

## CHAPTER 198

## MUNICIPAL POWER AND WATER DISTRICTS

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**198.01 Definitions.** In this chapter, unless the context otherwise requires:

(1) “Board of directors,” “directors” or “board” means the board of directors of a municipal power district selected as provided in this chapter, duly constituted and organized and acting as a board.

(2) “Chief executive” means mayor or city manager, village president, or chairperson of the town.

(3) “Commission” means the public service commission and any other body, commission or agency of the state which may at any time hereafter succeed to the general powers and jurisdiction of said commission.

(3m) “County clerk” means the clerk of the county containing the largest number of voters within a district or proposed district.

(4) “Governing body,” whenever used in relation to any municipality, means in the case of any town or village, the town or village board, and, in the case of any city, the common council or commissioners, as the case may be, of such city, and shall be held to include the mayor or other chief executive officer of such municipality in any case wherein the concurrence or approval of such officer is required by the law governing such municipality for the adoption of any municipal ordinance or resolution or other municipal act provided for in this chapter.

(5) “Municipality” means any town, city, or village.

(6) “Municipal power district,” “power district” or “district” means a municipal power district organized under this chapter, either as originally organized or as the same may be from time to time altered or amended.

(7) “Public utility” or “utility” means the plant, equipment, materials, supplies and any other or different property, including contract rights, used and useful primarily for the production, transmission or furnishing of electric power to or for the public for any purpose by a person, firm, association, corporation or a municipality and whether operated by a person, firm, association, corporation, a municipality or by trustees or by receivers appointed by any court.

(8) “Voters” means vote for governor at the last general election.

**History:** 1983 a. 189; 1989 a. 56 s. 258; 1997 a. 254; 2001 a. 107.

**198.02 District, creation, powers.** A municipal power district may be created as provided in this chapter and when so created shall be considered a municipal corporation and may exercise the powers granted in this chapter. Any 2 or more municipalities, whether contiguous or otherwise or in the same or different counties, may organize and incorporate as a municipal power district. No municipality may be divided in the formation of a municipal power district, and no municipality shall be included in a municipal power district unless approved by a majority of the

voters cast in that municipality at an election under s. 198.06 on the proposition of whether a district should be created.

**History:** 1997 a. 254.

**198.025 Plan for district.** It shall be the duty of the commission upon request of the governing body of any city, village or town to work out with the municipality, or with any group of municipalities interested with it in the creation of a municipal power district, a feasible working plan for a proposed district.

**History:** 1997 a. 254.

**198.03 Procedure for organizing district; initiation.**

The procedure for organizing, incorporating, and creating a municipal power district under the provisions of this chapter is as follows:

(1) **INITIAL RESOLUTION.** The governing bodies of one-half or more of the municipalities proposed to be included in the district shall first pass resolutions, declaring that public interest or necessity demands the creation and maintenance of a municipal power district to be known as “the .... (giving the name) municipal power district”. The resolutions shall name the municipalities to be included in the proposed district. Certified copies of the resolutions shall be presented to the county clerk, requesting the county clerk to call an election without delay for determining whether the district shall be created.

(2) **PETITION IN LIEU OF RESOLUTION.** In lieu of the resolutions provided for by sub. (1), a petition may be presented to the county clerk signed by at least 10% of the voters in the proposed district. The petition shall declare that, in the opinion of the petitioners, public interest or necessity demands the creation and maintenance of a municipal power district. The petition may be on separate sheets of paper, but each sheet shall contain the affidavit of the person who circulated the sheet, certifying that each name signed on that sheet is the true signature of the person whose name it purports to be.

**History:** 1997 a. 254.

**198.04 Procedure for organizing district; 2nd step.**

(1) **NOTICE TO COMMISSION.** Upon receipt of the certified copies of the resolutions adopted under s. 198.03 (1) or the petition presented under s. 198.03 (2), the county clerk shall immediately notify the commission in writing that the municipalities filing the resolutions or those named in the petition as constituting the proposed power district had petitioned the county clerk to call an election without delay for determining whether the district should be created.

(2) **REPORT OF COMMISSION.** Within 90 days after receipt of the notice of the county clerk under sub. (1), the commission shall file with the county clerk its written recommendations as to the feasibility or nonfeasibility of the proposed district with reasons for the commission’s recommendations. Certified copies of the commis-

sion's recommendations shall at the same time be filed by the commission with the clerk of each municipality included within the proposed district.

(3) ELECTION CALLED. Upon receipt of the commission's recommendations, or upon expiration of the 90-day period referred to in sub. (2), the county clerk shall call without delay an election within the proposed district for the purpose of determining whether the proposed district shall be created.

History: 1993 a. 482; 1997 a. 254.

**198.05 Subdistricts, boundaries.** Every petition or resolution provided for in s. 198.03 shall divide the proposed district into 5 subdistricts, giving each a number, except as provided in s. 198.07 (3). In the event that the boundaries of the district as originally proposed are changed at the election, provided for by s. 198.06, and approved by the commission pursuant to s. 198.06 (5), the commission shall make adjustments in the boundaries of the subdistricts that are necessary to comply with s. 198.07.

History: 1997 a. 254.

**198.06 Referendum. (1) NOTICE OF ELECTION, PUBLICATION.** Upon the establishment of subdistricts the county clerk shall give notice of an election to be held within the proposed district for the purpose of determining whether the proposed district shall be created. Such notice shall state the name of the proposed district, and describe its boundaries. The notice shall be published once a week for at least 3 consecutive weeks before the day of the election in some newspaper or newspapers having a general circulation within the proposed district.

(2) BALLOT REQUIREMENTS. The ballot for the election shall be in such form and contain such instructions and shall be of the size required by ss. 5.51 and 5.64 for the referendum ballot, except that there shall appear on the ballot the following:

Shall the.... (giving the name thereof) "municipal power district" be created and established?

YES  NO

(3) ELECTION PROCEDURE, ELECTORS, CANVASS. The election, and all matters pertaining to the election not otherwise provided for in this section, shall be conducted and the result ascertained in accordance with the election laws governing the conduct of local elections in the several election districts embraced in such proposed municipal power district, as nearly as may be, and no person may vote at the election unless he or she is a qualified elector of the territory included in the proposed district. The election may be held on the same day as any other state, city, village, town or county election and may be consolidated therewith. The ballots shall be transmitted by the local election authorities to the county board of canvassers of the county containing the largest number of voters within the proposed district, within 5 days after the election.

(4) COUNTY CANVASS OF VOTES, DECLARE RESULT. The county board of canvassers of the county shall meet on the Monday next succeeding the day of the election and shall canvass the votes cast, and in so doing shall canvass the returns of each municipality separately, and shall order and declare the district created of the municipalities in which a majority of those voting on the proposition voted in favor of the creation of the district, provided, that the total number of voters in the approving municipalities shall be not less than two-thirds of the number of voters within the district as first proposed.

(5) FILING OF RESULT, COMMISSION APPROVAL. (a) The board of canvassers shall cause a certified copy of the order declaring the result of the election to be filed in the office of the secretary of state. A certified copy of the order shall also be filed with the clerk of each municipality included in the district, with the county clerk, and with the commission.

(b) If the district as finally constituted comprises a smaller area than originally proposed because of the failure of one or more municipalities to approve the district at the election, the commission shall, within 10 days following the filing of the order under

par. (a) with the commission, file its approval or disapproval of the district as created by the election with the secretary of state, the clerk of each municipality included in the district and the county clerk. If the commission approves, upon the filing of the approval the creation and incorporation of the district shall be considered complete. If the commission disapproves, the district shall be considered dissolved. Except as provided in par. (c), the approval or disapproval of the commission shall be final.

(c) In the case of municipal water districts created under s. 198.22, the approval or disapproval of the commission shall be final unless objection to the commission's decision is made to the commission by one or more of the governing bodies of the municipalities which would otherwise be included in the district.

(d) If a district has been approved by all of the municipalities within the district as proposed, the creation and incorporation of the district shall be considered complete upon the filing of the result of the election with the secretary of state by the board of canvassers.

(6) EXPENSES OF ELECTION, PAYMENT. All amounts properly incurred and actually expended by any municipality in publishing notices of any election, in employing persons to conduct the election or in performing other duties imposed upon the municipality or upon the clerk of the municipality by any provision of this chapter shall be paid as other similar expenses of the municipality are paid and shall be a charge in favor of the municipality against the district to be repaid, together with interest thereon at the rate of 6% per year, upon the presentation of proper vouchers for the charges by the clerk of the municipality to the district, when and as the district has funds available for that purpose.

(7) INFORMALITIES DISREGARDED, LIMITATION OF ACTION TO TEST VALIDITY OF DISTRICT. No informality in any proceeding or in the conduct of the election, not substantially affecting adversely the legal rights of any citizen, shall be held to invalidate the creation of any district, and any proceedings wherein the validity of the creation is denied shall be commenced within 3 months from the date of filing the order of the board of canvassers with the secretary of state, otherwise the creation and the legal existence of the district shall be held to be valid and in every respect legal and incontestable.

History: 1973 c. 334 s. 57; 1975 c. 93 s. 113; 1979 c. 110 s. 60 (13); 1993 a. 246; 1995 a. 417; 1997 a. 254; 1999 a. 83.

**198.07 Board of directors, boundaries. (1)** The government of each district shall be vested in a board of 5 directors.

(2) The boundaries of the subdistricts shall be drawn so that each shall contain approximately an equal number of voters, except that no municipality shall contain more than 2 subdistricts, nor shall any municipality be divided unless it shall comprise more than one subdistrict.

(3) Where a district includes a municipality that contains more than 50% of the voters in the entire district, all of the following apply:

(a) A director at large shall be appointed.

(b) The territory in the district, other than that contained in the municipality described in sub. (3) (intro.), shall be divided into 2 subdistricts.

History: 1997 a. 254.

**198.08 Directors. (1) DIRECTOR FOR EACH SUBDISTRICT.** There shall be a director for each subdistrict who shall be appointed by the chief executives of the municipalities included within said subdistrict.

(2) APPOINTMENT; MEETING OF MUNICIPAL EXECUTIVE OFFICERS. Within 10 days after the creation and incorporation of a municipal power district is completed the chief executives in each subdistrict containing more than one municipality shall meet for the selection of a director for the subdistrict. The time and place of the meeting shall be designated by the county clerk.

(3) APPOINTMENT, VOTE BY MUNICIPAL EXECUTIVE OFFICERS. In the selection of a director for a subdistrict each chief executive

shall have one vote for each 1,000 voters within that chief executive's municipality, or the part of the municipality that is located in the subdistrict. A three-fourths vote shall be necessary for the selection of a director. The result of the selection of the director shall be certified to by the chairperson and clerk of the meeting and immediately filed with the secretary of state and the clerk of each municipality in the district.

(4) **ADJOURNMENT.** Such meeting may adjourn from time to time.

(5) **APPOINTMENT BY EXECUTIVE.** Where a municipality contains 2 subdistricts or where a subdistrict includes only one municipality, the chief executive of the municipality shall select a director for each such subdistrict, and shall immediately file a certified copy of the selection as provided by sub. (3).

(6) **DIRECTOR AT LARGE.** Where the selection of a director at large is required such selection shall be made by the governor. A certified copy of such selection shall be filed forthwith by the governor as provided in sub. (3).

(7) **TERM, OATH.** The regular term of directors of the district after the first term shall be 4 years. Each director shall hold office until the director's successor is selected and qualifies. Each director shall, before entering upon the discharge of the director's duties, take and subscribe to the constitutional oath of office. Each director's oath shall be filed in the office of the clerk of the district.

(8) **BIENNIAL ELECTIONS.** The meeting of chief executives for the selection of directors subsequent to the initial selection of directors shall be held within the district on the second Tuesday in April in even numbered years prior to the expiration of the term of any director. The clerk of the district shall designate the time and place of each such meeting. Except as otherwise provided in this subsection and in s. 198.09, every selection of a director subsequent to the initial selection of directors shall be made in the manner provided by this chapter for the initial selection of directors.

(9) **CLASSIFICATION.** Directors selected from odd-numbered subdistricts shall for the first term serve for a period that shall end 2 years after the first Monday of May of the next even-numbered year. Directors selected from even-numbered subdistricts shall for the first term serve for a period which shall end 4 years after the first Monday of May of the next even-numbered year. For the purposes of this section directors at large shall be considered to be from odd-numbered subdistricts.

(10) **ELECTION STATISTICS.** The clerk of the district shall seasonably obtain, compile and file in his or her office, for the information of the public, a statement showing the total number of votes cast for the office of governor in the last preceding general election in each subdistrict of the district. The clerk of every municipality and the elections board shall furnish such information so far as obtainable from their records, duly certified, to the clerk of the district upon request therefor by the clerk of the district. If the total number of votes cast in any subdistrict for the office of governor in the last preceding election cannot, because of an intervening change of boundaries of election wards or for any reason, be ascertained from any official record the clerk of the district shall fairly estimate such number for the purposes of such statement to be filed in his or her office.

**History:** 1971 c. 304 s. 29 (2); 1973 c. 334 s. 57; 1993 a. 184, 482; 1997 a. 254.

**198.09 Vacancies, declared, filled.** A director's death, resignation, inability to continue for any cause to act as director or change of residence from the subdistrict in which the director was selected shall vacate that director's office. The board shall by resolution declare the office vacant and a certified copy of the resolution shall be filed immediately by the clerk of the district with the clerk of each municipality included within the district. A successor for the unexpired term shall, within 20 days after the filing of the resolution, be selected by the officer or officers who selected the director whose office has been declared vacant.

**History:** 1993 a. 482; 1997 a. 254.

**198.10 Taxation. (1) TAXABLE PROPERTY, TAXES.** All real property situated in and all personal property the situs of which for purposes of general property taxation is in the district shall be subject to taxation in and by the district for a direct annual tax sufficient to pay the interest on any indebtedness of the district, and to pay and discharge the principal of the indebtedness within 20 years from the time of contracting the indebtedness.

(2) **ANNUAL TAX LEVY, COLLECTION.** On or before the first day of October in each year after any indebtedness shall have been incurred by any municipal power district, the board of directors shall certify in writing to the clerks of the several municipalities having territory in said district, the total amount necessary to pay the interest and debt retirement charges on outstanding indebtedness of said district for the ensuing year, and the share thereof that each such municipality must pay. For failure to pay such taxes the same penalties shall apply as for failure to pay other taxes. If any of such taxes shall remain unpaid and become delinquent the same shall be collected and payment thereof enforced in the same manner and by the same officers as other delinquent taxes are collected and payment thereof enforced and the proceeds of such collection and enforcement shall be paid over by the proper officers to the treasurer of the district. All officers of municipalities charged by this section with any duty or authority with respect to the assessment of property for taxation or the collection of any taxes for the benefit of any district shall have the same duties and liabilities with respect to the assessment of property and collection of taxes for the benefit of such district as are imposed upon them by law with respect to the assessment of property and collection of taxes for state and county purposes, except when inconsistent herewith, and shall be subject to the same penalties for any breach or neglect of duty or violation of law with respect thereto as in other cases.

(3) **APPORTIONMENT OF TAXES.** Said share shall be determined upon the basis of the proportion which the assessed valuation of any municipality as equalized by the department of revenue bears to the total assessed valuation in all municipalities within said district as equalized by the department of revenue.

(4) **MUNICIPAL TAX LEVY, CLERKS' DUTIES.** Upon the receipt of the report from the board of directors as provided for in sub. (2) each such clerk shall submit the same to the next regular or special meeting of the governing board of said city, village or town and such board shall, by resolution, levy and assess taxes sufficient to pay the same, against all of the taxable property included within the power district in the clerk's municipality. Following such assessment and levy, the clerk of each such municipality shall place the same upon the tax roll to be collected as other taxes are collected upon all of the taxable property within said municipality, and such moneys when collected shall be paid by the treasurer of each such municipality to the treasurer of such municipal power district.

(5) **UTILITY PROPERTY TAXED.** All utility property of every municipal power district, except a municipal water district created under s. 198.22, shall be assessed and taxed in the manner provided by law for the assessment and taxation of privately owned public utilities.

**History:** 1993 a. 482; 1997 a. 254.

### 198.11 Compensation and expenses of directors.

(1) Each director of the district shall receive compensation from the district for the director's services as a director at the rate of \$10 for each day that the director attends meetings of the board or of any committee of the board of which the director is a member, when the meeting of the committee is authorized by vote or resolution of the board, except that the compensation paid to a director shall not exceed \$1,000 in any one year. Each director shall also be entitled to be reimbursed for the actual and necessary traveling and hotel expenses incurred by the director whenever it shall be necessary for the director to travel outside of the municipality in which the director resides to attend meetings of the board or a committee of the board of which the director is a member or to ren-

der any other service or discharge any other duty to the district which may be required of the director by law or by vote or resolution of the board.

(2) The compensation of directors and amounts due them as reimbursement for expenses shall be paid at the end of each month upon itemized statements duly verified. Such statements shall be in such form as the clerk of the district shall prescribe and shall be audited and, if found true and correct, approved by the clerk of the district. When so audited and approved the amounts so approved shall be paid to the directors entitled thereto by the treasurer of the district out of the general fund of the district.

**History:** 1993 a. 482; 1997 a. 254.

**198.12 Corporate powers of district. (1)** SAME AS MUNICIPALITIES. Any district organized under the provisions of this chapter, shall have the right of perpetual succession, may sue and be sued, may take by eminent domain, grant, purchase, gift, devise, or lease or otherwise acquire and hold real and personal property of every kind within or without the district necessary to the full or convenient exercise of its powers, and may make contracts and do such other acts as shall be necessary and proper in the exercise of the powers and privileges granted and in the performance of the duties charged upon it and exercise such other or different powers as shall be conferred by law.

(2) SERVICE OF PROCESS ON, PERSONAL INJURY CLAIMS, VENUE. The district shall sue or be sued in its corporate name and service of process upon the district shall be by service upon the chairperson of the board and the clerk of the district, but no action shall be brought or maintained against a district upon a claim or cause of action unless the claimant complies with s. 893.80. Compliance with s. 893.80 is not required under this subsection in actions commenced under s. 19.37, 19.97 or 281.99. All actions by or against the district, except condemnation proceedings and actions to which the state or any officer or commission thereof is a party, shall be brought in the circuit court for the county in which its principal administrative office is located.

(3) SUBJECT TO CHAPTER 102. From the time when any district shall first operate any utility, it shall be held to be an employer, subject to ch. 102.

(4) MODE OF EXERCISING POWERS. The district shall act through and by ordinance, resolution or vote of its board of directors, or by its other duly constituted officers or agents acting within the scope of such authority as may be conferred upon them by law, or by lawful ordinance, resolution or vote of the board of directors.

(5) CHAPTER 196 APPLIES. Any utility operated by a district shall be held to be a “public utility” within the meaning of that term as used in and subject to ss. 196.01 to 196.53 and 196.59 to 196.76.

(6) UTILITIES, ACQUIRE, CONSTRUCT, OPERATE; WATER POWER; SALE OF SERVICE; USE OF STREETS. The district shall have power and authority to own, acquire and, subject to the restrictions applying to a municipality under s. 196.50 (4), to construct any utility or portion thereof to operate, in whole or in part, in the district, and to own, acquire and, subject to ss. 196.01 to 196.53 and 196.59 to 196.76 where applicable, to construct any addition to or extension of any such utility, and to own, acquire and construct any water power and hydroelectric power plant, within or without the district, to be operated in connection with any such utility, and to operate, maintain and conduct such utility and water power and hydroelectric power plant and system both within and without the district, and to furnish, deliver and sell to the public and to any municipality and to the state and any state institution heat, light and power service and any other service, commodity or facility which may be produced or furnished thereby, and to charge and collect rates, tolls and charges for the same. For said purposes the district is granted and shall have and exercise the right freely to use and occupy any public highway, street, way or place reasonably necessary to be used or occupied for the maintenance and operation of such utility or any part thereof, subject, however, to such

local police regulations as may be imposed by any ordinance adopted by the governing body of the municipality in which such highway, street, way or place is located.

**History:** 1975 c. 147 s. 54; 1979 c. 89, 323; 1981 c. 390; 1993 a. 184; 1995 a. 158; 1997 a. 27.

**198.13 Acquisition of private utilities; dissolution of power district. (1)** Upon the completion of the creation and incorporation of any district every right existing by virtue of any law or by virtue of any franchise or indeterminate permit, granted by the state directly or through any municipality, to purchase or acquire, on behalf of the public or of any municipality in such district, in whole or in part any public utility operating in whole or in part in such district, shall henceforth inure to and vest in and be exercised by such district. Every public grant, either by the state directly or through any municipality heretofore or hereafter granted to or held, owned or exercised by the owner or by the lessee or receiver of the owner of any such utility or any permit, privilege, right, or franchise to operate the same is hereby made subject to the express conditions that such district may purchase, acquire and take such utility, in whole or in part, in the manner provided in this chapter, and the continued operation of any such utility from and after the organization of such district by the owner or by the lessee or receiver of the owner shall be held to be an acceptance of and consent by the owner to said condition.

(2) From and after the organization of any district, no permit, privilege, right or franchise shall be granted to construct or operate any utility therein or to construct or operate therein any extension of or addition to any utility for which any permit, privilege, right or franchise may be required, except by the board of such district, except as to local ordinances governing the use of public streets, alleys, ways, and places. Every permit, privilege, right or franchise granted by any power district shall be subject to the condition prescribed in sub. (1) with respect to purchase, acquisition and taking by the proper district and shall be an indeterminate permit subject to the terms and conditions of this chapter and of s. 196.50.

(3) Under any of the following circumstances a power district shall be considered dissolved:

(a) If within 2 years of its creation a district has not become the owner or operator, or commenced construction, of a public utility. Any time consumed in any proceeding or contest before any commission or court shall not be included as part of the 2-year period.

(b) If a district has disposed of all of its utility property and for one year thereafter has not owned or operated a public utility.

(4) Any district dissolved in accordance with sub. (3) shall nevertheless continue to be a body corporate, subject to the limitations on its activities under s. 181.1405.

(5) In the event of dissolution, a district shall first retire all outstanding obligations of the district insofar as the proceeds derived from the disposal of its utility property will permit. All assets or proceeds remaining, if any, shall be distributed to municipalities within the boundaries of the district in proportion to the taxes levied and collected by them for the district during the existence of the district, up to an amount sufficient to repay all of those taxes. Any proceeds remaining after repayment of the taxes shall be distributed to the municipalities within the boundaries of the district in proportion to the shares of the gross operating revenues of the district for its last full 5 years of operation derived from payments for services furnished within the boundaries of each such municipality.

**History:** 1989 a. 303; 1997 a. 79, 254; 1999 a. 32.

**198.14 Powers of district board.** The board of directors of any district shall have power and authority:

(1) SEAL. To adopt a corporate seal for the district and prescribe the style thereof.

(2) MODE OF EXERCISE. To exercise by vote, ordinance or resolution all of the general powers of the district.

(3) **GRANT PERMITS.** To grant by ordinance indeterminate permits, subject to the conditions prescribed in ss. 196.50 and 198.12, for the construction or operation of utilities and extensions and additions thereto in the district but subject to local ordinances governing the use thereby of public streets, alleys, ways and places therein, but such ordinance shall be published as a class 1 notice, under ch. 985, not more than 20 nor less than 10 days before its adoption.

(4) **PURCHASES, SALES, CONVEYANCES.** To lease, purchase, sell, convey and mortgage the property of the district and to authorize and order all instruments, contracts, deeds or mortgages to be executed on behalf of the district by the chairperson of the board and the clerk of the district, except that the sale or lease of any public utility equipment in excess of 10 per cent of the book value of the utility property of the district shall be made as nearly as may be in accordance with s. 66.0817, except that the commission shall have no power to determine whether the interests of the district and the residents thereof will be best served by the sale or lease nor to fix the price and terms thereof other than to furnish the clerk of said district with its written recommendations thereon within 90 days.

(5) **EMPLOYEES.** To authorize to be appointed and employed and fix the compensation of such employees as may be required for carrying on the business of the district.

(6) **DEPOSITORIES.** To designate and appoint a suitable and responsible depository or depositories for the deposit and safe-keeping of the funds of the district and to contract with such depository or depositories with respect thereto and the rate of interest to be paid the district on such deposits.

(7) **TEMPORARY LOANS.** To borrow money for terms not exceeding ninety days, subject to the limitation of total indebtedness of the district contained in s. 198.14 (9). Such temporary loans shall constitute a first lien on the revenue of the district after the payment of interest on, and retirement of, bonds, and after the payment of taxes.

(8) **EMINENT DOMAIN.** To exercise the power of eminent domain and to condemn lands or any interest in lands including water powers, whether located within or without the district, whenever the same are necessary for the construction, operation, improvement or extension of any utility owned, or to be owned by the district and, in that behalf, to authorize condemnation proceedings to be instituted and prosecuted by the general counsel of the district in the name of the district and at its cost and expense and otherwise in the manner prescribed by law.

(9) **BOND ISSUES, DEBT LIMIT.** To provide by ordinance for the issuance and sale of bonds of the district to finance the purchase, acquisition or construction of any utility or parts of the utility or additions, extensions or betterments to the utility, that may be authorized, to authorize and require the execution of the bonds by the chairperson of the board and the clerk of the district under the corporate seal of the district and to approve the form of the bonds and prescribe the duties of the clerk and treasurer of the district with respect to the sale of the bonds and the application of the proceeds to the purposes for which the bonds were issued. Bonds issued under this subsection shall be subject to all of the following:

(a) The total amount of all indebtedness of the district shall not exceed 5% of the assessed value of the taxable property in the district, to be ascertained by the last preceding assessment for the state and county taxes.

(b) The ordinance authorizing the indebtedness shall levy a direct, annual, district tax sufficient to pay the interest on the debt as it becomes due, and to pay the principal of the debt within 20 years from the time of contracting the debt.

(c) All of the bonds shall mature in annual installments. The first installment of principal shall be due and payable not later than 2 years after the date of issue. The sum of the principal and interest due in any year after the first year shall not exceed the sum of the principal and interest due in any previous year by more than a denomination of a single bond issued.

(d) All of the bonds shall contain a provision requiring redemption of the bond, in whole or in part, at the option of the district on any interest payment date after 3 years from the date of the bonds.

(e) The authorization by the board of any bonds shall be approved by a majority vote of the electors of the district voting at a referendum election noticed, held, conducted and canvassed and the returns thereof made as nearly as may be in the manner provided for a referendum vote on the issuance of county bonds under ch. 67.

(f) The income of a district from any source other than taxation may be applied for the payment of part or all of the installments of interest on and principal of the bonds due in any year. Any surplus remaining may be redistributed at any time to municipalities within the boundaries of the district in proportion to, and in a total amount not more than, the taxes levied and collected by the municipalities for the district during the existence of the district, or the surplus may be held by the district for the payment of its expenses, including the payment of subsequent installments of interest and principal as they become due.

(g) Any sums collected by taxation to be used for the payment of interest on and principal of the bonds, and not required in any year for that purpose, shall be held by the district to be used for that purpose in any succeeding year, and the tax provided for in this section shall be collected in the succeeding year only in an amount sufficient, together with any balance remaining over from the proceeds of taxation in previous years, to pay the installments of interest on and principal of the bonds due in that year.

(h) Except as otherwise provided by this chapter, the bonds shall be issued as nearly as may be in the manner provided by ch. 67 for county bonds.

(10) **REVENUE BONDS.** As an alternative method of financing, to provide by ordinance or resolution for the issuance, upon the purchase, acquisition or construction by the district of any utility, or parts thereof, or additions, extensions or betterments thereto, of revenue bonds secured by mortgage or deed of trust upon the acquired property in the form and character prescribed by s. 66.0621, to provide for payment of any part of the cost of such property and to authorize the execution of such mortgage or deed of trust by the chairperson of the board and the clerk of the district on behalf of the district.

(11) **ACQUISITION OF UTILITIES, FINANCING SAME.** To acquire for the district any property which it has authority to acquire, subject to any funded or mortgage indebtedness outstanding against and secured by any bond, note, mortgage or deed of trust upon such property, without assuming any obligations with respect to such indebtedness, or to acquire such property and assume, or assume and promise to pay any such indebtedness, or to enter into any contract with any parties concerned, for the creation and substitution of such new obligations of the district as it is authorized to create, for any such indebtedness, and to pay and provide for the payment by the district of any sums due on account of any such indebtedness, and to provide by ordinance or resolution for and authorize the execution of any contract or other instrument required to enter into or carry out any such transactions on behalf of the district, subject to the limitation of total indebtedness of the district contained in s. 198.14 (9).

(12) **CONTRACT TO FURNISH SERVICE.** To enter into and authorize to be executed on behalf of the district with the governing body of any municipality contracts, leases and conveyances for the furnishing, delivery, production, leasing, sale or operation of any public utility property, facility or service either by such municipality to or for the district or by the district to or for such municipality, and to enter into and authorize to be executed any like contract, lease or conveyance with the owner or owners of any privately owned utility or public corporation.

(13) **ACT ON CLAIMS, REPORTS, BUDGET.** To examine and act upon all claims against the district, to require, examine and approve or disapprove monthly reports of operation and recom-

mendations by the general manager, to require, examine and approve or disapprove periodical reports by the clerk, to adopt a budget of district general and operating expense and expenses for interest charges and for capital account and make appropriations.

**(14) ADVICE FROM COMMISSION.** To apply for and obtain the counsel, advice or opinion in writing of the commission upon any proposed action of the board and to be entitled to the same upon reasonable request therefor accompanied by an offer to reimburse the commission the amount of its necessary expense in obtaining, preparing and furnishing the same, to approve and order paid by the district the amount of the commission's charges therefor.

**(15) OMNIBUS PROVISION.** To do or authorize to be done all things necessary to be done or authorized for the proper execution of any power conferred upon the district and not vested in any other officer thereof and of any power conferred upon the board by the provisions of this chapter.

**(16) CHANGE BOUNDARIES.** To change from time to time by a two-thirds vote the boundaries of the subdistricts to meet with the requirements of s. 198.07 (2).

**History:** 1981 c. 390 s. 252; 1983 a. 207; 1993 a. 184; 1997 a. 254; 1999 a. 150 s. 672.

#### **198.145 District legislature, ordinances, officers.**

**(1)** The board of directors shall constitute the legislative body of such district and determine all questions of policy.

**(2)** The enacting clause of all ordinances shall be as follows: "The board of directors of .... municipal power district do ordain as follows:". All ordinances shall be signed by the chairperson, or vice chairperson, and be attested by the clerk.

**(3)** The board shall appoint a general manager and may appoint and fix the duties of an attorney, a clerk, a treasurer and any other officers that the board considers necessary. Each appointee shall hold office at the pleasure of the board and give a bond in an amount that the board may require.

**History:** 1993 a. 184; 1997 a. 254.

#### **198.15 Board procedure. (1) CHAIRPERSON, DUTIES.**

The board shall elect one of their number chairperson for a term of one year, and a vice chairperson for a like term to act during the absence or disability of the chairperson. The principal duties of the chairperson of the board of directors of the district, other than the chairperson's duties as a director, shall be to preside at all meetings of the board, to sign all resolutions and ordinances adopted by the board and to sign, execute or acknowledge, as the case may require, all contracts, deeds, leases or other instruments authorized by the board to be executed by or on behalf of the district.

**(2) BYLAWS, MEETINGS.** The board shall adopt bylaws to govern its proceedings, and shall fix the time and place of holding its meetings, which shall be held once each month. A special meeting may be held after 3 days' written notice to each member by the clerk at the call of the chairperson or any 2 members of the board.

**(3) QUORUM.** A majority of the directors-elect shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at any meeting, if a quorum be present, shall be sufficient to adopt any motion, resolution or ordinance, except that for the exercise of any power enumerated in s. 198.14 (9), (10), (11) and (12) the affirmative vote of two-thirds of the directors-elect shall be required. The votes of directors on any action authorized in s. 198.14 (3), (4), (6), (8), (9), (10), (11), (12) and (13) shall be taken by ayes and noes and recorded in the minutes and shall likewise be taken and recorded on any other matter whenever requested by one-third of the directors present.

**(4) OFFICIAL PAPER.** The board shall designate an official newspaper and under ch. 985 shall publish therein all public notices of the district and all resolutions or ordinances adopted by the board.

**(5) FINANCIAL INTEREST VOIDS CONTRACTS.** No contract or transaction shall be made, entered into or authorized by the board with any director, other officer or employee of the district or with

any firm, corporation or association in which any director, other officer or employee of the district is financially interested, as a member or stockholder or otherwise adversely to the district, and any such contract or transaction if made, entered into or authorized shall be void and any director voting in favor thereof with knowledge of such interest shall be personally liable to the district for any loss sustained by the district by reason thereof.

**History:** 1993 a. 184.

**198.16 General manager. (1) ELECTION, ELIGIBILITY.** The general manager shall be the chief executive officer of the district. The general manager shall be chosen by the board of directors solely on the basis of the general manager's executive and administrative qualifications and need not, when appointed, be a resident of the state. All other things being equal, the board of directors shall appoint as general manager a person with experience in the construction, operation or management of public utilities. No member of the board shall, during the time for which appointed, be chosen as general manager. In case of the absence or disability of the manager, the board may designate some qualified person to perform the duties of the office during such absence or disability.

**(2) POWERS.** The general manager shall have full charge and control of the construction of the works of said district and of their maintenance and operation, also of the administration of the business affairs of said district. The powers of the general manager shall be:

(a) To see that all ordinances of the district are enforced;

(b) To appoint or hire, except as otherwise provided herein, all heads of departments, subordinate officials and employees necessary for the administration of the affairs of said district, and to remove the same;

(c) To attend all meetings of the board of directors and submit a general report of the affairs of the district, and to participate in the discussion of all matters coming before the board;

(d) To keep the directors advised as to the financial condition and future needs of the district, and to prepare and submit an annual budget;

(e) To prepare or cause to be prepared, all plans and specifications for the construction of the works of said district;

(f) To devote his or her entire time to the business of the district;

(g) To perform such other and additional duties as the board of directors may require.

**(3) FINANCIAL REPORT, PUBLICATION.** The general manager shall within 60 days from the end of each fiscal year cause to be published as a class 1 notice, under ch. 985, a financial report showing the result of operations for the preceding fiscal year and the financial status of the district on the last day thereof.

**History:** 1993 a. 482.

#### **198.165 District clerk, treasurer, attorney, duties.**

**(1)** The principal duties of the clerk of the district shall be to act as clerk of the board of directors and to record and sign all minutes of meetings of the board, including all resolutions and ordinances adopted by the board, to safely and systematically keep all records, files and papers of the board, to safely keep the corporate seal of the district and to affix the same on behalf of the board and to all certificates by the clerk made as clerk of the district, to sign, execute or acknowledge with the chairperson of the board all contracts, deeds, leases or other instruments authorized by the board to be executed by or on behalf of the district and, if authorized, to deliver the same, and to perform such other duties as may be imposed upon the clerk by law or by vote, resolution or ordinance adopted by the board.

**(2)** The principal duties of the treasurer of the district shall be to demand, receive, keep and account for all moneys and credits of the district and to pay to the persons entitled thereto the amounts called for in the orders or warrants drawn upon the treasurer by the clerk of the district and to take and keep receipts, vouchers or other suitable evidences of payment therefor, to keep accurate account

of all moneys received and disbursed by the treasurer and to render such accounts, statements and inventories of moneys and credits received and disbursed and on hand and generally of all matters pertaining to the treasurer's office as the board of directors may require and to perform such other duties as may be imposed upon the treasurer by law or by vote, resolution or ordinance adopted by the board.

(3) The principal duties of the general counsel of the district shall be to appear for the district and prosecute or defend all actions or proceedings in which the district is interested or a party, to prepare and draft resolutions, ordinances, contracts and other instruments when and as required by the board and to render to the board and to any officer of the district counsel, advice and opinions on all legal matters and to perform such other duties as may be imposed upon the general counsel by law or by vote, resolution or ordinance adopted by the board of directors.

**History:** 1991 a. 316; 1993 a. 184.

### 198.167 Certified public accountant; annual report.

The directors of the district shall employ annually the commission or a certified public accountant licensed or certified under ch. 442 approved by said commission who shall be qualified to, and who shall with all due diligence, examine and report upon the system of accounts kept by the district, all the contracts of whatsoever kind made and entered into by the board of directors within the year immediately preceding, and the properties and investments of the district. The certified public accountant shall in the report make such recommendations and suggestions as to the certified public accountant shall seem proper and required for the good of the district, and the efficient and economical or advantageous management and operation of the public utility or utilities of the district; and the certified public accountant shall in the report make such recommendations and suggestions as to the system of accounts kept, or in the certified public accountant's judgment to be kept, by the district, in connection with each public utility, the classification of the public utilities of the district and the establishment of a system of accounts for each class, the manner in which such accounts shall be kept, the form of accounts, records, and memoranda kept or to be kept, including accounts, records, and memoranda of receipts and expenditures of money, and depreciation and sinking fund accounts, as in the certified public accountant's judgment may be proper and necessary, and shall not conflict with the requirements of the commission.

**History:** 1991 a. 316; 2001 a. 16.

**198.17 Eminent domain procedure. (1) DEFINITIONS.** In this section:

(a) "Declaration" means a resolution or ordinance adopted by the directors of a district under sub. (1g) which identifies the utility which the district seeks to acquire.

(b) "Owner" means the owner of a utility, and, for purposes of the service of documents on the owner, includes all agents and representatives of the owner.

(c) "Utility" includes a portion of a public utility, including any water power and hydroelectric power plant owned and operated with the utility.

(1g) **DECLARATION OF INTENTION TO ACQUIRE UTILITY.** A district, by resolution or ordinance, adopted by the affirmative votes of two-thirds of its directors-elect, may declare the determination of the district to acquire any existing utility, which is operated in whole or in part in the district. Upon adoption of the declaration, the clerk of the district shall serve immediately on the commission and the owner a copy of the declaration, certified by the clerk under the seal of the district.

(1m) **VOLUNTARY SALE OF UTILITY.** (a) Within 30 days after service of the declaration upon the owner, the owner may propose to sell the utility to the district upon terms and conditions to be mutually agreed upon between the owner and the directors and approved by the commission. The owner shall serve a copy of the proposal upon the district and the commission. The commission

shall fix a time and place for a public hearing and consideration of the proposal and notify the owner and the district of the hearing.

(b) If terms and conditions of the sale of the utility to the district are agreed upon by the directors and the owner and approved by the commission, all of the following shall occur:

1. The commission shall announce its approval of the sale in writing.

2. The directors shall by resolution authorize and direct the written execution on the part of the district of each contract and instrument and the taking of every other action necessary to consummate the sale to the district of the utility in accordance with the terms of the agreement between the owner and the district.

(2) **DETERMINATION OF COMPENSATION.** (a) If the owner has consented in any manner provided by law to the purchase of the utility by the public or any municipality and one of the following applies, the commission and the parties shall proceed to determine, in the manner provided in ss. 197.05 to 197.09, the just compensation to be paid to the owner by the district for the utility identified in the declaration:

1. The owner fails to make and serve a proposal to sell the utility identified in the declaration in the time and manner described in sub. (1m).

2. The owner and the directors fail to agree upon terms and conditions for the sale of the utility identified in the declaration to the district.

3. The commission fails to approve the terms of sale of the utility identified in the declaration agreed upon by the owner and the directors.

(b) Upon the determination of just compensation for the utility identified in the declaration, the commission shall certify to the district and the owner the amount of compensation to be paid for the utility identified in the declaration, and the directors shall provide for and authorize payment of that amount to the parties entitled to payment.

(3) **ACTION TO DETERMINE NECESSITY OF TAKING OF UTILITY.** (a) If the owner of the utility identified in the declaration has not consented in any manner provided by law and has not become legally bound to consent to the purchase by the public or any municipality of the utility, the general counsel of the district shall, before proceedings are had under sub. (2), commence an action to determine the necessity of the taking of the utility by the district. The action shall be brought in the name and behalf of the district in the circuit court for the county in which the principal administrative office of the district is located against the owner of the utility as defendant praying the court for an adjudication of the necessity of the taking. The complaint in the action shall be served with the summons.

(b) The defendant owner shall answer in the action commenced under par. (a) within 10 days after service of the summons and complaint on the owner and the action shall be at issue and stand ready for trial upon 10 days' notice by either party. Unless the parties waive a jury, the question as to the necessity of the taking of the utility by the district shall be as speedily as possible submitted to a jury. If the jury or the court, in case a jury is waived, finds that a necessity exists for the taking by the district of the utility, to which the owner shall not have consented, the directors shall cause speedy notice of the finding of necessity to be certified to the commission and the owner. The commission and the parties shall then proceed to the ascertainment of the just compensation to be paid by the district to the owner for the utility. The consummation of the transfer of the utility to the district and the payment of the compensation to the owner shall be in the manner provided in sub. (2).

(4) **MUNICIPAL UTILITY EXEMPTION.** No utility owned by any municipality within the district shall be acquired by the district, except by mutual agreement pursuant to sub. (1m), until the district has first obtained, from the commission, after notice and hearing accorded to the municipality, a certificate that public necessity and convenience require that the utility be owned and operated by

the district. If the certificate is granted the consummation of the acquisition shall be in the manner provided in sub. (2).

**(5) ACQUISITION OF PART OF UTILITY.** (a) If the directors of the district determine that the district should acquire any part of the physical property of any utility which is or may be owned and operated as an entirety, the directors shall, before adopting any resolution or ordinance declaring the determination of the district to acquire the property, apply to the commission for and obtain the commission's certificate of authority to do so. The application of the district for the certificate shall state with reasonable certainty the part of the utility proposed to be acquired and the part of the utility not proposed to be acquired. The application shall also state the facts with respect to the properties to be acquired and the considerations on which the board of directors rely to show that only the part of the utility sought by the district should be acquired by the district. A copy of the application shall be served upon the owner of the utility affected and upon any municipality, whether within or without the district, in which the utility operates or furnishes any service.

(b) The commission shall fix a time and place for hearing the application made under par. (a) and shall give 10 days' notice of the hearing to all parties interested. The commission shall conduct a public hearing and investigation concerning the matters alleged in the application and shall make and file written findings and conclusions with respect to those matters. Before approving the application and granting the certificate of authority applied for, the commission shall ascertain and find:

1. That the acquisition by the district of the part of the utility, as proposed in the application, will be of greater financial, economic and industrial advantage to the district than the acquisition of the utility as an entirety as operated.

2. That the acquisition by the district of the part of the utility, as proposed in the application, will not result in any substantial injury to public interests or impairment of public service that would not result if the utility was acquired as an entirety and continued to be operated as an entirety.

3. That the acquisition by the district of the part of the utility, as proposed in the application, will not render the part of the utility that will not be acquired incapable of continuing to render any substantial public service being rendered by the utility adequately and at reasonable rates, tolls or charges for the service.

**(5m) ALTERNATIVE MODE OF ACQUIRING UTILITY.** Upon the initiation of steps for the formation of a district, or later, any municipality within a district or a proposed district may, in lieu of the other procedure provided by this section, determine, as provided by s. 197.02, to acquire any utility operating within the municipality under the terms of an indeterminate permit, as defined in s. 196.01, on behalf of and for the benefit of the district, subject to the conditions and by the procedure set forth and described in ch. 197. Any 2 or more municipalities within a district or proposed district may, in the same manner, determine to jointly acquire utilities operating within the municipalities, on behalf of and for the benefit of the district. The municipalities and districts may enter into contracts for the transfer and conveyance of the utilities to the districts immediately upon the acquisition of the utilities by the municipalities, and for the simultaneous payment of the purchase price for the utilities by the districts. The municipalities and districts may join in any conveyances, and do all such acts as are necessary to execute the contracts; subject to the provisions of this chapter governing the powers of districts to enter into transactions, and incur indebtedness, generally.

**(6) TECHNICALITIES.** No error or omission of a technical nature not affecting a substantial right shall be held to invalidate or impair any proceeding under this section or affect the legal result thereof.

**(7) COMMISSION'S EXPENSES.** The necessary expenses of the commission incurred by it in performing, at the instance of the district, any duty imposed by this section shall be itemized and

charged by the commission to the district and shall be audited and paid as other charges against the district are audited and paid.

**(8) MUNICIPAL LOANS TO DISTRICTS.** Any municipality situated within the boundaries of a district may provide for a loan to the district to pay the preliminary organization and administration expenses of the district, on the terms that the governing bodies of the municipality and the district agree upon. The lending municipality shall have the right, at its option, to receive bonds or other obligations of the borrowing district of any issue, providing for the payment of an amount of principal equal to that of the loan authorized under this subsection, in place of the obligations created by the loan. The terms of a loan under this subsection shall in every case provide that the municipality making the loan shall receive interest from the date of the loan at not less than the rate of interest provided for in the first bonds or other securities issued by the district, to become due at the date of issue of the securities, or at some specified date prior to or not more than one year after the date of issue, subject to the limitation of total indebtedness of the district contained in s. 198.14 (9).

**History:** 1979 c. 89, 177; 1991 a. 316; 1997 a. 254; 1999 a. 32.

**198.18 District bonds. (1) ISSUE, GENERAL LIABILITY.** Bonds of the district may be issued to raise funds with which to purchase any permanent property for the district, to refund any valid, subsisting bonded debt of the district and for the purpose of paying and discharging any plant mortgage certificates or purchasing and retiring any bonds, notes or other evidences of indebtedness secured by any mortgage or deed of trust upon property acquired by the district, subject to the limitation of total indebtedness of the district contained in s. 198.14 (9). Except as otherwise provided by this chapter all bonds of the district shall be and constitute a general liability of the district and the holders thereof shall have the benefit of all legal remedies to compel the payment of the interest thereon as the same shall fall due and the principal thereof at maturity, and, in the event of any default in the payment of interest or principal when due, to compel the levy and collection of taxes by the district on all property subject to taxation therein to pay the same.

**(2) TAXABILITY.** The bonds, plant mortgage certificates, notes or other evidence of indebtedness which may be issued, made or negotiated by the district and the income thereof shall be subject to taxation upon the same basis as the obligations of private utilities.

**(3) LIMITATION OF ACTION.** Bonds of the district shall be incontestable, except upon constitutional grounds, after the time provided by s. 893.77 (3), and the substance of this provision and s. 893.77 (3) shall be stated upon the face of each bond.

**(4) INVESTMENTS BY DISTRICTS.** Reserve funds carried by the district may be invested in any bonds or plant mortgage certificates issued by the district, provided that before purchasing any of its own issues the district shall advertise for offers and purchase first those issues which, interest accrued and maturities considered, are offered at the best net price to the district. Reserve funds of the district may also be invested in the bonds or plant mortgage certificates of any other district and in any of the kinds of securities or forms of investments enumerated in s. 201.25, 1969 stats.

**(5) TRUST FUND INVESTMENTS.** Bonds and plant mortgage certificates issued by any district shall be lawful investments for any trust funds held by the state or any state institution, for any reserve or debt service funds of any municipality, for the assets of any bank, trust company, or of any trust estate and shall be accepted as deposits for any purpose for which deposit of securities may be required or authorized by law.

**History:** 1971 c. 260 s. 92 (3); 1979 c. 279, 323; 1981 c. 390 s. 252; 1983 a. 207 s. 93 (8).

**198.19 Annexation of territory. (1)** Any territory, constituting one or more municipalities contiguous to a district may be annexed to and become a part of such district to all intents and purposes and with like effect as though originally included therein



upon such terms and conditions as the board of directors of the district shall fix by ordinance adopted by the affirmative vote of two-thirds of the directors—elect, provided that before such ordinance becomes effective the same shall be accepted and ratified by the affirmative vote of a majority of the qualified electors entitled to vote and voting in a special election called and held for that purpose in each municipality proposed in such ordinance to be annexed to the district. Such ordinance shall be published and such election shall be noticed, held and conducted, as nearly as may be, in the manner provided by this chapter for the noticing, holding and conduct of elections upon the organization of a municipal power district, except that the returns of such election and the ballots therein shall be delivered to the clerk of the district. The results of said election shall be canvassed publicly by the directors of the district.

(2) Upon the annexation of any territory to any district, each municipality so annexed shall be attached to and become a part of the subdistrict to which it may be contiguous or proximate, as shall be determined and declared by ordinance or resolution adopted by the board of directors of the district, and shall so remain until such time as the board shall form and establish new boundaries for subdistricts.

**198.20 Consolidation of districts.** (1) Any 2 power districts may be consolidated by ordinance, passed by a two-thirds vote of all of the members of the board of each power district, fixing the terms of the consolidation and ratified by the electors at a referendum held in each district. The ballots shall bear the words “For Consolidation” and “Against Consolidation”. If a majority of the votes cast on the question of consolidation in each district shall be for consolidation, the ordinance shall be in effect and have the force of a contract.

(2) The election, and all matters pertaining to the election not otherwise provided for in this section, shall be held and conducted and the result ascertained and declared in accordance with s. 198.06 (3) and (4). The ordinance and the result of the referendum shall be certified to the secretary of state. After certification, the consolidation shall be considered complete. Consolidation shall not affect the preexisting rights or liabilities of any power districts and actions on those rights and liabilities may be commenced or completed as though no consolidation had been effected.

**History:** 1973 c. 334 s. 57; 1975 c. 93 s. 113; 1997 a. 254.

**198.21 District obligations inviolate.** Any provision of this chapter may be altered, amended or repealed at any time by the legislature, but no amendment, repeal or alteration shall ever be enacted which shall release any district from any liability which it shall incur for the acquisition of property or for obtaining funds for the purposes of the district. The guarantees of this section shall be a part of every contract authorized by this chapter and entered into by any district under this chapter.

**History:** 1997 a. 254.

**198.22 Municipal water districts.** (1) **CREATION.** Municipal water districts may be created as provided for in this section and when created shall be considered municipal corporations and may exercise the powers herein granted.

(2) **DEFINITIONS.** The provisions of ss. 198.01 to 198.04, 198.06 (2) to (7), 198.10 (5), 198.12 (1) to (5), 198.13 (3) to (5), 198.14 (1), (2), (5) to (8) and (10) to (15), 198.145, 198.15, 198.165, 198.17 (6) to (8), 198.18 (2) to (5), 198.21 and 893.77 (3) apply to municipal water districts, except that as applied to this section the following shall apply:

(a) “Municipal power district,” “power district” and “district” mean a municipal water district organized pursuant to this section.

(b) “Public utility” or “utility” means the plant, equipment, material, supplies and any other or different property including contract rights, used and useful primarily for the production, transmission, purification, delivery or furnishing of water to or for the public for any purpose, or to a municipality, county or other governmental unit of this state.

(3) **ELECTION NOTICE.** The county clerk shall give notice of the election called pursuant to s. 198.04 (3) for the purpose of determining whether the proposed district shall be created, which notice shall state the name of the proposed district and describe its boundaries by metes and bounds, by cities, villages, towns or otherwise. The notice shall be published once a week for at least 3 successive weeks before the day of said election in some newspaper or newspapers having general circulation within the proposed district.

(4) **DIRECTORS.** (a) The government of each district shall be vested in a board of directors. If the district consists of an odd number of municipalities, the board of directors shall consist of one director from each municipality, but if the district consists of an even number of municipalities, the board of directors shall consist of one more than the number of municipalities in the district.

(b) The chief executive of each municipality within the district shall appoint a director of the district who is not an officer or employee of such municipality and shall issue a certificate of such appointment to be filed with the clerk of the district. Such appointees shall meet at the time and place designated by the county clerk, and in case there is an even number of directors, they shall immediately elect, by a majority vote by ballot, an additional director who is a resident of the district but not an officer or employee of any such municipality, and issue a certificate of such election to be filed with the clerk of the district. In case such election is not made within 10 days after the first meeting of the appointees, such fact shall be at once certified by such appointees to the governor of Wisconsin who shall forthwith appoint a resident of the district who is not an officer or employee of any such municipality as such director and shall issue a certificate of such appointment to be filed with the clerk of the district.

(c) The regular term of directors after the first term shall be for 4 years. The first term of half or, in case of an even number of directors, a majority of the directors shall be for 2 years and for the remaining director or directors, for 4 years, determined by lot. Each director shall hold office until the director’s successor is appointed or elected and qualifies. Each director shall, before entering upon the discharge of the director’s duties, take and subscribe to the constitutional oath of office which shall be filed with the clerk of the district.

(d) The death of a director, a director’s resignation or removal from the district, a director’s becoming an officer or employee of any such municipality, or a director’s disability shall vacate the office of the director. The board shall by resolution declare the office vacant and a certified copy of such resolution shall be filed forthwith by the clerk of the district with the clerk of each municipality included within the district. A successor for an expired or an unexpired term shall be elected or appointed by the officer or officers who elected or appointed the director whose term has terminated or whose office has been declared vacant, except in the case of the termination or vacancy of the term of a director appointed by the governor of Wisconsin. In such case the remaining directors shall elect the successor, and, if unable to do so, the governor shall appoint such successor as provided in sub. (4) (b).

(4a) **SPECIAL VOTING POWER OF DIRECTORS.** (a) The first board of directors appointed for a district under this section shall have the power to cast votes in the following manner:

1. Each director representing a municipality which, at the time of the creation of the district has a metered record of water consumption for the year previous to the creation of the district, shall have one vote as such director and one additional vote for each million gallons of water or more than half thereof consumed by the municipality appointing said director, based on the yearly average daily consumption of water by such appointing municipality for the preceding calendar year.

2. All other directors representing municipalities which do not have a record of metered consumption of water for the year previous to the creation of the district shall have but one vote until they have established a yearly average of daily consumption.

(b) When such yearly average daily consumption is of record for one year in any municipality, the director thereof shall have one additional vote for each million gallons of water or more than half thereof consumed by the municipality appointing the director.

(c) A quorum for a meeting of the directors shall consist of a majority of the votes eligible to be cast at said meeting as hereinbefore provided.

(5) EXPENSES OF DIRECTORS. A director shall be entitled to no compensation for services but shall be entitled to be reimbursed for actual and necessary traveling and hotel expenses incurred whenever it shall be necessary for the director to travel outside of the district, and such reimbursement shall be paid at the end of each month upon an itemized statement therefor filed with the clerk and approved by the board.

(6) ACQUISITION; CONSTRUCTION; OPERATION; SALE OF SERVICE; USE OF STREETS. The district shall have power and authority to own, acquire, and, subject to the restrictions applying to a municipality under s. 196.50 (4), to construct any water utility or portion thereof, to operate, in whole or in part, in the district and to construct any addition or extension to any such utility. For such purpose the district is granted and shall have and exercise the right freely to use and occupy any public highway, street, way or place reasonably necessary to be used or occupied for the construction, operation or maintenance of such utility or any part thereof, subject, however, to the obligation of the district to replace said grounds in the same condition as they previously were in.

(7) BOUNDARIES. Immediately upon the organization of the board of directors the clerk shall cause to be recorded in the office of the register of deeds of each county in which any part of said district is located, and shall file with the secretary of state, the department of natural resources, the governor and the clerk of each town, city or village, wholly or partly within the district, a certified copy of the boundaries of the district as set forth in the notice of election pursuant to sub. (3) or as thereafter amended. Thereafter, in any proceeding wherein the boundaries of the district are concerned, it shall be sufficient in describing said boundaries to refer to such record of such description.

(8) PURCHASES; SALE; CONVEYANCES. In addition to all other powers the board of directors shall have the power and authority to purchase, lease, sell, convey and mortgage property of the district and to authorize and order all instruments, contracts, deeds or mortgages to be executed on behalf of the district by the chairperson of the board and the clerk of the district.

(9) GENERAL MANAGER; POWERS. The general manager shall be the chief executive officer of the district. The general manager shall be chosen by the board of directors solely on the basis of executive and administrative qualifications and need not, when appointed, be a resident of the state. No member of the board shall, during the time for which that member is appointed or for 2 years thereafter, be chosen as a general manager. In case of the absence or disability of the manager, the board may designate some qualified person to perform the duties of the office during such absence or disability. The general manager shall have all the powers provided for in s. 198.16 (2) and such other power as the board may from time to time delegate to the general manager, but shall not be required to devote all of his or her time to the business of the district unless required to do so by the board. The general manager shall perform such other duties as the board may require of the general manager from time to time, and within 60 days after the end of each fiscal year cause to be published a financial report in the manner provided by the board showing the results of the operation for the preceding fiscal year and the financial status of the district on the last day thereof pursuant to an audit made by a certified public accountant employed by the board.

(10) CLERK, TREASURER. The office of district clerk and district treasurer may be held by the same person.

(11) EXAMINATION AND REPORT OF STATE DEPARTMENT. The directors shall annually employ a certified public accountant to make an annual examination and report of the accounts and transactions of the district and of all contracts entered into by the district and make the recommendations and suggestions that seem proper and required for the efficient, economical and advantageous management and operation of the district.

(12) USE OF INCOME. In addition to other methods herein provided, the income of the district may be used as provided in s. 66.0811 (2).

(13) DISTRIBUTION SYSTEM STANDARDS IN MILWAUKEE COUNTY. When any such district is established in any county having a population of 500,000 or more and containing a city of the 1st class, no municipality in such district shall construct any part of its distribution system except according to the standard of sizes and grades of materials as used by such city of the 1st class, or the standards of the American waterworks association and the department of natural resources.

**History:** 1971 c. 108 ss. 5, 6; 1971 c. 125 s. 523; 1971 c. 164; 1979 c. 323; 1985 a. 29; 1991 a. 316; 1993 a. 184; 1997 a. 254; 1999 a. 150 s. 672.