

No. 53, A.]

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CHAPTER 162.

AN ACT to repeal and recreate subsection (9) of section 66.06 and to create paragraph (bn) of subsection (1) of section 206.34 and paragraph (bn) of subsection (1) of section 231.32 of the statutes, relating to the financing of municipally owned public utilities and providing machinery for carrying out the amendment to Section 3 of Article XI which was adopted by the people in general election of November, 1932.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. Subsection (9) of section 66.06 of the statutes is repealed.

SECTION 2. A new subsection is added to section 66.06 and a new paragraph is added to subsection (1) of section 206.34 and to subsection (1) of section 231.32 of the statutes to be numbered and to read: (66.06) (9) METHOD OF PAYMENT. (a) Any town, village, city or power district may, by action of its governing body, provide for purchasing, acquiring, leasing, constructing, extending, adding to, improving, conducting, controlling, operating, or managing a public utility from the general fund, or from the proceeds of municipal bonds, mortgage bonds, or mortgage certificates. The term municipality as used in this subsection shall include power districts. Any indebtedness created pursuant to paragraphs (b), (c) and (d) of this subsection shall not be considered an indebtedness of such municipality, and shall not be included in arriving at the constitutional five per cent debt limitation.

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

1. The board or council shall order the issuance and sale of bonds bearing interest at a rate not exceeding six per centum per annum, payable semiannually, executed by the chief executive and the clerk and payable at such times not exceeding forty years from the date thereof, and at such places, as the board or council of such municipality shall determine, which bonds shall be payable only out of the said special redemption fund. Each such bond shall state plainly upon its face that it is payable only from the said special redemption fund, naming the ordinance creating it and that it does not constitute an indebtedness of such municipality. The said bonds may be issued either as registered bonds or as coupon

bonds payable to bearer. Coupon and bearer bonds may be registered as to principal in the holder's name on the books of such municipality, such registration being noted on the bond by the clerk or other designated officer, after which no transfer shall be valid unless made on the books of such municipality by the registered holder and similarly noted on the bond. Any bond so registered as to principal may be discharged from such registration by being transferred to bearer after which it shall be transferable by delivery but may be again registered as to principal as before. The registration of the bonds as to the principal shall not restrain the negotiability of the coupons by delivery merely, but the coupons may be surrendered and the interest made payable only to the registered holder of the bonds. If the coupons be surrendered, the surrender and cancellation thereof shall be noted on the bond and thereafter interest on the bond shall be payable to the registered holder or order in cash or at his option by check or draft payable at the place or one of the places where the coupons were payable. Such bonds shall be sold in such manner and upon such terms as the board or council shall deem for the best interests of said municipality; provided, however, that such bonds shall not be sold for less than ninety-five per cent of the par value. All bonds shall mature in substantially equal annual installments, and the first installment of principal shall fall due and be payable not later than three years after the date of issue. All such bonds shall contain a provision requiring redemption thereof, in whole or in part, at stipulated prices, at the option of the municipality on any interest payment date after three years from the date of the bonds. The board or council may provide in any contract for purchasing, acquiring, leasing, constructing, extending, adding to, improving, conducting, controlling, operating, or managing a public utility, that payment thereof shall be made in such bonds at not less than ninety-five per cent of the par value thereof.

2. All moneys received from any bonds issued pursuant hereto shall be applied solely for purchasing, acquiring, leasing, constructing, extending, adding to, improving, conducting, controlling, operating, or managing a public utility, and in the payment of the cost of any subsequent necessary additions, improvements and extensions, and there shall be and there is hereby granted and created a statutory mortgage lien upon the public utility to the holders of the said bonds and to the holders of the coupons of said bonds. The public utility shall remain subject to such statutory mortgage

lien until the payment in full of the principal and interest of the bonds. Any holder of the said bonds or of any coupons attached thereto may either at law or in equity protect and enforce the statutory mortgage lien hereby conferred, and compel performance of all duties required by this subsection of the municipality. If there be any default in the payment of the principal or interest of any of the said bonds, any court having jurisdiction of the action may appoint a receiver to administer the said public utility on behalf of the said municipality, and the said bondholders, with power to charge and collect rates lawfully established sufficient to provide for the payment of the operating expenses and also to pay any bonds or obligations outstanding against said utility, and to apply the income and revenues thereof in conformity with this statute and the said ordinance, or the said court may declare the whole amount of said bonds due and payable and may order and direct the sale of the said public utility. Under any sale so ordered, the purchaser shall be vested with an indeterminate permit to maintain and operate the said public utility. Any municipality may provide for additions, extensions and improvements to a public utility owned by said municipality by additional issue of bonds in the manner herein provided; but such additional issue or issues of bonds shall be subordinate to all prior issues of bonds which may have been made hereunder. Any municipality may issue new bonds in the manner herein provided and secured in the same manner, to provide funds for the payment of the principal and interest of any bonds then outstanding.

3. As accurately as possible in advance, said board or council shall by ordinance fix and determine (a) the proportion of the revenues of such public utility which shall be necessary for the reasonable and proper operation and maintenance thereof; (b) the proportion of the said revenues which shall be set aside as a proper and adequate depreciation fund; and (c) the proportion of the said revenues which shall be set aside and applied to the payment of the principal and interest of the bonds herein authorized and shall set the same aside in separate funds. At any time after one year's operation, the council or board may recompute the proportion of the revenues which shall be assignable as provided above based upon the experience of operation or upon the basis of further financing.

4. The proportion set aside to the depreciation fund shall be expended in making good depreciation either in said public utility or in new constructions, extensions or additions. Any accumulations

of such depreciation fund may be invested, and if invested, the income from the investment shall be carried in the depreciation fund.

5. The proportion which shall be set aside for the payment of the principal and interest of the bonds herein authorized shall from month to month as the same shall accrue and be received, be set apart and paid into a special fund in the treasury of the said municipality to be identified as "the...special redemption fund."

6. If any surplus shall be accumulated in any of the above funds, it shall be disposed of as provided in paragraph (c) of subsection (11) of this section.

7. The reasonable cost and value of any service rendered to such municipality by such public utility shall be charged against the said municipality and shall be by it paid for in monthly installments.

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

9. Said board or council shall have full power to adopt all ordinances necessary to carry into effect the provisions of paragraph (b) of this subsection.

10. Proceedings for purchasing, acquiring, leasing, constructing, extending, adding to, improving, conducting, controlling, operating, or managing a public utility by any municipality heretofore begun under the provisions of law other than paragraph (b) of this subsection, may be proceeded with either under the provisions of such law, if still in force, or under the provisions of said paragraph (b) as the board or council may elect. A municipality proceeding under chapter 197 to acquire the property of a public utility may pay for the same by the method provided for in this subsection.

11. The ordinance required by subdivision 3 of this paragraph may set apart bonds hereunder equal to the amount of any secured debt or charge subject to which a public utility may be purchased, acquired, leased, constructed, extended, added to, or improved in any proceedings heretofore begun or hereafter commenced, and shall set aside for interest and sinking fund from the income and revenues of the public utility, a sum sufficient to

comply with the requirements of the instrument creating the lien, or if such instrument does not make any provision therefor, said ordinance shall fix and determine the amount which shall be set aside into a secured debt fund from month to month for interest on the secured debt, and a fixed amount or proportion not exceeding a stated sum, which shall be not less than one per cent of the principal, to be set aside into said fund to pay the principal of the debt. Any surplus after satisfying the debt may be transferred to the special redemption fund. Public utility bonds set aside for such debt may, from time to time be issued to an amount sufficient with the amount then in such sinking fund, to pay and retire the said debt or any portion thereof; such bonds may be so issued at not less than ninety-five per cent of the par value in exchange for, or satisfaction of, the secured debt, or may be sold in the manner herein provided, and the proceeds applied in payment of the same at maturity or before maturity by agreement with the holder. The board or council and the owners of any public utility acquired, purchased, leased, constructed, extended, added to, or improved, hereunder may, upon such terms and conditions as are satisfactory, contract that public utility bonds to provide for such secured debt, or for the whole purchase price shall be deposited with a trustee or depository and released from such deposit from time to time on such terms and conditions as are necessary to secure the payment of the debt.

12. Any municipality which has heretofore or may hereafter purchase, acquire, lease, construct, extend, add to or improve, conduct, control, operate, or manage a public utility subject to a mortgage or deed of trust by the vendor or his or its predecessor in title to secure the payment of outstanding and unpaid bonds made by the vendor or his or its predecessor in title, may readjust, renew, consolidate or extend the debt evidenced by such outstanding bonds and continue the lien thereof of the mortgage, securing the same by issuing bonds to refund the said outstanding mortgage bonds at or prior to their maturity, which bonds shall be payable only out of a special redemption fund to be created and set aside by ordinance as nearly as may be in the manner prescribed by paragraph (b) of this subsection, and which refunding bonds shall be secured by a statutory mortgage lien upon the public utility, and such municipality is authorized to adopt all ordinances and take all proceedings, following as nearly as may be the procedure prescribed by paragraph (b) of this subsection, the lien

thereof shall have the same priority on the public utility as the mortgage securing the outstanding bonds, unless it be otherwise expressly provided in the proceedings of the common council or other governing authority to authorize the same.

(c) When payment is provided by mortgage certificate it shall be in the manner following:

1. The board or council shall order the issue and sale of mortgage certificates which shall recite that they are secured by trust deed or mortgage upon such equipment and that no municipal liability is created thereby.

2. Such mortgage certificates shall bear interest not to exceed six per cent per annum, payable semiannually, shall not be sold for less than ninety-five per cent of the par value, and shall be made payable at the option of such municipality in not less than three years and in not more than twenty years from the date thereof.

3. To secure the payment of principal and interest of such mortgage certificates, the chief executive and clerk shall execute to the purchaser thereof or to a trustee selected by resolution or ordinance, a trust deed or mortgage upon such public utility to the holders of said bonds and to the holders of the coupons of said bonds.

4. The trust deed or mortgage shall among other things provide:

a. That the lien upon the property therein described and upon the income, shall be the only security, and that no municipal liability is created.

b. That the income from operation shall be applied, first to the necessary maintenance and operation, second to provide for proper and adequate depreciation, and third, to payment of the principal and interest of the certificates herein authorized. All certificates shall mature in substantially equal annual installments, and the first installment of principal shall fall due and be payable not later than three years after the date of issue. All such certificates shall contain a provision requiring redemption thereof, in whole or in part, at stipulated prices, at the option of the municipality on any interest payment date after three years from the date of the certificates.

c. That if any interest shall remain due and unpaid for twelve months, or if any part of the principal shall not be paid when due, the trust deed or mortgage may be foreclosed.

d. That upon default in payment of principal or interest, the holder of such trust deed or mortgage may by notice in writing

served after such default declare the whole amount due and payable six months after such service and that it shall be so due and payable.

5. Refunding mortgage certificates may be issued in the same manner, upon a two-thirds vote of the board or council. The rate of interest and time of payment shall be as fixed by subdivision 2 of paragraph (c) of subsection (9).

(d) Any city, village, town or municipal power district which may own or operate, or hereafter purchase, acquire, lease, construct, extend, add to, improve, conduct, control, operate or manage any public utility may also, by action of its governing body, in lieu of the issuance of bonds or certificates or the levy of taxes and in addition to any other lawful methods or means of providing for the payment of indebtedness, have the power by and through its governing body to provide for or to secure the payment of the cost of purchasing, acquiring, leasing, constructing, extending, adding to, improving, conducting, controlling, operating, or managing a public utility by pledging, assigning or otherwise hypothecating, the net earnings or profits derived, or to be derived, from the operation of such public utility. To that end, it may enter into such contracts and may mortgage its plant and issue such evidences of indebtedness as may be proper to carry out the provisions of this paragraph.

(206.34) (1) (bn) In the lawfully authorized evidences of indebtedness of a municipally owned public utility of this state created pursuant to section 3 of article XI of the constitution, if the net book value of the property pledged as security for such bonds has been established or approved by the public service commission and the total issue of such bonds does not exceed fifty per cent of the net book value of the property pledged as security therefor.

(231.32) (1) (bn) In the lawfully authorized evidences of indebtedness of a municipally owned public utility of this state created pursuant to section 3 of article XI of the constitution, if the net book value of the property pledged as security for such bonds has been established or approved by the public service commission and the total issue of such bonds does not exceed fifty per cent of the net book value of the property pledged as security therefor.

SECTION 3. This act shall take effect upon passage and publication.

Approved May 25, 1933.