

No. 288, S.]

[Published August 26, 1947.]

CHAPTER 579.

AN ACT to amend 140.07 (Section heading) and (1) of the statutes, relating to district health officers.

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

140.07 (Section heading) and (1) of the statutes are amended to read:

140.07 (Section heading) DISTRICTS; * * * *DISTRICT HEALTH OFFICERS.* (1) The state board of health shall from time to time divide the state into sanitary districts, not exceeding 10, and it shall appoint for each a * * * *district health officer*, who shall hold office during efficiency and good behavior and who may be removed for cause by the board after opportunity to be heard. He shall not during his term of office engage in any occupation which would conflict with his official duties * * *. *Wherever in the statutes the term "deputy state health officer" is used, the term "district health officer" is substituted. The revisor of statutes is directed to make such substitution.*

Approved August 18, 1947.

No. 460, S.]

[Published August 27, 1947.]

CHAPTER 580.

AN ACT to create section 100.31 of the statutes, relating to the creation of marketing authorities in cities of the first class and defining the powers and duties thereof.

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

100.31 of the statutes is created to read:

100.31 (1) **SHORT TITLE.** This section may be referred to as the "Marketing Authority Law."

(2) **PURPOSE.** The purpose of this section is to provide a permissive method for establishment of markets in cities of the first class to facilitate efficient and economic handling of farm commodities, primarily fresh fruits and vegetables, at wholesale in the interest of the grower, the food trade and the consuming public.

(3) **DECLARATION OF NECESSITY.** It is found and declared that large quantities of fruits and vegetables, grown in Wisconsin for domestic and foreign markets or brought from foreign states or countries into this state for consumption, must pass through wholesale marketing systems which are obsolete and inadequate to meet present and future requirements; that the inadequacy of these systems contribute to high handling costs and deterioration with concomitant losses to growers, handlers and the consuming public; that improvement of these systems would annually result in large savings to the consuming public, handlers and agricultural producers alike, all for the general welfare; that the efforts of the public officers, the produce trade and other interested industries to achieve these improvements by purely private means have not succeeded; that the establishment and operation of terminal markets become and are public uses and purposes for which public money may be spent and private property acquired and are governmental functions of state concern; that it is in the public interest to permit creation of marketing facilities which are to be organized and operated on a non-profit, self-liquidating basis.

(4) **DEFINITIONS.** In this section, unless the context otherwise requires:

(a) "Farm products" include all agricultural, floricultural, vegetable, and fruit products of the soil, livestock and meats, poultry, eggs, dairy products, and any and all products which have their situs of production on the farm.

(b) "Food products" includes any and all products either in a natural or processed state used by man or animal as food.

(c) "Person" means any individual, partnership, corporation, association, or any other business entity.

(d) "Farmer" means any person principally engaged in the commercial production of farm products.

(e) "Wholesaler" means any person other than a farmer who engages primarily in the trading in farm and food products for resale to persons other than consumers.

(f) "Retailer" means any person other than a farmer who engages primarily in the selling of farm or food products directly to consumers.

(g) "Authority" means a public corporation, created under the provisions of this section.

(h) "Terminal market" or "market" means the physical areas, structures and appurtenances, located in a predominantly

consuming area, and owned, leased or operated by the authority in connection with the performance of its functions under this section, primarily for the purpose of facilitating the sale or other disposal of farm and food products at wholesale.

(i) "City" means any city of the first class. "The city" means the particular city for which a particular marketing authority is created.

(5) ESTABLISHING AUTHORITY-PETITION PROCEDURE. Any organization or group of farmers, wholesalers, retailers, or any political subdivision of the state may, individually or jointly, petition the director of the state department of agriculture, in the manner hereinafter provided, for the establishment of a marketing authority in and for any city of the first class. The petition shall set forth:

(a) The territory in which the authority shall be designated to operate, the city of the first class in which the market is to be located;

(b) The name and post-office address of each petitioner, and the fact that each such petitioner operates within the territory of operation described in the petition; the qualifications of each such petitioner under the provisions of this section; the name and post-office address of the individual representative of each such petitioner empowered to execute the petition in its behalf; and a statement of the action by each such petitioner authorizing the submission of the petition under the provisions of this section and granting authority to its individual representative to execute the same;

(c) The proposed legal name of the authority which shall include the term "Marketing Authority";

(d) The purposes of the authority, and the need therefor, its proposed methods of financing, management, and operation and its plans for construction and future development;

(e) The names and post-office addresses of the nominees from among whom the governor is to appoint the board of directors, as provided for in this section, together with the names and post-office addresses of those who participated in the nomination of each category of directors, as hereinafter provided.

(6) HEARINGS ON PETITION. Upon the receipt of a petition, meeting the requirements of subsection (5), the director of the state department of agriculture shall cause an investigation to be made; shall, within three months, cause a public hearing relative thereto to be held; and shall promptly report

his findings with recommendations to the governor, taking into consideration in the holding of such hearings and the making of such recommendation, the type, plans, and financial soundness of the authority, the trading area to be served, the proximity of existing or proposed markets, and the natural flow of produce in the territory of operation, and any other circumstances which in his opinion may be relevant.

(7) **CERTIFICATE OF AUTHORITY.** The governor, if he is satisfied that the purposes of this section will be effectuated, shall approve said petition and shall cause to be prepared and issued a certificate of authority creating such authority and granting to it the right of operation as a public corporation in accordance with the provisions of this section; provided, however, that the governor, prior to such approval, may direct the director of the state department of agriculture to hold further hearings and to submit new or additional recommendations.

(8) **FIRST BOARD OF DIRECTORS—AUTHORITY.** The first board of directors of a marketing authority shall consist of 9 members, as follows:

(a) The governor shall appoint 2 directors from a list of 4 wholesalers nominated by a majority vote at a general meeting of the wholesalers licensed under the United States Perishable Agricultural Commodities Act and operating within the territory of operation as defined in the certificate of authority; 2 directors from a list of 4 farmers nominated by a general farm organization or general farm organizations qualified in the opinion of the governor to represent agricultural producers residing and marketing their products within said territory; 1 director from a list of 3 consumers to be nominated by the chief executive officer of the city served by the authority; 1 director from a list of 3 businessmen, not wholesalers or retailers, nominated by the chief executive officer of the city served by the authority; and 1 director from a list of 3 retailers nominated by an association of retailers in said territory, through the formal action of the association's governing body or by a majority vote at a meeting of retailers, existing within said territory, called for that purpose by the petitioner or petitioners upon due notice given in a newspaper or other publication of general circulation in said territory;

(b) The chief executive officer of the city served by the authority shall serve as director or shall appoint a representative who shall be an official of the city.

(c) The director of the state department of agriculture, or his representative from the department of agriculture appointed by him, shall be a member of the board of directors, who shall be entitled to a vote at all meetings of the board.

(9) **TENURE OF OFFICE OF FIRST BOARD OF DIRECTORS.** Of the first board of directors of a marketing authority, one farmer director and one wholesaler director shall be appointed for a term of 3 years; one director representing farmers, one director representing wholesalers, and the director representing the city shall be appointed for a term of 2 years; and the director representing consumers, the director representing retailers, and the director representing businessmen, shall be appointed for one year. Each director shall be appointed and qualify.

(10) **SUBSEQUENT BOARDS OF DIRECTORS.** At the expiration of the term of the first appointed directors, their successors shall:

(a) Be nominated and appointed, as provided in section 8 hereof, for terms of 3 years or until their respective successors shall have been appointed and qualify, except that the governor shall appoint the 2 wholesaler directors from a list of 4 wholesalers nominated by a majority of the wholesalers operating within the market. In the event of any of the above groups failing to nominate candidates for the board of directors under this section, the governor shall appoint a director or directors with similar qualifications.

(11) **REMOVAL OF DIRECTORS, VACANCIES.** The governor after notice and opportunity for hearing, may remove any director of any authority created hereunder, because of inefficiency, neglect of duty or misconduct in office. In the event that any director is unable or fails for any reason to complete his term, the governor shall appoint in his place for the unexpired term, nominated in the same manner as the director he is to succeed.

(12) **OATH OF OFFICE, CONDUCT OF BUSINESS.** Each member of the board of directors of any authority created hereunder, shall before entering upon the duties of his office, take the constitutional oath of office and file the same in the office of the secretary of state. Five members of the board of directors of a marketing authority shall constitute a quorum for the transaction of business; in each case the concurrence of a majority present at a meeting at which a quorum is present shall be neces-

sary for the passage of any resolution, order or determination. The board of directors of either type of facility may appoint an executive committee and such other special committee as it deems proper. Each board shall meet at least once each quarter during the fiscal year and during its first meeting of each fiscal year, shall choose a chairman and a treasurer by a majority of all directors. The directors of a marketing authority shall receive \$10 for each meeting and shall be paid actual travel expenses not to exceed 5 cents per mile.

(13) **POWERS.** Any authority created under the terms of this section, shall, through the action of its board of directors, taken as provided in this section, have power:

(a) To acquire by purchase, lease, condemnation, or otherwise, such land or any interest in land, or other property, real or personal, as may be necessary in its opinion to the operation of the market, and may mortgage, sell, lease, rent, exchange, or otherwise dispose of, any such property as it may deem advisable; provided, however, that no real estate shall be sold unless the sale is approved by the governor and trustee of the bondholders, and provided further that no such real estate shall be used as a market, unless such property is acquired by a governmental agency;

(b) To plan, build, construct, or operate, or cause to be built, constructed, or operated such buildings, structures, equipment, and appurtenances thereto as it may deem necessary for the operation of the market, including, without limiting the generality of the foregoing restaurants, filling stations, garages and warehouses, provisions for sanitation and similar accessories for market operation;

(c) To borrow money, make and issue negotiable notes, bonds, refunding bonds, and other evidences of indebtedness or obligations herein called "bonds" of the authority, said bonds to have a maturity date not longer than 30 years from the date of issue, and to secure the payment of such bonds or any part thereof by pledge or mortgage of all or any of its revenues, receipts or other assets, real or personal, and to make such agreements with the purchasers or holders of such bonds, or with others in connection with any such bonds whether issued or to be issued, as the authority shall deem advisable, and in general to provide for the security for said bonds and the rights of the holders thereof; provided, however, that no obligations incurred by the authority shall be a debt of the state or any of its political sub-

divisions, or a pledge of the credit or taxing power of the state or any political subdivision thereof. The authority is authorized to receive appropriations, gifts, and contributions of money, supplies, goods and services, or loans thereof, if approved by the governor or appropriate state agency, and the political subdivisions of this state are hereby authorized to make, upon such terms and in such manner as may be required by the laws of this state, such appropriations and loans to such authorities.

(d) To employ a market manager qualified to operate a market of the type contemplated by the authority and such additional employes as may be necessary for the management and operation of the market;

(e) To fix the salaries of the market manager and any other authorized employes of the market;

(f) To fix, alter, charge and collect rentals and charges for stores, stalls, space, buildings, equipment and other appurtenances, privileges, and services furnished or performed, in or in connection with the market, for the purpose of providing for the payment of the expenses of the authority, the construction, improvement, repair, maintenance and operation of its properties, the payment of the principal of and interest on its obligations, and to fulfill the terms and provisions of any agreements made with the purchasers or holders of any such obligations; provided, however, that such rentals and charges shall not be designed to render a profit to the authority;

(g) To promulgate reasonable rules or regulations relating to the use of the market, including, without limiting the generality of the foregoing, rules and regulations relating to hours of business, sanitation, traffic, and such other matters as are normally incidental to the proper management of a market: provided, that no such rule or regulation shall fix or regulate prices, profits or types of farm and food products dealt in.

(h) In its discretion, reasonably exercised, and after due notice and an opportunity to be heard, to suspend or revoke any or all rights or privileges of any person violating the rules and regulations provided for in paragraph (g), enjoyed in connection with his activities in the market;

(i) To make contracts of any name and nature and to execute all instruments necessary or convenient for the carrying on of its business;

(j) To enter into and maintain contracts for all such types

of insurance as it may deem necessary to protect the authority against loss;

(k) To enter into contracts of group insurance for the benefit of its employes, and to set up a retirement or benefit fund for such employes;

(l) To adopt and use a corporate seal;

(m) To make by-laws for the management and regulation of its affairs;

(n) To sue and be sued in its corporate name;

(o) To delegate to the market manager or other officers of the authority such duties and responsibilities in relation to the operation of the market as it may deem reasonably necessary.

(p) In general, to do such other acts and things as may be reasonably necessary or convenient to carry out the powers hereinabove enumerated, and to carry on the operations of a wholesale market for farm and food products in accordance with the general purposes of this section.

(14) **LIMITATION OF POWERS.** The exercise of the powers, granted in subsection 13, shall be deemed to be expressly limited as follows:

(a) The authority shall be subject to all of the zoning, building, fire, sanitary, health and other police ordinances and regulations of the state and political subdivisions in which it is established;

(b) The authority shall have no power to discriminate in its operations against the sale of any farm or food products, or against any producer of such products, on account of the county, state or political subdivision in which any such products are produced, or on account of the legal nature of the producer or other person engaged in the marketing of any such products, or on account of the conditions of employment or the nature of the labor employed in the production or marketing of such products or on account of the method of transportation; but every authority shall take every reasonable precaution to prevent any such discrimination;

(c) The authority shall have no power to acquire, construct, maintain or operate more than one market, nor shall it acquire, construct, maintain or operate a market which is not operated primarily for the purpose of handling farm and food products at wholesale;

(d) No member of the board of directors of any authority shall be interested directly or indirectly in any transaction with

the authority except in connection with his normal business operations in the market;

(e) No authority shall itself engage directly or indirectly in the purchase or sale of farm or food products, or engage in any business other than that of managing the market authority;

(f) Since it is the purpose of this section to provide a market place where private enterprise can operate effectively and the management of which will remain in the hands of those using it, management shall not interfere with such incidents of private enterprise as profits, prices and types of farm or food products dealt in.

(15) BONDS. (a) 1. The bonds of the authority hereinabove referred to as authorized to be issued, shall be authorized by resolution or resolutions of the board thereof and shall be of such series, bear such date or dates, mature at such time or times, not exceeding 30 years from their respective dates, bear interest at such rates, not exceeding 6 per cent per annum, payable annually or semiannually, be in such denominations, be in such form, either coupon or fully registered without coupons, carry such registration, exchangeability and interchangeability privileges; be payable in such medium of payment and at such place or places; be subject to such terms of redemption not exceeding 105 per cent of the principal amount thereof; and be entitled to such priorities with respect to the revenues or receipts of the authority, as all such resolution or resolutions may provide. The bonds shall be signed by such officers as the authority shall determine, and coupon bonds shall have attached thereto interest coupons bearing the facsimile signature of the treasurer of the authority, all as may be prescribed in such resolution or resolutions. Any such bonds may be issued and delivered notwithstanding that one or more of the officers signing such bonds or the treasurer whose facsimile signature shall be upon the coupons, if any, shall have ceased to be such officer or officers at the time such bonds shall actually be delivered. Pending the preparation and delivery of definite bonds, interim receipts or temporary bonds may be issued and delivered to the purchaser or purchasers of such definite bonds, and may contain such terms and conditions as the authority may determine.

2. Said bonds may be sold at public or private sale for such price or prices as the authority shall determine, provided that the interest cost to maturity of the bonds shall not exceed 6 per cent per annum.

(b) Any resolution or resolutions authorizing the issuance of any bonds may contain provisions which shall be part of the contract with the holders thereof, as to:

1. Pledging the full faith and credit of the authority (with the express understanding that no obligations incurred by the authority shall be an obligation of the state or any of its political subdivisions, or a pledge of the credit and taxing power of the state or any political subdivisions thereof) as security for such obligations, or restricting such security to all or any part of the revenues of the authority from all or any of its properties;
2. The construction, improvement, operation, extension, enlargement, maintenance and repair of the properties of the authority, and the duties of the authority with reference thereto;
3. The terms and provisions of the bonds;
4. Limitations on the purposes to which the proceeds of the bonds then or thereafter to be issued may be applied;
5. The rate of rentals and charges for stores, stalls, space, buildings, equipment and other appurtenances, privileges, and the services furnished or performed, on or in connection with the market;
6. The setting aside of reserves and sinking funds and the regulation and the disposition thereof;
7. Limitations on the issuance of additional bonds;
8. The terms and provisions of any deed of trust or indenture securing the bonds or under which the same may be issued; and
9. Any other or additional agreements with the holders of the bonds.
10. In order to secure any such bonds, any authority may enter into any mortgages, deeds of trust, indentures or other agreements with any bank or trust company, or other person or persons in the United States having power to enter into the same, including any federal agency, and may assign and pledge any or all of the revenues, receipts or other assets, real or personal, of the authority thereunder. Such mortgage, deed of trust, indenture or other agreement may contain such provisions as may be customary in such instruments, or as the authority may authorize, including but without limitation provisions as to (1) the construction, improvement, alteration, expansion, operation, maintenance and repair of any properties of the authority, and the duties of the authority with reference thereto, (2) the application of funds and the safeguarding of funds on hand or on deposit, (3) the rights and remedies of the trustee and the

holders of the bonds (which may include restrictions upon the individual right of action of such bondholders) and (4) the terms and provisions of the bonds or the resolutions authorizing the issuance of the same.

(c) Said bonds shall have all the qualities of negotiable instruments under the law of merchant and the negotiable instrument law of this state. In the event that the authority shall default in the payment of the principal of or interest on any of the bonds, whether at maturity or upon call for redemption, and such default shall continue for a period of 30 days; or in the event that the authority or any officers, agents or employes thereof shall fail or refuse to comply with the provisions of this section or shall default in any agreement made with the holders of the bonds, any holder of bonds or trustee therefor shall have the right to apply in an appropriate judicial proceeding to any court of competent jurisdiction for the appointment of a receiver to represent the bondholders for the purposes herein provided, whether or not all bonds have been declared due and payable and whether or not such holders or trustee therefor are seeking or have sought to enforce any other-right or exercise any remedy in connection with such bonds. Upon application the court may appoint, and if the application is made up the holders of or a trustee on behalf of the holders of 25 per cent in aggregate principal amount of such bonds then outstanding shall appoint, a receiver to represent the bond holders for the purposes herein provided.

(d) The receiver so appointed shall forthwith directly or by his agents and attorneys enter into and upon and take possession of the properties of the authority, and may exclude the authority, its officers, agents and employes and all persons claiming under them wholly therefrom and shall have, hold, use, operate, manage and control the properties of the authority in the name of the authority, or otherwise, as the receiver may deem best and shall exercise all of the rights and powers of the authority with respect to such properties as the authority itself might do. Such receiver shall maintain, restore, insure and keep insured the properties of the authority and from time to time shall make all such necessary or proper repairs as may seem expedient to such receiver, and shall establish, levy, maintain and collect such rents and charges in connection with the properties of the authority as such receiver may deem necessary, proper or reasonable and shall collect and receive all revenues of the authority

and deposit the same in a separate account and apply such revenues so collected and received in such a manner as the court shall direct.

(e) Whenever all that is due upon the bonds and interest thereon, and upon any other obligations and interest thereon, having a charge, lien or other encumbrance on the revenues of the authority under any of the terms of any covenants or agreements with the holders of bonds shall have been paid or deposited as provided therein, and all the faults shall have been cured and made good, the court may, in its discretion and after such notices and hearings as it deems reasonable and proper, direct the receiver to surrender possession of the properties of the authority to the authority, the same right of the holders of the bonds to secure the appointment of a receiver to exist upon any subsequent default as herein provided.

(f) Such receiver shall in the performance of the powers hereinabove conferred upon him act under the direction and supervision of the court making such appointment and shall at all times be subject to the orders and decrees of such court and may be removed thereby. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any functions specifically set forth therein.

(g) Notwithstanding anything in this section to the contrary, said receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of whatever kind or character belonging to the authority and useful therefor, but the authority of any such receiver shall be limited to the operation and maintenance of the authority and no court shall have any jurisdiction to enter any orders or decrees requiring or permitting said receiver to sell, assign, mortgage or otherwise dispose of any such assets.

(h) Subject to any contractual limitations binding upon the holders of any issue of bonds or trustee therefor included but not limited to the restrictions of the exercise of any remedy to a specified proportion or percentage of such holders, any holders of bonds, or trustee therefor, shall have the right and power for the equal benefit and protection of the holders of bonds similarly situated:

1. By mandamus or other suit, action or proceeding at law or in equity to enforce his rights against the authority and any

of its officers, agents or employes, and to require and compel such authority or any such officers, agents or employes to perform and carry out its and their duties and obligations under this section and its and their covenants and agreements with bondholders;

2. By action or suit in equity to require the authority to account as if it were the trustee of an express trust for the bondholders;

3. By action or suit in equity to enjoin any acts or things which may be unlawful or in violation of the rights of the bondholders;

4. Bring suit on the bonds;

5. By notice in writing to the authority, declare all bonds due and payable, and if all defaults shall be made good then with the consent of the holders of 25 per cent or such other percentage as may be specified in any resolution, indenture or other instrument authorizing the issuance of such bonds of the principal amount of the bonds outstanding, to annul such declaration and its consequences.

(1) No remedy conferred by this section upon any holder of bonds, or any trustee therefor, is intended to be exclusive of any other remedy, but each such remedy is cumulative and in addition to any other remedy and may be exercised without exhausting and without regard to any other remedy conferred by this section or any other law. No waiver of any default or breach of duty or contract, whether by any holder of bonds, or any trustee therefor, shall extend to or shall affect any subsequent default or breach of duty or contract or shall impair any rights or remedies thereon. No delay or omission of any bondholder or any trustee therefor to exercise any right or power or shall be construed to be a waiver of any such default or acquiescence therein. Every substantive right and every remedy conferred upon the holders of bonds may be enforced and exercised from time to time and as often as may be deemed expedient. In case any suit, action or proceeding to enforce any right or exercise any remedy shall be brought or taken and then discontinued or abandoned, or shall be determined adversely to the holder of the bonds, or any trustee therefor, then and in every such case the authority and such holder, or such trustee, shall be restored to their former positions and rights and remedies as if no such suit, action or proceeding had been brought or taken.

(16) EXEMPTION FROM TAXATION. The effectuation

of the authorized purposes of the authorities created under this section, being public corporations, shall and will be in all respects for the benefit of all the people of this state, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions. Since such authority will be performing essential public functions in effectuating such purposes, the bonds issued by any such authority, their transfer and the income therefrom, shall at all times be free from taxation within this state. The authority shall be subject, however, to all state and local taxes except those from which it is exempted by this subsection.

(17) **AUDIT AND PUBLICATIONS.** (a) Immediately after the close of each fiscal year, every authority established pursuant to this section shall cause an audit to be made of its operations for such fiscal year. Such audit shall be made by a certified public accountant, or firm of accountants not regularly employed by the authority for its accounting purposes, or, with the approval of the proper state official, by a regular state accounting agency. Within 90 days after the close of its fiscal year each such authority shall file with the state department of agriculture a copy of such audit together with the names of the officers and directors thereof. Any person violating or failing to comply with the provisions of this section shall be guilty of a misdemeanor.

(b) Every authority established hereunder shall keep such records and make such reports to the state department of agriculture as may be required by the director thereof.

(c) In case any such authority shall fail or refuse to keep such records and to make such reports as are required by subsection (b), the director of the state department of agriculture through the attorneys for the state of the several counties and cities, may institute the necessary proceedings or otherwise, in his discretion, to have the directors, or such of them as are responsible for such failure or refusal, removed from office as provided herein.

(18) **SEPARABILITY OF PROVISIONS.** If any provision of this section, or the application thereof to any person or circumstance, is held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

Approved August 21, 1947.