



1995 ASSEMBLY BILL 382

May 18, 1995 - Introduced by Representatives DUFF, HOVEN, JENSEN, URBAN, SCHNEIDERS, LAZICH, ALBERS, POWERS, OTT, FREESE, UNDERHEIM, HUEBSCH, GOETSCH and GROTHMAN, cosponsored by Senators FARROW, PANZER, ADELMAN, RUDE, HUELSMAN and FITZGERALD. Referred to Committee on Environment and Utilities.

1 **AN ACT to repeal** 66.898 (4) (c), 66.899, 66.91 (1) (g) and 66.912 (5); **to amend**
2 66.886 (2) (a) 1., 66.898 (3), 66.898 (4) (a) and (b) and 66.91 (5) (a); and **to create**
3 66.913 of the statutes; **relating to:** public service commission oversight of rates
4 charged by the Milwaukee Metropolitan Sewerage District.

Analysis by the Legislative Reference Bureau

This bill provides for public service commission (PSC) oversight of rates charged by a metropolitan sewerage district that is established by a 1st class city. Currently, this bill only applies to the Milwaukee Metropolitan Sewerage District (MMSD). Currently, MMSD provides sewerage services within the boundaries of the district and, on a contract basis, to cities and villages outside the district's boundaries (contract communities). Current law authorizes MMSD to establish, assess and collect from any user of the system sewerage service charges. These service charges may be used to collect capital costs from all users of the system and the schedule of sewerage service charges for capital costs that are imposed within the district and the contract communities must be uniform. This bill removes certain provisions from the statutes that were found to be unconstitutional because they constituted a "private or local law" and were not passed as single-subject legislation, as required under article IV, section 18, of the constitution. *Brookfield v. Milwaukee Sewerage*, 114 Wis. 2d 896 (1988). These provisions dealt with the ability of MMSD to recover capital costs by levying property taxes on users in the district and, with respect to the contract communities, by basing service charges on the property value of the user's property.

Under the bill, the MMSD commission is required to establish a rate schedule that includes all rules applicable to the offering or discontinuance of the service covered by the schedule. The rates in this schedule may not be changed without filing the proposed change with the PSC. With respect to proposed rate decreases, the decrease takes effect on the date specified in the proposed change, but not earlier

than 10 days after the proposed change is filed with the PSC, unless the PSC, within this period suspends the operation of the proposed change or directs that the proposed decrease take effect less than 10 days after the filing. Proposed rate increases require an order of the PSC, to be issued after an investigation and a hearing, unless the MMSD commission provides certain notices and no request for an investigation and a hearing is made within 30 days after the notices are provided. If an investigation and a hearing are held, the bill requires their scope to be limited to the allocation of the costs that give rise to the rate increase among users. The PSC is required to independently investigate and determine the appropriate allocation of costs. The burden of establishing the reasonableness of the proposed cost allocation is on the MMSD commission. Issues other than the cost allocation may be raised under procedures, contained in current law, for investigating complaints filed with the PSC.

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.** 66.886 (2) (a) 1. of the statutes is amended to read:

2 66.886 (2) (a) 1. No resolution adopted by the commission under s. 66.91 (1),
3 (3) (c) or (6), 67.05 (1) or 67.12 (12), no schedule of charges under s. 66.076, 66.898
4 (4), ~~66.899~~ or 66.91 (5) (b) 3., no decision to borrow against taxes under s. 67.12 (1)
5 and no decision to borrow under s. 24.61 (3) (a) 7. is valid unless adopted by an
6 affirmative vote of at least a two-thirds majority of all commissioners.

7 **SECTION 2.** 66.898 (3) of the statutes is amended to read:

8 66.898 (3) SERVICE CHARGES FOR OPERATION AND MAINTENANCE. As part of any
9 contract executed under this section, the commission may assess reasonable and just
10 sewerage service charges against the contracting party with respect to operating and
11 maintenance costs. These charges shall be established in accordance with s. 66.912
12 and are subject to review under s. ~~66.912~~ ss. 66.076 (9) and 66.913. The schedule of
13 service charges may, but need not, be uniform with any other schedule of charges
14 established by the commission.

1 **SECTION 3.** 66.898 (4) (a) and (b) of the statutes are amended to read:

2 66.898 (4) (a) As part of any contract executed under this section, the
3 commission may assess reasonable and just sewerage service charges against the
4 contracting party with respect to capital costs. These sewerage service charges are
5 subject to review under s. 66.912. ~~The schedule of sewerage service charges with~~
6 ~~respect to capital costs used in contracts executed under this section shall be uniform~~
7 ~~with the system used to recover capital costs within the district ss. 66.076 (9) and~~
8 66.913.

9 (b) ~~Except as provided in par. (c), the~~ The charges assessed under this
10 subsection shall be established in accordance with s. 66.076 or 66.91 (5). In
11 computing the schedule of charges under this subsection, the commission may
12 consider the factors specified in s. 66.076 (5) or 66.91 (5). In computing the schedule
13 of charges under this subsection, the commission may also consider the fact that
14 sewerage service may not be available to or may be available to but not utilized by
15 a part of the property located within the territorial limits of a contracting party at
16 the time of computing the schedule.

17 **SECTION 4.** 66.898 (4) (c) of the statutes is repealed.

18 **SECTION 5.** 66.899 of the statutes is repealed.

19 **SECTION 6.** 66.91 (1) (g) of the statutes is repealed.

20 **SECTION 7.** 66.91 (5) (a) of the statutes is amended to read:

21 66.91 (5) (a) For service provided to any user, the commission may establish,
22 assess and collect service charges under s. 66.076 or under this subsection. ~~For~~
23 ~~service to any user outside the district and not located in a municipality which has~~
24 ~~contracted with the district under s. 66.898, the commission may establish, assess~~
25 ~~and collect service charges under s. 66.899. Except as provided under s. 66.899 (2),~~

1 any. Any charge made by the district under this subsection is reviewable by the
2 public service commission under s. ~~66.912 (5)~~ 66.913. The sewerage service charges
3 established under s. 66.076 or under this subsection with respect to capital costs for
4 service to any user shall be uniform.

5 **SECTION 8.** 66.912 (5) of the statutes is repealed.

6 **SECTION 9.** 66.913 of the statutes is created to read:

7 **66.913 Approval of sewerage commission rates.** (1) A rate schedule of a
8 commission shall include all rules applicable to the offering or discontinuance of the
9 service covered by the schedule. A commission may not change a rate in its schedule
10 except by filing the proposed change with the public service commission.

11 (2) Any proposed change which is a rate decrease shall be effective at the time
12 specified in the change as filed but not earlier than 10 days after the day of filing the
13 change with the public service commission, unless any of the following applies:

14 (a) During the 10-day period the public service commission, either upon
15 complaint or on its own motion, by order, suspends the operation of the proposed
16 change.

17 (b) The public service commission, upon application of any sewerage
18 commission, directs the proposed decrease take effect less than 10 days after the
19 filing.

20 (3) Except as provided under sub. (4), a commission may not change a schedule
21 to increase a rate charged to customers except by order of the public service
22 commission, after an investigation and hearing.

23 (4) A proposed rate increase may be effective without an order of the public
24 service commission under sub. (3) if all of the following occur:

