

1977 Assembly Bill 287

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CHAPTER 159, Laws of 1977

AN ACT to create 66.073 of the statutes, relating to authorizing creation of municipal electric companies.

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

SECTION 1. 66.073 of the statutes is created to read:

66.073 Municipal electric companies. (1) **SHORT TITLE.** This section shall be known as the "Municipal Electric Company Act".

(2) **FINDING AND DECLARATION OF NECESSITY.** It is declared that the operation of electric utility systems by municipalities of this state and the improvement of the systems through joint action in the fields of the generation, transmission and distribution of electric power and energy is in the public interest; that there is a need in order to ensure the stability and continued viability of the municipal systems to provide for a means by which municipalities which operate the systems may act jointly in all ways possible, including development of coordinated bulk power and fuel supply programs and efficient, community-based energy systems; and that, the necessity in the public interest for the provisions hereinafter enacted in this section is declared as a matter of legislative determination.

(3) **DEFINITIONS.** As used in this section, unless the context clearly indicates otherwise:

(a) "Bonds" means any bonds, interim certificates, notes, debentures or other obligations of a company issued under this section.

(am) “Community-based energy system” means a small-scale energy production system or device which serves a local area or portion thereof, including, but not limited to, a small scale power plant, using coal, sun, wind, organic waste or other form of energy, if the system is located sufficiently close to the community to make the dual production of heat and electricity possible. “Community-based energy system” also means a methane producing system or solar, wind or other energy source system for individual buildings or facilities.

(b) “Company” and “electric company” mean a municipal electric company.

(c) “Contracting municipality” means a municipality which contracts to establish an electric company under this section.

(d) “Municipal electric company” means a public corporation created by contract between 2 or more municipalities under this section.

(e) “Municipality” means a city, village or town.

(f) “Person” means a natural person, a public agency, cooperative or private corporation, association, firm, partnership, or business trust of any nature whatsoever, organized and existing under the laws of any state or of the United States.

(g) “Project” means any plant, works, system, facilities, and real and personal property of any nature whatsoever, together with all parts thereof and appurtenances thereto, used or useful in the generation, production, transmission, distribution, purchase, sale, exchange, or interchange of electric power and energy, or any interest therein or right to capacity thereof and the acquisition of fuel of any kind for any such purposes, including, but not limited to, the acquisition of fuel deposits and the acquisition or construction and operation of facilities for extracting fuel from natural deposits, for converting it for use in another form, for burning it in place, for transportation, storage and reprocessing or for any energy conservation measure which involves public education or the actual fitting and application of a device.

(h) “Public agency” means any municipality or other municipal corporation, political subdivision, governmental unit, or public corporation created under the laws of this state or of another state or of the United States, and any state or the United States, and any person, board, or other body declared by the laws of any state or the United States to be a department, agency or instrumentality thereof.

(4) CREATION OF MUNICIPAL ELECTRIC COMPANIES. (a) Any combination of municipalities of the state which operate facilities for the generation or transmission or distribution of electric power and energy may, by contract with each other, establish a separate governmental entity to be known as a municipal electric company to be used by such contracting municipalities to effect joint development of electric energy resources or production, distribution and transmission of electric power and energy in whole or in part for the benefit of the contracting municipalities. The municipalities party to the contract may amend the contract as provided therein.

(b) Any contract entered into under this section shall be filed with the secretary of state. Upon receipt, the secretary shall record the contract and issue a certificate of incorporation stating the name of the company and the date and fact of incorporation. Upon issuance of the certificate, the existence of the company shall begin.

(5) CONTRACT. Any contract establishing an electric company under this section shall specify:

(a) The name and purpose of the company and the functions or services to be provided by the company. The name may refer to the company as an agency, authority, company, corporation, group, system or other descriptive title.

(b) The establishment and organization of a governing body of the company which shall be a board of directors in which all powers of the company are vested. The contract may provide for the creation by the board of an executive committee of the board to which the powers and duties may be delegated as the board shall specify.

(c) The number of directors, the manner of their appointment, terms of office and compensation, if any, and the procedure for filling vacancies on the board. Each

contracting municipality shall have the power to appoint one member to the board of directors and shall be entitled to remove that member at will.

(d) The manner of selection of the officers of the company and their duties.

(e) The voting requirements for action by the board; but, unless specifically provided otherwise, a majority of directors shall constitute a quorum and a majority of the quorum shall be necessary for any action taken by the board.

(f) The duties of the board which shall include the obligation to comply or to cause compliance with this section and the laws of the state and in addition, with each and every term, provision and covenant in the contract creating the company on its part to be kept or performed.

(g) The manner in which additional municipalities may become parties to the contract by amendment.

(h) Provisions for the disposition, division or distribution of any property or assets of the company on dissolution.

(i) The term of the contract, which may be a definite period or until rescinded or terminated, and the method, if any, by which the contract may be rescinded or terminated, but that the contract may not be rescinded or terminated so long as the company has bonds outstanding, unless provision for full payment of such bonds, by escrow or otherwise, has been made pursuant to the terms of the bonds or the resolution, trust indenture or security instrument securing the bonds.

(6) POWERS. The general powers of an electric company shall include the power to:

(a) Plan, develop, acquire, construct, reconstruct, operate, manage, dispose of, participate in, maintain, repair, extend or improve one or more projects within or outside the state and act as agent, or designate one or more other persons participating in a project to act as its agent, in connection with the planning, acquisition, construction, operation, maintenance, repair, extension or improvement of such project.

(b) Produce, acquire, sell, distribute and process fuels necessary to the production of electric power and energy and implement energy conservation measures necessary to meet energy needs.

(c) Enter into franchises, exchange, interchange, pooling, wheeling, transmission and other similar agreements with any person or public agency.

(d) Make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the company.

(e) Employ agents and employees.

(f) Contract with any person or public agency within or outside the state, for the construction of any project or for the sale or transmission of electric power and energy generated by any project, or for any interest therein or any right to capacity thereof, on such terms and for such period of time as its board of directors shall determine.

(g) Purchase, sell, exchange, transmit or distribute electric power and energy within and outside the state in such amounts as it shall determine to be necessary and appropriate to make the most effective use of its powers and to meet its responsibilities, and to enter into agreements with any person or public agency with respect to such purchase, sale, exchange, or transmission, on such terms and for such period of time as its board of directors shall determine. A company may not sell power and energy at retail unless requested to do so by a municipal member within the service area of that municipal member.

(h) Acquire, own, hold, use, lease (as lessor or lessee), sell or otherwise dispose of, mortgage, pledge, or grant a security interest in any real or personal property, commodity or service or interest therein subject to s. 182.017 (8).

(i) Exercise the powers of eminent domain granted to public utility corporations under ch. 32.

(j) Incur debts, liabilities or obligations including the borrowing of money and the issuance of bonds, secured or unsecured, under sub. (11) (b).

(k) Sue and be sued in its own name.

(L) Have and use a corporate seal.

(m) Fix, maintain and revise fees, rates, rents and charges for functions, services, facilities or commodities provided by the company.

(n) Make, and from time to time amend and repeal, bylaws, rules and regulations not inconsistent with this section to carry into effect the powers and purposes of the company.

(o) Notwithstanding the provisions of any other law, invest any funds held in reserve or sinking funds, or any funds not required for immediate disbursement, including the proceeds from the sale of any bonds, in such obligations, securities and other investments as the company deems proper.

(p) Join organizations, membership in which is deemed by the board of directors to be beneficial to accomplishment of the company's purposes.

(q) Exercise any other powers which are deemed necessary and convenient by the company to effectuate the purposes of the company.

(r) Do and perform any acts and things authorized by this section under, through or by means of an agent or by contracts with any person.

(6m) ENERGY CONSERVATION DUTIES. A municipal electric company established by contract under this section shall consider energy conservation measures and the development of efficient, community-based energy systems.

(7) PUBLIC CHARACTER. An electric company established by contract under this section shall constitute a political subdivision and body public and corporate of the state, exercising public powers, separate from the contracting municipalities. It shall have the duties, privileges, immunities, rights, liabilities and disabilities of a public body politic and corporate but shall not have taxing power.

(8) PAYMENTS. (a) The contracting municipalities may provide in the contract created under sub. (5) for payment to the company of funds for commodities to be procured and services to be rendered by the company. These municipalities and other persons and public agencies may enter into purchase agreements with the company for the purchase of electric power and energy whereby the purchaser is obligated to make payments in amounts which shall be sufficient to enable the company to meet its expenses, interest and principal payments (whether at maturity or upon sinking fund redemption) for its bonds, reasonable reserves for debt service, operation and maintenance and renewals and replacements and the requirements of any rate covenant with respect to debt service coverage contained in any resolution, trust indenture or other security instrument. Purchase agreements may contain such other terms and conditions as the company and the purchasers may determine, including provisions whereby the purchaser is obligated to pay for power irrespective of whether energy is produced or delivered to the purchaser or whether any project contemplated by any such agreement is completed, operable or operating, and notwithstanding suspension, interruption, interference, reduction or curtailment of the output of such project. Such agreements may be for a term covering the life of a project or for any other term, or for an indefinite period. The contract created under sub. (5) or a purchase agreement may provide that if one or more of the purchasers defaults in the payment of its obligations under any such purchase agreement, the remaining purchasers which also have such agreements shall be required to accept and pay for and shall be entitled proportionately to use or otherwise dispose of the power and energy to be purchased by the defaulting purchaser. For purposes of this paragraph the phrase "purchase of electric power and energy" includes any right to capacity or interest in any project.

(b) The obligations of a municipality under a purchase agreement with a company or arising out of the default by any other purchaser with respect to such an agreement

shall not be construed to constitute debt of the municipality. To the extent provided in the purchase agreement, such obligations shall constitute special obligations of the municipality, payable solely from the revenues and other moneys derived by the municipality from its municipal electric utility and shall be treated as expenses of operating a municipal electric utility.

(c) The contract also may provide for payments in the form of contributions to defray the cost of any purpose set forth in the contract and as advances for any such purpose subject to repayment by the company.

(9) SALE OF EXCESS CAPACITY. (a) An electric company may sell or exchange excess power and energy produced or owned by it not required by any of the contracting municipalities for such consideration and for such period and upon such terms and conditions as it may determine to any other person or public agency.

(b) Notwithstanding any other provision of this section or any other statute, nothing shall prohibit a company from undertaking any project in conjunction with or owning any project jointly with any person or public agency.

(10) REGULATION. (a) An electric company created under this section shall be deemed to be a "public utility" for purposes of ch. 196, except that the terms and conditions and the rates at which a company sells power and energy for resale shall not be subject to regulation or alteration by the public service commission.

(b) Advance plans submitted by a municipal electric utility under s. 196.491 shall include consideration of alternatives to any proposed addition to any bulk electric generating facility as defined under s. 196.491. Such alternatives shall include, but not be limited to, community-based energy systems and energy conservation measures.

(11) TYPES OF BONDS. (a) An electric company may issue such types of bonds as it may determine, subject only to any agreement with the holders of particular bonds, including bonds as to which the principal and interest are payable exclusively from all or a portion of the revenues from one or more projects, or from one or more revenue producing contracts made by the company with any person or public agency, or from its revenues generally, or which may be additionally secured by a pledge of any grant, subsidy, or contribution from any public agency or other person, or a pledge of any income or revenues, funds, or moneys of the company from any source whatsoever.

(b) A company may from time to time issue its bonds in such principal amounts as the company deems necessary to provide sufficient funds to carry out any of its corporate purposes and powers, including the establishment or increase of reserves, interest accrued during construction of a project and for a period not exceeding one year after the completion of construction of a project, and the payment of all other costs or expenses of the company incident to and necessary or convenient to carry out its corporate purposes and powers.

(c) Neither the members of the board of directors of a company nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof.

(d) The bonds of an electric company (and such bonds shall so state on their face) shall not be a debt of the municipalities which are parties to the contract creating the company or of the state and neither the state nor any such municipality shall be liable thereon nor in any event shall such bonds be payable out of any funds or properties other than those of the company.

(12) FORM AND SALE OF BONDS. (a) Bonds of an electric company shall be authorized by resolution of the board of directors and may be issued under such resolution or under a trust indenture or other security instrument in one or more series and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium) as such resolution, trust indenture or other security instrument may provide,

and without limitation by the provisions of any other law limiting amounts, maturities or interest rates.

(b) The bonds may be sold at public or private sale as the company may provide and at such price or prices as the company shall determine.

(c) In case any of the officers whose signatures appear on any bonds or coupons shall cease to be such officers before the delivery of such obligations, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if the officers had remained in office until such delivery.

(13) COVENANTS. The company shall have power in connection with the issuance of its bonds to:

(a) Covenant as to the use of any or all of its property, real or personal.

(b) Redeem the bonds, to covenant for their redemption and to provide the terms and conditions thereof.

(c) Covenant to charge rates, fees and charges sufficient to meet operating and maintenance expenses, renewals and replacements to a project, principal and debt service on bonds, creation and maintenance of any reserves required by a bond resolution, trust indenture or other security instrument and to provide for any margins or coverages over and above debt service on the bonds deemed desirable for the marketability of the bonds.

(d) Covenant and prescribe as to events of default and terms and conditions upon which any or all of its bonds shall become or may be declared due before maturity, as to the terms and conditions upon which such declaration and its consequences may be waived and as to the consequences of default and the remedies of bondholders.

(e) Covenant as to the mortgage or pledge of or the grant of a security interest in any real or personal property and all or any part of the revenues from any project or projects or any revenue producing contract or contracts made by the company with any person or public agency to secure the payment of bonds, subject to such agreements with the holders of bonds as may then exist.

(f) Covenant as to the custody, collection, securing, investment and payment of any revenues, assets, moneys, funds or property with respect to which the company may have any rights or interest.

(g) Covenant as to the purposes to which the proceeds from the sale of any bonds then or thereafter to be issued may be applied, and the pledge of such proceeds to secure the payment of the bonds.

(h) Covenant as to limitations on the issuance of any additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding bonds.

(i) Covenant as to the rank or priority of any bonds with respect to any lien or security.

(j) Covenant as to the procedure by which the terms of any contract with or for the benefit of the holders of bonds may be amended or abrogated, the amount of bonds, the holders of which must consent thereto, and the manner in which such consent may be given.

(k) Covenant as to the custody of any of its properties or investments, the safekeeping thereof, the insurance to be carried thereon, and the use and disposition of insurance proceeds.

(L) Covenant as to the vesting in a trustee or trustees, within or outside the state, of such properties, rights, powers and duties in trust as the company may determine.

(m) Covenant as to the appointing and providing for the duties and obligations of a paying agent or paying agents or other fiduciaries within or outside the state.

(n) Make all other covenants and to do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds, or in the absolute

discretion of the company tend to make the bonds more marketable; notwithstanding that such covenants, acts or things may not be enumerated herein; it being the intention hereof to give the company power to do all things in the issuance of bonds and in the provisions for security thereof which are not inconsistent with the constitution of the state.

(o) Execute all instruments necessary or convenient in the exercise of the powers herein granted or in the performance of covenants or duties, which may contain such covenants and provisions, as any purchaser of the bonds of the company may reasonably require.

(14) REFUNDING BONDS. A company may issue refunding bonds for the purpose of paying any of its bonds at or prior to maturity or upon acceleration or redemption. Refunding bonds may be issued at such time prior to the maturity or redemption of the refunded bonds as the company deems to be in the public interest. The refunding bonds may be issued in sufficient amounts to pay or provide the principal of the bonds being refunded, together with any redemption premium thereon, any interest accrued or to accrue to the date of payment of such bonds, the expenses of issue of the refunding bonds, the expenses of redeeming the bonds being refunded, and such reserves for debt service or other capital or current expenses from the proceeds of such refunding bonds as may be required by the resolution, trust indenture or other security instruments. The issue of refunding bonds, the maturities and other details thereof, the security therefor, the rights of the holders thereof, and the rights, duties and obligations of the company in respect of the same shall be governed by this section relating to the issue of bonds other than refunding bonds insofar as the same may be applicable.

(15) BONDS ELIGIBLE FOR INVESTMENT. Bonds issued by a company under this section are hereby made securities in which all public officers and agencies of the state and all political subdivisions, all insurance companies, trust companies, banks, savings and loan associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any officer or agency of the state or any political subdivision for any purpose for which the deposit of bonds or obligation of the state or any political subdivision is now or may hereafter be authorized by law.

(16) TAX EXEMPTION AND PAYMENTS IN LIEU OF TAXES. (a) All bonds of a municipal electric company are declared to be issued on behalf of the state for an essential public and governmental purpose and to be debts of a state municipal corporation.

(b) The property of a company, including any pro rata share of any property owned by a company in conjunction with any other person or public agency, is declared to be public property used for essential public and governmental purposes and such property or pro rata share, a company and its income shall be exempt from all taxes of the state or any state public body except that for each project owned or partly owned by it, a company shall make payments-in-lieu-of-taxes to the state equal to the amount which would be paid to the state under ch. 76 for such project or share thereof if it were deemed to be owned by a light, heat and power company under s. 76.02 (8). The payment shall be determined, administered and distributed by the state in the same manner as the taxes paid by light, heat and power companies under ch. 76, except that the ad valorem rate applicable to light, heat and power companies taxed under ch. 76, which is to be used in determining such a payment, shall be adjusted downward to obtain a rate net of public utility tax credits received under s. 79.10.

(17) SUCCESSOR. A company shall, if the contract so provides, be the successor to any nonprofit corporation, agency or any other entity theretofore organized by such contracting municipalities to provide the same or a related function, and the company shall be entitled to all rights and privileges and shall assume all obligations and

liabilities of the other entity under existing contracts to which the other entity is a party.

(18) OTHER STATUTES. The powers granted under this section do not limit the powers of municipalities to enter into intergovernmental cooperation or contracts or to establish separate legal entities under s. 66.30 or any other applicable law, or otherwise to carry out their powers under applicable statutory provisions, nor shall such powers limit the powers reserved to municipalities by state law.

(19) CONSTRUCTION. This section shall be interpreted liberally to effect the purposes set forth in this section.
