

assessment, special assessment certificate, bond or note or tax certificate based on the special assessment, the court determines that the assessment is invalid for any cause, it shall stay all proceedings, frame an issue and summarily try the issue and determine the amount that the plaintiff justly ought to pay or which should be justly assessed against the property in question. That amount shall be ordered to be paid into court for the benefit of the parties entitled to the amount within a fixed time. Upon compliance with the order judgment shall be entered for the plaintiff with costs. If the plaintiff fails to comply with the 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 the assessment as provided in s. 66.0703 (10).

**History:** 1983 a. 532; 1987 a. 378; 1999 a. 150 s. 547; Stats. 1999 s. 66.0731.

### 66.0733 Repayment of assessments in certain cases.

If a contract for improvements entered into by a governmental unit authorized to levy special assessments is declared void by a court of last resort, the governing body may provide that all persons who have paid all or any part of any assessment levied against the abutting property owners because of the improvement may be reimbursed the amount of the assessment, paid from the fund, that the governing body determines. This section applies to contracts for improvements that are void for any of the following reasons:

- (1) There was insufficient authority to make the contract.
- (2) The contract was made contrary to a prohibition against contracting in other than a specified way.
- (3) The contract was prohibited by statute.

**History:** 1993 a. 246; 1999 a. 150 s. 501; Stats. 1999 s. 66.0733.

## SUBCHAPTER VIII

### PUBLIC UTILITIES

**66.0801 Definitions; effect on other authority.** (1) In this subchapter:

(a) “Municipal public utility” means a public utility owned or operated by a city, village or town.

(b) “Public utility” has the meaning given in s. 196.01 (5).

(2) Sections 66.0803 to 66.0825 do not deprive the office of the commissioner of railroads, department of transportation or public service commission of any power under ss. 195.05 and 197.01 to 197.10 and ch. 196.

**History:** 1999 a. 150.

### 66.0803 Acquisition of public utility or bus transportation system.

(1) (a) A town, village or city may construct, acquire or lease any plant and equipment located in or outside the municipality, including interest in or lease of land, for furnishing water, light, heat or power, to the municipality or 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 cases where the municipality in the franchise has reserved right to purchase. The character or duration of the franchise, permit or grant under which any public utility is operated does not affect the power to acquire the public utility under this subsection. 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. The board or council may agree with the owner or owners of any public utility or utilities on the value of the utility or utilities and may contract to purchase or acquire at that value, upon those terms and conditions mutually agreed upon between the board or council and the owner or owners.

(b) A resolution, specifying the method of payment and submitting the question to a referendum, shall be adopted by a major-

ity of all the members of the board or council at a regular meeting, after publication at least one week previous in the official paper.

(c) The notice of the referendum shall include a general statement of the plant and equipment proposed to be constructed, acquired or leased and of the manner of payment.

(d) Referenda under this section may not be held oftener than once a year, except that a referendum held for the acquisition, lease or construction of any of the types of property enumerated in par. (a) does not bar the holding of one referendum in the same year for the acquisition and operation of a bus transportation system by the municipality.

(e) The provisions of pars. (b) to (d) do not apply to the acquisition of any plant, equipment or public utility for furnishing water service when the plant, equipment or utility is acquired by the municipality by dedication or without monetary or financial consideration. After a public utility is constructed, acquired or leased under this subsection, pars. (b) to (d) do not apply to any subsequent construction, acquisition or lease in connection with that public utility.

(2) (a) A 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 the municipality. A 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 of the system, or pursuant to law, or upon securing a certificate from the department of transportation under s. 194.23.

(b) A 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 the property is situated or operated.

(c) A city, village or town providing or acquiring a motor bus transportation system under this section may finance the construction or purchase in any manner authorized for 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; 1999 a. 150 ss. 172 to 174; Stats. 1999 s. 66.0803.

This section is not a restriction upon the authority granted to the department of natural resources by s. 144.025 (2) (r) [now s. 281.19 (5)] 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. DNR*, 68 Wis. 2d 187, 228 N.W.2d 173 (1975).

Section 66.065 [now s. 66.0803], 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 s. 144.025 (2) (r) [now s. 281.19 (5)]. 60 Atty. Gen. 523.

### 66.0805 Management of municipal public utility by commission.

(1) Except as provided in sub. (6), the governing body of a city shall, and the governing body of a village or town may, provide for the nonpartisan management of a municipal public utility by creating a commission under this section. The board of commissioners, under the general control and supervision of the governing body, shall be responsible for the entire management of and shall supervise the operation of the utility. The governing body shall exercise general control and supervision of the commission by enacting ordinances governing the commission's operation. The board shall consist of 3, 5 or 7 commissioners.

(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 commission shall choose a president and a secretary from its membership. The commission may appoint and establish the compensation of a manager. The commission may command the services of the city, village or town engineer and may employ

and fix the compensation of subordinates as necessary. The commission may make rules for its proceedings and for the government of the department. The commission 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) (a) The governing body of the city, village or town may provide that departmental expenditures be audited by the 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. 66.0607; that the utility receipts be paid to a bonded cashier 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 designated general powers in the construction, extension, improvement and operation of the utility. Actual construction work shall be under the immediate supervision of the board of public works or corresponding authority.

(b) If water mains have been installed or extended in a municipality and the cost of installation or extension has been in some instances assessed against the abutting owners and in other instances paid by the municipality or a utility, the governing body of the municipality may provide that all persons who paid the assessment against any lot or parcel of land may be reimbursed the amount of the assessment regardless of when such assessment was made or paid. Reimbursement may be made from such funds or earnings of the municipal utility or from such funds of the municipality as the governing body determines.

(5) Two or more public utilities acquired as a single enterprise may be operated under this section as a single enterprise.

(6) 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 provided for in this section.

**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; 1999 a. 150 ss. 179, 181, 183, 236; Stats. 1999 s. 66.0805.

When a city council creates a board under sub. (1), the council is prohibited by sub. (3) from fixing the wages of the utility's employees. *Schroeder v. City of Clintonville*, 90 Wis. 2d 457, 280 N.W.2d 166 (1979).

**66.0807 Joint operation of public utility or public transportation system.** (1) In this section, "privately owned public utility" includes a cooperative association organized under ch. 185 or 193 for the purpose of producing or furnishing utility service to its members only.

(2) A city, village or town served by a privately owned public utility, motor bus or other systems of public transportation rendering local service may contract with the owner of the utility or system for the leasing, public operation, joint operation, extension and improvement of the utility or system by the municipality; or, with funds loaned by the municipality, may contract for the stabilization by municipal guaranty of the return upon or for the purchase by installments out of earnings or otherwise of that portion of the public utility or system which is operated within the municipality and any territory immediately adjacent and tributary to the municipality; or may contract 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 the utility or system property. The provisions of s. 66.0817 relating to preliminary agreement and approval by the department of transportation or public service commission apply to the contracts authorized by this section. The department of transportation or public service commission shall, when a contract under this section is approved by it and consummated, cooperate with the parties in respect to making valuations, appraisals, estimates and other determinations specified in the 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; 1999 a. 150 ss. 171, 237; Stats. 1999 s. 66.0807; 2005 a. 441.

**66.0809 Municipal public utility charges.** (1) Except as provided in sub. (2), the governing body of a town, village or city

operating a public utility may, by ordinance, fix the initial rates and shall provide for this collection monthly, bimonthly or quarterly 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 include standby charges to property not connected but for which public utility facilities have been made available. The charges shall be collected by the treasurer or other officer or employee designated by the city, village or town.

(2) If, on June 21, 1996, it is the practice of a governing body of a town, village or city operating a public utility to collect utility service charges using a billing period other than one permitted under sub. (1), the governing body may continue to collect utility service charges using that billing period.

(3) (a) Except as provided in subs. (4) and (5), on October 15 in each year notice shall be given to the owner or occupant of the lots or parcels of real estate to which utility service has been furnished prior to October 1 by a public utility operated by a town, city, or village and payment for which is owing and in arrears at the time of giving the notice. The department in charge of the utility shall furnish the treasurer with a list of the lots or parcels of real estate for which utility service charges are in arrears, and the notice shall be given by the treasurer, unless the governing body of the city, village, or town authorizes notice to be given directly by the department. The notice shall be in writing and shall state the amount of arrears, including any penalty assessed pursuant to the rules of the utility; that unless the amount is paid by November 1 a penalty of 10 percent of the amount of arrears will be added; and that unless the arrears, with any added penalty, are paid by November 15, the arrears and penalty will be levied as a tax against the lot or parcel of real estate to which utility service was furnished and for which payment is delinquent. The notice may be served by delivery to either the owner or occupant personally, or by letter addressed to the owner or occupant at the post-office address of the lot or parcel of real estate.

(b) 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, for which notice of arrears was given under par. (a) and for which arrears remain unpaid, stating the amount of arrears and penalty. Each delinquent amount, including the penalty, becomes a lien upon the lot or parcel of real estate to which the utility service was furnished and payment for which is delinquent, and the clerk shall insert the delinquent amount and penalty as a tax against the lot or parcel of real estate.

(c) All proceedings in relation to the collection of general property taxes and to the return and sale of property for delinquent taxes apply to the tax under par. (b) if it is not paid within the time required by law for payment of taxes upon real estate.

(d) Under this subsection, if an arrearage is for utility service furnished and metered by the utility directly to a manufactured home or mobile home unit in a licensed manufactured and mobile home community, the notice shall be given to the owner of the manufactured home or mobile home unit and the delinquent amount becomes a lien on the manufactured home or mobile home unit rather than a lien on the parcel of real estate on which the manufactured home or mobile home unit is located. A lien on a manufactured home or mobile home unit may be enforced using the procedures under s. 779.48 (2).

(e) This subsection does not apply to arrearages collected using the procedure under s. 66.0627.

(f) In this subsection, "metered" means the use of any method to ascertain the amount of service used or the use of a flat rate billing method.

(3m) (a) If sub. (5) applies and a notice of arrears under sub. (3) (a) is given or past-due charges are certified to the comptroller under s. 62.69 (2) (f), on the date the notice of arrears is given, or the past-due charges are certified under s. 62.69 (2) (f), the municipality has a lien upon the assets of each tenant of a rental dwelling