



State of Wisconsin
2005 - 2006 LEGISLATURE

LRBs0306/1
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**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2005 ASSEMBLY BILL 492**

November 14, 2005 - Offered by Representative UNDERHEIM.

1 **AN ACT** *to renumber* 66.0821 (1) (a); *to renumber and amend* 66.0821 (2) (b);
2 *to amend* 66.0821 (2) (a) 2., 66.0821 (3) (a), 66.0821 (4) (a), 66.0821 (4) (c),
3 66.0821 (5) (a), 66.0821 (6) and 196.01 (5) (a) 1.; and *to create* 66.0821 (1) (ae),
4 66.0821 (1) (am), 66.0821 (2) (b) 2., 66.0821 (4) (am) and 196.01 (5) (a) 1r. of the
5 statutes; **relating to:** municipal storm water utilities.

Analysis by the Legislative Reference Bureau

This substitute amendment prohibits cities, villages, and towns (municipalities) from using both property taxes and service charges to pay for the same costs that are incurred for storm water utilities. Under current law, a municipality is allowed to construct and operate a system for collecting, transporting, pumping, treating, or disposing of storm water and surface water. The costs for such a system may be funded with property taxes, special assessments, service charges, municipal obligations or revenue bonds, or any combination of the foregoing.

Current law allows a municipality to establish service charges in amounts to meet all or part of the costs for any of the following requirements of such a system: constructing, reconstructing, improving, extending, operating, maintaining, repairing, or depreciating the system, or paying all or part of the principal and interest of any indebtedness incurred for the system.

This substitute amendment refers to such a system as a “municipal storm water utility.” The substitute amendment allows a municipality to use any of the sources allowed under current law to meet the costs of a municipal storm water utility. However, if a municipality establishes a service charge to meet all or part of the costs for any requirement described above, the substitute amendment prohibits the municipality from including in its property tax levy any expenditure that is made for the purpose of meeting the requirement. In addition, if any portion of an expenditure can be allocated to meeting the requirement, the municipality may not include the allocated portion of the expenditure in its property tax levy.

In addition, the substitute amendment requires a municipality to consider the following when it establishes the amount of a service charge: 1) the volume or peaking of storm water or surface water discharge that is caused by impervious surfaces of the property served by the municipal storm water utility; 2) topography and other surface characteristics of the property; 3) the extent and reliability of mitigation or treatment measures available to service the property, apart from measures provided by the utility; and 4) any other reasonably relevant considerations. Under current law, a municipality is allowed, but not required, to consider these characteristics.

In addition, the substitute amendment requires a municipality to also consider the costs of services rendered by the municipal storm water utility to all public ways and thoroughfares within the jurisdiction of the utility. In establishing the amount of a service charge, the municipality must consider each utility user’s allocable portion of such costs. Also, the substitute amendment prohibits a municipality from including in a service charge any charge for mitigation or treatment resulting from naturally occurring runoff into a natural body of water.

The substitute amendment also makes a change to the provisions for complaints about municipal storm water utilities and other municipal sewer utilities. Under current law, a person who uses such a utility may complain to the Public Service Commission (PSC) that the rates, rules, or practices of the municipality regarding the utility are unreasonable or unjustly discriminatory. If the PSC finds sufficient cause for the complaint, the PSC must hold a public hearing after providing ten days’ notice to the person who filed the complaint and the municipality. After the hearing, if the PSC determines that the rates, rules, or practices are unreasonable or unjustly discriminatory, the PSC must issue an order establishing reasonable and just rates, rules, or practices.

This substitute amendment specifies that a user of a municipal storm water or other sewer utility may also complain to the PSC if the municipality violates any requirements under law that apply to the utility, including the requirements created in the substitute amendment.

Finally, the substitute amendment subjects certain municipal storm water utilities to the full authority of the PSC to regulate rates and services. Under current law, municipal storm water utilities are generally not subject to the PSC’s jurisdiction, except for the complaint procedure described above. Under this substitute amendment, only the following municipal storm water utilities are exempt from the PSC’s full authority regarding rates and services: 1) municipal

storm water utilities in operation on the effective date of the substitute amendment; and 2) municipal storm water utilities that are operated by metropolitan sewerage districts. Although the exempt utilities are not subject to the PSC's full authority regarding rates and services, the exempt utilities must comply with the substitute amendment's requirements regarding service charges that are described above. In addition, the exempt utilities are subject to the complaint procedure described above. For municipal storm water utilities that are subject to the full authority of the PSC under the substitute amendment, the PSC must ensure that their cost accounting practices and rate structures are consistent.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 66.0821 (1) (a) of the statutes is renumbered 66.0821 (1) (as).

2 **SECTION 2.** 66.0821 (1) (ae) of the statutes is created to read:

3 66.0821 (1) (ae) "Commission" means the public service commission.

4 **SECTION 3.** 66.0821 (1) (am) of the statutes is created to read:

5 66.0821 (1) (am) "Municipal storm water utility" means a public utility
6 operated by a municipality for the collection, transportation, pumping, treatment,
7 or final disposition of storm water and surface water.

8 **SECTION 4.** 66.0821 (2) (a) 2. of the statutes is amended to read:

9 66.0821 (2) (a) 2. If the extension of a sewer line or water main that is described
10 under subd. 1. is required because of a new subdivision, as defined in s. 236.02 (12),
11 or commercial development, the municipality may recoup some or all of the costs that
12 it has incurred for the extension by a method described under subd. 1. or by any other
13 method of financing agreed to by the municipality and the developer. If a person,
14 whose property is outside of the subdivision for which a developer is paying, or has
15 paid, the costs of a sewerage project under this subdivision, connects an extension
16 into the sewerage project after the amount is established that the developer is

1 required to pay under this subdivision, that person shall pay to the developer an
2 amount determined by the ~~public-service~~ commission. The ~~public-service~~
3 commission shall promulgate rules to determine the amount that such a person shall
4 pay to a developer. The rules promulgated under this subdivision, shall be based on
5 the benefits accruing to the property that connects an extension into the sewerage
6 project.

7 **SECTION 5.** 66.0821 (2) (b) of the statutes is renumbered 66.0821 (2) (b) 1. and
8 amended to read:

9 66.0821 (2) (b) 1. The Except as provided in subd. 2., the governing body of a
10 municipality, and the officials in charge of the management of the sewerage system
11 as well as other officers of the municipality, are governed in the discharge of their
12 powers and duties under this section by ss. 66.0809 to 66.0813 or 62.69 (2) (f), to the
13 extent consistent with this section, or, in the case of a metropolitan sewerage district
14 created under ss. 200.21 to 200.65, by ss. 200.55 and 200.59.

15 **SECTION 6.** 66.0821 (2) (b) 2. of the statutes is created to read:

16 66.0821 (2) (b) 2. Except for a municipal storm water utility in operation on the
17 effective date of this subdivision [revisor inserts date], and except for a municipal
18 storm water utility operated by a metropolitan sewerage district created under ss.
19 200.01 to 200.15 or under ss. 200.21 to 200.65, the commission has jurisdiction over
20 the rates and services of a municipal storm water utility and a municipal storm water
21 utility is subject to ss. 66.0809 to 66.0813 or 62.69 (2) (f) to the extent consistent, as
22 determined by the commission, with this section and ch. 196. In exercising authority
23 under this section and ch. 196, the commission shall ensure that cost accounting
24 practices and rate structures of municipal storm water utilities are consistent.

25 **SECTION 7.** 66.0821 (3) (a) of the statutes is amended to read:

1 66.0821 (3) (a) Except as provided in sub. (4) (am) and s. 66.0721, all or a
2 portion of the cost of exercising the authority under sub. (2) may be funded, to the
3 extent applicable, from the municipality's general fund, by taxation, special
4 assessment or sewerage service charges, by municipal obligations or revenue bonds
5 or from any combination of these sources.

6 **SECTION 8.** 66.0821 (4) (a) of the statutes is amended to read:

7 66.0821 (4) (a) The Subject to sub. (2) (b) 2., the governing body of the
8 municipality may establish sewerage service charges in an amount to meet all or part
9 of the requirements for the construction, reconstruction, improvement, extension,
10 operation, maintenance, repair, and depreciation of the sewerage system, and for the
11 payment of all or part of the principal and interest of any indebtedness incurred for
12 those purposes, including the replacement of funds advanced by or paid from the
13 general fund of the municipality. Service charges made by a metropolitan sewerage
14 district to any town, village, or city shall be levied by the town, village, or city against
15 the individual sewer system users within the corporate limits of the municipality,
16 and the municipality shall collect the charges and promptly remit them to the
17 metropolitan sewerage district. Delinquent charges shall be collected in accordance
18 with sub. (4) (d).

19 **SECTION 9.** 66.0821 (4) (am) of the statutes is created to read:

20 66.0821 (4) (am) If the governing body of a municipality establishes a service
21 charge to meet any requirement described in par. (a) that is required for a municipal
22 storm water utility, the municipality may not include in its property tax levy any
23 expenditure, or any allocable portion of an expenditure, that is made for the purpose
24 of meeting the requirement.

25 **SECTION 10.** 66.0821 (4) (c) of the statutes is amended to read:

1 66.0821 (4) (c) For the purpose of making equitable charges for all services
2 rendered by a ~~storm water and surface water sewerage system~~ municipal storm
3 water utility to users, the property served ~~may~~ shall be classified, taking into
4 consideration the volume or peaking of storm water or surface water discharge that
5 is caused by the area of impervious surfaces, topography, impervious surfaces and
6 other surface characteristics; ~~the~~ the extent and reliability of mitigation or treatment
7 measures available to service the property, apart from measures provided by the
8 ~~storm water and surface water sewerage system,~~ municipal storm water utility; a
9 user's allocable portion of the costs of services rendered by the municipal storm water
10 utility to highways, as defined in s. 340.01 (22), within the jurisdiction of the
11 municipal storm water utility; and any other considerations that are reasonably
12 relevant to a use made of the ~~storm water and surface water sewerage system~~
13 municipal storm water utility. The charges may not include any charge for
14 mitigation or treatment resulting from naturally occurring runoff into a natural
15 body of water. The charges may also include standby charges to property not yet
16 developed with significant impervious surfaces for which capacity has been made
17 available in the ~~storm water and surface water sewerage system~~ municipal storm
18 water utility.

19 **SECTION 11.** 66.0821 (5) (a) of the statutes is amended to read:

20 66.0821 (5) (a) If a user of a service complains to the ~~public service~~ commission
21 that rates, rules ~~and,~~ or practices are unreasonable or unjustly discriminatory or
22 violate this section, or if a holder of a mortgage or revenue bond or mortgage
23 certificate or other evidence of debt, secured by a mortgage on the sewerage system
24 or any part of the system or pledge of the income of sewerage service charges,
25 complains that rates are inadequate, the ~~public service~~ commission shall investigate

1 the complaint. If there appears to be sufficient cause for the complaint, the
2 commission shall set the matter for a public hearing upon 10 days' notice to the
3 complainant and the town, village or city. After the hearing, if the ~~public service~~
4 commission determines that the rates, rules, or practices complained of are
5 unreasonable or unjustly discriminatory or violate this section, it shall determine
6 and by order fix reasonable or lawful rates, rules, and practices and may make any
7 other order respecting the complaint that is just and reasonable, including, in the
8 case of standby charges imposed under sub. (4) (c), an order that a municipality
9 refund to the user any amount of the standby charges that have been collected if the
10 user has filed a complaint with the ~~public service~~ commission not later than 60 days
11 after receiving the original notice of charge or after receiving a notice of charge that
12 relates to an increased standby charge. The proceedings under this paragraph are
13 governed, to the extent applicable, by ss. 196.26 to 196.40. The commission shall bill
14 any expense of the commission attributable to a proceeding under this paragraph to
15 the town, village or city under s. 196.85 (1).

16 **SECTION 12.** 66.0821 (6) of the statutes is amended to read:

17 66.0821 (6) FORECLOSURE SALE. If there is a sale of mortgaged sewerage system
18 premises on a judgment of foreclosure and sale, the price paid for the premises may
19 not exceed the amount of the judgment and the costs of sale to and including the
20 recording of the sheriff's deed. The purchaser on the foreclosure sale may operate
21 and maintain the sewerage system and collect sewerage service charges, and for that
22 purpose is deemed to have a franchise from the municipality. The term "purchaser"
23 includes the purchaser's successors or assigns. The rates to be charged, in addition
24 to the contributions, if any, which the municipality has obligated itself to make
25 toward the capital or operating costs of the plant, shall be sufficient to meet the

1 requirements of operation, maintenance, repairs, depreciation, interest and an
2 amount sufficient to amortize the judgment debts and all additional capital costs
3 which the purchaser contributes to the plan over a period not exceeding 20 years.
4 In addition, the purchaser of the premises may earn a reasonable amount, as
5 determined by the ~~public-service~~ commission, on the actual amount of the
6 purchaser's investment in the premises represented by the purchase price of the
7 premises, plus any additions made to the investment by the purchaser or minus any
8 payments made by the municipality on account of the investments. The municipality
9 may by payment reduce the investment of the purchaser and after full payment of
10 the purchase price plus the cost of subsequent improvements the premises shall
11 revert to the municipality. While the premises are owned by the private purchaser,
12 the premises shall be considered a public utility and are subject to ch. 196 to the
13 extent applicable.

14 **SECTION 13.** 196.01 (5) (a) 1. of the statutes is amended to read:

15 196.01 (5) (a) 1. Any person engaged in the transmission or delivery of natural
16 gas for compensation within this state by means of pipes or mains ~~and any~~.

17 1g. Any person, excluding, except as provided in subd. 1r., a governmental unit,
18 who furnishes services by means of a sewerage system either directly or indirectly
19 to or for the public.

20 **SECTION 14.** 196.01 (5) (a) 1r. of the statutes is created to read:

21 196.01 (5) (a) 1r. A municipal storm water utility, except for a municipal storm
22 water utility in operation on the effective date of this subdivision [revisor inserts
23 date], or a municipal storm water utility operated by a metropolitan sewerage
24 district created under ss. 200.01 to 200.15 or under ss. 200.21 to 200.65.

25 **SECTION 15. Initial applicability.**

