal officer or employe to make a report thereon. Such resolution may limit the proportion of the cost to be assessed.

(3) The report required by sub. (2) shall consist of:

(a) Preliminary or final plans and specifications.

(b) An estimate of the entire cost of the proposed work or improvement.

(c) An estimate, as to each parcel of property affected, of:

1. The assessment of benefits to be levied.

2. The damages to be awarded for property taken or damaged.

3. The net amount of such benefits over damages or the net amount of such damages over benefits.

(d) A statement that the property against which the assessments are proposed is benefited, where the work or improvement constitutes an exercise of the police power. In such case the estimates required under par. (c) shall be replaced by a schedule of the proposed assessments.

(4) A copy of the report when completed shall be filed with the municipal clerk for public inspection. If property of the state may be subject to assessment under s. 66.64, the municipal clerk shall file a copy of the report with the state agency which manages the property. If the assessment to the property of the state for a project, as defined under s. 66.64 (2), is \$50,000 or more, the state agency shall submit a request for approval of the assessment, with its recommendation, to the building commission. The building commission shall review the assessment and shall determine within 90 days of the date on which the commission receives the report if the assessment is just and legal and if the proposed improvement is compatible with state plans for the facility which is the subject of the proposed improvement. If the building commission so determines, it shall approve the assessment. No project in which the property of the state is assessed at \$50,000 or more may be commenced and no contract on such project may be let without approval of the assessment by the building commission under this subsection. The building commission shall submit a copy of its determination under this subsection to the state agency which manages the property which is the subject of the determination.

(5) The cost of any work or improvement to be paid in whole or in part by special assessment on property may include the direct

and indirect cost thereof, the damages occasioned thereby, the interest on bonds or notes issued in anticipation of the collection of the assessments, a reasonable charge for the services of the administrative staff of the city, town or village and the cost of any architectural, engineering and legal services, and any other item of direct or indirect cost which may reasonably be attributed to the proposed work or improvement. The amount to be assessed against all property for any such proposed work or improvement shall be apportioned among the individual parcels in the manner designated by the governing body.

(6) If any property deemed benefited shall by reason of any provision of law be exempt from assessment therefor, such assessment shall be computed and shall be paid by the city, town or village.

(6a) A parcel of land against which has been levied a special assessment for the sanitary sewer or water main laid in one of the streets upon which it abuts, shall be entitled to such deduction or exemption as the governing body determines to be reasonable and just under the circumstances of each case, when a special assessment is levied for the sanitary sewer or water main laid in the other street upon which such corner lot abuts. The governing body may allow a similar deduction or exemption from special assessments levied for any other public improvement.

(6m) (a) In this subsection:

1. "Agricultural use" has the meaning given in s. 91.01 (1) and includes any additional agricultural uses of land, as determined by the town sanitary district or town.

2. "Eligible farmland" means a parcel of 35 or more acres of contiguous land which is devoted exclusively to agricultural use which during the year preceding the year in which the land is subject to a special assessment under this subsection produced gross farm profits, as defined in s. 71.58 (4), of not less than \$6,000 or which, during the 3 years preceding the year in which the land is subject to a special assessment under this subsection, produced gross farm profits, as defined in s. 71.58 (4), of not less than \$18,000.

(b) Except as provided in par. (c), no town sanitary district or town may levy any special assessment on eligible farmland for the construction of a sewerage or water system.

(c) 1. If any eligible farmland contains a structure that is connected to a sanitary sewer or public water supply at the time, or after the time, that a town sanitary district or town first levies a special assessment for the construction of a sewerage or water system in the service area in which the eligible farmland is located, the town sanitary district or town may levy a special assessment for the construction of a sewerage or water system on the eligible farmland that includes that structure. If that connection is made after the first assessment, the town sanitary district or town may also charge interest on the special assessment at an annual rate that does not exceed the average interest rate paid by the district or town on its obligations between the time the district or town first levies a special assessment for the construction of a sewerage or water system in the service area in which the eligible farmland is located and the time it levies the special assessment on that eligible farmland. That assessment may not exceed the equivalent of an assessment for that purpose on a square acre or, if the governing body of a town sanitary district or town so specifies by ordinance, the maximum size of any lot that is in that service area and that is not devoted exclusively to agricultural use.

2. If after an initial special assessment for the construction of a sewerage or water system is levied in a service area any eligible farmland subject to subd. 1. or exempted from a special assessment under par. (b) is divided into 2 or more parcels at least one of which is not devoted exclusively to agricultural use, the town sanitary district or town may levy on each parcel on which it has either levied a special assessment under subd. 1. or has not levied a special assessment for the construction of a sewerage or water system a special assessment for that purpose that does not exceed the amount of the special assessment for that purpose that would

have been levied on the parcel if the parcel had not been exempt under par. (b) or that has already been levied under subd. 1. The special assessment shall be apportioned among the parcels resulting from the division in proportion to their area. The town sanitary district or town may also charge interest on the special assessment at an annual rate that does not exceed the average interest rate paid by the district or town on its obligations between the time the district or town first levies a special assessment for the construction of a sewerage or water system in the service area in which the eligible farmland is located and the time it levies the special assessment on that eligible farmland under this subdivision. This subdivision does not apply to any eligible farmland unless the town sanitary district or town records a lien on that eligible farmland in the office of the register of deeds within 90 days after it first levies a special assessment for the construction of a sewerage or water system for the service area in which the eligible farmland is located, describing either the applicability of subd. 1. or the exemption under par. (b) and the potential for a special assessment under this subdivision.

3. If, after a town sanitary district or town first levies a special assessment for the construction of a sewerage or water system in a service area, the eligible farmland in that service area exempted from the special assessment under par. (b) is not devoted exclusively to agricultural use for a period of one year or more, the town sanitary district or town may levy on that eligible farmland the special assessment for the construction of a sewerage or water system that it would have levied if the eligible farmland had not been exempt under par. (b). The town sanitary district or town may also charge interest on the special assessment at an annual rate that does not exceed the average interest rate paid by the district or town on its obligations between the time the district or town first levies a special assessment for the construction of a sewerage or water system in the service area in which the eligible farmland is located and the time it levies the special assessment on that eligible farmland. This subdivision does not apply to any land unless the town or special purpose district records a lien on that eligible farmland in the office of the register of deeds within 90 days after it first levies a special assessment for the construction of a sewerage or water system in the service area in which the eligible farmland is located, describing the exemption under par. (b) and the potential for a special assessment under this subdivision.

(7) Upon the completion and filing of the report required by sub. (3) the city, town or village clerk shall cause notice to be given stating the nature of the proposed work or improvement, the general boundary lines of the proposed assessment district including, in the discretion of the governing body, a small map thereof, the place and time at which the report may be inspected, and the place and time at which all persons interested, or their agents or attorneys, may appear before the governing body or committee thereof or the board of public works and be heard concerning the matters contained in the preliminary resolution and the report. Such notice shall be published as a class 1 notice, under ch. 985, in the city, town or village and a copy of such notice shall be mailed, at least 10 days before the hearing or proceeding, to every interested person whose post-office address is known, or can be ascertained with reasonable diligence. The hearing shall commence not less than 10 and not more than 40 days after such publication.

(8) (a) After the hearing upon any proposed work or improvement, the governing body may approve, disapprove or modify, or it may rerefer the report prepared pursuant to subs. (2) and (3) to the designated officer or employe with such directions as it deems necessary to change the plans and specifications and to accomplish a fair and equitable assessment.

(b) If an assessment of benefits be made against any property and an award of compensation or damages be made in favor of the same property, the governing body shall assess against or award in favor thereof only the difference between such assessment of benefits and the award of damages or compensation.

(c) When the governing body finally determines to proceed with the work or improvement, it shall approve the plans and specifications therefor and adopt a resolution directing that such work or improvement be carried out in accordance with the report as finally approved and that payment therefor be made as therein provided.

(d) The city, town or village clerk shall publish the final resolution as a class 1 notice, under ch. 985, in the assessment district and a copy of such resolution shall be mailed to every interested person whose post-office address is known, or can be ascertained with reasonable diligence.

(e) When the final resolution is published, all work or improvements therein described and all awards, compensations and assessments arising therefrom are deemed legally authorized and made, subject to the right of appeal under sub. (12).

(9) Where more than a single type of project is undertaken as part of a general improvement affecting any property, the governing body may finally combine the assessments for all purposes as a single assessment on each property affected, provided that each property owner shall be enabled to object to any such assessment for any single purpose or for more than one purpose.

(10) If the actual cost of any project shall, upon completion or after the receipt of bids, be found to vary materially from the estimates, or if any assessment is void or invalid for any reason, or if the governing body shall determine to reconsider and reopen any assessment, it is empowered, after giving notice as provided in sub. (7) and after a public hearing, to amend, cancel or confirm any such prior assessment, and thereupon notice of the resolution amending, canceling or confirming such prior assessment shall be given by the clerk as provided in sub. (8) (d). If the assessments are amended to provide for the refunding of special assessment B bonds under s. 66.54 (16), all direct and indirect costs reasonably attributable to the refunding of the bonds may be included in the cost of the public improvements being financed.

(11) If the cost of the project shall be less than the special assessments levied, the governing body, without notice or hearing, shall reduce each special assessment proportionately and where any assessments or instalments thereof have been paid the excess over cost shall be applied to reduce succeeding unpaid instalments, where the property owner has elected to pay in instalments, or refunded to the property owner.

(12) (a) If any person having an interest in any parcel of land affected by any determination of the governing body, pursuant to sub. (8) (c), (10) or (11), feels aggrieved thereby that person may, within 90 days after the date of the notice or of the publication of the final resolution pursuant to sub. (8) (d), appeal therefrom to the circuit court of the county in which such property is situated by causing a written notice of appeal to be served upon the clerk of such city, town or village and by executing a bond to the city, town or village in the sum of \$150 with 2 sureties or a bonding company to be approved by the city, town or village clerk, conditioned for the faithful prosecution of such appeal and the payment of all costs that may be adjudged against that person. The clerk, in case such appeal is taken, shall make a brief statement of the proceedings had in the matter before the governing body, with its decision thereon, and shall transmit the same with the original or certified copies of all the papers in the matter to the clerk of the circuit court.

(b) Such appeal shall be tried and determined in the same manner as cases originally commenced in such court, and costs awarded as provided in s. 893.80.

(c) In case any contract has been made for making the improvement such appeal shall not affect such contract, and certificates or bonds may be issued in anticipation of the collection of the entire assessment for such improvement, including the assessment on any property represented in such appeal as if such appeal had not been taken.

(d) Upon appeal pursuant to this subsection, the court may, based upon the improvement as actually constructed, render a judgment affirming, annulling or modifying and affirming, as

modified, the action or decision of the governing body. If the court finds that any assessment or any award of damages is excessive or insufficient, such assessment or award need not be annulled, but the court may reduce or increase the assessment or award of damages and affirm the same as so modified.

(e) An appeal under this subsection shall be the sole remedy of any person aggrieved by a determination of the governing body, whether or not the improvement was made according to the plans and specifications therefor, and shall raise any question of law or fact, stated in the notice of appeal, involving the making of such improvement, the assessment of benefits or the award of damages or the levy of any special assessment therefor. The limitation provided for in par. (a) shall not apply to appeals based upon fraud or upon latent defects in the construction of the improvement discovered after such period.

(f) It shall be a condition to the maintenance of such appeal that any assessment appealed from shall be paid as and when the same or any instalments thereof become due and payable, and upon default in making such payment, any such appeal shall be dismissed.

(15) Every special assessment levied under this section shall be a lien on the property against which it is levied on behalf of the municipality levying same or the owner of any certificate, bond or other document issued by public authority, evidencing ownership of or any interest in such special assessment, from the date of the determination of such assessment by the governing body. The governing body shall provide for the collection of such assessments and may establish penalties for payment after the due date. The governing body shall provide that all assessments or instalments thereof which are not paid by the date specified shall be extended upon the tax roll as a delinquent tax against the property and all proceedings in relation to the collection, return and sale of property for delinquent real estate taxes shall apply to such special assessment, except as otherwise provided by statute.

(16) (a) In addition to all other methods provided by law, special charges for current services rendered may be imposed by the governing body by allocating all or part of the cost to the property served. Such may include, without limitation because of enumeration, snow and ice removal, weed elimination, street sprinkling, oiling and tarring, repair of sidewalks or curb and gutter, garbage and refuse disposal, sewer service and tree care. The provisions for notice of such charge shall be optional with the governing body except that in the case of street tarring and the repair of sidewalks, curb or gutters, a class 1 notice, under ch. 985, shall be published at least 20 days before the hearing or proceeding and a copy of the notice shall be mailed at least 10 days before the hearing or proceeding to every interested person whose post-office address is known, or can be ascertained with reasonable diligence. Such notice shall specify that on a certain date a hearing will be held by the governing body as to whether the service in question shall be performed at the cost of the property owner, at which hearing anyone interested will be heard.

(b) Such special charges shall not be payable in instalments. If not paid within the period fixed by the governing body, such a delinquent special charge shall become a lien as provided in sub. (15) as of the date of such delinquency, and shall automatically be extended upon the current or next tax roll as a delinquent tax against the property and all proceedings in relation to the collection, return and sale of property for delinquent real estate taxes shall apply to such special charge.

(c) Subsection (2) shall not be applicable to proceedings under this subsection.

(17) If any special assessment or special charge levied pursuant to this section shall be held invalid because such statutes shall be found to be unconstitutional, the governing body of such municipality may thereafter reassess such special assessment or special charge pursuant to the provisions of any applicable law.

(18) The governing body of any city, town or village may, without any notice or hearing, levy and assess the whole or any

part of the cost of any municipal work or improvement as a special assessment upon the property specially benefited thereby whenever notice and hearing thereon is in writing waived by all the owners of property affected by such special assessment.

**History:** 1971 c. 313; 1973 c. 19; 1977 c. 29; 1977 c. 285 s. 12; 1977 c. 418; 1979 c. 323 s. 33; 1983 a. 207; 1987 a. 27, 403; 1989 a. 322; 1991 a. 39, 316

**Cross-references:** As to the phrase "except as otherwise provided by statute" in (15), see several provisions in s. 66.54 which specify that delinquent assessments are to be returned to the county treasurer in trust for collection and not for credit. See also ss. 74.031 (9) and 74.12 (12) which provide that a county board may authorize settlement in full for delinquent assessments.

Under (15) the assessment lien is effective from the date of determination of the assessment, not from date of publication of the resolution. *Dittner v. Town of Spencer*, 55 W (2d) 707, 201 NW (2d) 45

A presumption arises that the assessment was made on the basis of benefits actually accrued. Language to the contrary in *Schilnecht v. Milwaukee*, 245 W 33, overruled. In levying a special assessment for benefits to residential property from a public improvement, benefit to the property as commercial property may be considered only where the assessing authority can prove there is a reasonable probability of rezoning the property in the near future. *Molbreak v. Village of Shorewood Hills*, 66 W (2d) 687, 225 NW (2d) 894.

Where original assessment by city is held procedurally invalid, city has option under (10) to start over using correct procedure. *Christenson v. Green Bay*, 72 W (2d) 565, 241 NW (2d) 193.

Property assessed under police power must benefit from the municipal improvement. In re *Installation of Storm Sewers, Etc.* 79 W (2d) 279, 255 NW (2d) 521.

Plaintiff's failure to comply strictly with express terms of (12) (a) and (f) deprived court of subject matter jurisdiction. *Bialk v. City of Oak Creek*, 98 W (2d) 469, 297 NW (2d) 43 (Ct. App. 1980).

Special assessment against church under (16) was not barred by 70.11 (4). *Grace Episcopal v. Madison*, 129 W (2d) 331, 385 NW (2d) 200 (Ct. App. 1986).

City may impose special charges under (16) (a) for delinquent electric bills due municipal utility. *Laskaris v. City of Wisconsin Dells*, 131 W (2d) 525, 389 NW (2d) 67 (Ct. App. 1986).

"Special benefits" under (1) (a) defined. *Matter of Goodger v. City of Delavan*, 134 W (2d) 348, 396 NW (2d) 778 (Ct. App. 1986).

Confirmation under (10) permits interest to be collected from date of original assessment. *Gelhaus & Brost v. City of Medford*, 143 W (2d) 193, 420 NW (2d) 775 (Ct. App. 1988).

Sub. (12) (d) does not permit trial court to correct assessment which was annulled due to lack of evidence; trial court may modify assessment only if there is adequate record evidence to make determination because (12) (d) evinces intent that municipality will reassess. *Dist. 4, Bd. of Ed. v. Town of Burke*, 151 W (2d) 392, 444 NW (2d) 733 (Ct. App. 1989).

Property specially assessed under police power must be benefitted to some extent, and method of assessment must be reasonable; not arbitrarily or capriciously burdening any group of property owners. *CTI Group v. Village of Germantown*, 163 W (2d) 426, 471 W (2d) 610 (Ct. App. 1991).

Imposition of interest on assessment from date of enactment of ordinance held unreasonable. *Village of Egg Harbor v. Sarkis*, 166 W (2d) 5, 479 NW (2d) 536 (Ct. App. 1991).

State property is not subject to assessment of special charges under (16). 69 Atty. Gen. 269.

Under (16), municipalities owning electric companies may pass ordinances allowing unpaid charges for furnished electricity to be placed on tax bill of receiving property. 73 Atty. Gen. 128.

Where landowners who were not treated in a discriminatory manner did not avail themselves of statutory right to appeal the merits of assessment against land based on report under (2), they were not deprived of due process or equal protection and could not maintain action under civil rights act for damages. *Kasper v. Larson*, 372 F Supp. 881.

Wisconsin special assessments. *Klitzke and Edgar*. 62 MLR 171 (1978).

**66.604 Lien of special assessment.** A special assessment levied under any authority whatsoever shall be a lien on the property against which it is levied on behalf of the municipality levying the same or the owner of any certificate, bond or other document issued by the municipality, evidencing ownership of any interest in such special assessment, from the date of the levy, to the same extent as a lien for a tax levied upon real property.

**History:** 1987 a. 378.

**66.605 Special assessments. (1)** Notwithstanding any other statute, the due date of any special assessment levied against property abutting on or benefited by a public improvement may be deferred on such terms and in such manner as prescribed by its governing body while no use of the improvement is made in connection with the property. Such special assessment may be paid in instalments within the time prescribed by the governing body. Any such special assessment shall be a lien against the property from the date of the levy.

(2) If a tax certificate is issued under s. 74.57 for property which is subject to a special assessment that is deferred under this section, the governing body may provide that the amounts of any

deferred special assessments are due on the date that the tax certificate is issued and are payable as are other delinquent special assessments from any moneys received under s. 75.05 or 75.36.

(3) The lien of any unpaid amounts of special assessments deferred under this section with respect to which a governing body has not taken action under sub. (2) is not merged in the title to property taken by the county under ch. 75.

**History:** 1975 c. 224; 1989 a. 104

**66.606 Lien of recycling fees. (1)** In this section:

(a) "Recycling fee" means any of the following:

1. Any special assessment or special charge levied under any authority by a responsible unit for the purpose of complying with s. 159.09 (2).

2. Any charge made under any authority by any person acting under a contract with a responsible unit to provide a service required under s. 159.09 (2).

(b) "Responsible unit" has the meaning given in s. 159.01 (9).

(c) "Taxation district" has the meaning given in s. 74.01 (6).

(2) Any recycling fee which remains unpaid is a lien on the property against which it is levied or made on behalf of the responsible unit or person charging the recycling fee, from the date of the charge, to the same extent as a lien for a tax levied upon real property. Any unpaid recycling fee shall be certified to the taxation district in which the property is located, placed on the tax roll and collected as delinquent real property taxes are collected.

(3) The treasurer of the taxation district shall disburse to the proper responsible unit or person all collections of unpaid recycling fees which were placed upon the tax roll under sub. (2).

(4) Subsections (1) to (3) do not authorize a responsible unit to impose a restriction, tax or fee on packaging for a purpose relating to the disposal of the packaging.

**History:** 1989 a. 335; 1991 a. 39.

**66.608 Business improvement districts. (1)** In this section:

(a) "Board" means a business improvement district board appointed under sub. (3) (a).

(b) "Business improvement district" means an area within a municipality consisting of contiguous parcels subject to general real estate taxes, other than railroad rights-of-way, and may include railroad rights-of-way, rivers or highways continuously bounded by the parcels on at least one side.

(c) "Chief executive officer" means a mayor, city manager, village president or town chairperson.

(d) "Local legislative body" means a common council, village board of trustees or town board of supervisors.

(e) "Municipality" means a city, village or town.

(f) "Operating plan" means a plan adopted or amended under this section for the development, redevelopment, maintenance, operation and promotion of a business improvement district, including all of the following:

1. The special assessment method applicable to the business improvement district.

1m. Whether real property used exclusively for manufacturing purposes will be specially assessed.

2. The kind, number and location of all proposed expenditures within the business improvement district.

3. A description of the methods of financing all estimated expenditures and the time when related costs will be incurred.

4. A description of how the creation of the business improvement district promotes the orderly development of the municipality, including its relationship to any municipal master plan.

5. A legal opinion that subs. 1. to 4. have been complied with.

(g) "Planning commission" means a plan commission under s. 62.23, or if none a board of public land commissioners, or if none a planning committee of the local legislative body.



(2) A municipality may create a business improvement district and adopt its operating plan if all of the following are met:

(a) An owner of real property used for commercial purposes and located in the proposed business improvement district designated under par. (b) has petitioned the municipality for creation of a business improvement district.

(b) The planning commission has designated a proposed business improvement district and adopted its proposed initial operating plan.

(c) At least 30 days before creation of the business improvement district and adoption of its initial operating plan by the municipality, the planning commission has held a public hearing on its proposed business improvement district and initial operating plan. Notice of the hearing shall be published as a class 2 notice under ch. 985. Before publication, a copy of the notice together with a copy of the proposed initial operating plan and a copy of a detail map showing the boundaries of the proposed business improvement district shall be sent by certified mail to all owners of real property within the proposed business improvement district. The notice shall state the boundaries of the proposed business improvement district and shall indicate that copies of the proposed initial operating plan are available from the planning commission on request.

(d) Within 30 days after the hearing under par. (c), the owners of property to be assessed under the proposed initial operating plan having a valuation equal to more than 40% of the valuation of all property to be assessed under the proposed initial operating plan, using the method of valuation specified in the proposed initial operating plan, or the owners of property to be assessed under the proposed initial operating plan having an assessed valuation equal to more than 40% of the assessed valuation of all property to be assessed under the proposed initial operating plan, have not filed a petition with the planning commission protesting the proposed business improvement district or its proposed initial operating plan.

(e) The local legislative body has voted to adopt the proposed initial operating plan for the municipality.

(3) (a) The chief executive officer shall appoint members to a business-improvement district board to implement the operating plan. Board members shall be confirmed by the local legislative body and shall serve staggered terms designated by the local legislative body. The board shall have at least 5 members. A majority of board members shall own or occupy real property in the business improvement district.

(b) The board shall annually consider and may make changes to the operating plan, which may include termination of the plan, for its business improvement district. The board shall then submit the operating plan to the local legislative body for its approval. If the local legislative body disapproves the operating plan, the board shall consider and may make changes to the operating plan and may continue to resubmit the operating plan until local legislative body approval is obtained. Any change to the special assessment method applicable to the business improvement district shall be approved by the local legislative body.

(c) The board shall prepare and make available to the public annual reports describing the current status of the business improvement district, including expenditures and revenues. The report shall include an independent certified audit of the implementation of the operating plan obtained by the municipality. The municipality shall obtain an additional independent certified audit upon termination of the business improvement district.

(d) Either the board or the municipality, as specified in the operating plan as adopted, or amended and approved under this section, shall have all powers necessary or convenient to implement the operating plan, including the power to contract.

(4) All special assessments received from a business improvement district and all other appropriations by the municipality or other moneys received for the benefit of the business improvement district shall be placed in a segregated account in the municipi-

pal treasury. No disbursements from the account may be made except to reimburse the municipality for appropriations other than special assessments, to pay the costs of audits required under sub. (3) (c) or on order of the board for the purpose of implementing the operating plan. On termination of the business improvement district by the municipality, all moneys collected by special assessment remaining in the account shall be disbursed to the owners of specially assessed property in the business improvement district, in the same proportion as the last collected special assessment.

(4m) A municipality shall terminate a business improvement district if the owners of property assessed under the operating plan having a valuation equal to more than 50% of the valuation of all property assessed under the operating plan, using the method of valuation specified in the operating plan, or the owners of property assessed under the operating plan having an assessed valuation equal to more than 50% of the assessed valuation of all property assessed under the operating plan, file a petition with the planning commission requesting termination of the business improvement district, subject to all of the following conditions:

(a) A petition may not be filed under this subsection earlier than one year after the date the municipality first adopts the operating plan for the business improvement district.

(b) On and after the date a petition is filed under this subsection, neither the board nor the municipality may enter into any new obligations by contract or otherwise to implement the operating plan until the expiration of 30 days after the date of hearing under par. (c) and unless the business improvement district is not terminated under par. (e).

(c) Within 30 days after the filing of a petition under this subsection, the planning commission shall hold a public hearing on the proposed termination. Notice of the hearing shall be published as a class 2 notice under ch. 985. Before publication, a copy of the notice together with a copy of the operating plan and a copy of a detail map showing the boundaries of the business improvement district shall be sent by certified mail to all owners of real property within the business improvement district. The notice shall state the boundaries of the business improvement district and shall indicate that copies of the operating plan are available from the planning commission on request.

(d) Within 30 days after the date of hearing under par. (c), every owner of property assessed under the operating plan may send written notice to the planning commission indicating, if the owner signed a petition under this subsection, that the owner retracts the owner's request to terminate the business improvement district, or, if the owner did not sign the petition, that the owner requests termination of the business improvement district.

(e) If after the expiration of 30 days after the date of hearing under par. (c), by petition under this subsection or subsequent notification under par. (d), and after subtracting any retractions under par. (d), the owners of property assessed under the operating plan having a valuation equal to more than 50% of the valuation of all property assessed under the operating plan, using the method of valuation specified in the operating plan, or the owners of property assessed under the operating plan having an assessed valuation equal to more than 50% of the assessed valuation of all property assessed under the operating plan, have requested the termination of the business improvement district, the municipality shall terminate the business improvement district on the date that the obligation with the latest completion date entered into to implement the operating plan expires.

(5) (a) Real property used exclusively for residential purposes may not be specially assessed for purposes of this section.

(b) A municipality may terminate a business improvement district at any time.

(c) This section does not limit the power of a municipality under other law to regulate the use of or specially assess real property.

History: 1983 a. 184; 1989 a. 56 s. 258

**66.609 Architectural conservancy districts. (1)** In this section:

(a) "Architectural conservancy district" means an area within a municipality consisting of contiguous parcels subject to general real estate taxes, other than railroad rights-of-way.

(b) "Board" means an architectural conservancy district board appointed under sub. (3) (a).

(c) "Chief executive officer" means a mayor, city manager, village president or town chairperson.

(cm) "Historic property" means any building or structure that is any of the following:

1. Listed on, or has been nominated by the state historical society for listing on, the national register of historic places in Wisconsin or the state register of historic places.

2. Included in a district that is listed on, or has been nominated by the state historical society for listing on, the national register of historic places in Wisconsin or the state register of historic places, and has been determined by the state historical society to contribute to the historic significance of the district.

3. Included on a list of properties that have been determined by the state historical society to be eligible for listing on the national register of historic places in Wisconsin or the state register of historic places.

(d) "Local legislative body" means a common council, village board of trustees or town board of supervisors.

(e) "Municipality" means a city, village or town.

(f) "Operating plan" means a plan that is adopted or amended under this section for the development, redevelopment, maintenance, operation and promotion of an architectural conservancy district and that includes all of the following:

1. The special assessment method applicable to the architectural conservancy district.

2. The kind, number and location of all proposed expenditures within the architectural conservancy district.

3. A description of the methods of financing all estimated expenditures and the time when related costs will be incurred.

4. A description of how the creation of the architectural conservancy district promotes the orderly development of the municipality, including its relationship to any municipal master plan.

5. A legal opinion that subs. 1. to 4. have been complied with.

(g) "Planning commission" means a plan commission under s. 62.23 or, if one does not exist, a board of public land commissioners or, if neither exists, a planning committee of the local legislative body.

**(2)** A municipality may create an architectural conservancy district and adopt its operating plan if all of the following are met:

(a) An owner of real property located in the proposed architectural conservancy district designated under par. (b) petitions the municipality for creation of an architectural conservancy district.

(am) At least 50% of the properties included within the proposed architectural conservancy district are historic properties.

(b) The planning commission designates a proposed architectural conservancy district and adopts its proposed initial operating plan.

(c) At least 30 days before the creation of the architectural conservancy district and adoption of its initial operating plan by the municipality, the planning commission holds a public hearing on the proposed architectural conservancy district and initial operating plan. Notice of the hearing shall be published as a class 2 notice under ch. 985. Before publication of the notice, a copy of that notice, a copy of the proposed initial operating plan and a copy of a detail map showing the boundaries of the proposed architectural conservancy district shall be sent by certified mail to all owners of real property within the proposed architectural conservancy district. The notice shall state the boundaries of the proposed

architectural conservancy district and shall indicate that copies of the proposed initial operating plan are available on request from the planning commission.

(d) Within 30 days after the hearing under par. (c), the owners of property to be assessed under the proposed initial operating plan having a valuation equal to more than 40% of the valuation of all property to be assessed under the proposed initial operating plan, using the method of valuation specified in the proposed initial operating plan, or the owners of property to be assessed under the proposed initial operating plan having an assessed valuation equal to more than 40% of the assessed valuation of all property to be assessed under the proposed initial operating plan, have not filed a petition with the planning commission protesting the proposed architectural conservancy district or its proposed initial operating plan.

(e) The local legislative body votes to adopt the proposed initial operating plan for the municipality.

**(3)** (a) The chief executive officer shall appoint members to an architectural conservancy district board to implement the operating plan. Board members shall be confirmed by the local legislative body and shall serve staggered terms designated by the local legislative body. The board shall have at least 5 members. A majority of board members shall own or occupy real property in the architectural conservancy district.

(b) The board shall annually consider and may make changes to the operating plan, which may include termination of the plan, for its architectural conservancy district. The board shall then submit the operating plan to the local legislative body for its approval. If the local legislative body disapproves the operating plan, the board shall consider and may make changes to the operating plan and may continue to resubmit the operating plan until local legislative body approval is obtained. Any change to the special assessment method applicable to the architectural conservancy district shall be approved by the local legislative body.

(c) The board shall prepare and make available to the public annual reports describing the current status of the architectural conservancy district, including expenditures and revenues. The report shall include an independent certified audit of the implementation of the operating plan that shall be obtained by the municipality. The municipality shall obtain an additional independent certified audit upon termination of the architectural conservancy district.

(d) Either the board or the municipality, as specified in the operating plan as adopted, or as amended and approved under par. (b), shall have all powers necessary or convenient to implement the operating plan, including the power to contract.

**(4)** All special assessments received from an architectural conservancy district, all other appropriations by the municipality and all other moneys received for the benefit of the architectural conservancy district shall be placed in a segregated account in the municipal treasury. No disbursements from the account may be made except to reimburse the municipality for appropriations other than special assessments, to pay the costs of audits required under sub. (3) (c) or on order of the board for the purpose of implementing the operating plan. On termination of the architectural conservancy district by the municipality, all moneys collected by special assessment that remain in the account shall be disbursed to the owners of specially assessed property in the architectural conservancy district in the same proportion as the last collected special assessment.

**(5)** A municipality shall terminate an architectural conservancy district if the owners of property assessed under the operating plan having a valuation equal to more than 50% of the valuation of all property assessed under the operating plan, using the method of valuation specified in the operating plan, or the owners of property assessed under the operating plan having an assessed valuation equal to more than 50% of the assessed valuation of all property assessed under the operating plan, file a petition with the

planning commission requesting termination of the architectural conservancy district, subject to all of the following conditions:

(a) A petition may not be filed under this subsection earlier than one year after the date on which the municipality first adopts the operating plan for the architectural conservancy district.

(b) On and after the date on which a petition is filed under this subsection, neither the board nor the municipality may enter into any new obligations by contract or otherwise to implement the operating plan until 30 days after the date of hearing under par. (c) and unless the architectural conservancy district is not terminated under par. (e).

(c) Within 30 days after the filing of a petition under this subsection, the planning commission shall hold a public hearing on the proposed termination. Notice of the hearing shall be published as a class 2 notice under ch. 985. Before publication of the notice, a copy of that notice, a copy of the operating plan and a copy of a detail map showing the boundaries of the architectural conservancy district shall be sent by certified mail to all owners of real property within the architectural conservancy district. The notice shall state the boundaries of the architectural conservancy district and shall indicate that copies of the operating plan are available on request from the planning commission.

(d) Within 30 days after the hearing held under par. (c), every owner of property assessed under the operating plan may send written notice to the planning commission indicating, if the owner signed a petition under this subsection, that the owner retracts the owner's request to terminate the architectural conservancy district or, if the owner did not sign the petition, that the owner requests termination of the architectural conservancy district.

(e) If on the 31st day after the hearing held under par. (c), the owners of property assessed under the operating plan having a valuation equal to more than 50% of the valuation of all property assessed under the operating plan, using the method of valuation specified in the operating plan, or the owners of property assessed under the operating plan having an assessed valuation equal to more than 50% of the assessed valuation of all property assessed under the operating plan, after adding subsequent notifications under par. (d) and after subtracting any retractions under par. (d), have requested the termination of the architectural conservancy district, the municipality shall terminate the architectural conservancy district on the date that the obligation with the latest completion date entered into to implement the operating plan expires.

(6) (a) A municipality may terminate an architectural conservancy district at any time.

(b) This section does not limit the authorities of a municipality to regulate the use of or specially assess real property.

History: 1991 a 269

#### 66.610 Pedestrian malls in cities of the 1st class.

(1) PURPOSE The purpose of this section is to authorize any city of the 1st class to undertake, develop, finance, construct and operate pedestrian malls as local improvements.

(2) DEFINITIONS As used in this section:

(a) "Annual pedestrian mall improvement" includes, without limitation because of enumeration, any reconstruction, replacement or repair of trees, plantings, furniture, shelters or other pedestrian mall facilities.

(b) "Annual pedestrian mall improvement cost" includes, without limitation because of enumeration, planning consultant fees, public liability and property damage insurance premiums, reimbursement of the city's reasonable and necessary costs incurred in operating and maintaining a pedestrian mall, levying and collecting special assessments and taxes, publication costs, and any other costs related to annual improvements and the operation and maintenance of a pedestrian mall.

(c) "Board of assessment" means the board created under subch. II of ch. 32, for the purpose of estimating benefits and dam-

ages in connection with the creation or improvement of a pedestrian mall.

(d) "Business district" means an existing recognized area of a city principally used for commerce or trade.

(e) "City" means a city of the 1st class.

(f) "Commissioner of public works" means the board of public works, commissioner of public works, or any other city board or officer vested with authority over public works.

(g) "Community development advisory body" means any corporation or unincorporated association whose shareholders or members are owners or occupants of property included in a proposed or existing pedestrian mall district.

(h) "Council" and "common council" mean the governing body of the city.

(i) "Intersecting street" means, unless the council declares otherwise, any street which meets or intersects a pedestrian mall, but includes only those portions thereof which lay between the mall or mall intersection and the first intersection of such intersecting street with a street open to general vehicular traffic.

(j) "Mall intersection" means any intersection of a city street which is part of a pedestrian mall with any other street.

(k) "Owner" includes any person holding the record title of an estate in possession in fee simple or for life, or a vendor of record under a land contract for the sale of an estate in possession in fee simple or for life.

(L) "Pedestrian mall" means any street, land or appurtenant fixture designed primarily for the movement, safety, convenience and enjoyment of pedestrians.

(m) "Pedestrian mall district" means any geographical division of the city designated by the board of assessment for the purpose of undertaking, developing, financing, constructing and operating a pedestrian mall.

(n) "Pedestrian mall improvement" means, without limitation because of enumeration, any construction or installation of pedestrian thoroughfares, perimeter parking facilities, public seating, park areas, outdoor cafes, skywalks, sewers, shelters, trees, flower or shrubbery plantings, sculptures, newsstands, telephone booths, traffic signs, sidewalks, traffic lights, kiosks, water pipes, fire hydrants, street lighting, ornamental signs, ornamental lights, graphics, pictures, paintings, trash receptacles, display cases, marquees, awnings, canopies, overhead or underground radiant heating pipes or fixtures, walls, bollards, chains and all such other fixtures, equipment, facilities and appurtenances which, in the council's judgment, will enhance the movement, safety, convenience and enjoyment of pedestrians and benefit the city and the affected property owners.

(o) "Skywalk" means any elevated pedestrian way.

(p) "Street" means any public road, street, boulevard, highway, alley, lane, court or other way used for public travel.

(3) ACQUISITION, IMPROVEMENT AND ESTABLISHMENT OF PEDESTRIAN MALLS (a) Upon petition of any community development advisory body or upon its own motion, the council may by resolution designate lands to be acquired, improved and operated as pedestrian malls or may by ordinance designate streets, including a federal, state, county or any other highway system with the approval of the jurisdiction responsible for maintaining that highway system, in or adjacent to business districts to be improved for primarily pedestrian uses. The council may acquire by gift, purchase, eminent domain, or otherwise, land, real property or rights-of-way for inclusion in a pedestrian mall district or for use in connection with pedestrian mall purposes. The council may also make improvements on mall intersections, intersecting streets or upon facilities acquired for parking and other related purposes, if such improvements are necessary or convenient to the operation of the mall.

(b) In establishing or improving a pedestrian mall, the council may narrow any street designated a part of a pedestrian mall,

reconstruct or remove any street vaults or hollow sidewalks existing by virtue of a permit issued by the city, construct crosswalks at any point on the pedestrian mall, or cause the roadway to curve and meander within the limits of the street without regard to the uniformity of width of the street or curve or absence of curve in the center line of such street.

(c) 1. Subject to subd. 2., the council may authorize the payment of the entire cost of any pedestrian mall improvement established under this section by appropriation from the general fund, by taxation or special assessments, and by the issuance of municipal bonds, general or particular special improvement bonds, revenue bonds, mortgages or certificates, or by any combination of such financing methods.

2. If such improvement is financed by special assessments and special improvement bonds are not issued, such special assessments, when collected, shall be applied to the payment of the principal and interest on any general obligation bonds issued or to the reduction of general taxes if such general obligation bonds or general tax levy are used to finance the improvement.

(d) The council may exercise the powers granted by this subsection only if it makes the findings required under sub. (4) and complies with the procedures and requirements under subs. (5), (6) and (8).

**(4) PRELIMINARY FINDINGS.** No pedestrian mall may be established under sub. (3) unless the council finds that:

(a) The proposed pedestrian mall will be located primarily in or adjacent to a business district.

(b) There exist reasonably convenient alternate routes for private vehicles to other parts of the city and state.

(c) The continued unlimited use by private vehicles of the streets or parts thereof in the proposed mall district endangers pedestrian safety.

(d) Properties abutting the proposed mall can be reasonably and adequately provided with emergency vehicle services and delivery and receiving of merchandise or materials either from other streets or alleys or by the limited use of the pedestrian mall for such purposes.

(e) It is in the public interest to use such street or portions thereof primarily for pedestrian purposes.

**(5) PROCEDURES.** (a) Before establishing a pedestrian mall or undertaking any pedestrian mall improvement, the council shall by resolution authorize the commissioner of public works and the local planning agency to make studies and prepare preliminary plans for the proposed project. The local planning agency shall hold a public hearing on these studies and preliminary plans.

(b) Upon receiving the authority under par. (a) and upon completion of the public hearing, the commissioner of public works shall prepare a report which shall include:

1. A plat and survey showing the character, course and extent of the proposed pedestrian mall.

2. A description of any proposed alterations of any street and of any public or private utilities running under or over any public way.

3. A description of the methods to be used in completing the project, including information on grading, drainage, planting, street lighting, paving, curbing, sidewalks, the types of construction materials and the proposed initial distribution and location of any movable furniture, sculptures, pedestrian or vehicle traffic control devices, flowers and plantings and any other structures or facilities.

4. A description of the property necessary to be acquired or interfered with and the identity of the owner of each such parcel if the same can be readily ascertained by the commissioner.

5. An estimate of the cost of each item in the proposed project, described separately or in reasonable classifications detailed to the council's satisfaction.

(c) In preparing such report, the commissioner of public works shall consult with any community development advisory body which has been organized in the proposed pedestrian mall district.

(d) After referring the report described in par. (b) to the city plan commission for review and recommendations, the commissioner of public works shall submit such report, with the city plan commission's recommendations, if any, to the council and shall file a copy in the office of the city clerk. The council may then refer the report and recommendations, with any modifications it deems necessary, to the board of assessment for action pursuant to subch. II of ch. 32.

(e) Notwithstanding any other provision of this section, if a petition protesting the establishment of a pedestrian mall or a pedestrian mall improvement, duly signed and acknowledged by the owners of 51% or more of the front footage of lands abutting a street or part thereof proposed as a pedestrian mall, is filed with the city clerk at any time prior to the conclusion of all proceedings required under this section, the council shall terminate its proceedings, and no proposal for the establishment of the same or substantially the same mall may be introduced or adopted within one year after such termination.

(f) Proceedings governing the establishment of a pedestrian mall or the undertaking of a pedestrian mall improvement are governed by subch. II of ch. 32.

**(6) ORDINANCES; REQUIRED PROVISIONS.** Any ordinance establishing a pedestrian mall shall:

(a) Contain the findings required under sub. (4).

(b) Designate the streets, including intersecting streets, or parts thereof to be used as a pedestrian mall.

(c) Limit the use of the surface of such street or part thereof to pedestrian users and to emergency, public works, maintenance and utility transportation vehicles during such times as the council determines appropriate to enhance the purposes and function of the pedestrian mall.

**(7) USE BY PUBLIC CARRIERS.** If the council finds that a street or part thereof which is designated as a pedestrian mall is served by a common carrier engaged in mass transportation of persons within the city and that continued use of such street or part thereof by such common carrier will benefit the city, the public and adjacent property, the council may permit such carrier to use such street or part thereof for such purposes to the same extent and subject to the same obligations and restrictions which are applicable to such carrier in the use of other streets of the city. Upon like findings, the council may permit use of such street or part thereof by taxicabs or other public passenger carriers.

**(8) PERMITS.** (a) If, at the time an ordinance establishing a pedestrian mall is adopted, any property abutting such pedestrian mall or part thereof does not have access to some other street or alley for the delivery or receiving of merchandise or materials, such ordinance shall provide for either:

1. The issuance of special access permits to the affected owners for such purposes; or

2. The designation of the hours or days on which such pedestrian mall may be used for such purposes without unreasonable interference with the use of the mall or part thereof by pedestrians and other authorized vehicles.

(b) The council may issue temporary permits for closing a pedestrian mall or any part thereof to all vehicular traffic for the promotion and conduct of sidewalk art fairs, sidewalk sales, craft shows, entertainment programs, special promotions and for such other special activities consistent with the ordinary purposes and functions of the pedestrian mall.

**(9) EXCESS ESTIMATED COST; ASSESSMENT ADJUSTMENTS.** (a) If, after the completion of any pedestrian mall improvement, the commissioner of public works certifies that the actual cost is less than the estimated cost upon which any aggregate assessment is based, such aggregate assessment shall be reduced, subject to par.

(c), by a percentage amount of the excess estimated cost which is equal to the percentage of the estimated cost financed by such aggregate assessment. The city comptroller shall certify to the city treasurer the amount refundable under this subsection.

(b) If such aggregate assessment has been fully collected, the city treasurer shall refund the excess assessment to the affected property owners on a proportional basis.

(c) If such aggregate assessment has not been fully collected, the amount of the refundable assessment shall be reduced by a sum determined by the council to be sufficient to cover anticipated assessment collection deficiencies, and the balance, if any, shall be refunded to the affected owners on a proportional basis. The treasurer shall deduct the appropriate amount from instalments due after the receipt of the certificate from the city comptroller.

**(10) ANNUAL COSTS; SPECIAL ACCOUNT.** (a) Concurrently with the submission of the plan, and annually thereafter by June 15 of each year, the city comptroller and the commissioner of public works, with the assistance of a community development advisory body, if any, shall furnish the council with a report estimating the cost of improving, operating and maintaining any pedestrian mall district for the next fiscal year. Under the plan in effect, such report shall include itemized cost estimates of any proposed changes in the plan under consideration by the council and also a detailed summary of the estimated costs chargeable to the following categories:

1. The amount of the annual costs chargeable to the general fund. Such amount may not exceed that amount which the city normally allocates from the general fund for maintenance and operation of a street of similar size and location not improved as a pedestrian mall.

2. The amount of the annual costs chargeable to owners of property in the district who are benefited by such annual mall improvements. The aggregate amount assessed against such owners may not exceed the aggregate benefits accruing to all such assessable property.

3. The amount of the annual costs, if any, to be specially taxed against taxable property in the district. Such amount shall be determined by deducting from the estimated annual costs the amounts under subs. 1. and 2. and the amount of anticipated rentals received from vendors using pedestrian mall facilities.

(b) Moneys appropriated and collected for annual pedestrian mall improvement costs shall be credited to a special account. The council may incur such annual costs as it deems necessary, whether or not they have been included in the budget for that fiscal year, except that such nonbudgeted expenditures shall be included in the estimate required under par. (a) for the next following fiscal year. Any unexpended balances in such special account remaining at the end of a fiscal year shall be carried over to the appropriate category of the estimate required under par. (a) for the next following fiscal year.

**(11) NUISANCES: LIMITATION OF LIABILITY** (a) The installation of any furniture, structure or facility or the permitting of any use in a pedestrian mall district under a final plan adopted under this section may not be deemed a nuisance or unlawful obstruction or condition by reason of the location of such installation or use.

(b) Such installation or use may not cause the city or any person acting under permit to be liable for injury to persons or property in the absence of negligence in the construction, maintenance, operation or conduct of such installation or use.

**(12) INTERPRETATION: AMENDMENT AND REPEAL** No action by the council establishing a pedestrian mall or undertaking a pedestrian mall improvement under this section may be construed as a vacation, abandonment or discontinuance of any street or public way. This section may not be construed to prevent the city from abandoning the establishment or operation of a pedestrian mall, changing the extent of a pedestrian mall, amending the description of the district to be assessed or taxed for annual improvement costs, or changing or repealing any limitations on the use of a

pedestrian mall by private vehicles or any plan, rule or regulation adopted for the operation of a pedestrian mall.

**(13) SUBSTANTIAL COMPLIANCE; VALIDITY** Substantial compliance with the requirements of this section is sufficient to give effect to any proceedings hereunder and any error, irregularity or informality not affecting substantial justice does not affect the validity of such proceedings.

**History:** 1975 c. 255; 1979 c. 110 s. 60 (11); 1983 a. 189; 1983 a. 207 s. 93 (3); 1983 a. 236 ss. 8, 13.

**NOTE:** Chapter 255, laws of 1975, which created this section, contains a statement of legislative findings and public policy.

**66.615 Sidewalks.** (1) **PART OF STREET; OBSTRUCTIONS.** Streets shall provide a right-of-way for vehicular traffic and, where the council so requires, a sidewalk on either or both sides thereof; the sidewalk shall be for the use of persons on foot, and no person shall be allowed to encumber the same with boxes or other material; but such sidewalk shall be kept clear for the uses specified herein.

(2) **GRADE** In all cases where the grades of sidewalks shall not have been specially fixed by ordinance the sidewalks shall be laid to the established grade of the street.

(3) **CONSTRUCTION AND REPAIR.** (a) *Authority of council.* The council may from time to time by ordinance or resolution determine where sidewalks shall be constructed and establish the width, determine the material and prescribe the method of construction of standard sidewalks, and the standard so fixed may be different for different streets, and may order by ordinance or resolution sidewalks to be laid as provided in this subsection.

(b) *Board of public works.* The board of public works may order any sidewalk which is unsafe, defective or insufficient to be repaired or removed and replaced with a sidewalk in accordance with the standard fixed by the council.

(c) *Notice.* A copy of the ordinance, resolution or order directing such laying, removal, replacement or repair shall be served upon the owner, or an agent, of each lot or parcel of land in front of which such work is ordered. The board of public works, or either the street commissioner or the city engineer if so requested by the council, may serve the notice. Service of the notice may be made by:

1. Personal delivery;
2. Certified or registered mail; or
3. Publication in the official newspaper as a class 1 notice, under ch. 985, together with mailing by 1st class mail if the name and mailing address of the owner or an agent can be readily ascertained.

(d) *Default of owner.* Whenever any such owner shall neglect for a period of 20 days after such service to lay, remove, replace or repair any such sidewalk the city may cause such work to be done at the expense of such owner. All work for the construction of sidewalks shall be let by contract to the lowest responsible bidder except as provided in s. 62.15 (1).

(e) *Minor repairs.* If the cost of repairs of any sidewalk in front of any lot or parcel of land does not exceed the sum of \$100, the board of public works, street commissioner or city engineer if so required by the council, may immediately repair such sidewalk, without notice or letting the work by contract, and charge the cost thereof to the owner of such lot or parcel of land, as provided in this section.

(f) *Expense.* The board of public works shall keep an accurate account of the expenses of laying, removing and repairing sidewalks in front of each lot or parcel of land whether the work is done by contract or otherwise, and report the same to the comptroller who shall annually prepare a statement of the expense so incurred in front of each lot or parcel of land and report the same to the city clerk, and the amount therein charged to each lot or parcel of land shall be entered by such clerk in the tax roll as a special tax against said lot or parcel of land, and the same shall be collected in all respects like other taxes upon real estate. The council



by resolution or ordinance may provide that the expense so incurred may be paid in up to 10 annual instalments and upon such determination, the comptroller shall prepare the expense statement as herein required in such manner and with such frequency as the improved instalment payment schedule allows. If annual instalments for such expense are authorized, the city clerk shall charge the amount to each lot or parcel of land and enter it on the tax roll as a special tax against such lot or parcel each year until all instalments have been entered, and the same shall be collected in all respects like other taxes upon real estate. The council may provide that the street commissioner or city engineer shall perform the duties imposed by this section on the board of public works.

(5) **SNOW AND ICE** The board of public works shall keep the sidewalks of the city clear of snow and ice in all cases where the owners or occupants of abutting lots fail to do so, and the expense of so doing in front of any lot or parcel of land shall be included in the statement to the comptroller required by sub. (3) (f), and in the comptroller's statement to the city clerk and in the special tax to be levied as therein provided. The city may also impose a fine or penalty for neglecting to keep sidewalks clear of snow and ice.

(6) **REPAIR AT CITY EXPENSE** Whenever the council shall by resolution or ordinance so determine, sidewalks shall be kept in repair by and at the expense of the city, or the council may direct that a certain proportion of the cost of construction, reconstruction or repair be paid by the city and the balance by abutting property owners.

(7) **RULES** The council may from time to time make all needful rules and regulations by ordinance for carrying the aforesaid provisions into effect, for regulating the use of the sidewalks of the city and preventing their obstruction.

(10) **APPLICATION OF SECTION; DEFINITIONS** The provisions of this section shall not apply to 1st class cities but shall be applicable to towns and villages, and when applied to towns and villages:

(a) "Board of public works" means the committee or officer designated to handle street or sidewalk matters.

(b) "City" means town or village.

(c) "Comptroller" means clerk.

(d) "Council" means town board or village board.

**History:** 1975 c. 172, 356, 421, 422; 1979 c. 32; 1983 a. 189, 532; 1991 a. 316; 1993 a. 490.

A city cannot delegate its primary responsibility to maintain its sidewalks, nor delegate or limit its primary liability by ordinance. *Kobelinski v. Milwaukee & S. Transport Corp.* 56 W (2d) 504, 202 NW (2d) 415.

Defendant property owners' failure to remove snow and ice from sidewalk in violation of municipal ordinance did not constitute negligence per se. *Hagerty v. Village of Bruce*, 82 W (2d) 208, 262 NW (2d) 102.

City, exercising its police power, can impose special tax on properties for cost of installing sidewalk on adjacent city right-of-way, in absence of showing that properties would be benefited. *Stehling v. City of Beaver Dam*, 114 W (2d) 197, 336 NW (2d) 401 (Ct. App. 1983).

**66.616 Curb ramping.** (1) The standard for construction of curbs and sidewalks on each side of any city or village street, or any connecting highway or town road for which curbs and sidewalks have been prescribed by the governing body of the town, city or village having jurisdiction thereover, shall include curb ramping providing access to crosswalks at intersections and other designated locations. Curb ramping includes the curb opening, the ramp and that part of the sidewalk or apron leading to and adjacent to the curb opening. Any person constructing new curbs or sidewalks or replacing curbs or sidewalks within 5 feet of a legal crosswalk in any city street, village street, connecting highway or town road shall comply with the standards for curb ramping under this section.

(3) Curb ramps shall conform to the following requirements:

(a) Curb ramping shall be of permanent construction. The ramp shall be at least 40 inches wide. The sides of the ramp shall slope from the sidewalk or apron elevations to the ramp elevation with the widest portion of the side slope not less than 18 inches nor more than 24 inches wide at the curb. The ramp slope may not exceed one inch vertical to 12 inches horizontal from the flow line

elevation of the curb. The curb opening shall be not less than 40 inches nor more than 80 inches wide at the flow line of the curb. The taper of the curb from the top of the curb to the flow line of the curb at the curb opening shall be not less than 18 inches nor more than 24 inches wide. The ramp shall be bordered on both sides and on the curb line with a 4-inch-wide yellow stripe or with brick of a contrasting color.

(b) Curb ramping shall be in one of the following locations, to provide access to each end of each crosswalk affected:

1. At the center of the curve of the street corner to accommodate crossing for either direction at the intersection. The entire curb corner may not be made into a ramp, but shall provide for standard sidewalk apron and curb on both sides of a ramp. Any safety zone marking required by ordinance shall be provided in the street or town road 40 inches out and parallel with the curb, joining with the standard safety pedestrian crossing markings in the street or town road;

2. If subd. 1. is not feasible, centered on line with the crosswalk and pedestrian traffic and containing surface texturing to indicate clearly to the sense of touch that the surface differs from that of the sidewalk or street. The surface texturing shall consist of linear impressions one-fourth of an inch to three-eighths of an inch deep, oriented to provide a uniform pattern of diamond shapes. The diamond shapes shall measure approximately 1 1/4 inches wide by 2 1/4 inches long, with the length of the diamond shape parallel to the direction of pedestrian movement. The diamond shapes shall be spaced one-fourth of an inch to three-eighths of an inch apart. This surface texture may be achieved by impressing and removing expanded metal regular industrial mesh into the surface of the ramp while the concrete is in a plastic state; or

3. If both subds. 1. and 2. are not feasible, at a suitable location as near to the crosswalk as practicable. Any safety zone markings required by ordinance shall be provided in the street or town road 40 inches out and parallel with the curb, joining with the standard safety pedestrian crossing markings in the street or town road.

(5) The district attorney, on his or her own motion or upon the complaint of any person, may bring an action in circuit court to enforce this section.

(6) If any person constructs a new or replacement sidewalk or curb, other than the town, city or village with jurisdiction over the curbs or sidewalks, the town, city or village shall inform the person of the requirements of this section. The town, city or village may agree to construct, or bear the cost of constructing, curb ramping required to provide access to sidewalks opposite the new or replacement curb or sidewalk.

**History:** 1971 c. 283; 1973 c. 98, 243; 1977 c. 29 s. 1654 (3); 1979 c. 272; 1991 a. 32.

**66.62 Special assessments.** (1) Except as provided in s. 66.60 (6m), in addition to other methods provided by law, the common council of any 2nd, 3rd or 4th class city, a village board or a town board may, by ordinance, provide that the cost of installing or constructing any public work or improvement shall be charged in whole or in part to the property benefited thereby, and to make an assessment against such property in such manner as such council or board determines. Such special assessment shall be a lien against the property from the date of the levy.

(2) Every such ordinance shall contain provisions for reasonable notice and hearing. Any person against whose land a special assessment is levied under any such ordinance shall have the right to appeal therefrom in the manner prescribed in s. 66.60 (12) within 40 days of the date of the final determination of the governing body.

**History:** 1983 a. 532; 1989 a. 322.

Ordinance under this section may use police power as basis for special assessment. *Mowers v. City of St. Francis*, 108 W (2d) 630, 323 NW (2d) 157 (Ct. App. 1982).

**66.625 Laterals and service pipes.** Whenever the governing body shall by resolution require water, heat, sewer and gas laterals or service pipes to be constructed from the lot line or near

the lot line to the main or from the lot line to the building to be serviced, or both, it may provide that when the work is done by the city, village or town or under a city, village or town contract, a record of the cost of constructing such laterals or service pipes shall be kept and such cost, or the average current cost of laying such laterals or service pipes, shall be charged and be a lien against the lot or parcel served.

History: 1983 a 532

#### 66.63 Assessment of condemnation benefits.

(1) As a complete alternative to any other method provided by law, for the purpose of payment of the expenses, including such excess of damages and all other expenses and costs incurred for the taking of private property for the purpose set forth in ss. 32.02 (1), 61.34 (3) and 62.22, the governing body of the town, city or village may, by resolution, levy and assess the whole or any part of such expenses, as a special assessment upon such property as they determine is specially benefited thereby, and they shall include in said levy the whole or any part of the excess of benefits over total damages, if any, making therein a list of every lot or parcel of land so assessed, the name of the owner thereof, if known, and the amount levied thereon.

(2) Such resolution shall be published as a class 2 notice, under ch. 985, and a notice therewith that at a time stated therein, the governing body will meet at their usual place of meeting and hear all objections which may be made to such assessment or to any part thereof. If such resolution levies an assessment against property outside the corporate limits, notice as provided herein shall be given by mailing a copy of the resolution and the notice by registered mail to the last-known address of the owner of such property. A copy of such resolution shall be filed with the clerk of the town in which the property is located.

(3) At the time so fixed the governing body shall meet and hear all such objections, and for that purpose may adjourn to a date set by the governing body, until the hearing is completed, and shall by resolution confirm or modify such assessment in whole or in part. At any time before the first day of November thereafter any party liable may pay any such assessment to the town, city or village treasurer. On such first day of November, if any such assessment remains unpaid, the treasurer shall make a certified statement showing what assessments so levied remain unpaid, and file the same with the clerk, who shall extend the same upon the tax roll of such municipality, in addition to and as part of all other taxes therein levied on such land, to be collected therewith.

(4) At the time of making out the tax roll, next after the filing of any assessment to pay the expenses incurred in proceedings for the condemnation of lands outside the corporate limits, the town clerk shall enter in said roll the benefits not offset by damages or an excess of benefits over damages which shall be levied on the land described as a special assessment and shall be collected the same as other taxes. Such amounts when collected shall be paid over to the city or village treasurer to be applied in payment of any damages or excess of damages over benefits awarded by such assessment; and in case the amount of such special assessments are insufficient to pay all damages or excess of damages over benefits so awarded, then the difference shall be paid by the city or village. Any such damages or excess of damages over benefits may be paid out of such fund prior to the collection of such special assessments, to be reimbursed therefrom when collected.

(5) Any person against whose land an assessment of benefits is made pursuant to this section may appeal therefrom as prescribed in s. 32.06 (10) within 30 days of the adoption of the resolution required under sub. (3).

#### 66.635 Reassessment of invalid condemnation and public improvement assessments.

(1) If in any action other than an action pursuant to s. 66.60 (12), for the recovery of damages arising from a failure to make a proper assessment of benefits and damages, as provided by law, or failure to observe any provision of law, or because of any act or defect in any pro-

ceeding in which benefits and damages are assessed, and in any action to set aside any special assessment, special assessment certificate, bond or note or tax certificate based upon such special assessment, the court determines that such assessment is invalid by reason of a defective assessment of benefits and damages, or for any cause, it shall stay all proceedings, frame an issue therein and summarily try the same and determine the amount which the plaintiff justly ought to pay or which should be justly assessed against the property in question. Such amount shall be ordered to be paid into court for the benefit of the parties entitled thereto within a time to be fixed. Upon compliance with said order judgment shall be entered for the plaintiff with costs. If the plaintiff fails to comply with such order the action shall be dismissed with costs.

(2) If the common council, village board or town board determines that any special assessment is invalid for any reason, it may reopen and reconsider such assessment as provided in s. 66.60 (10).

History: 1983 a 532; 1987 a 378

#### 66.64 Special assessments for local improvements.

(1) The property of the state, except that held for highway right-of-way purposes or acquired and held for purposes under s. 85.09, and the property of every county, city, village, town, school district, sewerage district or commission, sanitary or water district or commission, or any public board or commission within this state, and of every corporation, company or individual operating any railroad, telegraph, telecommunications, electric light or power system, or doing any of the business mentioned in ch. 76, and of every other corporation or company whatever, shall be in all respects subject to all special assessments for local improvements. Certificates and improvement bonds therefor may be issued and the lien thereof enforced against such property, except property of the state, in the same manner and to the same extent as the property of individuals. Such assessments shall not extend to the right, easement or franchise to operate or maintain railroads, telegraph, telecommunications or electric light or power systems in streets, alleys, parks or highways. The amount represented by any certificate or improvement bond issued as aforesaid shall be a debt due personally from such corporation, company or individual, payable in the case of a certificate when the taxes for the year of its issue are payable, and in the case of a bond according to the terms thereof.

(2) In this subsection, "assessment" means a special assessment on property of the state and "project" means any continuous improvement within overall project limits regardless of whether small exterior segments are left unimproved. If the assessment of a project is less than \$50,000, or if the assessment of a project is \$50,000 or more and the building commission approves the assessment under s. 66.60 (4), the state agency which manages the property shall pay the assessment from the revenue source which supports the general operating costs of the agency or program against which the assessment is made.

History: 1977 c 29; 1977 c 418 ss. 431, 924 (48); 1983 a 27; 1985 a 187; 1985 a 297 s. 76; 1987 a 27.

66.645 Duty of officers; action to collect tax. (1) The officers now authorized by law to collect and receive the same from individuals shall have full power to receive and collect all such special assessments in the same manner as the same are now collected from individuals, and in addition thereto such officers shall have power at the direction of the proper authorities of the city, village or town making such special assessments, upon the nonpayment of any such special assessments by any corporation, company, or individual mentioned in s. 66.64 within the time now limited by law for the payment of such special assessments by individuals, or in the case of a county, city, village, town, and school district, after the time now prescribed by law in the case of other claims, to institute and prosecute an action to collect the same in the name and at the cost of such city, village or town. A like action may be maintained by the owner or holder of any spe-

cial assessment certificate or improvement bond issued as aforesaid in the name and at the cost of that owner or holder. In such action, when brought in the name of such city, village or town, it shall be sufficient to allege that the defendant is indebted upon a special assessment, specifying the amount due, and when brought by such owner or holder, to set up a copy of such certificate or bond, specify the amount due and when payable, and allege that the defendant is liable therefor. On the trial of such action, when brought in the name of the city, village or town, the production of the tax roll or list showing the amount thereof; and when brought by such owner or holder, the production of such certificate or improvement bond, tax roll, or list showing the amount thereof shall be prima facie evidence of the correctness and validity of such assessment, certificate, or improvement bond and of the liability of the defendant for the amount thereof and interest thereon from the time the same became payable. Any judgment recovered in such action shall be collected in the manner now prescribed for the collection of judgments against such defendant.

(2) Any county treasurer to whom special assessments for improvements are returned may likewise institute and prosecute an action to collect the same in the name of the county when authorized to do so by the county board of supervisors.

History: 1987 a 378; 1991 a 316; 1993 a 246.

**66.65 Assessment against city, village or town property abutting on improvement.** (1) A city, village or town may levy special assessments for municipal work or improvement under s. 66.60 upon property in an adjacent city, village or town, if such property abuts upon and benefits from such work or improvement and if the governing body of the municipality where the property is located, by resolution approves such levy. In any such case the owner of such property shall be entitled to the use of the work or improvement upon which such assessment is based upon the same conditions as the owner of property within the city, village or town.

(2) A special assessment under this section shall be a lien against the benefited property and shall be collected by the treasurer in the same manner as the taxes of the municipality and paid over by the treasurer to the treasurer of the municipality levying such assessment.

History: 1991 a 316.

**66.694 Special assessments against railroad for street improvement.** (1) If any city, village or town causes any street, alley or public highway within its corporate limits to be improved by grading, curbing, paving or otherwise improving the street, alley or public highway, where the entire or partial cost of the improvement is assessed against abutting property, and the street, alley or public highway is crossed by the track of any railroad and engaged as a common carrier, the common council or board of public works of the city, or the village or town board, shall at any time after the completion and acceptance of the improvement by the municipality, file with the local agent of the railroad corporation operating the railroad, a statement showing the amount chargeable to the railroad corporation for the improvement, which shall be an amount equal to the cost of constructing the improvement along the street, alley or public highway immediately in front of and abutting its right-of-way on each side of the street, alley or public highway at the point where the track crosses the street, alley or public highway, based upon the price per square yard, lineal foot or other unit of value used in determining the total cost of the improvement.

(2) The amount charged against any railroad corporation for improving the street, alley or public highway, fronting or abutting its right-of-way, shall not exceed the average amount per front foot assessed against the remainder of the property fronting or abutting on the street, alley or public highway so improved. The amount calculated under sub. (1) and contained in the statement shall be due and payable by the railroad corporation to the municipality, causing the statement to be filed within 30 days of the date

when the statement shall be presented to the local representative of the railroad corporation.

History: 1977 c 72; 1993 a 246, 490.

**66.695 Action to recover assessment.** If any railroad corporation fails or refuses to pay to any city, village or town the amount set forth in any statement or claim for the making of street improvements, as provided in s. 66.694, within the time specified in the statement, the city, village or town shall have a valid claim for such amount against the railroad corporation, and may maintain an action in any circuit court within this state to recover the amount in the statement.

History: 1993 a 246.

**66.696 Improvement of streets by abutting railroad company.** If the track of any railroad is laid upon or along any street, alley or public highway within any city, village or town, the corporation operating the railroad shall maintain and improve the portion of the street, alley or public highway that is occupied by its tracks. The railroad corporation shall grade, pave or otherwise improve the street, alley or public highway or portion thereof in such manner and with such materials as the common council of the city or the village or town board determines. The railroad corporation is not required to pave or improve that portion of the street, alley or public highway occupied by it with different material or in a different manner from that in which the remainder of the street is paved or improved. The railroad corporation shall be liable to pay for paving, grading or otherwise improving a street, alley or public highway only to the extent that the actual cost of the improvement exceeds the estimated cost of the improvement were the street, alley or public highway not occupied by the tracks of the railroad.

History: 1977 c 72; 1993 a 246.

**66.697 Notice to railroad company; time for construction.** (1) If any city, village or town orders any street, alley or public highway to be paved, graded, curbed or improved, as provided in s. 66.696, the clerk of the city, village or town shall cause to be served upon the local agent of the railroad corporation, a notice setting forth the action taken by the city, village or town relative to the improvement of the street, alley or public highway.

(2) If the railroad corporation elects to construct the street, alley or public highway improvement, it shall within 10 days of the receipt of the notice from the clerk of the city, village or town, file with the clerk a notice of its intention to construct the street, alley or public highway improvement, and it shall be allowed until the June 30 thereafter to complete the work, unless the work is ordered after May 20 of any year, and in that case the railroad corporation shall be allowed 40 days from the time the clerk of the municipality presents the notice to the railroad agent, in which to complete the work.

History: 1993 a 246.

**66.698 Construction by municipality; assessment of cost.** (1) If any city, village or town orders any street, alley or public highway improved, as provided in s. 66.696, and serves notice on the railroad corporation, as provided in s. 66.697, and the railroad corporation elects not to construct the improvement or elects to construct the improvement but fails to construct the improvement within the time provided in s. 66.697, the city, village or town shall proceed to let a contract for the construction of the improvement, and cause the street, alley or public highway to be improved as determined under s. 66.696, and when the improvement is completed and accepted by the city, village or town, the clerk of the city, village or town shall present to the local agent of the railroad corporation a statement of the actual cost of the improvement, and the railroad corporation shall within 20 days of its receipt of the statement pay to the treasurer of the city, village or town the amount shown by the statement.

(2) If any railroad corporation fails to pay the cost of constructing any pavement or other street improvement as pro-

vided under sub. (1), the city, village or town causing the improvement to be constructed shall have the right to enforce collection of the amount by an action at law against the railroad corporation as provided in s. 66.695.

History: 1993 a 246

**66.699 Effect of sections 66.694 to 66.698.** Sections 66.694 to 66.698 shall not operate to repeal any existing law, but shall provide a method of compelling a railroad corporation to pay its proportionate share of street, alley or public highway improvements in case any city, village or town elects to follow those provisions.

History: 1993 a 246

**66.70 Political subdivisions prohibited from levying tax on incomes.** No county, city, village, town, or other unit of government authorized to levy taxes shall assess, levy or collect any tax on income, or measured by income, and any such tax so assessed or levied is void.

**66.73 Citizenship day.** To redirect the attention of the citizens of Wisconsin (particularly those who are about to exercise the franchise for the first time) to the fundamentals of American government and to American traditions, any county, municipal or school board may annually provide for and appropriate funds for a program of citizenship education which stresses, through free and frank discussion of a nonpolitical, nonsectarian and nonpartisan nature, the doctrine of democracy, the duties and responsibilities of elective and appointive officers, the responsibilities of voters in a republic and the organization, functions and operation of government. This program should culminate in a ceremony of induction to citizenship for those who have been enfranchised within the past year. Any county may determine to conduct such ceremony either on or within the octave of the day designated by congress or proclaimed by the president of the United States as Citizenship Day. The board may carry out this function in such manner as it determines. The secretary of state, department of public instruction and other state officers and departments shall cooperate with the participating units of government by the dissemination of available information which will stimulate interest in the government of Wisconsin and its subdivisions.

History: 1971 c. 152 s. 33; Stats. 1971 s. 66.73

**66.74 Assessment on racing prohibited.** Notwithstanding subch. V of ch. 77, no county, town, city or village may levy or collect from any licensee, as defined in s. 562.01 (7), any fee, tax or assessment on any wager in any race, as defined in s. 562.01 (10), or on any admission to any racetrack, as defined in s. 562.01 (12), except as provided in s. 562.08.

History: 1987 a 354; 1991 a 39

**66.75 Room tax; forfeitures. (1)** In this section:

(a) "Commission" means an entity created by one municipality or by 2 or more municipalities in a zone, to coordinate tourism promotion and development for the zone.

(am) "District" has the meaning given in s. 229.41 (4m).

(b) "Hotel" has the meaning given in s. 77.52 (2) (a) 1.

(c) "Motel" has the meaning given in s. 77.52 (2) (a) 1.

(d) "Municipality" means any city, village or town.

(dm) "Sponsoring municipality" means any city, village or town that creates a district either separately or in combination with another city, village, town or county.

(e) "Tourism" means travel for recreational, business or educational purposes.

(f) "Tourism entity" means a nonprofit organization that came into existence before January 1, 1992, and provides staff, development or promotional services for the tourism industry in a municipality.

(g) "Transient" has the meaning given in s. 77.52 (2) (a) 1.

(h) "Zone" means an area made up of 2 or more municipalities that, those municipalities agree, is a single destination as perceived by the traveling public.

(1m) (a) The governing body of a municipality may enact an ordinance, and a district, under par. (e), may adopt a resolution, imposing a tax on the privilege of furnishing, at retail, except sales for resale, rooms or lodging to transients by hotelkeepers, motel operators and other persons furnishing accommodations that are available to the public, irrespective of whether membership is required for use of the accommodations. Any tax imposed under this paragraph is not subject to the selective sales tax imposed by s. 77.52 (2) (a) 1. and may not be imposed on sales to the federal government and persons listed under s. 77.54 (9a). Any tax imposed under this paragraph by a municipality shall be paid to the municipality and may be forwarded to a commission if one is created under par. (c), as provided in par. (d). Except as provided in par. (am), any tax imposed under this paragraph by a municipality may not exceed 8%. Except as provided in par. (am), if a tax greater than 8% under this paragraph is in effect on May 13, 1994, the municipality imposing the tax shall reduce the tax to 8%, effective on June 1, 1994.

(am) A municipality that imposes a room tax under par. (a) is not subject to the limit on the maximum amount of tax that may be imposed under that paragraph if any of the following apply:

1. The municipality is located in a county with a population of at least 380,000 and a convention center is being constructed or renovated within that county.

2. The municipality intends to use at least 60% of the revenue collected from its room tax, of any room tax that is greater than 7%, to fund all or part of the construction or renovation of a convention center that is located in a county with a population of at least 380,000.

3. The municipality is located in a county with a population of less than 380,000 and that county is not adjacent to a county with a population of at least 380,000, and the municipality is constructing a convention center or making improvements to an existing convention center.

4. The municipality has any long-term debt outstanding with which it financed any part of the construction or renovation of a convention center.

(b) 1. If a single municipality imposes a room tax under par. (a), the municipality may create a commission under par. (c). The commission shall contract with another organization to perform the functions of a tourism entity if no tourism entity exists in that municipality.

2. If 2 or more municipalities in a zone impose a room tax under par. (a), the municipalities shall enter into a contract under s. 66.30 to create a commission under par. (c). If no tourism entity exists in any of the municipalities in the zone that have formed a commission, the commission shall contract with another organization in the zone to perform the functions of the tourism entity. Each municipality in a single zone that imposes a room tax shall levy the same percentage of tax. If the municipalities are unable to agree on the percentage of tax for the zone, the commission shall set the percentage.

3. A commission shall monitor the collection of room taxes from each municipality in a zone that has a room tax.

4. A commission shall contract with one tourism entity from the municipalities in the zone to obtain staff, support services and assistance in developing and implementing programs to promote the zone to visitors.

(c) 1. If a commission is created by a single municipality, the commission shall consist of 4 to 6 members. One of the commission members shall represent the Wisconsin hotel and motel industry. Members shall be appointed under subd. 3.

2. a. If the commission is created by more than one municipality in a zone, the commission shall consist of 3 members from each municipality in which annual tax collections exceed

\$1,000,000, 2 members from each municipality in which annual tax collections exceed \$300,000 but are not more than \$1,000,000 and one member from each municipality in which annual tax collections are \$300,000 or less. Except as provided in subd. 2. b., members shall be appointed under subd. 3.

b. Two additional members, who represent the Wisconsin hotel and motel industry, shall be appointed to the commission by the chairperson of the commission, shall serve for a one-year term at the pleasure of the chairperson and may be reappointed.

3. Members of the commission shall be appointed by the principal elected official in the municipality and shall be confirmed by a majority vote of the members of the municipality's governing body who are present when the vote is taken. Commissioners shall serve for a one-year term, at the pleasure of the appointing official, and may be reappointed.

4. The commission shall meet regularly, and, from among its members, it shall elect a chairperson, vice chairperson and secretary.

5. The commission shall report any delinquencies or inaccurate reporting to the municipality that is due the tax.

(d) 1. A municipality that first imposes a room tax under par. (a) after May 13, 1994, shall spend at least 70% of the amount collected on tourism promotion and development. Any amount of room tax collected that must be spent on tourism promotion and development shall either be spent directly by the municipality on tourism promotion and development or shall be forwarded to the commission for its municipality or zone if the municipality has created a commission.

2. If a municipality collects a room tax on May 13, 1994, it may retain not more than the same percentage of the room tax that it retains on May 13, 1994. If a municipality that collects a room tax on May 1, 1994, increases its room tax after May 1, 1994, the municipality may retain not more than the same percentage of the room tax that it retains on May 1, 1994, except that if the municipality is not exempt under par. (am) from the maximum tax that may be imposed under par. (a), the municipality shall spend at least 70% of the increased amount of room tax that it begins collecting after May 1, 1994, on tourism promotion and development. Any amount of room tax collected that must be spent on tourism promotion and development shall either be spent directly by the municipality on tourism promotion and development or shall be forwarded to the commission for its municipality or zone if the municipality has created a commission.

3. A commission shall use the room tax revenue that it receives from a municipality to promote and develop tourism, including the support of a convention center, in the zone or in the municipality.

4. The commission shall report annually to each municipality from which it receives room tax revenue the purposes for which the revenues were spent.

5. The commission may not use any of the room tax revenue to construct or develop a lodging facility.

(e) 1. Subject to subd. 2., a district may adopt a resolution imposing a room tax under par. (a) in an amount not to exceed 3% of total room charges. A majority of the authorized members of the district's board may vote that, if the balance in a special debt service reserve fund of the district is less than the requirement under s. 229.50 (5), the room tax imposed by the district under this subdivision is 3% of total room charges beginning on the next January 1, April 1, July 1 or October 1 after the payment and this tax is irrevocable if any bonds issued by the district and secured by the special debt service reserve fund are outstanding. A room tax imposed by a district under this subdivision applies within the district's jurisdiction, as specified in s. 229.43, and the proceeds of the tax may be used only for the district's debt service on its bond obligations. If a district stops imposing and collecting a room tax, the district's sponsoring municipality may impose and collect a room tax under par. (a) on the date on which the district stops imposing and collecting its room tax.

2. In addition to the room tax that a district may impose under subd. 1., if the district's only sponsoring municipality is a 1st class city, the district may adopt a resolution imposing an additional room tax. The additional percentage of room tax under this subdivision shall be equal to the percentage of room tax imposed by the sponsoring municipality on the date on which the sponsoring municipality agrees to stop imposing and collecting its room tax, as described under s. 229.44 (15). A district shall begin collecting the additional room tax imposed under this subdivision on the date on which the sponsoring municipality stops imposing and collecting its room tax. A room tax imposed by a district under this subdivision applies only within the borders of the sponsoring municipality and may be used for any lawful purpose of the district.

(f) 1. The department of revenue shall administer the tax that is imposed under par. (a) by a district and may take any action, conduct any proceeding and impose interest and penalties.

2. Sections 77.51 (14) (c), (f) and (j) and (14g), 77.52 (3), (4), (6) and (18), 77.58 (1) to (5) and (7), 77.59, 77.60, 77.61 (2), (5), (8), (9) and (12) to (14) and 77.62, as they apply to the taxes under subch. III of ch. 77, apply to the tax described under subd. 1.

3. From the appropriation under s. 20.835 (4) (gg), the department of revenue shall distribute 97% of the taxes collected under this paragraph for each district to that district, no later than the end of the month following the end of the calendar quarter in which the amounts were collected. The taxes distributed shall be increased or decreased to reflect subsequent refunds, audit adjustments and all other adjustments. Interest paid on refunds of the tax under this paragraph shall be paid from the appropriation under s. 20.835 (4) (gg) at the rate under s. 77.60 (1) (a). Any district that receives a report along with a payment under this subdivision or subd. 2. is subject to the duties of confidentiality to which the department of revenue is subject under s. 77.61 (5).

4. Hotels and motels and the department of revenue may not collect taxes under this paragraph for any district after the calendar quarter during which all bonds issued by the district under subch. II of ch. 229 during the first 60 months after April 26, 1994, and any bonds issued to fund or refund those bonds, are retired or for more than 2 years if bonds have not been issued during that time, except that the department may collect from hotels and motels taxes that accrued before that calendar quarter, or before the end of that 2-year period, and interest and penalties that relate to those taxes. If taxes are collected and no bonds are issued, the district may use the revenue for any lawful purpose.

5. Persons who are subject to the tax under this subsection, if that tax is administered by the department of revenue, shall register with the department. Any person who is required to register, including any person authorized to act on behalf of a person who is required to register, who fails to do so is guilty of a misdemeanor.

(2) As a means of enforcing the collection of any room tax imposed by a municipality or a district under sub. (1m), the municipality or district may exchange audit and other information with the department of revenue and may do any of the following:

(a) Whenever the municipality or district has probable cause to believe that the correct amount of room tax has not been assessed or that the tax return is not correct, inspect and audit the financial records of any person subject to sub. (1m) pertaining to the furnishing of accommodations to determine whether or not the correct amount of room tax is assessed and whether or not any room tax return is correct.

(b) Enact a schedule of forfeitures, not to exceed 5% of the tax under sub. (1m) or par. (c), to be imposed on any person subject to sub. (1m) who fails to comply with a request to inspect and audit the person's financial records under par. (a).

(c) Determine the tax under sub. (1m) according to its best judgment if any person required to make a return fails, neglects or refuses to do so for the amount, in the manner and form and within the time prescribed by the municipality or district.



(d) Require each person who is subject to par. (c) to pay an amount of taxes that the municipality or district determines to be due under par. (c) plus interest at the rate of 1% per month on the unpaid balance. No refund or modification of the payment determined may be granted until the person files a correct room tax return and permits the municipality or district to inspect and audit his or her financial records under par. (a).

(e) Enact a schedule of forfeitures, not to exceed 25% of the room tax due for the previous year under sub. (1m) or par. (c) or \$5,000, whichever is less, to be imposed for failure to pay the tax under sub. (1m).

(3) The municipality shall provide by ordinance and the district shall provide by resolution for the confidentiality of information obtained under sub. (2) but shall provide exceptions for persons using the information in the discharge of duties imposed by law or of the duties of their office or by order of a court. The municipality or district may provide for the publishing of statistics classified so as not to disclose the identity of particular returns. The municipality or district shall provide that persons violating ordinances or resolutions enacted under this subsection may be required to forfeit not less than \$100 nor more than \$500.

History: 1983 a 189, 514; 1993 a 263, 467, 491

City was authorized to enact room tax; gross receipts method was fair and reasonable way of calculating tax. *Blue Top Motel, Inc v City of Stevens Point*, 107 W (2d) 392, 320 NW (2d) 172 (1982)

**66.77 Tax levy rate limit. (1) DEFINITIONS.** In this section:

(a) "Debt levy" means the county purpose levy for debt service on loans under subch. II of ch. 24, bonds issued under s. 67.05 and promissory notes issued under s. 67.12 (12), less any revenues that abate the levy.

(b) "Debt levy rate" means the debt levy divided by the equalized value of the county exclusive of any tax incremental district value increment.

(c) "Excess over the limit" means the amount of revenue received by a county that results from the county exceeding the limit under sub. (2).

(d) "Operating levy" means the county purpose levy, less the debt levy.

(e) "Operating levy rate" means the total levy rate minus the debt levy rate.

(f) "Penalized excess" means the excess over the limit for the county.

(g) "Total levy rate" means the county purpose levy divided by the equalized value of the county exclusive of any tax incremental district value increment.

(2) LIMIT Except as provided in sub. (3), no county may impose an operating levy at an operating levy rate that exceeds .001 or the operating levy rate in 1992, whichever is greater.

(3) REFERENDUM, RESPONSIBILITY TRANSFERS (a) 1. If the governing body of a county wishes to exceed the operating levy rate limit otherwise applicable to the county under this section, it shall adopt a resolution to that effect. The resolution shall specify either the operating levy rate or the operating levy that the governing body wishes to impose for either a specified number of years or an indefinite period. The governing body shall call a special referendum for the purpose of submitting the resolution to the electors of the county for approval or rejection. In lieu of a special referendum, the governing body may specify that the referendum be held at the next succeeding spring primary or election or September primary or general election to be held not earlier than 30 days after the adoption of the resolution of the governing body.

2. The clerk of the county shall publish type A, B, C, D and E notices of the referendum under s. 10.01 (2). Section 5.01 (1) applies in the event of failure to comply with the notice requirements of this subdivision.

3. The referendum shall be held in accordance with chs. 5 to 12. The governing body shall provide the election officials with

all necessary election supplies. The form of the ballot shall correspond substantially with the standard form for referendum ballots prescribed by the elections board under ss. 5.64 (2) and 7.08 (1)

(a) If the resolution under subd. 1. specifies the operating levy rate, the question shall be submitted as follows: "Under state law, the operating levy rate for the... (name of county), for the tax to be imposed for the year... (year), is limited to \$... per \$1,000 of equalized value. Shall the... (name of county) be allowed to exceed this rate limit for... (a specified number of years) (an indefinite period) by \$... per \$1,000 of equalized value that results in an operating levy rate of \$... per \$1,000 of equalized value?" If the resolution under subd. 1. specifies the operating levy, the question shall be submitted as follows: "Under state law, the operating levy rate for the... (name of county), for the tax to be imposed for the year... (year), is limited to \$... per \$1,000 of equalized value. Notwithstanding the operating levy rate limit, shall the... (name of county) be allowed to levy an amount not to exceed \$... (operating levy) for operating purposes for the year... (year), which may increase the operating levy rate for... (a specified number of years) (an indefinite period)? This would allow a...% increase above the levy of \$... (preceding year operating levy) for the year... (preceding year)?"

4. Within 14 days after the referendum, the clerk of the county shall certify the results of the referendum to the department of revenue. A county may exceed the operating levy rate limit otherwise applicable to it under this section in that year by an amount not exceeding the amount approved by a majority of those voting on the question.

(b) 1. If an increased operating levy rate is approved by a referendum under par. (a) for a specified number of years, the increased operating levy rate shall be the operating levy rate limit for that number of years for purposes of this section. If an increased operating levy rate is approved by a referendum under par. (a) for an indefinite period, the increased operating levy rate shall be the operating levy rate limit for purposes of this section.

2. If an increased operating levy is approved by a referendum under par. (a), the increased operating levy shall be used to calculate the operating levy rate limit for the approved year for purposes of this section. After the approved year, the operating levy rate limit in the approved year or the operating levy rate limit that would have been applicable if there had been no referendum, whichever is greater, shall be the limit for the specified number of years or for an indefinite period for purposes of this section.

(c) 1. If a county transfers to another governmental unit responsibility for providing any service that the county provided in the preceding year, the levy rate limit otherwise applicable under this section to the county in the current year is decreased to reflect the cost that the county would have incurred to provide that service, as determined by the department of revenue.

2. If a county increases the services that it provides by adding responsibility for providing a service transferred to it from another governmental unit in any year, the levy rate limit otherwise applicable under this section to the county in the current year is increased to reflect the cost of that service, as determined by the department of revenue.

(4) PENALTIES If the department of revenue determines that a county has a penalized excess in any year, the department of revenue shall do all of the following:

(a) Reduce the amount of the shared revenue payments to the county under subch. I of ch. 79 in the following year by an amount equal to the amount of the penalized excess.

(b) If the amount of the reduction made under par. (a) is insufficient to recover fully the amount of the penalized excess, request the department of transportation to reduce the aids paid in that following year to the county under s. 86.30 (2) (e) by the amount needed to recover as much of the remainder as is possible.

(c) Ensure that the amount of any reductions in shared revenue payments under par. (a) lapses to the general fund.

(d) Ensure that the amount of the penalized excess is not included in determining the limit described under sub. (2) for the county for the following year.

(5) **RATE COMPARISON.** Annually, the department of revenue shall compare the operating levy rate limit of each county under this section to the actual operating levy rate imposed by the county.

History: 1993 a 16, 490

**66.80 Benefit funds for officers and employes of first class cities.** (1) In all cities of the first class in this state, whether organized under general or special charter, annuity and benefit funds shall be created, established, maintained and administered (by such city) for all officers and employes of such cities, who at the time this section shall come into effect are not contributors, participants or beneficiaries in any pension fund now in operation in such city by authority of law; provided that before this section shall be in effect in any city to which it applies, it must first have been approved by a majority vote of the members elect of the common council of such city.

(2) Upon approval by a majority vote of the members of the common council of such city the common council shall create a retirement board, the members of which shall serve without compensation, which board shall have full power and authority to administer such annuity and benefit fund, and to make such rules and regulations under which all participants shall contribute to and receive benefits from such fund. Three members of the retirement board shall be city employes elected by the members of the retirement system and shall serve 4-year terms and 5 members shall be appointed under s. 66.146 and shall serve 3-year terms. The common council may provide for contribution by the city to such annuity and benefit fund. The executive director of the retirement board shall be appointed under s. 66.146.

(3) The common council of such city may provide for annuity and benefit funds for officers and employes of boards, agencies, departments, commissions and divisions of the city government, including a housing authority created under the provisions of s. 66.40.

History: 1987 a 382.

**66.805 Death benefit payments to foreign beneficiaries.** A retirement system of any city of the first class may provide by appropriate enactment of the local legislative body that no beneficiary may be designated for the payment of any retirement allowance, pension or proceeds of a member of such retirement system if such beneficiary is not a resident of either the United States or Canada. If a beneficiary is designated who is neither a resident of the United States nor Canada, any contributions or retirement allowance which would have been paid to the beneficiary had the beneficiary been a resident of either the United States or Canada shall be deemed payable to the estate of the deceased member of such retirement system. The local legislative body of the city of the first class may also provide by appropriate enactment that if a death benefit would be payable because of the death of a member of the retirement system and the designated beneficiary of such death benefit is not a resident of either the United States or Canada, the death benefit which would have been paid had the designated beneficiary been a resident of either the United States or Canada, shall be deemed payable to the estate of the deceased member.

History: 1991 a 316

**66.81 Exemption of funds and benefits from taxation, execution and assignment.** All moneys and assets of any retirement system of any city of the first class and all benefits and allowances and every portion thereof, both before and after payment to any beneficiary, granted under any such retirement system shall be exempt from any state, county or municipal tax or from attachment or garnishment process, and shall not be seized, taken, detained or levied upon by virtue of any executions, or any process or proceeding whatsoever issued out of or by any court of

this state, for the payment and ratification in whole or in part of any debt, claim, damage, demand or judgment against any member of or beneficiary under any such retirement system, and no member of or beneficiary under any such retirement system shall have any right to assign any benefit or allowance, or any part thereof, either by way of mortgage or otherwise; however, this prohibition shall not apply to assignments made for the payment of insurance premiums. The exemption from taxation contained herein shall not apply with respect to any tax on income.

History: 1991 a 316

Although this section prohibits court order awarding portion of pension fund to nonemploye spouse, court may order employe spouse to make specific payout selection under the retirement plan. *Marriage of Lindsey v. Lindsey*, 140 W (2d) 684, 412 NW (2d) 132 (Ct. App. 1987).

**66.82 Investment of retirement funds in 1st class cities.** The board of any retirement system in a 1st class city, whose funds are independent of control by the investment board, shall have the power in addition to others provided to invest funds from the system, in excess of the amount of cash required for current operations, in loans, securities and any other investments authorized for investment of funds of the public employe trust fund under s. 25.17 (3) (a) and (4). The independent retirement system board shall be then subject to the conditions imposed on the investment board in making the investments under s. 25.17 (3) (e) to (g), (4), (7), (8) and (15) but is exempt from the operation of ch. 881. In addition to all other authority for the investment of funds granted to the board of any retirement system of a 1st class city whose funds are independent of the control of the investment board, the retirement system board of the city may invest its funds in accordance with s. 206.34, 1969 stats. In making investments under this section, the board of a retirement system of a 1st class city may invest in shares of investments authorized under this section.

History: 1971 c. 41 s 12; 1971 c. 260 s. 92 (4); 1981 c. 96; 1983 a. 283.

**66.88 Definitions.** In ss. 66.88 to 66.918:

(1) "Capital costs" means the cost of acquiring, purchasing, adding to, leasing, planning, designing, constructing, extending and improving all or any part of a sewerage system and of paying principal, interest or premiums on any indebtedness incurred for these purposes.

(2) "Combined sewer overflow abatement" means decreasing discharges of a combination of storm and sanitary wastewater or storm and industrial wastewater directly or indirectly to the waters of the state that occur when the volume of wastewater flow exceeds the transport capacity of a combined storm and sanitary sewer system.

(3) "Commission" means the metropolitan sewerage commission created under s. 66.882.

(4) "District" means the metropolitan sewerage district created under s. 66.882.

(5) "Interceptor sewer" means a sewer that:

(a) Is constructed, maintained and operated by the district;

(b) Is either a force main sanitary sewer with a diameter greater than 12 inches or a gravity flow sanitary sewer with a diameter greater than 24 inches; and

(c) Performs any of the following functions:

1. Receives and conveys sanitary sewage from a sanitary sewerage collection system directly or indirectly to a sewage treatment facility;

2. Temporarily collects and stores excessive sewage flow until existing treatment plant capacity is available.

(6) "Local sewer" means any sewer constructed, operated or maintained by any municipality. "Local sewer" does not include any sewer that has been incorporated into the sewerage system under s. 66.896 (2). If the classification of any sewer is unclear, the presumption shall be that the sewer is local.

(7) "Municipality" means any city, town, village, sanitary district organized under subch. IX of ch. 60 or metropolitan sewerage

district organized under ss. 66.20 to 66.26 that is located wholly or partially within the district or that contracts for services under s. 66.898.

(8) "Operating costs" means the costs of controlling, operating, managing or maintaining the sewerage system. "Operating costs" also includes replacement costs.

(9) "Replacement costs" means the costs of obtaining and installing equipment, accessories or appurtenances that are necessary during the service life of the district's sewerage system to maintain the capacity and performance for which the sewerage system was designed and constructed.

(10) "Sewerage service area" means the area of the district and the area for which service is provided by contract under s. 66.898.

(11) "Sewerage system" means all facilities of the district for collection, transportation, storage, pumping, treatment and final disposition of sewage. "Sewerage system" does not include any private sewage system, as defined in s. 145.01 (12), or any local sewer.

(12) "User" means any owner or occupant of any building or lot that is located within the sewerage service area and is furnished with sewerage service.

History: 1981 c. 282; 1983 a. 189 ss. 70, 329 (8); 1983 a. 532 s. 36.

NOTE: See ss. 62.175, 62.18 and 62.185 for other provisions relating to city sewers.

### 66.882 Establishing a district and a commission.

(1) ESTABLISHMENT BY RESOLUTION OR REORGANIZATION. (a) Except as provided in par. (b), a commission is established under ss. 66.88 to 66.918 if the common council of any 1st class city passes a resolution of necessity by a majority vote of the members—elect.

(b) 1. On April 27, 1982, each metropolitan sewerage district organized under s. 59.96, 1979 stats., is reorganized as a district under ss. 66.88 to 66.918 and a commission is created under ss. 66.88 to 66.918.

2. Commencing in 1983, the district reorganized under this paragraph shall, on or before November 1, annually pay or provide for the payment to any county obligated on account of bonds or bond anticipation notes issued on behalf of a district under s. 59.96 (7), 1979 stats., an amount sufficient to pay the interest and principal falling due in the succeeding year on the bonds and notes pursuant to the original terms of the bonds and notes. The county shall deposit amounts paid to it under this subdivision in the debt service funds for the bonds and notes established under s. 67.11. The county shall pay to the district any surplus in a debt service fund remaining after the bonds or notes for which the debt service fund was created are paid.

(2) COMPOSITION OF THE COMMISSION The commission is composed of 11 members, who are appointed as follows:

(a) Except as provided in s. 66.884 (7), the mayor of the 1st class city shall appoint 7 individuals as members of the commission, each of whom shall have his or her principal residence in the 1st class city. Three of the commissioners appointed under this paragraph shall be elected officials. Each commissioner appointed under this paragraph may take his or her seat immediately upon appointment, pending confirmation or rejection by a majority of the members—elect of the common council. An appointee whose confirmation is pending may act within the scope of authority of a commissioner until the mayor withdraws the appointment or the common council rejects the appointment, whichever is earlier. The mayor shall withdraw any appointment that the common council rejects and may only resubmit the appointment for confirmation after at least one subsequent appointment is rejected. For the purposes of this paragraph, "elected official" means:

1. The mayor of the 1st class city.
2. Members of the common council of the 1st class city.
3. Members of the county board of supervisors of the county in which the 1st class city is located who reside in the city.

4. State legislators who reside in the 1st class city.
5. The city attorney, comptroller or treasurer of the 1st class city.
6. Members of the board of school directors in charge of the public schools of the 1st class city.

(b) Except as provided in s. 66.884 (7), an executive council composed of the elected executive officer of each city, village and town that is wholly or partly within the boundaries of the district under s. 66.888 (1), except a 1st class city, shall appoint 4 members of the commission by a majority vote of the members of the executive council. Each of these members shall have his or her principal residence within the district but outside the 1st class city. Three of these members shall be elected officials. Each commissioner appointed under this paragraph may take his or her seat immediately upon appointment.

(c) The mayor and the executive council shall appoint the members of a commission that governs a district created under sub. (1) within 90 days after the passage of the resolution under sub. (1) (a) or within 90 days after the reorganization under sub. (1) (b).

History: 1981 c. 282; 1983 a. 27; 1983 a. 207 s. 93 (8).

**66.884 Commissioners.** (1) TERM (a) Except as provided in par. (b) and sub. (8):

1. Each commissioner appointed by the mayor of the 1st class city under s. 66.882 (2) (a) who is not an elected officer serves for a 3-year term or until a successor is appointed, whichever is later.

2. Each commissioner appointed by the mayor of the 1st class city under s. 66.882 (2) (a) who is an elected officer serves for a one-year term or until a successor is appointed, whichever is later.

3. Each commissioner appointed by the executive council under s. 66.882 (2) (b) serves for a 3-year term or until a successor is appointed, whichever is later.

(b) Each term commences on the 2nd Tuesday of July. No commissioner may serve more than 9 consecutive years.

(c) Of the initial commissioners who are not elected officers appointed by the mayor of the 1st class city under s. 66.882 (2) (a), one commissioner has a term of one year, one commissioner has a term of 2 years and 2 commissioners have a term of 3 years. One of the initial commissioners appointed by the executive council under s. 66.882 (2) (b) has a term of one year, one of the initial commissioners has a term of 2 years and 2 of the initial commissioners have terms of 3 years.

(2) SUCCESSORS The mayor shall appoint successors to commissioners appointed under s. 66.882 (2) (a) and the executive council shall appoint successors to commissioners appointed under s. 66.882 (2) (b), as provided in s. 66.882. Each successor shall be appointed at least 6 weeks before the expiration of the preceding commissioner's term.

(3) CHANGE OF RESIDENCE OR LOSS OF ELECTED STATUS Any commissioner appointed under s. 66.882 (2) (a) who moves his or her principal residence outside the 1st class city and any commissioner appointed under s. 66.882 (2) (b) who moves his or her principal residence outside the district or into the 1st class city shall resign. Any commissioner who is an elected official and who is not reelected or who otherwise leaves the elected office may serve not more than an additional 90 days after leaving office or until a successor is appointed, whichever occurs first.

(4) VACANCIES Vacancies occurring during the term of any commissioner shall be filled as provided under s. 66.882, but only for the balance of the unexpired term. All vacancies shall be filled within 90 days. The balance of the unexpired term constitutes one term for the commissioner appointed to fill the vacancy. A commissioner appointed to fill a vacancy may be reappointed for subsequent full terms, as provided in sub. (1) (a).

(5) OATH OF OFFICE Before assuming the duties of the office, each commissioner shall take and subscribe the oath of office required under s. 19.01 and file the oath with the secretary of state, duly certified by the official administering the oath.

(6) **EXPENSES; SALARY.** Each commissioner, including any commissioner who serves as a member of the legislature, shall receive actual and necessary expenses incurred while in the performance of the duties of the office and, in addition, shall receive a salary in an amount the commission specifies by resolution. Any change in salary after its initial establishment applies only to subsequently appointed or reappointed commissioners. The salary shall be paid at the time and in the same manner that the salaries of employees of the commission are paid.

(7) **REAPPORTIONMENT.** (a) Commencing in 1990, in the year immediately following the date when the federal decennial census of population becomes available in printed form, the commission shall reapportion the allocation of appointments between s. 66.882 (2) (a) and (b) to reflect as nearly as possible the proportionate populations within the district of the 1st class city and of the cities, villages and towns that are represented on the executive council. As part of its reapportionment the commission may increase the number of seats to not more than 13 and may decrease the number of seats to not less than 9.

(b) If the commission fails to reapportion itself under par. (a), any municipality, any aggrieved person or any county in which the district is initially created may petition the circuit court for the county in which the district is initially created for an order compelling reapportionment. After reasonable notice to the commission the court may order reapportionment.

(8) **REMOVAL FROM OFFICE.** Any commissioner appointed by the mayor under s. 66.882 (2) (a) may be removed by the mayor. Any commissioner appointed by the executive council under s. 66.882 (2) (b) may be removed by the same process as is used for appointment.

*History:* 1981 c. 282; 1987 a. 417

See note to 13.625, citing 78 Atty Gen. 149

**66.886 Commission; organization.** (1) **QUORUM.** Six commissioners constitute a quorum for the transaction of business. If after reapportionment under s. 66.884 (7) the number of commissioners is increased to 12 or 13, 7 commissioners constitute a quorum. If after reapportionment under s. 66.884 (7) the number of commissioners is reduced to 9 or 10, 5 commissioners constitute a quorum.

(2) **ACTION CONCERNING FINANCING FOR THE DISTRICT.** (a) Except as provided in par. (b):

1. No resolution adopted by the commission under s. 66.91 (1), (3) (c) or (6), 67.05 (1) or 67.12 (12), no schedule of charges under s. 66.076, 66.898 (4), 66.899 or 66.91 (5) (b) 3., no decision to borrow against taxes under s. 67.12 (1) and no decision to borrow under s. 24.61 (3) (a) 7. is valid unless adopted by an affirmative vote of at least a two-thirds majority of all commissioners.

2. No resolution adopted by the commission under s. 67.12 (1) (b) is valid unless adopted by an affirmative vote of at least a three-fourths majority of all commissioners.

(b) If one or more resolutions authorizing full financing of the capital budget adopted under s. 66.908 are not adopted on or before October 15 succeeding the annual adoption of the budget, the commission may by a vote of a simple majority of all commissioners annually levy taxes under s. 66.91 (6) (a) 4. or otherwise appropriate a sum from any source for the purpose of financing the capital budget. The total levy and appropriation may not exceed \$40,000,000.

(3) **CHAIRPERSON.** The commission shall elect one commissioner as chairperson of the commission, for a term specified by rule by the commission. The chairperson is removable at pleasure by the commission. The chairperson shall preside over the meetings of the commission and shall perform other duties imposed upon the chairperson by ss. 66.88 to 66.918 or assigned by the commission. The commission may also appoint a vice chairperson who may exercise the powers and shall perform the duties of the chairperson in the absence or disability of the chairperson.

(4) **SECRETARY.** The commission shall appoint a secretary who is not a member of the commission. The secretary is removable

at pleasure by the commission and shall receive the compensation the commission determines. The compensation shall be paid at the time and in the same manner that the salaries of other employees of the district are paid. The secretary shall maintain all records concerning the district and shall perform the other duties that are imposed upon the secretary by ss. 66.88 to 66.918 or that are assigned by the commission.

(5) **TREASURER.** The commission shall appoint a treasurer who shall oversee and be responsible for the receipt and disbursement of all money received by the district and for the investment of money received by the district.

(6) **RECORDS; MEETINGS.** All records of the commission are subject to subch. II of ch. 19. Subchapter V of ch. 19 governs all meetings of the commission.

(7) **ANNUAL AUDIT.** The commission shall annually audit the financial transactions of the district and shall include a summary of the audit in its annual report under sub. (9).

(8) **DEMAND AUDIT.** (a) On the demand of any municipality or county located wholly or partly within the boundaries of the district, the district shall request an audit by the public service commission of its books, records and practices. The district shall pay the costs of the audit. The audit shall determine the district's compliance with generally accepted accounting principles. The public service commission may contract with an auditing firm to perform the audit if the public service commission cannot complete a requested audit in a timely manner. Under no circumstances is the district subject to a further demand audit under this subsection until at least one year elapses from the date the report of the previous demand audit under this subsection is filed.

(b) Upon completion of the demand audit and receipt of the audit report, the district shall hold a public hearing within 45 days in the municipality or county that demanded the audit. The district shall arrange for summaries of the report to be made available for the hearing.

(9) **ANNUAL REPORT.** The commission shall prepare annually a full report of its official transactions and expenditures and shall mail the report to the governor, to the secretary of natural resources and to the governing body of each municipality.

*History:* 1981 c. 282, 391; 1983 a. 27; 1983 a. 207 s. 95; 1985 a. 29, 49; 1991 a. 39

**66.888 Boundary; name; corporate status.**

(1) **BOUNDARY.** (a) Except as provided in pars. (b) to (d), the initial boundary of the district is the boundary of the county in which the 1st class city is located.

(b) The initial boundary of a district created under s. 66.882 (1) (b) is the same as the boundary of the district created under s. 59.96 (5), 1979 stats.

(c) 1. The commission shall, by resolution, exclude areas from the district that it finds are not likely to receive sewerage service from the district within 25 years.

2. The commission may, by resolution, redefine the boundary of the district initially defined under sub. (1) (b) in accordance with subs. 3. to 5. If an area is likely to receive sewerage service from the district within 10 years, the area shall be included within each boundary redefined under this subdivision.

3. Within 90 days after all commissioners have been appointed under s. 66.882, the commission shall adopt rules concerning the factors to be considered in determining the redefined boundary of the district under subd. 2. The commission may also establish conditions by rule that shall apply if an area is not within the district after the boundary is redefined but is subsequently added to the district under par. (d). When adopting rules under this subdivision the commission shall consider, among other considerations:

a. The weight to be given to the need for private sewage systems, as defined in s. 145.01 (12), to maintain the public health and welfare in any area located within the district prior to a redefinition of the boundary but located outside the district after a redefinition of the boundary.

b. The weight to be given to the effects of excluding any area from the district by a redefinition of the boundary on property taxation of the area excluded, on the use of the area and on property taxation of the district as a whole.

c. The need to maintain the consistency of any redefined boundary of the district with a regional water quality management plan established or approved under ss. 144.025 and 147.25 or any facilities plan established and approved under s. 144.04.

d. The equity of providing similar treatment of properties located within a common drainage basin.

e. The weight to be given to plans approved by any municipality for expansion of its local sewers and for general development.

4. a. Within 45 days after adopting rules under subd. 3., the commission shall determine whether to redefine the boundary under subd. 2. Before the commission adopts a final resolution that would redefine the boundary, the commission shall first obtain the consent of the governing body of the city, village or town in which the area is located and shall hold a public hearing on the proposed resolution. The commission shall mail a notice that states the time and place of the hearing and is accompanied by a copy of the proposed resolution to the clerk of each municipality at least 30 days before the hearing. The commission shall also publish a copy of the notice and of the proposed resolution as a class 2 notice under ch. 985 within the district. The date of the first publication shall be at least 30 days prior to the date of the hearing. The proposed resolution shall contain the description by metes and bounds of each area to be affected by redefining the boundary.

b. Any area not included within the redefined boundary under subd. 1. or 2. ceases to be a part of the district for all purposes upon the filing of a certified copy of the resolution describing the area not within the district with the clerk of each county in which the district is located. The commission shall also record the resolution with the register of deeds for each county in which the district is located, and file a certified copy of the resolution with the clerk of each city, village and town in the district and with the department of natural resources.

5. The commission shall biennially review the redefinition of the boundary under subd. 4. a. If, after any biennial review, the commission finds that an area is likely to receive sewerage service from the district within the following 10 years, the commission shall redefine the boundary to include the area in the district. Additions to the district under this subdivision are not subject to par. (d).

(d) 1. The commission shall, by resolution, add any area to the district if all of the following conditions are met:

a. Sewage from the area to be added drains or may drain into any lake or into any river or stream flowing into a lake that is used or may be used as a source of drinking water for a municipality.

b. The commission has authorized the addition to the sewerage system of all facilities needed to treat and dispose of the sewage from the area to be added.

c. The municipality in which the area to be added is located requests that the commission add the area to the district.

d. Adding the area to the district is consistent with any regional water quality management plan.

2. Before the commission adopts a final resolution to add area to the district, the commission shall first obtain the consent of the governing body of the city, village or town in which the area is located and shall hold a public hearing on the proposed resolution. The commission shall mail a notice stating the time and place of the hearing along with a copy of the proposed resolution to the clerk of each municipality at least 30 days before the hearing. The commission shall also publish a copy of the notice and of the proposed resolution as a class 2 notice under ch. 985 within the district. The date of the first publication shall be at least 30 days prior to the date of the hearing. The proposed resolution shall contain the description by metes and bounds of each area to be added to the district.

3. Any area added to the district under this paragraph becomes a part of the district for all purposes upon the filing of a certified copy of the resolution describing the area being added with the clerk of each county in which the district is located. The commission shall also record the resolution with the register of deeds for each county in which the district is located, and file certified copies with the clerk of each city, village and town in the district and with the department of natural resources.

(2) NAME. (a) Except as provided in par. (b), the name of the district is the metropolitan sewerage district of the county or counties in which it is established.

(b) The name of a district created under s. 66.882 (1) (b) is the Milwaukee metropolitan sewerage district.

(3) CORPORATE STATUS. The district is a municipal body corporate that may enter into binding contracts and that may sue and be sued in its own name. The district is a special district under article XI, section 3, of the constitution.

History: 1981 c. 282; 1983 a. 189 s. 329 (8); 1983 a. 192; 1993 a. 301.  
Sec. 66.888 (1) (c) 2 to 5 is constitutional. *Brookfield v Milw Sewerage Dist*, 171 W (2d) 400, 491 NW (2d) 484 (1992)

**66.89 General duties of the commission.** Subject to ss. 66.88 to 66.918, the commission shall:

(1) SEWERAGE SYSTEM FUNCTIONS. Project, plan, design, construct, maintain and operate a sewerage system for the collection, transmission and disposal of all sewage and drainage of the sewerage service area including, either as an integrated or as a separate feature of the system, the collection, transmission and disposal of storm water and groundwater.

(2) COMBINED SEWER OVERFLOW ABATEMENT. Abate combined sewer overflows to the extent necessary to comply with federal or state law.

History: 1981 c. 282, 391.

**66.892 Local sewers. (1) DUTIES OF MUNICIPALITIES** (a) Each municipality shall construct, operate and maintain local sewers and appurtenant facilities and shall repair and rehabilitate local sewers and appurtenant local facilities.

(b) Except as provided in sub. (2), ss. 66.88 to 66.918 do not authorize the commission to operate, maintain, rehabilitate or preserve local sewers or appurtenant local facilities constructed by a municipality or to separate combined storm and sanitary sewers.

(c) This subsection does not prohibit the commission from operating, maintaining, rehabilitating or preserving its sewerage system.

(2) SEPARATING COMBINED SEWERS. (a) Except as provided in pars. (b) to (d) and subject to s. 144.04, no commission may separate combined storm and sanitary sewers.

(b) 1. If the commission undertakes abatement of combined sewer overflows, it shall use the most cost-effective method available.

2. If partial or complete separation of combined storm and sanitary sewers is the most cost-effective method of abating combined sewer overflows, the commission may separate the combined sewers.

3. If 2 or more methods of abating combined sewer overflows are approximately equally cost-effective, the commission shall select the method of abatement that involves separating the fewest linear feet of combined storm and sanitary sewers.

(c) If separation of a combined storm and sanitary sewer is authorized under par. (b), the commission shall adopt an authorizing resolution before commencing the separation. The resolution shall include a statement that any person aggrieved may petition for judicial review under par. (d). Before adopting the resolution, the commission shall first obtain the consent of the governing body of the city, village or town in which the combined storm and sanitary sewer is located and shall hold a public hearing on the proposed resolution. The commission shall mail a notice that states the time and place of the hearing and is accompanied by a copy of the proposed resolution to the clerk of each municipi-



pality at least 30 days before the hearing. The notice shall include a statement that judicial review of the commission's decision is available, as provided in par. (d). The commission shall also publish a copy of the notice and the proposed resolution as a class 2 notice under ch. 985 within the district. The date of the first publication shall be at least 30 days prior to the date of the hearing.

(d) Any person aggrieved by the decision of the commission to separate a combined storm and sanitary sewer may file a petition for judicial review in the circuit court for the county in which the district is located. Nothing in this paragraph affects any review under s. 144.04.

History: 1981 c. 282, 391.

**66.894 Sewerage construction, operation and maintenance.** (1) GENERAL POWERS OF THE COMMISSION. To the extent necessary to carry out its duties under s. 66.89, the commission may project, plan, design, adopt, construct, operate and maintain:

(a) District, interceptor and outfall sewers.

(b) Conduits, drains and pumping and other plants for the collection and transmission of residential, industrial and other sanitary sewage from local sewers to and into the interceptor sewers of the district.

(c) Facilities for the treatment and disposal of sewage transmitted into the interceptor sewers of the district.

(d) Pumping stations and tunnels for the purpose of flushing any of the rivers flowing through the district.

(e) Storm sewers and other facilities and structures for the collection and transmission of storm water and groundwater.

(f) Buildings, structures and facilities appurtenant to structures authorized under pars. (a) to (e).

(2) RIVER AND LAKE BEDS. (a) Except as provided in par. (b), the commission may lay, construct and maintain, without compensation to the state, any part of the sewerage system or of its works or appurtenances over, upon or under any part of the bed of any river or its branches flowing through the district, or of any land that has not been the subject of a state lake bed grant to a county in which a 1st class city is located and that is covered by any of the outlying waters, as defined in s. 29.01 (11).

(b) Nothing in ss. 66.88 to 66.918 authorizes the commission to lay or construct any part of the sewerage system after April 27, 1982, over, upon or under any land covered by any outlying waters, as defined in s. 29.01 (11), unless the commission first obtains the prior consent of both houses of the legislature and the governor.

(3) WATERWAYS. The commission may lay, construct and maintain any part of the sewerage system over, upon or under canals or other waterways.

(4) DELIVERY OF DEEDS; DNR PERMITS. Upon application of the commission the proper officers of this state shall execute, acknowledge and deliver to the proper officers of the district any deed or other instrument as may be proper for the purpose of fully confirming the grants under subs. (2) and (3). Notwithstanding s. 30.05, the district may not commence an action under sub. (2) or (3) without obtaining all of the necessary permits from the department of natural resources under ch. 30.

(5) COMPLIANCE WITH LOCAL ZONING; DEVIATIONS. (a) In its actions under ss. 66.88 to 66.918, the commission shall comply with local zoning and land use ordinances unless it finds that, in carrying out its responsibilities under ss. 66.88 to 66.918, deviation from these ordinances meets the test of public necessity, as that term is used for the purposes of ch. 32. The commission may only make determinations of public necessity by resolution. This paragraph does not authorize the commission to deviate from floodplain or shoreland zoning ordinances.

(b) If the commission makes a determination of public necessity to deviate from a local zoning or land use ordinance, it shall serve a copy of the resolution by certified mail upon the clerk of the municipality whose ordinance is involved, including a state-

ment that judicial review is available only for 90 days. Any aggrieved person may commence an action in the circuit court of the county in which the municipality is located to challenge the commission's determination within 90 days from the date of postmark. Any action under this paragraph shall name the district as a defendant. An action under this paragraph is the only manner by which the commission's determination of public necessity for deviating from such an ordinance may be challenged. The circuit court shall give precedence to a trial of the issues raised in such an action over all other actions not then on trial in the court. Failure to commence an action within 90 days from the date of postmark bars the raising of any objection by any person to the commission's determination of public necessity. This subsection does not limit any proceeding under s. 32.05.

(6) REMOVING OBSTRUCTIONS. (a) The commission may require that any owner of any building, structure or other physical obstruction in, over or under the public lands, avenues, streets, alleys or highways in the district that blocks or impedes the construction, operation or maintenance of the sewerage system, upon reasonable notice by the commission, promptly shift, adjust, accommodate or remove the obstructions as needed to permit the commission to carry out its responsibilities. The district shall pay 50% of the owner's costs of complying with this subsection.

(b) If the owner fails after reasonable notice to discharge any duty imposed under par. (a) the owner may, in addition to any other available remedy or remedies, be fined \$100 for each offense plus an additional \$50 for each day that the owner's failure continues.

(c) This subsection also applies to any building, structure or other physical obstruction in, over or under the public highways of any county of this state into which the sewerage system extends.

(7) ROAD ALTERATIONS AND TRAFFIC CONTROL. The commission may excavate in or otherwise alter any state, county or municipal street, road, alley or public highway in the district for the purpose of constructing, maintaining and operating the sewerage system or to construct in the street, road, alley or public highway an interceptor or district sewer or any appurtenance thereof, without providing a bond. The commission shall notify the public authority that controls the street, road, alley or public highway at least 45 days prior to the date the commission intends to advertise for bids as to the location where the excavation or alteration will take place. The public authority shall prepare a reasonable traffic control plan and provide the plan to the commission within 30 days after receiving the notice. The commission shall pay a reasonable fee for development of the plan and shall include the plan in its bidding documents. The commission shall pay the costs of implementing the traffic control plan during the period of construction. Upon completing the work the commission shall restore the street, road, alley or public highway at its own expense to a condition as good as or better than existed before the commencement of the work.

(8) RIVER AND STREAM ALTERATIONS. (a) Subject to s. 30.20 and to any applicable rule of the department of natural resources, the commission may improve any river or stream within the district by deepening, widening or otherwise changing it as the commission finds necessary in order to carry off surface or drainage water.

(b) The commission may make improvements outside the district of any river or stream that flows from within the district to a point outside the district. The commission may contract with any governmental body that owns or controls any lands through which such a river or stream flows for the payment of that part of the cost of the improvement in the territory governed by the body that is wholly or partially outside the district.

(9) WATER DIVERSION. (a) Within the district, the commission may divert storm water, groundwater and water from lakes, rivers or streams into drains, conduits or storm sewers but no surplus waters or floodwaters shall be diverted or bypassed into any lake, river or stream in another watershed. Before diverting water from

any lake, river or stream into an enclosed drain, conduit or storm sewer or similar structure, the commission shall comply with pars. (b) and (c).

(b) The commission shall apply to the department of natural resources for a permit for the diversion. Upon receipt of an application for a permit, the department shall fix a time, not more than 8 weeks after receiving the application, and a convenient place for a public hearing on the application. The department shall notify the commission of the time and place and the commission shall publish a notice of the time and place of the hearing once each week for 3 successive weeks before the hearing in at least one newspaper designated by the department of natural resources and published in the district.

(c) In addition to the publication required under par. (b) the commission, not less than 20 days prior to the hearing, shall mail a notice of the hearing to every person who has recorded an interest in any lands that are likely to be affected by the proposed diversion and whose post-office address can be ascertained by due diligence. The notice shall specify the time and place of the hearing, shall be accompanied by a general statement of the nature of the application and shall be forwarded to these persons by registered mail in a sealed and postpaid envelope properly addressed. The commission shall file proof of the publication and mailing of notice with the department of natural resources. At the hearing or any adjournment thereof, the department of natural resources shall consider the application and shall take evidence offered by the commission and other persons in support of or in opposition to the application. The department may require that the application be amended. If the department finds after the hearing that the application is in the public interest, will not violate public rights and will not pose an unreasonable risk to life, health or property, the department shall issue a permit to the commission.

(10) **PRELIMINARY WORK.** The commission may make all preliminary investigations and perform all preliminary work as should, in the commission's judgment, precede the actual projection, construction and establishment of the sewerage system.

(11) **EXAMINATIONS AND TESTS.** (a) The commission may enter upon any land or water in the district for the purpose of making examinations, test borings, tests or surveys in the performance of its responsibilities under ss. 66.88 to 66.918. The commission shall compensate for damage caused by its examinations, test borings, tests or surveys. The commission may examine any sewer or sewerage system to determine if the sewer or sewerage system is defective in operation, construction, design or supervision.

(b) Except as provided in par. (c), prior to entry onto land under this subsection the district shall obtain the consent of the owner.

(c) If the consent of the owner cannot be obtained, the district shall obtain a special entry warrant prior to entry onto the land. To obtain a special entry warrant, the district shall petition the circuit court for the county in which the land to be entered is located and shall mail a copy of the petition by registered mail to the owner's last-known address, if any. If the court determines that entry onto the land is reasonably related to the performance of the district's responsibilities under ss. 66.88 to 66.918, the court shall issue the warrant on the district's affidavit that the district intends to enter the land under this subsection, that the district has mailed, at least 5 days prior to the affidavit, a copy of the petition for the warrant to the owner as required in this paragraph and that the district has been otherwise unable to obtain the owner's consent.

(12) **DISPOSAL OF TREATED SEWAGE.** Subject to any applicable rule of the department of natural resources, the commission may dispose of treated sewage by commercial or charitable means and may expend an amount reasonably necessary for this purpose.

(13) **LABORATORY TESTING.** The commission may operate laboratory facilities for testing sewage for any municipality or user, but may not require that any municipality or user use these facilities.

(14) **SHORE PROTECTION PROJECTS.** (a) In this subsection:

1. "Political subdivision" means a county, city, village or town.

2. "Project" means a shore protection or erosion control project which consists, in whole or in part, of waste rock produced by construction projects undertaken by the commission and which has been requested, by resolution, by a political subdivision with territory in the district's service area.

(b) The commission may construct a project. This paragraph does not apply to the construction of any project on or after January 1, 1992.

(c) Prior to construction of a project under this subsection, the commission and the political subdivision requesting the project shall obtain all necessary permits and approvals from the state and from any governmental unit with jurisdiction of the area where the project is proposed to be located. If the project is proposed to be located on an area of lake bed the title of which has been granted by the state to a political subdivision, the commission may not construct the project unless that political subdivision approves the location of the project.

(d) 1. The commission shall pay for the portion of the cost of a project constructed by the commission under this subsection which equals the difference between the cost of disposing of the waste rock at a disposal site which is approved by the department of natural resources and which is outside of the district's service area and the cost of disposing of the waste rock in the project.

2. If the cost of a project exceeds the amount paid by the commission under subd. 1., the political subdivision which requests the project shall pay 15% of the excess cost or \$300,000, whichever is less, and the commission shall pay the remainder, except as provided under subd. 3.

3. The commission may not pay under subd. 2. a total of more than \$2,690,000 for all projects constructed under this subsection.

4. A political subdivision which requests a project under this subsection may not charge the commission a fee for disposing of the waste rock in the project.

(e) If water no more than 300 feet in distance separates a completed project from the shore, the political subdivision which requests the project shall construct facilities to provide pedestrian access between the completed project and the shore.

(f) The political subdivision which holds title to the lake bed on which a project is constructed by the commission under this subsection holds title to that project and is responsible for any maintenance required after the project is completed. The commission may not make any claim relating to an ownership interest in that project.

(g) Paragraphs (d) to (f) do not apply to any project which includes a solid waste disposal facility which requires an operating license under s. 144.44 (4).

History: 1981 c. 282, 391; 1983 a. 27 s. 2202 (38); 1985 a. 187; 1987 a. 130; 1989 a. 366.

#### 66.896 Connections to the sewerage system.

(1) **APPROVAL OF THE COMMISSION.** The commission may approve or disapprove any connection with or use of the sewerage system by any town, city or village or by any private person or corporation. The commission shall examine proposed connections or uses and shall hear all the parties in interest. If the commission finds that any sewer connected or to be connected to the sewerage system is defective in construction, design, supervision or operation, the commission may not permit any connection to be made or continued until the alterations, new construction and changes in supervision or operation required by the commission have been made.

(2) **INCORPORATION OR USE OF EXISTING SEWERS.** (a) The commission may temporarily use any public sewer or drain, including any storm sewer or drain, in the district for the purposes of ss. 66.88 to 66.918. The commission may incorporate with the sewerage system for use as an outfall sewer into a channeled water-

course or as an interceptor sewer any public sewer or drain, including any storm sewer or drain, and any of their appurtenances, either in their existing condition or with repairs or modifications as the commission may determine. The commission may condemn, close up, abolish, destroy, alter the functions or increase the flow of any of those public sewers and drains incorporated with the sewerage system as it deems necessary to carry out the purposes of ss. 66.88 to 66.918. If the commission decides to incorporate or utilize a sewer or drain under this subsection, it shall use the procedures specified in par. (b).

(b) The commission shall act under par. (a) by resolution. Before the commission adopts a final resolution to incorporate or utilize a sewer or drain, the commission shall first obtain the consent of the governing body of the city, village or town in which the sewer or drain is located and shall hold a public hearing on the proposed resolution. The commission shall mail a notice that states the time and place of the hearing and is accompanied by a copy of the proposed resolution to the clerk of each municipality at least 30 days before the hearing. The commission shall also publish a copy of the notice and of the proposed resolution as a class 2 notice under ch. 985 within the district. The date of the first publication shall be at least 30 days prior to the date of the hearing.

(3) **POWER TO REQUIRE CONNECTION** The commission may compel any owner or occupant of any premises located along the line of any interceptor sewer or along the line of any sewer of a municipality that is discharging sewage, refuse or industrial wastes of any kind into any river or canal within the drainage area of the district to change or rebuild any outlet, drain or sewer so as to discharge all the sewage, refuse or industrial wastes into the sewers of the town, city or village or into the district's interceptor sewer under rules adopted by the commission under s. 66.902.

*History:* 1981 c. 282, 391

**66.898 Contract sewerage service.** (1) **GENERAL POWER OF THE COMMISSION.** Subject to subs. (2) to (6), the commission may contract with any city, town, village, sanitary district organized under subch. IX of ch. 60 or metropolitan sewerage district organized under ss. 66.20 to 66.26 wholly or partially outside the boundaries of the district, but wholly or partially within the same general drainage area as the district for the transmission, treatment or disposal of sewage from any territory located in the city, town, village, sanitary district or metropolitan sewerage district. Each contract executed under this section shall specify the terms of payment of sewerage service charges by the contracting party.

(2) **PRIOR APPROVALS.** Before permitting any city, town, village, sanitary district or metropolitan sewerage district to connect its sewers with or use any of the district's interceptor sewers under this section, the sewers shall be approved as provided in s. 66.896 (1). The governing body of the city, town, village, sanitary district or metropolitan sewerage district may enter into a contract under this section only by a vote of three-fourths of its members.

(3) **SERVICE CHARGES FOR OPERATION AND MAINTENANCE.** As part of any contract executed under this section, the commission may assess reasonable and just sewerage service charges against the contracting party with respect to operating and maintenance costs. These charges shall be established in accordance with s. 66.912 and are subject to review under s. 66.912. The schedule of service charges may, but need not, be uniform with any other schedule of charges established by the commission.

(4) **SERVICE CHARGES FOR CAPITAL COSTS** (a) As part of any contract executed under this section, the commission may assess reasonable and just sewerage service charges against the contracting party with respect to capital costs. These sewerage service charges are subject to review under s. 66.912. The schedule of sewerage service charges with respect to capital costs used in contracts executed under this section shall be uniform with the system used to recover capital costs within the district.

(b) Except as provided in par. (c), the charges assessed under this subsection shall be established in accordance with s. 66.076

or 66.91 (5). In computing the schedule of charges under this subsection, the commission may consider the factors specified in s. 66.076 (5) or 66.91 (5). In computing the schedule of charges under this subsection, the commission may also consider the fact that sewerage service may not be available to or may be available to but not utilized by a part of the property located within the territorial limits of a contracting party at the time of computing the schedule.

(c) If the commission adopts a system with respect to capital costs within the district on the basis of the value of the property in the area to be served, as equalized under s. 70.57, the commission shall adopt a system of sewerage service charges with respect to capital costs used in contracts executed under this section that shall equal the amount the commission would be able to levy as taxes upon the area to be served by the contract, if the area was within the district boundary.

(5) **PAYMENT OF ASSESSED CHARGES** (a) Any city, town, village, sanitary district organized under subch. IX of ch. 60 or metropolitan sewerage district organized under ss. 66.20 to 66.26 that contracts under this subsection may provide for the payment of charges from any available source, including:

1. Tax levy.
2. Assessments upon and assessments of charges against the whole city, town, village, sanitary district organized under subch. IX of ch. 60 or metropolitan sewerage district organized under ss. 66.20 to 66.26 or upon or against any part thereof that the governing body determines to be benefited by the service.
3. Borrowing under s. 67.12 (12).
4. Disbursements from the general fund.
5. The proceeds of a sales tax.
6. The proceeds of its own schedule of service charges. The schedule of these charges may, but need not, be uniform with any schedule of charges established by the commission.

(b) A deficiency in the source of funds for payment does not relieve the contracting party of liability for failure to pay the commission in full at the time provided in the contract.

(6) **INTEREST ON LATE PAYMENTS** Contracts executed under this section may provide for interest on late payments.

*History:* 1981 c. 282, 391; 1983 a. 27; 1983 a. 532 s. 36

Sub (4) (c) is unconstitutional because passed in violation of Art. IV, s. 18, Wis. Const. *Brookfield v. Milw. Sewerage*, 144 W (2d) 896, 426 NW (2d) 591 (1988)

**66.899 Noncontractual sewerage service.** (1) Notwithstanding ss. 66.076 and 66.91 (5), if the commission establishes a system to recover capital costs within the district on the basis of the value of property in the area to be served, as equalized under s. 70.57, the commission shall establish a system of sewerage service charges to recover capital costs which shall be used with respect to any area which is served by the district and which is outside the boundaries of the district and outside of any municipality which has contracted with the district under s. 66.898. The charges shall be equal to the amount the commission would be authorized to levy as taxes upon the area served if the area were within the district's boundaries.

(2) Any charge made by the district under this section is reviewable under s. 66.912 (5) if the charge has been paid.

(3) Section 66.91 (5) (b) and (d) apply to charges assessed under this section.

(4) The commission may charge municipalities assessed under this section reasonable interest for late payments.

*History:* 1985 a. 29

This section is unconstitutional because passed in violation of Art. IV, s. 18, Wis. Const. *Brookfield v. Milw. Sewerage*, 144 W (2d) 896, 426 NW (2d) 591 (1988)

**66.90 Acquisition of property.** (1) **GENERAL POWER OF THE COMMISSION.** The commission may acquire by gift, purchase, lease or other methods of acquisition or by condemnation, any real property situated in the state and all tenements, hereditaments and appurtenances belonging or in any way appertaining to, or in any interest, franchise, easement, right or privilege therein, that may be needed for the purpose of projecting, planning, constructing

and maintaining the sewerage system, that may be needed for the collection, transmission or disposal of all sewage or drainage of the district or that may be needed for improving any river or stream within the district under s. 66.894 (8) (a) or (b).

(2) **ALTERING STREAMS OVER PRIVATE LANDS** No stream over private lands may be altered unless the commission acquires the lands under sub. (1) or unless the governing body of the village, town or city in which the stream is located approves the proposed alteration.

(3) **CONDEMNATION** Section 32.05 controls the process of condemnation under this section. The commission shall establish the public necessity for any acquisition by condemnation.

(4) **CONVEYANCE OF PROPERTY ACQUIRED** All property, real or personal, acquired by the commission shall be taken for the benefit of and shall belong to the district. The commission may convey any part of its interest in real or personal property it has acquired that is not needed to carry out the powers and duties of the commission.

History: 1981 c. 282, 391

### 66.902 Rules; special orders; special use permits.

(1) **GENERAL RULE-MAKING AUTHORITY** (a) The commission may adopt the rules both necessary and proper to promote the best results from the construction, operation and maintenance of the sewerage system, to prevent damage to the sewerage system from misuse, injury to employees, surcharging all or part of the sewerage system or interference with the process of sewage treatment or disposal or to comply with federal or state pretreatment requirements. Such rules are applicable to all users. The rules may, without limitation by enumeration:

1. Prohibit discharge into the sewerage system, either directly or indirectly, of any liquid, gaseous or solid waste deemed detrimental to the sewerage system, to the commission's employees or to the process of sewage treatment or disposal.

2. Prescribe the conditions upon which wastes may be discharged.

3. Prescribe standards of sewer design, construction, operation, alteration and maintenance applicable to any sewerage system connecting with or using the sewerage system and the conditions upon and the manner in which connections to interceptor sewers and replacement of existing district sewers shall be made.

4. Prohibit or restrict discharge into the sewerage system of the district's service area of any substance if the discharge of that substance would do any of the following:

a. Interfere with the district's ability to meet its obligations under a pollution discharge elimination permit or general permit issued under s. 147.02 or 147.023, or under an air pollution control permit issued under subch. III of ch. 144.

b. Interfere with the marketing of treated sewage sludge by the district.

(b) The rules shall apply throughout the territory served by the sewerage system and, except as provided in s. 66.894 (5), shall have precedence over any conflicting ordinance, code or regulation of or permit issued by any municipality within the territory.

(c) The commission may adopt, amend or repeal a rule only after notice and public hearing, except that if the preservation of the public health, safety or welfare necessitates putting a rule into effect immediately, the commission may adopt any rule as an emergency rule. An emergency rule is effective for a period of 120 days after the date of adoption unless the commission specifies a shorter period of effectiveness. If the problem that necessitates adopting an emergency rule continues beyond 120 days the commission shall, after providing notice and a hearing, adopt a rule to deal with the problem. Except in the case of an emergency rule, the commission shall publish a notice of the hearing on a proposed rule that includes an informative summary of the proposed rule and specifies the time and place of the hearing at least 30 days prior to the hearing in a newspaper of general circulation in the district. The notice shall also include a statement that judicial

review of a rule is available, as provided in par. (d). The commission shall also mail a similar notice to the clerk of each municipality at least 30 days prior to the hearing. The commission shall identify and take all other steps, if any, that it determines are necessary to convey effective notice to persons who are likely to have an interest in the proposed rule making. Failure of any person to receive notice of a hearing on proposed rule making is not grounds for invalidating the resulting rule if notice of the hearing was published and mailed as provided in this paragraph. Insofar as applicable, s. 227.18 governs the conduct of the hearings. A rule adopted by the commission takes effect upon its publication in a newspaper of general circulation in the district.

(d) Except as provided in s. 227.40 (2), the exclusive means of judicial review of the validity of a rule is an action for declaratory judgment as to the validity of the rule brought in the circuit court for the county in which the district is located or for the county in which the plaintiff resides. Upon the motion of any party the court may change the place of the trial under s. 801.52. If 2 or more petitions for review of the same rule are filed in different counties, the circuit court for the county in which a petition for review of a rule was first filed shall determine the venue for judicial review of the rule, to order transfer or consolidation where appropriate. The summons in the action for review shall be served by delivering a copy to the chairperson or secretary of the commission. The court shall render a declaratory judgment in the action only when it appears from the evidence presented that the rule or its threatened application unlawfully interferes with or impairs, or threatens to interfere with or impair, the rights and privileges of the plaintiff. A declaratory judgment may be rendered whether or not the plaintiff has first requested the commission to pass upon the validity of the rule in question. Insofar as applicable, s. 227.40 (2), (3) and (4) govern any declaratory judgment proceeding under this paragraph.

(e) If any person fails to comply with a rule of the district, the district may obtain an injunction under s. 823.02 or the district may initiate an action for the civil remedies under s. 147.21 (2) or (5). If the district acts under s. 147.21 (2) or (5), the district may recover the forfeiture in a civil action brought by the commission in the name of the district. Collected forfeitures shall be paid into the district's general fund. The forfeiture is in addition to and does not substitute for any damages recoverable by the commission.

(2) **SPECIAL ORDERS** (a) The commission may issue special orders in the name of the district directing compliance with the rules of the district within a specified time. All special orders shall be in writing and shall specifically state the action by the user that is required to comply with the order. Service of any special order may be made in the manner provided for service of a summons under s. 801.11. The commission may designate commission employees to issue special orders in the name of the district in an emergency to prevent damage to the sewerage system from misuse, injury to employees, interference with the process of sewage treatment or disposal or substantial risk to the public health and welfare. Special orders are effective and enforceable upon service, unless the commission specifies a later effective date in the special order or agrees to a different effective date.

(b) Any person aggrieved by a special order of the district that directly affects the rights or duties of the person may secure a review of the necessity for and reasonableness of the order by filing with the commission, within 30 days after service of the special order, a verified petition specifying the person's objections to the order or the modification desired in the order. Upon receipt of the petition, the commission shall order a public hearing on the petition and make any further investigations it determines advisable. Insofar as applicable, ss. 227.44 (6), (7) and (8) and 227.45 to 227.48 govern the proceeding. The determination of the commission upon any petition is subject to review in a proceeding, brought within 30 days after service of notice of the final determination, in the circuit court of the county in which the district is located or of the county in which the plaintiff resides. Insofar as

applicable, ss. 227.52 to 227.58 govern any proceeding for judicial review under this paragraph.

(c) If the commission does not stay compliance and a person fails to comply with a special order of the district within the time specified, or if a person fails to begin in good faith to obey, the person is creating a public nuisance enjoined under s. 823.02. The district may also initiate an action for the civil remedies under s. 147.21 (2) or (5). If the district acts under s. 147.21 (2) or (5), the forfeiture may be recovered by the district in a civil action brought by the commission in the name of the district. Collected forfeitures shall be paid into the district's general fund. The forfeiture is in addition to and does not substitute for any damages recoverable by the commission.

(3) **SPECIAL USE PERMITS** The commission may issue permits for the special use of the sewerage system to private persons, firms or corporations for the transmission and disposal of any liquid, gaseous or solid waste determined to be not detrimental to the sewerage system, to its employees or to the process of sewage treatment, upon terms and conditions specified by the commission. The commission may prescribe and collect an annual fee not to exceed \$500 for any permit for special use. The permit is revocable by the commission summarily for violation of the terms or conditions of the permit. A holder of the permit does not acquire any vested right or privilege by being issued a special use permit under this subsection. Any private person, firm or corporation using the sewerage system without a permit for a use for which a permit may be issued under this subsection, or continuing to use the sewerage system after notice of revocation of the permit, shall forfeit to the district not more than \$500 for each violation. The forfeiture may be recovered by the district in a civil action brought by the commission in the name of the district. Collected forfeitures shall be paid into the general fund of the district.

(4) **HEARINGS; DESIGNATED REPRESENTATIVES** The commission may designate representatives to conduct any hearings required under this section and, except as provided in s. 227.46 (5), may designate any member or employe of the commission for that purpose. If more than one person is designated, the commission shall specify the presiding officer for the hearing. All testimony or other evidence taken; appearances for and against the matter involved and a summary of the arguments of all parties shall be reported to the commission in the manner the commission prescribes.

(6) **COMBINED SEWER OVERFLOW ABATEMENT** The commission shall not establish by rule or enforce by special order or other means a duty on the part of any municipality to abate combined sewer overflows.

**History:** 1981 c. 282, 391; 1983 a. 228 s. 16; 1985 a. 29; 1985 a. 182 s. 57; 1989 a. 337, 336.

**66.904 Contracts. (1) GENERAL POWERS OF THE COMMISSION.** The commission may enter into contracts, agreements or stipulations necessary to perform its duties and exercise its powers under ss. 66.88 to 66.918, including contracts to purchase, lease or otherwise obtain the use of all necessary equipment, supplies and labor.

(2) **BIDDING REQUIREMENTS** (a) Except as provided in par. (b), all work done and all purchases of supplies and materials by the commission shall be by contract awarded to the lowest responsible bidder complying with the invitation to bid, if the work or purchase involves an expenditure of \$7,500 or more. If the commission decides to proceed with construction of any sewer after plans and specifications for the sewer are completed and approved by the commission and by the department of natural resources under ch. 144, the commission shall advertise by a class 2 notice under ch. 985 for construction bids. All contracts and the awarding of contracts are subject to s. 66.29.

(b) The commission may purchase without public advertisement or competitive bidding if the article, appliance, apparatus, material or process to be purchased is patented or made or manufactured by one party only or if damage or threatened damage to

the sewerage system creates an emergency in which public health or welfare is endangered.

(c) The commission shall accept the bid of the person who it finds is the lowest responsible bidder complying with the invitation to bid for the contract unless it rejects all bids or relets the contract.

(cm) 1. Except as provided under subd. 4., in determining the lowest responsible bid for any contract awarded prior to December 31, 1993, the commission may evaluate the multiplier effect on state revenues and tax receipts of contract moneys which will be spent in this state under the contract. The commission shall promulgate by rule any condition and evaluation criterion which it applies to a bid evaluated under this subdivision. If the commission accepts a bid evaluated under this subdivision, it shall file with the secretary of the commission a written report detailing the reasons for its acceptance. The secretary shall make the report available for public inspection. The commission shall include in the annual report prepared under s. 66.886 (9) a summary of all bids accepted after an evaluation under this subdivision.

2. In determining the lowest responsible bid for any contract awarded under this subsection, the commission may use life-cycle cost estimates as part of any evaluation under this subdivision, including the applicable costs of energy efficiency, acquisition and conversion, money, transportation, warehousing and distribution, training, operation and maintenance and disposition or resale.

3. The commission shall include in any advertisement for bids which it intends to evaluate under this paragraph notice of the conditions and evaluation criteria which it intends to apply to the bids.

4. This paragraph does not apply to any contract financed in whole or in part by federal funding if any condition of the funding prohibits acceptance of a bid based on the type of evaluation authorized under this paragraph.

5. Notwithstanding any other provision of law, this state may not deem any contract awarded by the commission under this paragraph ineligible for funding by this state because the dollar amount of the contract awarded by the commission is higher than the lowest dollar bid received by the commission.

(d) Notwithstanding pars. (a) to (c) and in addition to any rights the commission may have under the provisions of the contract, the commission may amend any contract let under par. (a) with the agreement of the contractor, upon making the following findings:

1. The proposed amendment results in a reduction of the total contract price.

2. The changes do not substantially change the general scope or purpose of the contract work.

(e) Paragraphs (a) to (d) do not apply to contracts awarded under s. 66.905.

(3) **BID DEPOSITS; CONTRACT PROVISIONS.** (a) The commission may permit or require a sum of money or a certified check payable to the order of the district or a bond for the benefit of the district to be filed with any bid or proposal as liquidated damages in an amount that, in the judgment of the commission, will protect the district from any loss if the bid is accepted, the contract is awarded to the bidder and the bidder fails to execute a contract in accordance with the terms of the bid.

(b) Every contract made by the commission shall contain an agreement on the part of the contractor and the contractor's sureties requiring the contractor to pay to the district:

1. Actual damages if the contractor breaches the contract; or

2. Liquidated damages in a definite sum, to be named in the contract, for each day's delay in completing the contract after the time specified for its completion. The daily sum shall be an amount that, in the judgment of the commission, will protect the district from loss and will ensure the prompt completion of the contract.



(c) The commission may require any construction contract and any other contract specified by the commission's executive director to include a bond, which shall guarantee one of the following:

1. The full performance of the contract by the contractor to the satisfaction of the commission, according to the plans and specifications of the commission.

2. The full payment by the prime contractor of all claims for labor performed and materials furnished or used under the contract.

(4) **DAY LABOR.** The commission may use day labor to do any work if the executive director of the district in writing so recommends. All bids or part of a bid for any such work, supplies or materials may be rejected by the commission or may be subsequently relet.

(5) **WORKER'S COMPENSATION.** The commission may require that all contracts be let subject to ch. 102.

**History:** 1981 c. 282, 391; 1985 a. 29.

Where mistake of omission in bid was not material and quickly cured, award to bidder was proper. *Dillingham Const. v. Milwaukee Metro. Sewerage Dist.* 629 F. Supp. 406 (1986)

### 66.905 Minority business development and training program. (1) DEFINITIONS. In this section:

(a) "Minority business" means a sole proprietorship, partnership, limited liability company, joint venture or corporation that is at least 51% owned and controlled by one or more minority group members and that is engaged in construction or construction-related activities.

(b) "Minority group member" has the meaning given under s. 560.036 (1) (f).

(2) **PROGRAM CREATED.** (a) From the amounts allocated for purposes of this section under s. 20.866 (2) (to), the district shall fund a development and training program for the purpose of developing the capability of minority businesses to participate in construction and construction-related projects funded under the combined sewer overflow abatement program under s. 144.242.

(b) From the amounts allocated for purposes of this section under s. 20.866 (2) (tc), the district shall fund a development and training program for the purpose of developing the capability of minority businesses to participate in construction and construction-related projects funded under the clean water fund program under ss. 144.241 and 144.2415.

(c) The district may implement the training programs under pars. (a) and (b) directly, or may contract under this section for the implementation of these training programs.

(3) **REQUEST FOR PROPOSALS.** The executive director shall request proposals for prime contracts from bondable general contractors or construction contractors that are bona fide independent minority businesses. Each proposal submitted shall include all of the following conditions:

(a) A goal that at least 25% of the total number of workers in all construction trades employed on the project will be minority group members.

(b) A subcontracting plan that provides sufficient detail to enable the executive director to determine that the prime contractor has made or will make a good faith effort to award at least 20% of the total contract amount to bona fide independent minority business subcontractors.

(4) **DETERMINATIONS BY EXECUTIVE DIRECTOR.** (a) In determining whether a business is a bona fide minority business, the executive director shall take into consideration all of the following:

1. Whether the ownership and control of the business by minority group members is real, substantial and continuing.

2. Whether the minority owners enjoy the customary incidents of ownership and share the risks and profits to an extent commensurate with their ownership interests.

3. Whether the minority owners possess the power to make major decisions on policy and management and to direct the operations of the business on a day-to-day basis.

4. Whether there is any formal or informal restriction, including any provision of the bylaws, partnership agreement, joint venture agreement or corporate charter of the business, that provides for cumulative voting rights or other method of preventing minority owners from making decisions without the cooperation or vote of any nonminority owner.

5. Whether the securities constituting ownership of a corporation claiming to be a minority business are held directly by minority group members. No security held in trust or by a guardian for a child may be considered to be held directly by a minority group member.

6. Whether the contribution of capital or expertise by a minority owner of the business for the purpose of acquiring an interest in the business is real and substantial. If a contribution consists only of a promise to contribute capital or a note payable to the business or a nonminority owner, or mere participation as an employee of the business, the executive director shall not consider it a real and substantial contribution.

7. Whether nonminority owners of the business are disproportionately responsible for the operation of the business.

8. If the minority owners contract with another person for the management of the business, whether the ultimate power to hire and discharge managers rests with the minority owners or with the person with whom the minority owners contract.

(b) In determining whether a business is independent, the executive director shall consider all relevant factors, including the date the business was established, the adequacy of its resources for the work it is expected to perform under the contract and the degree to which financial, equipment leasing and other relationships with nonminority businesses vary from customary industry practices. Recognition of a business as a separate entity for a tax or corporate purpose is not necessarily sufficient to prove that a business is independent.

(5) **AWARD OF CONTRACT.** For each contract to be awarded under this section, the executive director shall select from among all applicants the proposal that best meets the requirements under sub. (3), taking into consideration the cost of implementing the proposal. The district shall award contracts to the applicants selected by the executive director under this subsection.

(6) **REVIEW AND IMPLEMENTATION COMMITTEE.** The executive director may establish a committee to assist him or her in all of the following areas:

(a) Reviewing proposals and selecting the prime contractors to which contracts will be awarded.

(b) Developing the implementation plan that is required under sub. (7).

(7) **IMPLEMENTATION PLAN REQUIRED.** (a) The executive director shall develop a plan for the expeditious implementation of the programs created under this section that does all of the following:

1. Provides for the training of minority group members in construction and construction-related trades and occupations.

2. Provides for management and technical assistance to minority group members in construction and construction-related businesses.

3. Provides other management services necessary to assist minority businesses in developing construction-related capabilities and opportunities for participation in construction projects.

4. Provides for the development of a program that enables minority participation in specific components of contracts awarded for the purpose of developing the technical capabilities of minority businesses.

(b) The executive director shall submit the plan to the secretary of natural resources for review and comment. The secretary of

natural resources shall provide the executive director with comments or recommendations for changes in the plan, if any, within 30 days after the plan is submitted. No contracts may be awarded under sub. (5) until 30 days after the date the plan is submitted to the secretary of natural resources or until the date the executive director receives the secretary's comments or recommendations, whichever is earlier.

History: 1985 a. 29; 1987 a. 27; 1991 a. 39; 1993 a. 112.

**66.906 Commission employes. (1) GENERAL POWERS OF THE COMMISSION.** The commission may appoint or employ professional or technical advisers and experts and other personnel the commission requires for the proper execution of its duties under ss. 66.88 to 66.918, fix their compensations and remove or discharge the employes at pleasure.

**(2) FIXED PERIOD APPOINTMENTS.** The commission may appoint or employ highly trained, experienced or skilled employes for fixed periods.

**(3) INDEMNITY BONDS.** The commission may require any employe to provide an indemnity bond in an amount the commission finds appropriate for the proper performance of the employe's duties. No law respecting civil service applies to the commission or to the commission's employes.

**(4) RETIREMENT BENEFITS.** Any employe of the district hired on or after April 26, 1982, is eligible to participate in any compensation or benefit program in which employes of a sewerage commission of a 1st class city under ss. 62.60 to 62.27, 1979 stats., participated, and such program shall treat the employe as eligible to participate in such program. If an employe of the district is receiving retirement benefits from such a program at the time of employment by the district, such employe is not eligible to participate in the program unless the employe elects to suspend his or her retirement benefit payments during his or her employment by the district.

History: 1981 c. 282, 391; 1985 a. 175.

**66.908 Capital budget. (1) ANNUAL ADOPTION.** Annually on or before September 1, the commission shall adopt a capital budget for the benefit of the district, setting forth the anticipated revenues and expenditures for the ensuing fiscal year.

**(2) CAPITAL TRANSFERS.** During the budget year the commission may, with the concurrence of two-thirds of its members, transfer amounts from one capital account to another if it finds that the funds are not necessary to meet outstanding obligations payable from the account. Nothing in this subsection impairs, or authorizes the commission to impair, any contractual obligation entered into by the commission or the district.

History: 1981 c. 282, 391.

**66.91 Financing.** The district may borrow money and issue and execute bonds, notes and other forms of indebtedness and may enter into agreements to secure its indebtedness in the manner specified in subs. (1) to (7):

**(1) REVENUE BONDS AND NOTES.** (a) The district may issue bonds, notes or certificates for the purposes provided in s. 66.066. Except as provided in pars. (b) to (fa), the procedure for issuance of these bonds, notes or certificates is as specified in s. 66.066.

(b) The commission has the powers and duties specified for a board or council in s. 66.066. The district has the powers and duties specified for a municipality in s. 66.066. If s. 66.066 specifies that a board, council or municipality shall act by ordinance, the commission shall act by resolution.

(c) District bonds issued under s. 66.066 (2) (a) shall be executed by the chairperson and secretary of the commission rather than by a chief executive and clerk.

(d) 1. Section 66.066 (2) (a) 2. does not apply to district bonds. District bonds shall either mature:

a. Serially, commencing not later than 3 years from the date of issue;

b. In a specified term of years, if a sinking fund is created to pay the principal of these term bonds; or

c. In any combination of serial and term bonds.

2. A sinking fund created under subd. 1. b. shall provide for the retirement of the term bonds beginning not later than 3 years from the date of issue, or for deposit of money in the sinking fund, beginning not later than 3 years from the date of issue, to pay the principal of the term bonds at maturity.

3. Notwithstanding s. 66.066 (2) (a) 1., district bonds shall be made payable within 50 years from the date of the bonds, whether the bonds mature serially or within a specified term of years.

(e) Notwithstanding s. 66.066 (2) (c):

1. The commission may fix the proportion of revenues needed for operation and maintenance of the sewerage system and the proportion of revenues to be set aside as a depreciation fund.

2. The commission shall by resolution determine the proportion of revenues to be set aside for payment of principal and interest on the bonds as accurately as possible in advance. The commission may recompute the proportion of revenues set aside under this paragraph at any time, subject to the contract rights vested in holders of revenue obligations secured by the revenues.

(f) Deeds or mortgages that secure principal and interest of bonds under s. 66.066 shall be executed by the commission chairperson and secretary rather than by a chief executive and clerk.

(fa) Notwithstanding any contrary provision of s. 66.066, the district may issue bond anticipation notes under s. 66.066 (2) (m) in the form of commercial paper. If the district issues such commercial paper, the district may borrow to pay the interest on such paper, may obtain credit and liquidity facilities and may delegate authority to any person to sell, execute, determine the interest rates, maturities and amounts of such paper and to conduct the issuance of such paper as provided by the commission in the resolution under s. 66.066 (2) (m) authorizing the issuance. Such issuance under a single resolution shall be deemed a single issue of securities issued as of the date of the sale of the first such paper and not as a series of refundings. A resolution authorizing the issuance of commercial paper under this paragraph and any taxes levied or any pledge made on such issuance is irrevocable as specified in the authorizing resolution.

(g) User charges and service charges established by the commission under sub. (5) or s. 66.076 to comply with any covenant concerning the sufficiency of the charges contained in a resolution or ordinance providing for the issuance of revenue bonds or notes under s. 66.066 shall be presumed reasonable in any review of the charges by the public service commission under s. 66.912 (5).

**(1m) INVESTMENT OF FUNDS.** Notwithstanding any of the limits or restrictions in ss. 66.066 (2) (d) and (f), 66.069 (1) (c) and 67.11 (2) on the debt instruments in which the district or commission may invest any of its funds that are not immediately needed, the district may invest any such funds in a debt instrument listed under s. 66.04 (2).

**(2) GENERAL OBLIGATION BONDS.** The commission may issue bonds or notes of the district for the purposes and in the manner provided in ch. 67. The purposes for which the commission may issue bonds or notes shall be construed to include financing the cost of planning and designing any part of the sewerage system and the cost of issuing the bonds or notes. Notwithstanding s. 67.08 (2), the commission may sell bonds or notes of the district issued under ch. 67 at public or private sale. If the commission authorizes the private sale of bonds or notes, the commission shall specify in its minutes the reasons for its decision to authorize private rather than public sale.

**(3) MARKETING REVENUE BONDS.** To enhance the marketability of district bonds or notes issued under s. 66.066, the commission may:

(a) Pledge to the issue unencumbered amounts to be received by the district as service charges.

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(b) Establish in the district's treasury a fund in a determinable amount not exceeding the principal amount of the issue, to be built up and maintained until the issue is paid or utilized as otherwise provided in the resolution or ordinance establishing the fund. The commission shall designate a fund established under this paragraph as a debt service fund for the particular issue. Any surplus in the debt service fund upon its termination shall be transferred to the general fund of the district treasury. The source of the debt service fund shall be one or more appropriations from the general fund of the district treasury, a direct, irrevocable, annual, general tax, a sales tax or a borrowing under sub. (2). The unfunded portion of the debt service fund is a debt of the district and shall be included in determining its debt limit under article XI, section 3, of the constitution.

(c) Levy a direct, irrevocable, annual, general tax in an amount sufficient to provide for the payment of all the principal and interest on the issue as it matures. The amount of the levy entered on the tax roll and collected each year shall be reduced by the amount in the special redemption fund provided under s. 66.066 or in any similar fund that is available for payment of principal and interest on the issue during the ensuing year. The portion of the principal of the issue not paid or provided for is a debt of the district and shall be included in determining its debt limit under article XI, section 3, of the constitution.

**(4) BOND ANTICIPATION NOTES.** (a) If the commission authorizes the issuance of bonds under ch. 67 it may, prior to the issuance of the bonds and in anticipation of their sale, authorize by resolution an issue of bond anticipation notes of the district in an aggregate principal amount not in excess of the authorized principal amount of the bonds. The resolution shall be adopted by two-thirds of the members of the commission and shall state that all conditions precedent to the authorization of the bonds have been complied with and that the notes are issued for the purposes for which bonds are authorized to be issued. The resolution shall pledge to the payment of the principal of and interest on the notes the proceeds of the sale of the bonds in anticipation of the sale of which the notes were issued. The resolution may provide, in addition to or in place of the pledge of bond proceeds, for the levy of a direct, annual, irrevocable tax upon all of the taxable property of the district in an amount sufficient to pay the interest on the notes as the interest falls due and to pay and discharge the principal of the notes at maturity.

(b) No note may be issued under this subsection unless the commission's treasurer first certifies to the commission that contracts with respect to improvements are to be let and that the proceeds of the notes are required for the payment of the contracts.

(c) Notes issued under this subsection shall be sold at public or private sale as determined by the resolution authorizing issuance. Notes issued under this subsection shall mature within 3 years of the date of issuance and shall be executed in the same manner as are district bonds. If the commission authorizes the private sale of notes, the commission shall specify in its minutes the reasons for its decision to authorize private rather than public sale. The notes shall state on their face that they are issued on behalf of the district and that they are payable from proceeds of bonds issued under ch. 67 or from a tax upon all of the taxable property in the district. The notes are not a general obligation of the district, except to the extent that a tax has been levied under par. (a).

(d) Any funds derived from the issuance and sale of bonds under ch. 67 and issued subsequent to the execution and sale of notes issued under this subsection shall constitute a trust fund, which shall be expended first for the payment of principal and interest of the notes and then may be expended for other purposes set forth in the resolution authorizing the bonds.

**(5) SERVICE CHARGES.** (a) For service provided to any user, the commission may establish, assess and collect service charges under s. 66.076 or under this subsection. For service to any user outside the district and not located in a municipality which has contracted with the district under s. 66.898, the commission may

establish, assess and collect service charges under s. 66.899. Except as provided under s. 66.899 (2), any charge made by the district under this subsection is reviewable under s. 66.912 (5). The sewerage service charges established under s. 66.076 or under this subsection with respect to capital costs for service to any user shall be uniform.

(b) 1. The commission may, as a complete or partial alternative to any other method of recovering capital costs, compute a schedule of charges based on capital costs to be recovered under this subsection from any user.

2. In making this computation, the commission may consider any improvement, addition or rehabilitation of any physical structure, including interceptor sewers and treatment plants, to be an improvement, addition or rehabilitation to the entire sewerage system.

3. The commission shall:

a. Adopt a schedule of charges computed under this paragraph. The commission may modify the schedule as it deems necessary.

b. Submit the schedule of charges it adopts and each modification of the schedule to each municipality subject to the charges.

c. Bill periodically each municipality subject to the charges for the charges due under this subsection.

(c) 1. Charges for sewerage service shall, to the extent practicable, be proportionate to the costs of the sewerage system that the district may reasonably attribute to the user.

2. The commission may classify users on the basis of uses and may establish separate charges for separate classes. In computing charges, the commission may consider any reasonable factor, including wastewater flow or drainage, delivery flow characteristics, water consumption, type and number of sewerage connections or plumbing fixtures, population served, lot size, portion of lot improved and assessed value of property served. The commission may also compute its fee schedules as needed to meet the requirements of s. 66.076 or of title II of the water pollution control act, 33 USC 1251 et seq.

(d) 1. Each sanitary district organized under subch. IX of ch. 60 and each metropolitan sewerage district organized under ss. 66.20 to 66.26 that is billed by the commission under par. (b) shall, within 5 days of receipt of a bill from the commission, in turn bill each city, town or village served by the sanitary district or metropolitan sewerage district organized under ss. 66.20 to 66.26. Each city, town or village located within the district and billed under this paragraph or billed by the commission under par. (b) or under s. 66.076 shall, within 45 days of receiving the bill, pay the full amount billed to the district. Each municipality may levy a reasonable penalty for late payment by the user to the municipality. Each municipality may provide for the payment of charges to it by any means specified in s. 66.898 (5).

2. Any city, town or village may collect and tax charges made by it to users in the same manner as water rates are taxed and collected under s. 66.069 (1) or 66.071 (1) (e). Charges taxed under this subdivision are a lien upon the property served, as provided in s. 66.091 (1) or 66.071 (1) (e).

(e) The commission may separately compute, on any reasonable basis, both capital and operating costs of providing sewerage service to any federal, state, county or municipal facility and may directly bill the federal government, the state, the county or the municipality.

**(6) TAX LEVIES.** (a) The commission may levy a tax upon the taxable property in the district as equalized for state purposes:

1. To make payments to a county as provided in s. 66.882 (1) (b) 2;

2. To pay principal, interest and any premiums on bonds or notes issued by the district under sub. (2) or (4) or under s. 67.12;

3. For the purposes provided in sub. (3); or

4. To acquire, extend, plan, design, construct, add to or improve land, waters, property or facilities for sewerage purposes.

(b) Within 10 days after receiving the equalized valuations from the department of revenue, the secretary of the commission shall file with the clerk of each city, town or village wholly or partially within the boundaries of the district a certified statement showing the amount of the district tax levy and the proportionate amount of the tax to be entered on the tax rolls for collection in each city, town or village. The proportionate amount shall be based on the ratio of full value of the taxable property of the part of the city, town or village located in the district to the full value of all taxable property in the district. Upon receiving the certified statement from the secretary of the commission, the clerk of each city, town or village shall enter the amount of the tax on the tax rolls of the area of the city, town or village included in the district for collection. This proportionate amount of the tax is not subject to any limitation on county, city, village or town taxes.

**(6m) TAX STABILIZATION FUND** The commission may establish a tax stabilization fund for any purpose authorized by ss. 66.88 to 66.918.

**(7) CONSIDERATION OF AREA DEBT MARKETING PLANS** Prior to exercising its authority under this section, the commission shall consider the debt marketing plans of any municipality or any county located wholly or partially within the district's boundary that notifies the commission of its debt marketing plans.

**History:** 1981 c. 282, 391; 1983 a. 27, 192; 1983 a. 207 ss. 35, 36, 93 (3), (8); 1983 a. 532 s. 36; 1985 a. 29 ss. 1209v to 1209wr, 3202 (56); 1989 a. 366; 1991 a. 39.

**66.911 Minority financial advisers and investment firms.** (1) In this section, "minority financial adviser" and "minority investment firm" mean a financial adviser and investment firm, respectively, certified by the department of development under s. 560.036 (2).

(2) The commission shall attempt to ensure that 5% of the total funds expended for financial and investment analysis and for common stock and convertible bond brokerage commissions in each fiscal year is expended for the services of minority financial advisers or minority investment firms.

**History:** 1991 a. 39

**66.912 User charges for sewer operation.** (1) **DECLARATION OF POLICY** In the interpretation and application of this section, it is declared to be the policy of this state to authorize a district to institute a system of user charges which is designed to recover all or part of the operating costs to the extent required by federal or state law in order to obtain federal or state funding from a user of the sewerage system in the proportion to which the user's waste water discharge contributes to such costs. It is intended that the system be instituted to satisfy but not exceed eligibility requirements of public grants under Title II of the water pollution control act (33 USC 1251 et seq.) or under any other state or federal law and to satisfy but not exceed any other applicable state or federal law requiring such a system.

(2) **COLLECTION OF CHARGES AS USER FEES.** A district may, as a complete or partial alternative to any other method of recovering operating costs:

(a) Compute a uniform schedule of charges based on operating expenses to be recovered from users under this subsection.

(b) Adopt the uniform schedule of charges computed under par. (a). The commission may modify the schedule periodically.

(c) Submit the schedule adopted under par. (b) and every modification to every municipality within the sewerage service area as early in every calendar year as practicable.

(d) Bill periodically each municipality within the sewerage service area for the charges due under this subsection.

(3) **FACTORS IN CHARGE SCHEDULES.** In computing a charge schedule under sub. (2) (a), the sewerage commission shall require each user to pay the proportion of total operating cost of the system incurred by the transmission and treatment of the user's wastewater. In determining such proportional costs, the sewerage

commission shall consider such factors, without limitation because of enumeration, as strength, volume and delivery flow rate characteristics of each user's sewage.

(4) **COLLECTION OF FEES BY MUNICIPALITIES.** Every sanitary district organized under subch. IX of ch. 60 or metropolitan sewerage district organized under ss. 66.20 to 66.26 billed by a district under sub. (2) shall in turn bill every city, town or village served by the sanitary district or metropolitan sewerage district organized under s. 66.20 to 66.26. Every city, town and village billed by a district under sub. (2), by a sanitary district or metropolitan sewerage district organized under ss. 66.20 to 66.26 under this subsection shall collect such charges from the individual sewer system users in the city, town or village and shall promptly remit the same to the district. The district may adopt rules for the establishment and administration of collection procedures and the settlement of such collections with the district as required by this section. Under such rules the district may provide for reimbursement of the municipality for the expense of collecting late payments of charges. Each municipality shall pay the district in full within 45 days after receiving a bill from the district. The district or, if the district does not act, every municipality is empowered to levy a penalty for late payment by the user to the municipality. Any city, town or village may collect under s. 66.076 (7) any charge which is due under this section and which is delinquent. In the event that any municipality does not remit such charges to the district within 45 days of the billing date, the district may borrow moneys, repayable in not longer than 18 months, sufficient to offset such uncollected charges.

(5) **REVIEW BY PUBLIC SERVICE COMMISSION.** Except as provided under s. 66.899 (2), upon complaint to the public service commission by any user that charges, rules and practices under this section are unreasonable or unjustly discriminatory, according to the standards and criteria which the commission is required to follow under state or federal law, including, without limitation because of enumeration, this section, 33 USC 1251 et seq. and ch. 147, or upon complaint of a holder of a revenue bond or other evidence of debt, secured by a mortgage on the sewerage system or any part thereof or pledge of the income of sewerage service charges, that charges are inadequate, the public service commission shall investigate the complaint. If sufficient cause therefor appears, the public service commission shall set the matter for a public hearing upon 10 days' notice to the complainant and the commission. After the hearing, if the public service commission determines that the charges, rules or practices complained of are unreasonable or unjustly discriminatory, it shall determine and by order fix reasonable charges, rules and practices and shall make such other order respecting such complaint as may be just and reasonable. The proceedings under this subsection shall be governed, as far as applicable, by ss. 196.26 to 196.40. The commission may submit the factual data, reports and analyses considered by it in establishing the charges, rules or practices subject to a complaint under this subsection. The public service commission shall give due weight to such data, reports and analyses. Judicial review of the determination of the public service commission may be had by any person aggrieved in the manner prescribed under ch. 227. If any user pays a charge and the public service commission or court, on appeal from the public service commission, finds such charge, after reviewing a complaint filed under this subsection, to be excessive, the district shall refund to the user the excess plus the interest thereon computed at the rate then paid by the district for borrowing funds for a term of one year or less.

**History:** 1977 c. 382; 1979 c. 175; 1981 c. 282 ss. 7 to 13; Stats. 1981 s. 66.912; 1983 a. 207; 1983 a. 532 s. 36; 1985 a. 29; 1987 a. 403 s. 256.

**66.914 Judicial review of compliance schedules.** If a court-ordered schedule of compliance affecting the district is reviewed by a court, the court shall take into consideration the availability of state and federal grant funds used to comply with the schedule, the timely achievement of state and federal clean water goals and equity with the efforts of other cities, villages, towns, sanitary districts and metropolitan sewerage districts to

comply with the requirements to achieve these goals. In its review the court shall determine what, if any, effect the availability of state and federal grant funds has on the compliance schedule.

**History:** 1981 c. 282

Federal and state sewage law discussed *Milwaukee v. Illinois*, 451 US 304 (1981).

**66.916 Construction.** Nothing in ss. 66.88 to 66.914 in any way limits or takes away any of the powers of any municipality located in the district, relating to the construction, extension or repair of local or sanitary sewers or drains except that all plans and specifications for the construction of any local or sanitary sewers or extensions thereof shall be submitted to and approved in writing by the district before the sewers are constructed.

**History:** 1981 c. 282

**66.918 Validation of debt; liability for diverting funds. (1) DEBT VALIDATION** No legislative, judicial or administrative determination that a district may not spend borrowed money or that a district has spent borrowed money for a purpose other than the stated purpose for which it was borrowed affects the validity of the obligation or the evidence of indebtedness therefor.

**(2) LIMITATIONS ON ACTIONS TO CONTEST DEBTS** Section 893.77 applies to all borrowing by a district and to all evidences of indebtedness given therefor.

**(3) IMPAIRMENTS OF BORROWED MONEY FUNDS.** (a) Any person participating in any impairment of or diversion from a borrowed money fund, debt service fund, special redemption fund, bond security or similar fund of the district is liable in an action brought by a party listed under par. (b) for the cost of restoring the fund to its proper level.

(b) The commission, any taxpayer of the district or any holder of an evidence of indebtedness payable in whole or in part out of the fund that is impaired or diverted may commence an action under par. (a).

**History:** 1981 c. 282, 391; 1983 a. 207 s. 93 (8)

**66.92 Housing for veterans; authority to promote; state cooperation. (1)** Any county, city, village or town or agency thereof may appropriate money, grant the use of land, buildings or property owned or leased by it, or take such other action as may be deemed advisable or necessary to promote and provide housing for veterans and military personnel.

**(2)** In the event that an agency created or designated by a county or municipality to administer anything authorized under this section is unable to secure satisfactory and acceptable bid or bids the agency may nevertheless negotiate necessary contracts authorized by the sponsoring county or municipality subject to the approval of the county or municipality.

**(3)** The department of veterans affairs shall furnish any county, city, village, town or agency thereof with information and assistance to facilitate housing for veterans and military personnel. The department of veterans affairs shall call upon the Wisconsin housing and economic development authority for assistance in carrying out the purpose of this subsection. The Wisconsin housing and economic development authority shall furnish such assistance when requested and the salaries and expenses therefor shall be paid out of the appropriation for the department of veterans affairs.

**History:** 1977 c. 29; 1979 c. 361 s. 112; 1985 a. 29; 1991 a. 189.

**66.925 Urban homestead programs. (1) PROGRAM ESTABLISHED.** In this section "governing body" means a county board, city council, village board or town board that establishes a program under this section and "property" means any property used principally for dwelling purposes that contains no more than 2 dwelling units and that is owned by a governing body. Any county board, city council, village board or town board may establish an urban homestead program. A program established by a county board under this section applies only to those unincorporated areas of the county in which no program exists. The program shall consist of the conveyance of property at cost under condi-

tions set by the governing body and under the requirements of this section, to any individual or household satisfying eligibility requirements established by the governing body. The governing body may appropriate money for the administration of the program and may take any other action considered advisable or necessary to promote the program, including, but not limited to, the following:

(a) Acquisition under ch. 75 of any property which would be eligible for conveyance under the program.

(b) Acquisition of any other property which would be eligible for conveyance under this program and that is declared unfit for human habitation by any housing code enforcement agency with jurisdiction over the property or that is found to be in substantial noncompliance with local housing codes.

**(2) CONDITIONS OF CONVEYANCE.** As a condition of the conveyance of the property under sub. (1), the governing body shall require that:

(a) The property be rehabilitated so that it satisfies all housing-related requirements of applicable law, including, but not limited to, building, plumbing, electrical and fire prevention codes, within a specific period, not to exceed 2 years, after the conveyance.

(b) The person to whom the property is conveyed live on the premises for a specified period, which may not be less than 3 years.

(c) The legal title to and ownership of any property conditionally conveyed under this section remain in the governing body until quitclaim deed to the property is conveyed to the individual or household under this subsection. The instrument of a conditional conveyance of property under this subsection shall contain the provision of this paragraph.

**(2m) ELIGIBILITY.** The governing body may establish reasonable eligibility criteria and other conditions and requirements necessary to ensure that the purposes of a program under this section are carried out.

**(3) TRANSFER OF TITLE.** If an individual or household has resided on property conveyed under this section for the period of time required under sub. (2) and has rehabilitated and maintained and otherwise complied with the terms of the conditional conveyance under subs. (2) and (2m) throughout the period, the governing body shall convey to the individual or household, by quitclaim deed, all of the body's reversionary interests in the property.

**(4) MORTGAGES.** If an individual or household obtains a mortgage from a lending institution and uses the proceeds of the mortgage solely for the purposes of rehabilitating or constructing the premises or property under this section, the governing body shall agree to subjugate its rights to the premises or property in case of default, and shall agree that in such case it will execute and deliver a deed conveying title in fee simple to the institution, provided that the institution shall dispose of the property in like manner as foreclosed real estate and shall pay over any part of the proceeds of the disposition as shall exceed the amount remaining to be paid on account of the mortgage together with the actual cost of the sale, to the governing body. In return for relinquishing such rights, the governing body shall be given by the lending institution the opportunity to find, within 90 days of the default, another individual or household to assume the mortgage obligation.

**History:** 1981 c. 231; Stats 1981 s. 66.91; 1981 c. 391 s. 80; Stats 1981 s. 66.925; 1987 a. 378; 1993 a. 246.

**NOTE:** Chapter 231, laws of 1981, section 2, which created this section, contains legislative "findings and purpose" in section 1.

**66.93 Sites for veterans' memorial halls.** Any city, town or village may donate to any organization specified in s. 70.11 (9) land upon which is to be erected a memorial hall to contain the memorial tablet specified in said section.

**66.935 Mass transit bonding. (1)** In this section:

(a) "Political subdivision" means a county, city, village or town.



(b) "Public transit body" means any transit or transportation commission or authority and public corporation established by law or by interstate compact to provide mass transportation services and facilities.

(2) In addition to the provisions of any other statutes specifically authorizing cooperation between political subdivisions or public transit bodies, unless such statutes specifically exclude action under this section, any political subdivision or public transit body may, for mass transit purposes, issue bonds or, with any other political subdivision or public transit body, jointly issue bonds.

History: 1991 a 282.

**66.94 Metropolitan transit authority. (1) DEFINITIONS.** The following terms when used in this section, unless a different meaning clearly appears from the context, shall have the following meanings:

(a) "Authority" means any metropolitan transit authority established pursuant to this section.

(b) "Board" means the metropolitan transit board.

(c) "Bonds" shall mean any bonds, interim certificates, certificates of indebtedness, equipment obligations, notes, debentures or other obligations of the authority, issued pursuant to this section.

(d) "Contract" shall mean any agreement of the authority whether contained in a resolution, trust indenture, lease, bond or other instrument.

(e) "Metropolitan district" or "district" embraces all the territory in any county having a population of 125,000 or more and in those cities, villages and towns located in counties immediately adjacent thereto having a population of less than 125,000, through or into which a transportation system extends from such county.

(f) "Municipalities" means cities, villages and towns.

(g) "Obligee of the authority" or "obligee" shall include any bondholder, trustee or trustees for any bondholders, any lessor, demising property to the authority used in connection with the function of the transit board, or any assignee or assignees of such lessor's interest, or any part thereof, and the United States of America when it is a party to any contract with the authority.

(h) "Real property" shall include lands, lands under water, structures, and any and all easements, franchises and incorporeal hereditaments, and every estate and right therein, legal and equitable, including terms for years and liens by way of judgments, mortgages or otherwise.

(i) "Transportation system" means all land, shops, structures, equipment, property, franchises and rights of whatever nature required for transportation of passengers for hire, freight and express, except all transportation facilities extending beyond the boundaries of the metropolitan district, and except all express and freight operations not operated in combination with transportation of passengers, including, however, without limitation, elevated railroads, subways, underground railroads, motor vehicles, motor buses, and any combination thereof, or any other form of mass transportation operation.

(j) "Trust indenture" shall include instruments pledging the revenues of real or personal properties.

(2) **CREATION OF THE AUTHORITY** There is hereby authorized to be created in each county having a population of 125,000 or more a political subdivision, body politic and corporate of the state, under the name of "Metropolitan Transit Authority" which shall exercise the powers conferred by this section within the metropolitan district of which such county is a part.

(3) **ORIGINAL EXERCISE OF POWERS** The authority shall not exercise any of the powers hereby granted until both of the following have occurred:

(a) This section is adopted by the electors of one or more cities, villages and towns having a population in the aggregate of more than 100,000 within the metropolitan district; and

(b) The legislative body of the municipality in such district then having more than 50 per cent of public transportation routes, computed upon a mileage basis, enacts an ordinance that accepts the authority for such municipality and designates the date when such authority shall commence to exercise its powers granted under this section. Repeal of that ordinance, subsequent to the exercise by the authority of such powers, shall not affect the continuation of the authority's operations or the exercise of its powers.

(4) **MANNER OF ADOPTION** This section may be adopted by any city, village or town within the metropolitan district in the following manner: The governing body of any municipality, by ordinance passed at least 30 days prior to submission of the question, may direct that the question of the adoption of this section be submitted to the electors therein at any general, special, judicial or local election. The clerk of such municipality or the election commission of any city of the first class shall thereupon submit the question to popular vote. Public notice of the election shall be given in the same manner as in case of a regular municipal election except that such notice shall be published or posted at least 20 days prior to the election. If a majority of those voting on the question vote in the affirmative thereon, this section shall be adopted in such municipality. The proposition on the ballot to be used at such election shall be in substantially the following form:

Shall section 66.94 of the Wisconsin statutes which creates a metropolitan transit authority for ownership and operation of a public mass transportation system in the metropolitan district be adopted?

YES  NO

(5) **LEGAL STATUS** (a) *Actions, seal, office.* The authority may sue and be sued in its corporate name. It may adopt a corporate seal and change the same at pleasure. The principal office of the authority shall be located within the metropolitan district.

(b) *Exempt from taxation.* The authority, its property (real or personal), franchises and income and the bonds, certificates and other obligations issued by it, and the interest thereon, shall be exempt from all income taxes and taxes based on the value of property by the state, any county, municipality, public corporation or other political subdivision or agency of the state.

(c) *Tax equivalent.* In lieu of the property taxes levied under subch. I of ch. 76, and in lieu of the income or franchise taxes levied under ch. 71 which, but for par. (b), would be due and payable, there shall be paid to the state treasurer, as a tax equivalent but not in excess of property taxes and income or franchise taxes, the net revenues of the next preceding year, after the payment of: 1) all operating costs, including all charges which may be incurred pursuant to subs. (29) and (34) and all other costs and charges incidental to the operation of the transportation system; 2) interest on and principal of all bonds payable from said revenues and to meet all other charges upon such revenues as provided by any trust agreement executed by the authority in connection with the issuance of bonds or certificates; 3) all costs and charges incurred pursuant to subs. (32) and (33) and any other costs and charges for acquisition, installation, construction or replacement or reconstruction of equipment, structures or rights-of-way not financed through the issuance of bonds or certificates under sub. (15) or s. 66.935; and 4) any compensation required to be paid to any municipality for the use of streets, viaducts, bridges, subways and other public ways. Deficiencies in any annual tax equivalent shall not be cumulative.

(6) **MEMBERS OF THE BOARD** The governing and administrative body of the authority shall be a board consisting of 7 members to be known as the metropolitan transit board. Members of the board must live within the metropolitan district. They shall be persons of recognized business ability. No member of the board or employe of the authority shall hold any other office or employment under the federal, state or any county or any municipal government except as honorary office without compensation or an office in the military service. No member of the board shall hold

any other office in or be employed by the authority. No member of the board or employe of the authority shall have any private financial interest or profit directly or indirectly in any contract, work or business of the authority nor in the sale of or lease of any property to or from the authority. No member of the board shall be paid any salary, fee or compensation for services except that the member shall be reimbursed for actual expenses incurred in the performance of duties.

(7) **SELECTION AND REPLACEMENT** (a) *Appointment and terms of office.* The members of the board shall hold office for terms of 7 years, except for the initial terms herein provided. Three members shall be appointed by the mayor and confirmed by the common council of the city having the largest population within the district. These appointments shall be for initial terms of 1, 3 and 7 years, respectively. Three members shall be appointed by the governor for initial terms of 2, 4 and 6 years, respectively. The 6 members so appointed will nominate the seventh member by majority vote for an initial term of 5 years, and the appointment of the seventh member shall be approved and made by the governor. If no seventh member is nominated either by the original board within 60 days of its appointment, or by any subsequent board within 60 days after a vacancy occurs in the office of the seventh member, then the governor shall appoint the seventh member. At the expiration of initial terms, successors shall be appointed in the same manner for terms of 7 years. Five members shall constitute a quorum.

(b) *Successors, vacancies.* Successors to members shall be appointed in the same manner as their predecessors. In the event of a vacancy, a successor shall be appointed in like manner. In addition to death, resignation, legal incompetency or conviction of a felony, a member's office is vacated in the event the member's permanent residence is removed from the district.

(8) **RESIGNATIONS AND REMOVALS** Any member may resign from office to take effect when a successor has been appointed and is qualified. The appointing authority may remove any member of the board appointed by the appointing authority in case of incompetency, neglect of duty or malfeasance in office. They may give the board member a copy of such charges and an opportunity to be heard publicly thereon in person or by counsel upon not less than 10 days' notice. Upon failure of a member to qualify within the time required or upon a member's abandonment of or removal from office, the member's office shall become vacant.

(9) **GENERAL POWERS.** The authority shall have power to acquire, construct or operate and maintain for public service a transportation system or systems or any part thereof in the district and the power to dispose of the same and to enter into agreement for the operation of such system or parts thereof with others and all other powers necessary or convenient to accomplish the purposes of this section.

(10) **POWER TO ACQUIRE EXISTING TRANSPORTATION FACILITIES** The authority may acquire by purchase, condemnation, lease, gift or otherwise, all or any part of the plant, equipment, rights and property, reserve funds, employe's pension or retirement funds, special funds, franchises, licenses, patents, permits, and papers, documents and records belonging to any person or public body operating a transportation system within the district, and to lease any municipality or privately owned facilities for operation and maintenance by the authority.

(11) **POWER TO ACQUIRE AND DISPOSE OF PROPERTIES** The authority shall have power to acquire by purchase, condemnation, lease, gift or otherwise any other property and rights useful for its purposes, and to sell, lease, transfer or convey any property or rights when no longer useful, or to exchange the same for other property or rights which are useful for its purposes.

(12) **JOINT USE OF PROPERTY.** The authority shall have power to enter into agreements for the joint use by the authority and any railroad, person or public body owning or operating any transportation facilities either within or without the district of any property or rights of the authority or such railroad, person or public body operating any transportation facilities for any suitable purpose

and for the establishment of through routes, joint fares and transfer of passengers.

(13) **RIGHT OF EMINENT DOMAIN** (a) *As to what property.* The authority shall have the right of eminent domain to acquire any existing transportation facilities within the district and any private property or property devoted to any public use which is necessary for the purposes of the authority except such property which is used for the purpose of operating transportation facilities extending beyond the boundaries of the district. The authority shall have the right where necessary to acquire by eminent domain the right to use jointly all such property which is used for the purpose of operating transportation facilities extending beyond the boundaries of the district. The right of eminent domain shall be exercised in accordance with the procedure set out in ch. 32 or in accordance with any other applicable laws.

(14) **POWER TO OPERATE LOCAL TRANSPORTATION FACILITIES.**

(a) *Use of public ways.* The authority shall have the right, but not exclusive of the public right, to use any public road, street or other public way in the district for interurban transportation of passengers, but shall not have the right to use any street or other public way in any municipality for local transportation of passengers within such municipality unless this section shall have been adopted by such municipality, and the governing body of such municipality shall have given its consent thereto by ordinance. The right to use any road, street or other public way, or to operate over any bridge, viaduct or elevated structures above and subways beneath the surface of any road, street or public ground, including approaches, entrances, sidings, stations and connections for the purpose of local transportation in any municipality adopting this section, shall be upon such terms as are determined by the municipality in which such rights-of-way or facilities are located, and shall be subject to such reasonable rules and regulations and the payment of such license fees as the grantor may by ordinance from time to time prescribe.

(b) *Right to existing service.* Nothing contained herein shall deprive any town, city or village of the transportation facility existing on July 31, 1951, or the right to seek extensions thereof as contemplated by statutes.

(15) **POWER TO BORROW MONEY** (a) *Purpose.* The authority shall have the continuing power to borrow money for the purpose of acquiring any transportation system or part thereof (including any cash funds of such system reserved to replace worn out or obsolete equipment and facilities), for acquiring necessary cash working funds or establishing reserve funds, for acquiring, constructing, reconstructing, extending or improving its transportation system or any part thereof and for acquiring any property and equipment useful for the construction, reconstruction, extension, improvement or operation of its transportation system or any part thereof. For the purpose of evidencing the obligation of the authority to repay any money borrowed the authority may, pursuant to ordinance adopted by the board, issue and dispose of interest-bearing revenue bonds or certificates and may also issue and dispose of such bonds or certificates to refund any bonds or certificates previously issued in accordance with the terms expressed therein and may also, by resolution adopted by the board, jointly issue bonds under s. 66.935 (2) and waive for such bonds any of the restrictions contained in pars. (b) to (i).

(b) *Source of payment.* All such bonds shall be payable solely from the revenues or income to be derived from the operation of such transportation system.

(c) *Terms.* Bonds or certificates issued under this subsection may bear such date or dates, may mature at such time or times not exceeding 40 years from the date of issue, may bear interest at such rate to be paid semiannually, may be in such form, may be executed in such manner, may be payable at such place, may be made subject to redemption in such manner and upon such terms with or without premium as is stated on the face thereof, may be authenticated in such manner and may contain such terms and covenants as may be provided in such ordinance. These bonds and certificates may be registered under s. 67.09.

(d) *Negotiability.* Notwithstanding the form thereof, in the absence of an express recital to the contrary on the face thereof, all such bonds shall be negotiable instruments.

(e) *Temporary financing.* Pending the preparation and execution of any such bonds temporary bonds may be issued with or without interest coupons as may be provided by ordinance.

(f) *Trust agreement; lien.* To secure the payment of any such bonds and for the purpose of setting forth the covenants and undertakings of the authority in connection with the issuance thereof and of any additional bonds payable from such revenue or income, as well as the use and application of the revenue or income to be derived from the transportation system, the authority may execute and deliver trust agreements but no lien upon any physical property of the authority shall be created thereby.

(g) *Remedy for breach.* A remedy for any breach of the terms of any such trust agreement by the authority may be by mandamus proceedings in any court of competent jurisdiction to compel performance and compliance therewith, but the trust agreement may prescribe by whom or on whose behalf such action may be instituted.

(h) *Public credit not pledged.* Under no circumstances shall any bonds of the authority become an indebtedness or obligation of the state or of any county, city, town, village, school district or other municipal corporation, nor shall any such bond become an indebtedness of the authority within the purview of any constitutional limitation or provision, and it shall be plainly stated on the face of each bond and certificate that it does not constitute such an indebtedness or obligation but is payable solely from the revenues or income as aforesaid. For the purpose of debt limitation, the authority shall be considered a public utility.

(i) *Sale of securities.* Before any such bonds (excepting refunding bonds) are sold, the entire authorized issue, or any part thereof, shall be offered for sale as a unit after advertising for bids, by a class 2 notice, under ch. 985, published in the district, the last insertion to be at least 10 days before bids are required to be filed. All bids shall be sealed, filed and opened as provided by ordinance and the bonds shall be awarded to the highest and best bidder or bidders therefor. The authority shall have the right to reject all bids and readvertise for bids in the manner provided for in the initial advertisement. If no bids are received, such bonds may be sold at not less than par value, without further advertising, within 60 days after the bids are required to be filed pursuant to any advertisement.

**(16) FINANCING OF EQUIPMENT** (a) *Purchase of equipment.* The authority shall have power to purchase equipment such as cars and motor buses, and may execute agreements, leases and equipment trust certificates in the form customarily used in such cases appropriate to effect such purchase and may dispose of such equipment trust certificates. All money required to be paid by the authority under the provisions of such agreements, leases and certificates shall be payable solely from the revenue or income to be derived from the transportation system and from grants and loans as provided in sub. (18). Payment for such equipment, or rentals therefor, may be made in instalments, and the deferred instalments may be evidenced by equipment trust certificates payable solely from such revenue or income, and it may be provided that title to such equipment shall not vest in the authority until the equipment trust certificates are paid.

(b) *Security.* The agreement to purchase may direct the vendor to sell and assign the equipment to a bank or trust company, duly authorized to transact business in the state, as trustee for the benefit and security of such certificates and may direct the trustee to deliver the equipment to one or more designated officers of the authority and authorize the trustee simultaneously therewith to execute and deliver a lease of the equipment to the authority. Each vehicle so purchased and leased shall have the name of the owner and lessor plainly marked on both sides thereof followed by the words "Owner and Lessor".

(c) *Provisions of agreements.* Such agreements, leases and certificates shall be authorized by ordinance of the board and shall contain such covenants, conditions and provisions as may be deemed necessary or appropriate to insure the payment of the certificates from the revenue or income to be derived from the transportation system.

(d) *Related agreements to be consistent.* The covenants, conditions and provisions of the agreements, leases and certificates shall not conflict with any of the provisions of any trust agreement securing the payment of bonds or certificates of the authority.

**(17) RIGHT TO INVEST IN SECURITIES OF AUTHORITY.** The state and all counties, cities, villages, incorporated towns and other municipal corporations, political subdivisions and public bodies, and public officers of any thereof, all banks, bankers, trust companies, savings banks and institutions, building and loan associations, investment companies and other persons carrying on a banking business, all insurance companies, insurance associations and other persons carrying on an insurance business, and all executors, administrators, guardians, trustees and other fiduciaries may legally invest any debt service funds, moneys or other funds belonging to them or within their control in any bonds or certificates issued pursuant to this section, but nothing contained in this subsection shall be construed as relieving any person from any duty of exercising reasonable care in selecting securities for purchase or investment.

**(18) POWER OF AUTHORITY TO ACCEPT PUBLIC GRANTS AND LOANS.** The authority shall have power to apply for and accept grants and loans from the federal government, the state or any municipality, or any agency or instrumentality thereof, to be used for any of the purposes of the authority and to enter into any agreement in relation to such grants or loans when such agreement does not conflict with any of the provisions of any trust agreements securing the payment of bonds or certificates of the authority.

**(19) POWER OF AUTHORITY TO INVEST AND REINVEST FUNDS.** The authority shall have power to invest and reinvest any funds held in reserve or debt service funds not required for immediate disbursement in bonds or notes of the United States, bonds of the state, or of any county or municipality in which the authority is engaged in the operation of its business, and, at not to exceed their par value or their call price, in bonds or certificates of the authority, and to sell these securities whenever the funds are needed for disbursements. Such investment or reinvestment of any funds shall not be in conflict with any provisions of any trust agreement securing the payment of bonds or certificates of the authority.

**(20) INSURANCE AND INDEMNITY CONTRACTS.** The authority shall have power to procure and enter into contracts for any type of insurance and indemnity against loss or damage to property from any cause, including loss of use and occupancy, against death or injury of any person, against employers' liability, against any act of any member, officer or employe of the board or of the authority in performance of the duties of that person's office or employment or any other insurable risk.

**(21) POWER OF TAXATION DENIED TO AUTHORITY.** The authority shall not have power to levy taxes for any purpose whatsoever.

**(22) ORDINANCES, RULES AND REGULATIONS.** The board shall have power to pass all ordinances and make all rules and regulations proper or necessary to regulate the use, operation and maintenance of its property and facilities, and to carry into effect the powers granted to the authority.

**(23) ORGANIZATION OF BOARD.** As soon as possible after the appointment of the initial members, the board shall organize for the transaction of business, select a chairperson and a temporary secretary from its own number, and adopt bylaws, rules and regulations to govern its proceedings. The initial chairperson and each succeeding chairperson shall be elected by the board from time to time for the term of that chairperson's office as a member of the

board or for the term of 3 years, whichever is shorter and shall be eligible for reelection.

(24) **CONDUCT OF BOARD MEETINGS.** Regular meetings of the board shall be held at least once in each calendar month, at a time and place fixed by the board. Five members of the board shall constitute a quorum for the transaction of business, except that a quorum is not required for adjournment to a definite date or final adjournment. All action of the board shall be by ordinance or resolution and the affirmative vote of at least 4 members shall be necessary for the adoption of any ordinance or resolution. All such ordinances and resolutions before taking effect shall be approved by the chairperson of the board by signing the ordinance or resolution. The chairperson shall return to the board with the objections thereto in writing at the next regular meeting of the board any ordinance or resolution the chairperson does not approve. If the chairperson does not so return any ordinance or resolution, it is deemed to be approved and shall take effect accordingly. Upon the return of any ordinance or resolution by the chairperson with the objections, it shall be reconsidered by the board, and if upon reconsideration it is again passed by the affirmative vote of at least 5 members, it shall go into effect notwithstanding the veto of the chairperson. All ordinances, resolutions and all proceedings of the authority and all documents and records in its possession shall be public records, and open to public inspection, except such documents and records as are kept or prepared by the board for use in negotiations, action or proceedings to which the authority is a party.

(25) **SECRETARY AND TREASURER.** The board shall appoint a secretary and a treasurer, who need not be members of the board, to hold office during the pleasure of the board, and fix their duties and compensation. The secretary shall not be engaged in any other business or employment. Before entering upon the duties of their respective offices they shall take and subscribe an official oath, and the treasurer shall execute an official bond with corporate sureties to be approved by the board. The bond shall be payable to the authority in whatever penal sum may be directed by the board conditioned upon the faithful performance of the duties of the office and the payment of all money received according to law and the orders of the board. The board may, at any time, require a new bond from the treasurer in such penal sum as it may determine. The obligation of the sureties shall not extend to any loss sustained by the insolvency, failure or closing of any credit union, savings bank, savings and loan association or national or state bank wherein the treasurer has deposited funds if the credit union, savings bank, savings and loan association or bank has been approved by the board as a depository. The oaths of office and bond shall be filed in the principal office of the authority.

(26) **MANNER OF HANDLING FUNDS.** All funds shall be deposited in the name of the authority and shall be withdrawn only by check or draft signed in the manner as provided by the board. The board may designate any of its members or any employee to affix the signature of the chairperson and another to affix the signature of the treasurer to any check or draft for payment of salaries or wages and for the payment of any other obligation of not more than \$1,000. In case any officer whose signature appears upon any check, draft, bond, certificate or interest coupon, issued pursuant to this section, ceases to hold office, the signature nevertheless shall be valid and sufficient for all purposes with the same effect as if that officer had remained in office.

(27) **APPOINTMENT OF A GENERAL MANAGER.** The board shall appoint a general manager who shall be a person of recognized ability and experience in the operation of transportation systems to hold office during the pleasure of the board. The general manager shall have management of the properties and business of the authority and the employes thereof, subject to the general control of the board. The general manager shall direct the enforcement of all ordinances, resolutions, rules and regulations of the board, and shall perform such other duties as may be prescribed from time to time by the board. The board may appoint a general attorney and

a chief engineer, and shall provide for the appointment of such other officers, attorneys, engineers, consultants, agents and employes as may be necessary for the construction, extension, operation, maintenance and policing of its properties. It shall define their duties and may require bonds of them. The general manager, general attorney, chief engineer and all other officers provided for under this subsection shall be exempt from subscribing any oath of office. The compensation of all officers, attorneys, consultants, agents and employes shall be fixed by the board.

(28) **SUPERVISION OF OFFICERS AND EMPLOYES.** The board shall classify all the officers, positions and grades of regular employment required, excepting that of the general manager, secretary, treasurer, general attorney, and chief engineer, with reference to the duties thereof and the compensation fixed therefor, and adopt rules governing appointments to any of such offices or positions on the basis of merit and efficiency. No discrimination shall be made in any appointment or promotion because of sex, race, creed, color, or political or religious affiliation. No officer or employe shall be discharged or demoted except for cause which is detrimental to the service. Any officer or employe who is discharged or demoted may file a complaint in writing with the board within 10 days after notice of the person's discharge or demotion. If any employe is a member of a labor organization, the complaint may be filed by such organization for and in behalf of such employe. The board shall grant a hearing on such complaint within 30 days thereafter. The time and place of the hearing shall be fixed by the board and due notice thereof given to the complainant, the labor organization by or through which the complaint was filed and the general manager. The hearing shall be conducted by the board, or any member thereof or any officers' committee or employes' committee appointed by the board. The complainant may be represented by counsel. If the board finds, or approves a finding of the member or committee appointed, that the complainant has been unjustly discharged or demoted, the complainant shall be restored to the person's office or position with back pay. The decision of the board shall be final and not subject to review. The board may abolish any office or reduce the force of employes for lack of work or lack of funds, but in so doing the officer or employe with the shortest service record in each class and grade shall be first released from service and shall be reinstated in order of seniority when additional force of employes is required.

(29) **EMPLOYES.** (a) *Collective bargaining.* The authority shall have the same rights, duties and obligations with respect to collective bargaining by and with its employes as do public utility corporations.

(b) *Employes of existing systems.* If the authority acquires any existing transportation system or part thereof, all of the employes in the operating and maintenance divisions of such system or part thereof and all other employes, except executive officers, shall be transferred to and appointed as employes of the authority, subject to all rights and benefits of this section, and such employes shall be given seniority credit in accordance with the records of their previous employer.

(c) *Retirement systems.* Members and beneficiaries of any pension or retirement system or other benefits established by such previous employer shall continue to have the rights, privileges, benefits, obligations and status with respect to such established system except as provided by s. 66.944. The authority shall establish and maintain a sound pension and retirement system adequate to provide for all payments when due under such established system or as modified from time to time by ordinance of the board. For this purpose, both the board and the participating employes shall make such periodic payments to the established system as may be determined by such ordinance. The board, in lieu of social security payments, shall make payments into such established system at least equal in amount to the amount so required to be paid by private corporations. Provision shall be made by the board for all officers and employes of the authority appointed under this section to become, subject to reasonable rules and regulations and

s. 66.944, members or beneficiaries of the pension or retirement system with uniform rights, privileges, obligations and status as to the class in which such officers and employes belong.

**(30) ESTABLISHMENT OF FARES AND STANDARDS OF SERVICE.** (a) *Powers of board.* The board shall, notwithstanding any law to the contrary, have exclusive authority and it shall be its duty to establish rates, fares and other charges, and to make all rules and regulations for the operation of the transportation system. The board shall also have the authority, subject to the jurisdiction of the department of transportation or office of the commissioner of railroads as to the reasonableness and adequacy thereof, to determine and make effective standards of service, and to establish, change, extend, shorten or abandon routings all in accordance with the statutes in such cases made and provided subject to the provisions of any ordinance of any municipality granting rights to the authority.

(b) *Fares.* Rates, fares and other charges for transportation shall be so fixed that revenues shall at all times be sufficient in the aggregate for:

1. Payment of all operating costs, including all charges which may be incurred pursuant to subs. (29) and (34) and all other costs and charges incidental to the operation of the transportation system;

2. Payment of interest and principal of all bonds payable from said revenues and to meet all other charges upon such revenues as provided by any trust agreement executed by the authority;

3. Payment of all costs and charges incurred pursuant to subs. (32) and (33) and any other costs and charges for acquisition, installation, construction or replacement or reconstruction of equipment, structures or rights-of-way not financed through the issuance of bonds or certificates under sub. (15) or s. 66.935; and

4. Any compensation required to be paid to any municipality for the use of streets, viaducts, bridges, subways and other public ways.

**(30m) LIMITATION ON SERVICE.** Notwithstanding any other provision of this section, no authority may provide service outside the corporate limits of the metropolitan district for which the authority is established unless the authority receives financial support for the service pursuant to a contract with a public or private organization for such service. This subsection does not apply to service provided by an authority outside the corporate limits of the metropolitan district for which the authority is established if the authority is providing the service on April 28, 1994, without receiving financial support from a public or private organization for the service, and elects to continue such service.

**(31) CHARGES FOR GOVERNMENT TRANSPORTATION.** The board may provide free transportation within any municipality in which they are employed for fire fighters when in uniform, and police officers when in uniform and when not in uniform and certified for special duty and for its employes when in uniform or upon presentation of identification, and may enter into agreements with the United States post office department for the transportation of mail and the payment of compensation in lieu of fares for the transportation of letter carriers when in uniform.

**(32) MODERNIZATION FUND.** It shall be the duty of the board, as promptly as possible, to rehabilitate, reconstruct and modernize all portions of any transportation system acquired by the authority and to maintain at all times an adequate and modern transportation system suitable and adapted to the needs of the municipalities served, and for safe, comfortable and convenient service. To that end the board shall establish a modernization fund which shall include, but is not limited to cash in renewal, equipment or depreciation funds which are part of transportation systems or part thereof acquired by the authority and any excess cash derived from the sale of revenue bonds or certificates. The moneys in the modernization fund shall be disbursed for the purpose of acquiring or constructing extensions and improvements and betterment of the system, to make replacements of property damaged or destroyed or in necessary cases where depreciation fund is insuffi-

cient, to purchase and cancel its revenue bonds and certificates prior to their maturity at a price not exceeding par, and to redeem and cancel its revenue bonds and certificates according to their terms. The board may make temporary loans from the modernization fund for use as initial working capital.

**(33) DEPRECIATION POLICY.** To assure modern, attractive transportation service the board may establish a depreciation policy which makes provision for the continuous and prompt replacement of worn out and obsolete property and the board may make provision for such depreciation of the property of the authority as is not offset by current expenditures for maintenance, repairs and replacements. The board from time to time shall make a determination of the relationship between the service condition of the properties of the authority and the then established depreciation rates and reserves and may make adjustments or modifications of such rates in such amounts as it may deem appropriate because of experience and estimated consumption of service life of road, plant and equipment.

**(34) DAMAGE RESERVE FUND.** (a) *Establishment of fund.* The board shall withdraw from the gross receipts of the authority and charge to operating expenses such an amount of money as in the opinion of the board shall be sufficient to provide for the adjustment, defense and satisfaction of all suits, claims, demands, rights and causes of action and the payment and satisfaction of all judgments entered against the authority for damage caused by injury to or death of any person and for damage to property resulting from the construction, maintenance and operation of the transportation system. The board shall deposit such moneys in a fund to be known and designated as the damage reserve fund.

(b) *Use of fund.* The board shall use the moneys in the damage reserve fund to pay all expenses and costs arising from the adjustment, defense and satisfaction of all suits, claims, demands, rights and causes of action and the payment and satisfaction of all judgments entered against the authority for damages caused by injury to or death of any person and for damage to property resulting from the construction, maintenance and operation of the transportation system.

(c) *Liability insurance.* The cost of obtaining and maintaining insurance against such contingencies shall be paid out of the moneys in the damage reserve fund. All moneys received from such insurance coverage or protection shall be paid into the damage reserve fund.

(d) *Worker's compensation.* The authority and its employes shall be subject to ch. 102.

**(35) CLAIMS AGAINST AUTHORITY FOR PERSONAL INJURIES, DEATHS OR PROPERTY DAMAGES.** Civil actions to enforce claims against the authority for personal injuries, wrongful deaths or property damages may be commenced and prosecuted.

**(36) SPECIAL FUNDS.** The authority may establish and create such other and additional special funds as may be found desirable by the board and in and by such ordinances may provide for payments into all special funds from specified sources with such preferences and priorities as may be deemed advisable and may also by any such ordinances provide for the custody, disbursement and application of any moneys in any such special funds consistent with the provisions of this section.

**(37) PUBLIC BIDDING ON CONTRACTS.** (a) *Exceptions.* 1. All contracts for the sale of property of the value of more than \$2,500 or for any concession in or lease of property of the authority for a term of more than one year shall be awarded to the highest responsible bidder, after advertising for bids by publishing a class 2 notice, under ch. 985.

2. All construction contracts and contracts for supplies, materials, equipment and services, when the expense thereof will exceed \$2,500, shall be let to the lowest responsible bidder, after advertising for bids, except:

a. When by vote of at least 5 members of the board, it is determined that an emergency requires immediate delivery of supplies, materials or equipment or performance of services;



b. When repair parts, accessories, equipment or services are required for equipment or services previously furnished or contracted for;

c. When the nature of the services required is such that competitive bidding is not in the best interest of the public, including, without limiting the generality of the foregoing, the services of accountants, architects, attorneys, engineers, physicians, superintendents of construction, and others possessing a high degree of skill; or

d. When services such as water, light, heat, power, telecommunications or telegraph are required.

3. All contracts involving less than \$2,500 shall be let by competitive bidding whenever possible, and in any event in a manner calculated to insure the best interests of the public.

(b) *Rejection of bids.* In determining the responsibility of any bidder, the board may take into account past dealings with the bidder, experience, adequacy of equipment, ability to complete performance within the time set, and other factors beside financial responsibility, but in no case shall any such contract be awarded to any other than the highest bidder (in case of sale, concession or lease) or the lowest bidder (in case of purchase or expenditure) unless authorized or approved by a vote of at least 5 members of the board, and unless such action is accompanied by a statement in writing setting forth the reasons, which statement shall be kept on file in the principal office of the authority and open to public inspection.

(c) *Evason, collusion.* Contracts shall not be split into parts involving expenditure of less than \$2,500 for the purpose of avoiding the provisions of this section, and all such split contracts shall be void. If any collusion occurs among bidders or prospective bidders in restraint of freedom of competition, by agreement to bid a fixed amount or to refrain from bidding or otherwise, the bids of such bidders shall be void. Each bid shall be accompanied by the bidder's sworn statement that the bidder has not been a party to any such agreement.

(d) *Employes not to bid.* Members of the board, officers and employees of the authority, and their relatives within the fourth degree by the terms of the civil law, are forbidden to be interested directly or indirectly in any contract for construction or maintenance work or for the delivery of materials, supplies or equipment.

(e) *Readvertising.* The board shall have the right to reject all bids and to readvertise for bids. If after such readvertisement no responsible and satisfactory bid within the terms of the advertisement shall be received, the board may award such contract without competitive bidding, if it shall not be less advantageous to the authority than any valid bid received pursuant to advertisement.

(f) *Rules of the board.* The board shall adopt rules and regulations to carry into effect the provisions of this subsection.

**(38) ADVERTISEMENT FOR BIDS.** Advertisements for bids shall be published as a class 2 notice, under ch. 985, in the metropolitan district, the last insertion to be at least 10 days before the time for receiving bids. Such advertisement shall state the time and place for receiving and opening of bids, and by reference to plans and specifications on file at the time of the first publication, or in the advertisement itself, shall describe the character of the proposed contract in sufficient detail to fully advise prospective bidders of their obligations and to insure free and open competitive bidding. All bids in response to advertisements shall be sealed and shall be publicly opened by the board, and all bidders shall be entitled to be present in person or by representatives. Cash or a certified or satisfactory cashier's check, as a deposit of good faith, or a bid bond with satisfactory surety or sureties in a reasonable amount to be fixed by the board before advertising for bids, shall be required with the proposal of each bidder. Bond for faithful performance of the contract with surety satisfactory to the board and adequate insurance may be required by the board. The contract shall be awarded as promptly as possible after the opening of bids. All bids shall be placed on file open to public inspection. All bids shall be void if any disclosure of the terms of any bid in response

to an advertisement is made or permitted to be made by the board before the time fixed for opening bids.

**(39) ESTABLISHMENT OF FISCAL YEAR.** The board shall establish a fiscal operating year. At least 30 days prior to the beginning of the first full fiscal year after creation of the authority, and annually thereafter, the board shall cause to be prepared a tentative budget which shall include all operation and maintenance expense for the ensuing fiscal year. The tentative budget shall be considered by the board at a public meeting, held after publication in the district of a class 1 notice, under ch. 985, not less than 10 days prior to such meeting; subject to any revision and amendments as may be determined, it shall be adopted prior to the first day of the ensuing fiscal year as the budget for that year. No expenditures for operations and maintenance in excess of the budget shall be made during any fiscal year except by the affirmative vote of at least 5 members of the board. It shall not be necessary to include in the annual budget any statement of necessary expenditures for pensions or retirement annuities, for interest or principal payments on bonds, or for capital outlays, but the board shall provide for payment of same from appropriate funds.

**(40) ANNUAL REPORT.** As soon after the end of each fiscal year as may be expedient, the board shall print a detailed report and financial statement of its operations and of its assets and liabilities. A reasonably sufficient number of copies of such report shall be printed for distribution to persons interested, upon request, and a copy thereof shall be filed with the governor, the county clerks of the counties in which the authority is engaged in the operation of its business and the clerk of each municipality which has adopted this section or granted rights to the authority by ordinance. A separate copy of such report shall be mailed to the principal officer and the governing body of each such municipality.

**(42) CONFLICT OF LAWS.** Insofar as any provision of this section is inconsistent with the provisions of any other law, the provisions of this section shall be controlling, except as provided in sub. (44).

**(43) APPLICATION OF SECTION.** This section shall be construed as constituting complete statutory authority for the creation of metropolitan transit authorities and the acquisition, ownership and operation of a transportation system by such authority and for the issuance of bonds as herein authorized, any other law relating to the matters herein contained to the contrary notwithstanding.

**(44) PUBLIC UTILITY LABOR DISPUTES.** Notwithstanding any provision of this section the authority shall be deemed an employer under subch. III of ch. 111, and the authority shall be subject to the same laws as other similar organizations engaged in like activities; and any provision of this section in conflict with the provisions of this subsection is to the extent of such conflict superseeded by the provisions of this subsection.

**History:** 1973 c. 172, 243; 1975 c. 94 ss. 38, 91 (9), (12); 1975 c. 147 s. 54; 1975 c. 199; 1977 c. 29 s. 1654 (9) (h); 1979 c. 102 s. 237; 1979 c. 110; 1981 c. 96; 1981 c. 347 s. 80 (2); 1983 a. 24, 189; 1983 a. 207 s. 93 (8); 1983 a. 368; 1985 a. 135, 187; 1985 a. 297 s. 76; 1987 a. 403; 1991 a. 39, 221, 282, 316; 1993 a. 16, 123, 279, 490

Railroad property is subject to special assessment for sanitary sewer even though the sewer is of no immediate benefit. *Soo Line RR. Co. v. Neenah*, 64 W (2d) 665, 221 NW (2d) 907.

### 66.943 City, village and town transit commissions.

**(1)** Any city, village or town may enact an ordinance for the establishment, maintenance and operation of a comprehensive unified local transportation system, the major portion of which is or is to be located within or the major portion of the service of which is or is to be supplied to the inhabitants of such city, village or town, and which system is used or to be used for the transportation of persons or freight.

**(2)** The transit commission shall be designated "Transit Commission" preceded by the name of the enacting city, village or town.

**(3)** In this section:

(a) "Comprehensive unified local transportation system" means a transportation system comprised of motor bus lines and any other local public transportation facilities or freight transpor-

tation facilities, the major portions of which are within the city, village or town.

(b) "Transit commission" or "commission" means the local transit commission created under this section.

(4) The transit commission shall consist of not less than 3 members to be appointed by the mayor or village board or town board chairperson and approved by the common council or village or town board, one of whom shall be designated as chairperson.

(5) (a) The first members of the transit commission shall be appointed for staggered 3-year terms. The term of office of each member thereafter appointed shall be 3 years.

(c) No person holding stocks or bonds in any corporation subject to the jurisdiction of the transit commission, or who is in any other manner pecuniarily interested in any such corporation, may be a member of nor be employed by the transit commission.

(6) The transit commission may appoint a secretary and employ accountants, engineers, experts, inspectors, clerks and other employes and fix their compensation, and purchase furniture, stationery and other supplies and materials, that are reasonably necessary to enable it to perform its duties and exercise its powers.

(7) (a) The transit commission may conduct hearings and may adopt rules relative to the calling, holding and conduct of its meetings, the transaction of its business, the regulation and control of its agents and employes, the filing of complaints and petitions and the service of notices.

(b) For the purpose of receiving, considering and acting upon any complaints or applications that may be presented to it or for the purpose of conducting investigations or hearings on its own motion the transit commission shall hold regular meetings at least once a week except in the months of July and August and special meetings on the call of the chairperson or at the request of the city council or town board.

(c) The transit commission may adopt a seal, of which judicial notice shall be taken in all courts. Any process, writ, notice or other instrument that the commission may be authorized by law to issue shall be considered sufficient if signed by the secretary of the commission and authenticated by the commission's seal. All acts, orders, decisions, rules and records of the commission, and all reports, schedules and documents filed with the commission may be proved in any court by a copy of the documents that is certified by the secretary under the seal of the commission.

(8) Except as otherwise provided in this subsection, the jurisdiction, powers and duties of the transit commission shall extend to the comprehensive unified local transportation system for which the commission is established including any portion of the system extending into adjacent or suburban territory that is outside of the city, village or town not more than 30 miles from the nearest point marking the corporate limits of the city, village or town. The jurisdiction, powers and duties of a transit commission providing rail service shall extend to the comprehensive unified local rail transportation system for which the commission is established including any portion of the system that extends into adjacent or suburban territory that is outside of the city, village or town and in an adjoining state whose laws permit, subject to the laws of that state but subject to the laws of this state in all matters relating to rail service.

(9) Initial acquisition of the properties for the establishment of and to comprise the comprehensive unified local transportation system shall be subject to s. 66.065 or ch. 197.

(10) (a) Any city, village, town or federally recognized Indian tribe or band may by contract under s. 66.30 establish a joint municipal transit commission with the powers and duties of city, village or town transit commissions under this section. Membership on such a joint transit commission shall be as provided in the contract established under s. 66.30.

(b) Notwithstanding any other provision of this section, no joint municipal transit commission under par. (a) may provide service outside the corporate limits of the parties to the contract under

s. 66.30 which establish the joint municipal transit commission unless the joint municipal transit commission receives financial support for the service pursuant to a contract with a public or private organization for such service. This paragraph does not apply to service provided by a joint municipal transit commission outside the corporate limits of the parties to the contract under s. 66.30 which establish the joint municipal transit commission if the joint municipal transit commission is providing the service on April 28, 1994, without receiving financial support from a public or private organization for the service, and elects to continue such service.

(11) (a) In lieu of providing transportation services, a city, village or town may contract with a private organization for such services.

(b) Notwithstanding any other provision of this section, no municipality may contract with a private organization to provide service outside the corporate limits of such municipality unless the municipality receives financial support for the service pursuant to a contract with a public or other private organization for such service. This paragraph does not apply to service provided under par. (a) outside the corporate limits of a municipality if a private organization is providing the service on April 28, 1994, without receiving financial support from a public or private organization for the service, and the municipality elects to continue such service.

(12) Notwithstanding any other provision of this section, no transit commission may provide service outside the corporate limits of the city which establishes the transit commission unless the transit commission receives financial support for the service pursuant to a contract with a public or private organization for such service. This subsection does not apply to service provided by a transit commission outside the corporate limits of the city which establishes the transit commission if the transit commission is providing the service on April 28, 1994, without receiving financial support from a public or private organization for the service, and elects to continue such service.

History: 1975 c. 224; 1977 c. 418; 1981 c. 247; 1983 a. 189, 266; 1993 a. 184, 246, 279, 491.

**66.944 Transit employes; Wisconsin retirement system.** (1) (a) This subsection applies to all affected employes of a transportation system which is acquired, after June 29, 1975, but prior to January 1, 1982, by a city, a city transit commission or a metropolitan transit authority which is a participating employer in the Wisconsin retirement fund.

(b) Within 60 days after May 19, 1978, or within 60 days after a system is acquired by a city, a city transit commission or a metropolitan transit authority, whichever is later, an election shall be conducted by the department of employe trust funds under procedures adopted by the department of employe trust funds. If all of the affected employes of the transportation system who are members of a retirement system established by the previous employer vote to be included within the Wisconsin retirement fund, prior to January 1, 1982, or the Wisconsin retirement system, after that date, rather than their present retirement system, their eligibility for participation within the Wisconsin retirement system shall be computed from the date of acquisition.

(c) Notwithstanding s. 66.94 (29) or any other law, after the election under par. (b), no city, city transit commission or metropolitan transit authority may be required to contribute to more than one retirement fund for an affected employe.

(2) (a) Notwithstanding any other law pension benefits, rights and obligations of persons who are employed by a transportation system on the date of its acquisition by a participating employer in the Wisconsin retirement system shall be determined under pars. (b) and (c) if the date of acquisition is on or after January 1, 1982.

(b) Participating employers who acquire a transportation system on or after January 1, 1982 may elect to permit the employes of the transportation system on the date of acquisition to elect to

continue participation under a retirement plan which has been established for those employes prior to the acquisition, rather than to participate in the Wisconsin retirement system. An employe who elects to continue participation in the prior established retirement plan is included under the Wisconsin retirement system as a participating employe but no contributions shall be made to the Wisconsin retirement system, and the employe is not eligible for any benefits from the system for service as an employe of the transportation system. If an affected employe does not elect to continue participation in the previously established retirement plan the employe is a participant in the Wisconsin retirement system from the date of acquisition and employer and employe contributions are required commencing with that date. The government entity acquiring the transportation system is not required to contribute, directly or indirectly, to the Wisconsin retirement system and also to another retirement plan for the employe.

(c) An employe may elect to continue under a previously established retirement plan as provided by par. (b) only if the participating employer in the Wisconsin retirement system which acquired the transportation system files with the department of employe trust funds within 60 days after the date of acquisition notice of election to make the option available. An employe who does not elect under par. (b), according to the procedures established by the department of employe trust funds, to continue participation under a previously established retirement plan within 60 days after the employer's notice is filed is a participant in the Wisconsin retirement system.

(3) A person who commences employment on or after January 1, 1982 or the date of acquisition, whichever is later, with a transportation system which has been acquired by a participating employer in the Wisconsin retirement system is, if otherwise eligible under the Wisconsin retirement system, a participating employe under that system.

History: 1977 c. 418; 1981 c. 96.

**66.945 Creation, organization, powers and duties of regional planning commissions.** (1) DEFINITIONS In this section:

(a) "Governing body" means the town, village or county board or the legislative body of a city.

(b) "Local governmental units" or "local units" means cities, villages, towns and counties.

(c) "Population" means the population of a local unit as shown by the last federal census or by any subsequent population estimate under s. 16.96.

(2) CREATION OF REGIONAL PLANNING COMMISSIONS (a) A regional planning commission may be created by the governor, or such state agency or official as the governor designates, upon petition in the form of a resolution by the governing body of a local governmental unit and the holding of a public hearing on such petition. If the petition is joined in by the governing bodies of all the local units in the proposed region, including the county board of any county, part or all of which is in the proposed region, the governor may dispense with the hearing. Notice of any public hearing shall be given by the governor by mail at least 10 days in advance to the clerk of each local unit in the proposed region.

(b) If the governor finds that there is a need for a regional planning commission, and if the governing bodies of local units within the proposed region which include over 50% of the population and equalized assessed valuation of the region as determined by the last previous equalization of assessments, consent to the formation of such regional planning commission, the governor may create the regional planning commission by order and designate the area and boundaries of the commission's jurisdiction taking into account the elements of homogeneity based upon, but not limited to, such considerations as topographic and geographic conformations, extent of urban development, the existence of special or acute agricultural, forestry, conservation or other rural problems, uniformity of social or economic interests and values, park and

recreational needs, civil defense, or the existence of physical, social and economic problems of a regional character.

(c) Territory included within a regional planning commission that consists of one county or less in area also may be included in the creation of a multicounty regional planning commission. Such creation does not require that the existing regional planning commission consisting of one county or less in area be terminated or altered, but upon creation of the multicounty commission, the existing commission shall cease to have authority to make charges upon participating local governmental units pursuant to sub. (14) and shall adopt a name other than "regional planning commission".

(2m) LIMITATION ON TERRITORY No regional planning commission may be created to include territory located in 3 or more uniform state districts as established by 1970 executive order 22 (August 24, 1970). Any existing regional planning commission which includes territory located in 3 or more such uniform state districts shall be dissolved no later than December 31, 1972.

(3) COMPOSITION OF REGIONAL PLANNING COMMISSIONS (a) The membership composition of a regional planning commission which includes a city of the first class shall be as follows:

1. One member appointed by the county board of each county, part or all of which is initially within the region or is later added.

2. Two members from each participating county shall be appointed by the governor. At least one such appointee shall be a person, selected from a list of 2 or more persons nominated by the county board, who has experience in local government in elective or appointive offices or who is professionally engaged in advising local governmental units in the fields of land-use planning, transportation, law, finance, engineering or recreation and natural resources development. The governor in making appointments hereunder shall give due weight to the place of residence of the appointees within the various counties encompassed by the region.

3. The secretary of development or a designee shall serve as a nonvoting member of each regional planning commission organized under this section.

(b) For any region which does not include a city of the first class, the membership composition of a regional planning commission shall be in accordance with resolutions approved by the governing bodies of a majority of the local units in the region, and these units shall have in the aggregate at least half the population of the region. For the purposes of this determination a county, part or all of which is within the region, shall be counted as a local unit, but the population of an approving county shall not be counted. In the absence of the necessary approval by the local units, the membership composition of a commission shall be determined as follows:

1. For regions which include land in more than one county par. (a) shall apply.

2. For regions that include land in only one county the commission shall consist of 3 members appointed by the county board; and 3 members appointed by the governing body of each city, village and town in the region having a population of 20,000 or more (if there is no city, village or town having a population of 20,000 or more the governor shall appoint one member from each city, village or town with a population of 5,000 or more within the region); and in addition 3 members shall be appointed at large by the governor. All governor appointees shall be persons who have experience in local government in elective or appointive offices or who are professionally engaged in advising local governmental units in the fields of land-use planning, transportation, law, finance or engineering.

(c) Terms of office for regional planning commission members shall be as follows:

1. If the composition of the commission is approved by local units under par. (b), the terms shall be as prescribed in the resolutions of approval.

2. For members of all other commissions the term is 6 years after the initial term. At the first meeting of the commission it shall be determined by lot which of the initial members shall have 2, 4 and 6-year terms, respectively, and each group shall be as nearly equal as may be.

(d) All regional planning commission members shall be electors of the state and reside within the region.

(4) **COMPENSATION; EXPENSES** A per diem compensation may be paid members of regional planning commissions. This shall not affect in any way remuneration received by any state or local official who, in addition to serving as a state or local official, serves also as a member of the regional planning commission. All members may be reimbursed for actual expenses incurred as members of the commission in carrying out the work of the commission.

(5) **CHAIRPERSON; RULES OF PROCEDURE; RECORDS** Each regional planning commission shall elect its own chairperson and executive committee and shall establish its own rules of procedure, and may create and fill such other offices as it may determine necessary. The commission may authorize the executive committee to act for it on all matters pursuant to rules adopted by it. The commission shall meet at least once each year. It shall keep a record of its resolutions, transactions, findings and determinations, which shall be a public record.

(6) **DIRECTOR AND EMPLOYEES** The regional planning commission shall appoint a director and such employees as it deems necessary for its work and may hire such experts and consultants for part-time or full-time service as may be necessary for the prosecution of its responsibilities.

(7) **ADVISORY COMMITTEES OR COUNCILS; APPOINTMENT** The regional planning commission may appoint advisory committees or councils whose membership may consist of individuals whose experience, training or interest in the program may qualify them to lend valuable assistance to the regional planning commission by acting in an advisory capacity in consulting with the regional planning commission on all phases of the commission's program. Members of such advisory bodies shall receive no compensation for their services but may be reimbursed for actual expenses incurred in the performance of their duties.

(8) **FUNCTIONS, GENERAL AND SPECIAL** (a) The regional planning commission may conduct all types of research studies, collect and analyze data, prepare maps, charts and tables, and conduct all necessary studies for the accomplishment of its other duties; it may make plans for the physical, social and economic development of the region, and may adopt by resolution any plan or the portion of any plan so prepared as its official recommendation for the development of the region; it may publicize and advertise its purposes, objectives and findings, and may distribute reports thereon; it may provide advisory services on regional planning problems to the local government units within the region and to other public and private agencies in matters relative to its functions and objectives, and may act as a coordinating agency for programs and activities of such local units and agencies as they relate to its objectives. All public officials shall, upon request, furnish to the regional planning commission, within a reasonable time, such available information as it requires for its work. In general, the regional planning commission shall have all powers necessary to enable it to perform its functions and promote regional planning. The functions of the regional planning commission shall be solely advisory to the local governments and local government officials comprising the region.

(b) The regional planning commission shall make an annual report of its activities to the legislative bodies of the local governmental units within the region, and shall submit 2 copies of the report to the legislative reference bureau.

(9) **PREPARATION OF MASTER PLAN FOR REGION** The regional planning commission shall have the function and duty of making and adopting a master plan for the physical development of the region. The master plan, with the accompanying maps, plats,

charts, programs and descriptive and explanatory matter, shall show the commission's recommendations for such physical development and may include, among other things without limitation because of enumeration, the general location, character and extent of main traffic arteries, bridges and viaducts; public places and areas; parks; parkways; recreational areas; sites for public buildings and structures; airports; waterways; routes for public transit; and the general location and extent of main and interceptor sewers, water conduits and other public utilities whether privately or publicly owned; areas for industrial, commercial, residential, agricultural or recreational development. The regional planning commission may amend, extend or add to the master plan or carry any part or subject matter into greater detail.

(10) **ADOPTION OF MASTER PLAN FOR REGION** The master plan shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the region which will, in accordance with existing and future needs, best promote public health, safety, morals, order, convenience, prosperity or the general welfare, as well as efficiency and economy in the process of development. The regional planning commission may adopt the master plan as a whole by a single resolution, or, as the work of making the whole master plan progresses, may by resolution adopt a part or parts thereof, any such part to correspond generally with one or more of the functional subdivisions of the subject matter of the plan. The resolution shall refer expressly to the maps, plats, charts, programs and descriptive and explanatory matter, and other matters intended by the regional planning commission to form the whole or any part of the plan, and the action taken shall be recorded on the adopted plan or part thereof by the identifying signature of the chairperson of the regional planning commission and a copy of the plan or part thereof shall be certified to the legislative bodies of the local governmental units within the region. The purpose and effect of adoption of the master plan shall be solely to aid the regional planning commission and the local governments and local government officials comprising the region in the performance of their functions and duties.

(11) **MATTERS REFERRED TO REGIONAL PLANNING COMMISSION** The officer or public body of a local governmental unit within the region having final authority thereon may refer to the regional planning commission, for its consideration and report, the following matters: The location of or acquisition of land for any of the items or facilities which are included in the adopted regional master plan. Within 20 days after the matter is referred to the regional planning commission or such longer period as may be stipulated by the referring officer or public body, the commission shall report its recommendations to the referring officer or public body. The report and recommendations of the commission shall be advisory only. State agencies may authorize the regional planning commission with the consent of the commission to act for such agency in approving, examining or reviewing plats, under s. 236.12 (2) (a). Regional planning commissions authorized by a local unit on November 1, 1980 to act for the local unit in approving plats may continue to so act until the commission withdraws its consent or the local unit its approval. A local unit may authorize a regional planning commission, with the consent of the commission, to conduct an advisory review of plats.

(12) **LOCAL ADOPTION OF PLANS OF REGIONAL COMMISSION; CONTRACTS** (a) Any local governmental unit within the region may adopt all or any portion of the plans and other programs prepared and adopted by the regional planning commission.

(b) In addition to the other powers specified in this section a regional planning commission may enter into a contract with any local unit within the region under s. 66.30 to make studies and offer advice on:

1. Land use, thoroughfares, community facilities, and public improvements;
2. Encouragement of economic and other developments.

(13) AID FROM GOVERNMENTAL AGENCIES; GIFTS AND GRANTS Aid, in any form, for the purpose of accomplishing the objectives of the regional planning commission may be accepted from all governmental agencies whether local, state or federal, if the conditions under which such aid is furnished are not incompatible with the other provisions of this section. The regional planning commission may accept gifts and grants from public or private individuals or agencies if the conditions under which such grants are made are in accordance with the accomplishment of the objectives of the regional planning commission.

(14) BUDGET AND SERVICE CHARGES (a) For the purpose of providing funds to meet the expenses of a regional planning commission, the commission shall annually on or before October 1 prepare and approve a budget reflecting the cost of its operation and services to the local governmental units within the region. The amount of the budget charged to any local governmental unit shall be in the proportion of the equalized value for tax purposes of the land, buildings and other improvements thereon of such local governmental unit, within the region, to the total such equalized value within the region. The amount charged to a local governmental unit shall not exceed .003 per cent of such equalized value under its jurisdiction and within the region, unless the governing body of such unit expressly approves the amount in excess of such percentage. All tax or other revenues raised for a regional planning commission shall be forwarded by the treasurer of the local unit to the treasurer of the commission on written order of the treasurer of the commission.

(b) Where one-half or more of the land within a county is within a region, the chairperson of the regional planning commission shall certify to the county clerk, prior to August 1 of each year, the proportionate amount of the budget charged to the county for the services of the regional planning commission. Unless the county board finds such charges unreasonable, and institutes the procedures set forth below for such a contingency, it shall take such necessary legislative action as to provide the funds called for in the certified statement.

(c) Where less than one-half of the land within a county is within a region, the chairperson of the regional planning commission shall before August 1 of each year certify to the clerk of the local governmental unit involved a statement of the proportionate charges assessed to that local governmental unit. Such clerk shall extend the amount shown in such statement as a charge on the tax roll under s. 144.07 (2).

(d) If any local governmental unit makes a finding by resolution within 20 days of the certification to its clerk that the charges of the regional planning commission are unreasonable, it may:

1. Submit the issue to arbitration by 3 arbitrators, one to be chosen by the local governmental unit, one to be chosen by the regional planning commission and the third to be chosen by the first 2 arbitrators. If the arbitrators are unable to agree, the vote of 2 shall be the decision. They may affirm or modify the report, and shall submit their decision in writing to the local governmental unit and the regional planning commission within 30 days of their appointment unless the time be extended by agreement of the commission and the local governmental unit. The decision shall be binding. Election to arbitrate shall be waiver of right to proceed by action. Two-thirds of the expenses of arbitration shall be paid by the party requesting arbitration and the balance by the other, or

2. If a local governmental unit does not elect to arbitrate, it may institute a proceeding for judicial review under ch. 227.

(e) By agreement between the regional planning commission and a local governmental unit, special compensation to the commission for unique and special services provided to such local governmental unit may be arranged.

(f) The regional planning commission may accept from any local governmental unit supplies, the use of equipment, facilities and office space and the services of personnel as part or all of the financial support assessed against such local governmental unit.

(15) DISSOLUTION OF REGIONAL PLANNING COMMISSIONS Upon receipt of certified copies of resolutions recommending the dissolution of a regional planning commission adopted by the governing bodies of a majority of the local units in the region, including the county board of any county, part or all of which is within the region, and upon a finding that all outstanding indebtedness of the commission has been paid and all unexpended funds returned to the local units which supplied them, or that adequate provision has been made therefor, the governor shall issue a certificate of dissolution of the commission which shall thereupon cease to exist.

(16) WITHDRAWAL Within 90 days of the issuance by the governor of an order creating a regional planning commission, any local unit of government within the boundaries of such region may withdraw from the jurisdiction of such commission by a two-thirds vote of the members-elect of the governing body after a public hearing. Notice thereof shall be given to the commission by registered mail not more than 3 nor less than 2 weeks prior thereto and by publication of a class 2 notice, under ch. 985. A local unit may withdraw from a regional planning commission at the end of any fiscal year by a two-thirds vote of the members-elect of the governing body taken at least 6 months prior to the effective date of such withdrawal. However, such unit shall be responsible for its allocated share of the contractual obligations of the regional planning commission continuing beyond the effective date of its withdrawal.

History: 1971 c 225, 227; 1977 c 29, 187, 418; 1979 c 110, 175, 248; 1979 c 361 s. 112; 1991 a 316; 1993 a 184, 246

Withdrawal from the commission by municipality has no effect on county's authority to contract with the commission under this section. *Tanck v Dane County Regional Plan Comm* 81 W (2d) 76, 260 NW (2d) 18

With respect to claims of contractual interference and civil conspiracy, a plan commission is immune from suit. *Busse v Dane County Regional Planning Comm* 181 W (2d) 527, 510 NW (2d) 136 (Ct App 1993).

See note to 59 97, citing 61 Atty Gen 220.

Representation provisions of (3) do not violate the one man, one vote principle. 62 Atty Gen 136

Appointments to regional planning commissions on behalf of a county, under (3) (b) are made by the county board, unless the county has a county executive or a county administrator in which event such appointments are made by that county officer, under the authority set forth in either 59 032 (2) (c) or 59 033 (2) (c). 62 Atty Gen 197.

Commission employees have indemnity protection under 895 46 (1) (a). 77 Atty Gen 142.

The boundaries of existing multicounty regional planning commissions may only be altered following their dissolution under sub (15). OAG 11-93.

**66.95 Prohibiting operators from leaving keys in parked motor vehicles.** The governing body of any city, village or town may by ordinance require every passenger motor vehicle to be equipped with a lock suitable to lock either the starting lever, throttle, steering apparatus, gear shift lever or ignition system; prohibit any person from permitting a motor vehicle in the person's custody from standing or remaining unattended on any street, road, alley or in any other public place, except an attended parking area, unless either the starting lever, throttle, steering apparatus, gear shift or ignition of the vehicle is locked and the key for that lock is removed from the vehicle; and provide forfeitures for such violations. The foregoing provisions shall not apply to motor vehicles operated by common carriers of passengers under ch. 194.

History: 1991 a 316; 1993 a 246

**66.955 Nuisance weeds.** (1) In this section, "nuisance weeds" means any nonnative member of the genus *Lythrum* (purple loosestrife) or hybrids thereof and multiflora rose.

(2) Except as provided in sub. (3), no person may sell, offer for sale, distribute, plant or cultivate any nuisance weed or seeds thereof.

(3) The department of natural resources may conduct research on the control of nuisance weeds. The secretaries of natural resources and of agriculture, trade and consumer protection may authorize any person to plant or cultivate nuisance weeds for the purpose of controlled experimentation.



(4) The department of natural resources shall make a reasonable effort to implement a statewide program for education, research, control and containment of purple loosestrife under s. 23.23.

(5) Any person who knowingly violates this section shall forfeit not more than \$100. Each violation of this section is a separate offense.

History: 1987 a 41.

**66.96 Noxious weeds.** (1) The term "destroy" means the complete killing of weeds or the killing of weed plants above the surface of the ground by the use of chemicals, cutting, tillage, cropping system, pasturing livestock, or any or all of these in effective combination, at such time and in such manner as will effectually prevent such plants from maturing to the bloom or flower stage.

(2) The term "noxious weeds" as used in this chapter includes the following: Canada thistle, leafy spurge and field bindweed (creeping Jenny) and any other such weeds as the governing body of any municipality or the county board of any county by ordinance or resolution declares to be noxious within its respective boundaries.

(3) Every person shall destroy all noxious weeds on all lands which the person shall own, occupy or control. The person having immediate charge of any public lands shall destroy all noxious weeds on such lands. The highway patrolman on all federal, state or county trunk highways shall destroy all noxious weeds on that portion of the highway which that highway patrolman patrols. The town board shall cause to be destroyed all noxious weeds on the town highways.

(4) The chairperson of each town, the president of each village and the mayor or manager of each city shall annually on or before May 15 publish a class 2 notice, under ch. 985, that every person is required by law to destroy all noxious weeds, as defined in this section, on lands in the municipality which the person owns, occupies or controls. A town, village or city which has designated as its official newspaper or which uses for its official notices the same newspaper as any other town, village or city may publish the notice under this subsection in combination with the other town, village or city.

(5) This section does not apply to Canada thistle or annual noxious weeds that are located on land that the department of natural resources owns, occupies or controls and that is maintained in whole or in part as habitat for wild birds by the department of natural resources.

History: 1975 c. 394 s. 12; 1975 c. 421; Stats. 1975 s. 66.96; 1983 a 112, 189; 1989 a 56 s. 258; 1991 a 39, 316.

See note to 80.01, citing Walker v. Bignell, 100 W (2d) 256, 301 NW (2d) 447 (1981).

**66.97 Weed commissioner; appointment, oath, term; exception.** The chairperson of each town, the president of each village, and the mayor of each city, shall appoint one or more commissioners of noxious weeds therein on or before May 15 in each year; such weed commissioner shall take the official oath, which oath shall be filed in the office of the town, village or city clerk, and shall hold office for one year and until a successor has qualified. If more than one commissioner is appointed, the town, city or village shall be divided into districts by the officer making the appointment, and each commissioner shall be assigned to a different district. The town chairperson, village president or city mayor may appoint a resident of any district to

serve as weed commissioner in any other district of the same town, village or city. This section shall not apply to cities of the 1st class, but in such cities the aldermanic district superintendent shall perform the duties of commissioners of weeds.

History: 1971 c. 304 s. 29 (1); 1975 c. 394 s. 12; 1975 c. 421; Stats. 1975 s. 66.97; 1989 a 56 s. 258.

**66.98 Duties; powers; collection of tax.** (1) Every weed commissioner shall carefully investigate concerning the existence of noxious weeds in the district; and if any person in the district neglects to destroy any weeds as required by s. 66.96, the weed commissioner shall destroy or cause all such weeds to be destroyed, in the manner considered to be the most economical method, and for each day devoted to doing so the weed commissioner shall receive such compensation as is determined by the town board, village board or city council upon presenting to the proper treasurer the account therefor, verified by oath and approved by the appointing officer. Such account shall specify by separate items the amount chargeable to each piece of land, describing the same, and shall, after being paid by the treasurer, be filed with town, city or village clerk, who shall enter the amount chargeable to each tract of land in the next tax roll in a column headed "For the Destruction of Weeds", as a tax on the lands upon which such weeds were destroyed, which tax shall be collected under ch. 74, except in case of lands which are exempt from taxation in the usual way. A delinquent tax may be collected as is a delinquent real property tax under chs. 74 and 75 or as is a delinquent personal property tax under ch. 74. In case of railroad or other lands not taxed in the usual way the amount chargeable against the same shall be certified by the town, city or village clerk to the state treasurer who shall add the amount designated therein to the sum due from the company owning, occupying or controlling the lands specified, and the treasurer shall collect the same therefrom as prescribed in subch. I of ch. 76, and return the amount collected to the town, city or village from which such certificate was received. Any such commissioner may enter upon any lands that are not exempt under s. 66.96 (5) and upon which any of the weeds mentioned in s. 66.96 are growing, and cut or otherwise destroy them, without being liable to an action for trespass or any other action for damages resulting from such entry and destruction, if reasonable care is exercised in the performance of the duty hereby imposed.

(2) For each day consumed by the commissioners in carrying out their duties other than the destruction of weeds, they shall receive such compensation as may be determined by the village board, town board or city council to be paid out of the city, village or town treasury.

History: 1975 c. 394 ss. 12, 27; 1975 c. 421; Stats. 1975 s. 66.98; 1979 c. 102 s. 237; 1987 a 378; 1991 a 39; 1993 a 246.

**66.99 County weed commissioner; deputies.** Any county may by resolution adopted by its county board provide for the appointment of a county weed commissioner, define the duties and fix the term of office and compensation. When any such weed commissioner has been appointed and has qualified, the commissioner has the powers and duties of the weed commissioners provided for in ss. 66.96 to 66.98. Each town chairperson, village president or city mayor may appoint one or more deputy weed commissioners, who shall work in cooperation with the county weed commissioner in the district assigned by the appointing officer.

History: 1975 c. 394 ss. 12, 27; 1975 c. 421; Stats. 1975 s. 66.99; 1989 a 56 s. 258.