

CHAPTER 60

TOWNS

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NOTE: 1983 Wisconsin Act 532, which completely revised chapter 60, has extensive notes explaining the revision. See Laws of Wisconsin, 1983.

SUBCHAPTER I

DEFINITIONS

60.001 **Definitions.** In this chapter:

(1) “Annual town meeting” means the town meeting held under s. 60.11.

(2) “Special town meeting” means a town meeting, other than the annual town meeting, held under s. 60.12.

(3) “Town meeting” means the annual town meeting or a special town meeting.

History: 1983 a. 532.

SUBCHAPTER II

LEGAL STATUS; ORGANIZATION

60.01 **Legal status; general powers. (1)** A town is a body corporate and politic, with those powers granted by law. A town shall be designated in all actions and proceedings by its name, as “Town of ....”.

(2) A town may:

(a) Sue and be sued.

(b) Acquire and hold real and personal property for public use and convey and dispose of the property.

(c) Enter into contracts necessary for the exercise of its corporate powers.

History: 1983 a. 532.

**60.03 Division and dissolution of towns generally.**

(1) **GENERAL RULE.** Subject to sub. (7), a town may be divided or dissolved under subs. (2) to (6).

(2) **PETITION.** If at least 20% of the residents of a town who have a freehold interest in real property located in the town and who constitute at least one-third of the electors of the town file a petition with the county board, conforming to the requirements of s. 8.40, requesting division or dissolution of the town and file the petition with the town clerk at least 60 days before the next annual town meeting, a referendum shall be held at the annual town meeting on the question of division or dissolution.

(3) **NOTICE OF REFERENDUM.** A town clerk who receives a petition under sub. (2) shall, at least 30 days before the annual town meeting, give notice that a referendum on the question of division or dissolution will be held at the annual town meeting. The notice shall describe any proposed division. Notice of a division or dissolution shall be published as a class 2 notice under ch. 985. Notice of a division referendum shall also be made by posting the notice in 3 public places in each subdivision of the town proposed by the petition under sub. (2). Notice of a dissolution referendum shall also be made by posting the notice in 3 public places in the town.

(4) **BALLOT QUESTION.** In a referendum under this section, the ballot on the question of division shall pose the question as “For Division” and “Against Division” and describe the proposed division. The ballot on the question of dissolution shall pose the question as “For Dissolution” and “Against Dissolution”.

(5) **REFERENDUM VOTE; AUTHORITY OF COUNTY BOARD.** (a) *Division.* The electors of each subdivision proposed under sub. (2) shall vote separately. If a majority of the electors voting in either subdivision favors division, the town clerk shall certify the result to the county board of the county in which the town is located. Upon receipt of the certified result, the county board may divide the town accordingly. If the county board does not divide the town within 180 days after the board receives the certified result of the referendum, the board’s authority to divide the town, based on that referendum, lapses.

(b) *Dissolution.* If a majority of the electors votes in favor of dissolution, the town clerk shall certify the result to the county board of the county in which the town is located. Upon receipt of the certified result, the county board may dissolve the town. If the county board does not dissolve the town within 180 days after the board receives the certified result of the referendum, the board’s authority to dissolve the town, based on that referendum, lapses.

(6) **VALIDITY OF PROCEEDING.** Any person aggrieved may have the validity of proceedings under this section reviewed by commencing an action in circuit court. An action brought under this subsection shall be brought within the time provided under s. 893.73 (1) (b). A town which has exercised the powers and functions of a town for one year is conclusively presumed to have been duly organized.

(7) **DIVISION NOT PERMITTED.** No town may be divided if division results in a town of less than 36 sections in area unless each resulting town of less than 36 sections contains 75 electors and real estate valued, at the last preceding assessment, at least 40% of the equalized value of real estate in the town before division.

**History:** 1983 a. 532; 1989 a. 192.

**60.05 Organization of towns in special cases.**

(1) **APPLICATION.** (a) In this subsection, “area” means any government township or any contiguous territory which is part of one or more towns, which is equal in area to more than one government township but not more than 2 government townships and which is within one county.

(b) Any area which has at least 300 residents who have a freehold interest in real property located in the area, at least 150 of whom are electors who have resided in the area for at least one year prior to verification of the petition under sub. (2), and which has an equalized valuation of at least \$5,000,000, according to the

last preceding assessment, may be organized into a town if the remaining territory of any town of which the newly organized town was formerly a part is not less than 36 square miles and has not less than 75 electors and real estate valued at at least 40% of the equalized value of real estate in the town before division, according to the last preceding assessment.

(2) **PETITION.** To initiate a proceeding to organize a town under this section a petition, signed by a majority of the electors of the proposed town, shall be filed with the circuit court of the county in which the area is located. The petition shall demonstrate that the area is entitled to be organized as a town under sub. (1) and shall contain an accurate description of the proposed area of the town, the name of the town of which the area is currently a part, the names of the electors of the proposed town and the proposed name of the new town. The petition shall be verified by at least 3 signers. Upon receipt of a petition, the court shall establish the time and place for a hearing on the petition and direct that a copy of the petition and order be served upon the clerk of the town of which the proposed town is currently a part. The petition and order shall be served upon the clerk at least 20 days before the hearing. The court shall order that a notice of the hearing be published in the area of the proposed town as a class 3 notice under ch. 985.

(3) **HEARING.** The court shall conduct a hearing on the petition and shall permit any elector or taxpayer of the area of the proposed town, or of any town of which the proposed area is currently a part, to be heard. The court may adjourn the hearing from time to time and refer any issue of fact to a referee. The fees and expenses of the referee shall be established and apportioned by the court after the trial of any issue and paid by any town of which the area of the proposed town is a part.

(4) **COURT ORDER.** If, after the hearing under sub. (3), the court finds that the area of the proposed town meets the requirements of sub. (1), the court shall enter an order establishing a new town under the name proposed in the petition and shall designate the location of the first town meeting of the new town. The clerk of court shall immediately file certified copies of the order with the secretary of state and the county clerk.

(5) **APPORTIONMENT OF DEBTS.** Assets and liabilities of the newly organized town and any town or towns of which it was a part shall be apportioned under s. 66.0235.

(6) **ATTACHMENT OF REMAINDER OF OLD TOWN.** If the remaining territory of any town from which a new town is organized is divided into 2 detached parts by the organization of the new town, the detached portion with the least number of electors shall be attached to and become part of the new town.

**History:** 1983 a. 532; 1999 a. 150 s. 672.

**60.06 Validity of attachment or detachment.** The town board may bring an action to test the validity of an ordinance attaching or detaching all or part of the territory of the town to or from any town, village or city. Any expense incurred by the town board and its agents, attorneys and representatives in the action shall be paid by the town.

**History:** 1983 a. 532.

No tort liability can attach to the exercise of a town’s legal right to challenge an annexation. *Whispering Springs Corp. v. Town of Empire*, 183 Wis. 2d 396, 515 N.W.2d 469 (Ct. App. 1994).

**60.065 Change of town name.** The name of a town shall be changed if a petition designating the new name is signed and filed with the town clerk under the procedures in s. 9.20 (1), certified by the town clerk under the procedure in s. 9.20 (3), approved by the electors in an election held under the procedures in s. 9.20 (4) and the result of the election is published in the town’s official paper, or posted in the town, and the new name is filed in the office of the secretary of state.

**History:** 1993 a. 246.

**60.07 Delivery of papers to clerk of new town.** If a new town is organized, the town clerk of the town from which the new

town was organized shall deliver, if removable, all of his or her official papers and files pertaining to the new town and a certified copy of all relevant official records, papers and files not removable to the office of the clerk of the new town. Any record, paper or file delivered to the office of the clerk of a new town under this section shall have the same effect as if originally filed there.

**History:** 1983 a. 532.

**60.09 When a county constitutes a town. (1)** GENERALLY. If a county is not divided into towns, it shall, for purposes of town government, be considered one town.

**(2)** MENOMINEE COUNTY. The county of Menominee consists of one town, known as the town of Menominee.

**History:** 1983 a. 532.

### SUBCHAPTER III

#### TOWN MEETING

**60.10 Powers of town meeting. (1)** DIRECT POWERS. The town meeting may:

(a) *Raise money.* Raise money, including levying taxes, to pay for expenses of the town, unless the authority has been delegated to the town board under sub. (2) (a).

(b) *Town offices and officers.* 1. Fix the compensation of elective town offices under s. 60.32, unless the authority has been delegated to the town board under sub. (2) (k).

2. Combine the offices of town clerk and town treasurer under s. 60.305 (1).

2m. In a town with a population of 2,500 or more, provide for the appointment by the town board of the town clerk, town treasurer, or both, or of the combined office of town clerk and town treasurer under s. 60.305 (1), at a level of compensation to be set by the board that may not be reduced during the term to which the person is appointed.

3. Combine the offices of town assessor and town clerk under s. 60.305 (2).

4. Establish or abolish the office of town constable and establish the number of constables. Abolition of the office is effective at the end of the term of the person serving in the office.

5. Designate the office of town clerk, town treasurer or the combined office of clerk and treasurer as part-time under s. 60.305 (1) (b).

6. Designate town board supervisors as full-time officers.

(c) *Election of town officers.* 1. Adopt a plan under s. 5.60 (6) to elect town board supervisors to numbered seats.

2. Provide under s. 8.05 (3) (a) for the nomination of candidates for elective town offices at a nonpartisan primary election.

(e) *Cemeteries.* Authorize the acquisition and conveyance of cemeteries under s. 157.50 (1) and (3).

(f) *Administrator agreements.* Approve agreements to employ an administrator for more than 3 years under s. 60.37 (3) (d).

(g) *Hourly wage of certain employees.* Establish the hourly wage to be paid under s. 60.37 (4) to a town employee who is also an elected town officer, unless the authority has been delegated to the town board under sub. (2) (L).

**(2)** DIRECTIVES OR GRANTS OF AUTHORITY TO TOWN BOARD. Except as provided under par. (c), directives or grants of authority to the town board under this subsection may be general and continuing or may be limited as to purpose, effect or duration. A resolution adopted under this subsection shall specify whether the directive or grant is general and continuing or whether it is limited as to purpose, effect or duration. A resolution that is continuing remains in effect until rescinded at a subsequent town meeting by a number of electors equal to or greater than the number of electors who voted for the original resolution. This subsection does not limit any authority otherwise conferred on the town board by law. By resolution, the town meeting may:

(a) *Raise money.* Authorize the town board to raise money, including levying taxes, to pay for expenses of the town.

(b) *Membership of town board in populous towns.* In a town with a population of 2,500 or more, direct the town board to increase the membership of the board under s. 60.21 (2).

(c) *Exercise of village powers.* Authorize the town board to exercise powers of a village board under s. 60.22 (3). A resolution adopted under this paragraph is general and continuing.

(d) *General obligation bonds.* Authorize the town board to issue general obligation bonds in the manner and for the purposes provided by law.

(e) *Purchase of land.* Authorize the town board to purchase any land within the town for present or anticipated town purposes.

(f) *Town buildings.* Authorize the town board to purchase, lease or construct buildings for the use of the town, to combine for this purpose the town's funds with those of a society or corporation doing business or located in the town and to accept contributions of money, labor or space for this purpose.

(g) *Disposal of property.* Authorize the town board to dispose of town real property, other than property donated to and required to be held by the town for a special purpose.

(h) *Exercise of certain zoning authority.* In a town located in a county which has enacted a zoning ordinance under s. 59.69, authorize, under s. 60.62 (2), the town board to enact town zoning ordinances under s. 61.35.

(i) *Watershed protection and soil and water conservation.* Authorize the town board to engage in watershed protection, soil conservation or water conservation activities beneficial to the town.

(j) *Appointed assessors.* Authorize the town board to select assessors by appointment under s. 60.307 (2).

(k) *Compensation of elective town offices.* Authorize the town board to fix the compensation of elective town offices under s. 60.32 (1) (b).

(L) *Hourly wage of certain employees.* Authorize the town board to establish the hourly wage to be paid under s. 60.37 (4) to a town employee who is also an elected town officer, other than a town board supervisor.

**(3)** AUTHORIZATION TO TOWN BOARD TO APPROPRIATE MONEY. The town meeting may authorize the town board to appropriate money in the next annual budget for:

(a) *Conservation of natural resources.* The conservation of natural resources by the town or by a bona fide nonprofit organization under s. 60.23 (6).

(b) *Civic functions.* Civic and other functions under s. 60.23 (3).

(c) *Insects, weeds and animal diseases.* The control of insect pests, weeds or plant or animal diseases within the town.

(d) *Rural numbering systems.* Posting signs and otherwise cooperating with the county in the establishment of a rural numbering system under s. 59.54 (4) and (4m).

(e) *Cemetery improvements.* The improvement of the town cemetery under s. 157.50 (5).

**History:** 1983 a. 532; 1991 a. 39; 1995 a. 34, 201; 2001 a. 16; 2003 a. 214.

**NOTE:** 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.

The terms "authorize" and "direct" in sub. (2) are not used interchangeably. A town meeting that "authorize(s)" an act gives the town board permission to do the act within its discretion, but if it "direct(s)" that an act be done, the action is mandatory. *Graziano v. Town of Long Lake*, 191 Wis. 2d 813, 530 N.W.2d 55 (Ct. App. 1995). Assessments made by an assessor appointed in the absence of authorization under sub. (2) (j) were valid under the de facto officer doctrine. *Joyce v. Town of Tainter*, 2000 WI App 15, 232 Wis. 2d 349, 606 N.W.2d 284, 99-0324.

Section 60.55 does not create an exception to the grant of power to the town meeting to authorize land purchases or construction by the town board. If a town board chooses to meet the requirements of s. 60.55 to provide fire protection by providing housing for fire protection services and also chooses to purchase land and construct that housing, then the town board must proceed with the authorization of the town meeting under sub. (2) (e) and (f) to purchase the land and construct the building. *Town of Clayton v. Cardinal Construction Company, Inc.* 2009 WI App 54, 317 Wis. 2d 424, 767 N.W.2d 605, 08-1793.

A town board exercising village powers under s. 60.22 (3) is not entitled to purchase land and contract for construction when doing so would conflict with statutes

relating to towns and town boards. The village board power to acquire land and construct buildings under s. 61.34 (3) is in direct conflict with sub. (2) (e) and (f), which relates to towns and town boards and which confers that power of authorization on the town meeting. *Town of Clayton v. Cardinal Construction Company, Inc.* 2009 WI App 54, 317 Wis. 2d 424, 767 N.W.2d 605, 08–1793.

**60.11 Annual town meeting. (1) REQUIREMENT.** Each town shall hold an annual town meeting, as provided in this section.

**(2) WHEN HELD.** (a) Except as provided in par. (b), the annual town meeting shall be held on the 3rd Tuesday of April.

(b) The annual town meeting may set a date different than provided under par. (a) for the next annual town meeting if the date is within 10 days after the 3rd Tuesday of April.

**(3) WHERE HELD.** (a) The annual town meeting may be held in the town or in any other town, village, or city in the same county or in an adjoining county.

(b) The annual town meeting shall be held at the location of the last annual town meeting unless the location is changed by the town board. If the town board changes the location, it shall publish a class 2 notice under ch. 985 stating the location of the meeting, not more than 20 nor less than 15 days before the date of the meeting.

**(4) ADJOURNMENT.** The annual town meeting may be recessed to a time and date certain if the resumed meeting is held within 30 days after the date of the meeting originally scheduled under sub. (2).

**(5) NOTICE.** No public notice of an annual town meeting is required if held as provided under sub. (2) (a). If held as provided under sub. (2) (b), notice of the time and date of the meeting shall be given under s. 60.12 (3).

**(6) JURISDICTION.** An annual town meeting may transact any business over which a town meeting has jurisdiction.

**(7) POLL LIST.** An annual town meeting may require the clerk of the town meeting to keep a poll list with the name and address of every elector voting at the meeting. If an elector of the town obtains a confidential listing under s. 6.47 (2) and presents an identification card issued under s. 6.47 (3), the clerk shall record the identification serial number of the elector in lieu of the elector's address.

**History:** 1983 a. 532; 1999 a. 49; 2005 a. 312; 2011 a. 115.

**60.12 Special town meetings. (1) WHO MAY CONVENE.** A special town meeting may be convened if:

(a) Called by a town meeting.

(b) A written request, signed by a number of electors equal to not less than 10% of the votes cast in the town for governor at the last general election, is filed with the town clerk.

(c) Called by the town board.

**(2) TIME, DATE AND PURPOSE TO BE STATED.** If a special town meeting is requested or called under sub. (1), the time, date and purpose of the meeting shall be stated in the request or as part of the call.

**(3) NOTICE.** The town clerk shall, not more than 20 nor less than 15 days before the date of a special town meeting, publish a class 2 notice of the meeting under ch. 985. The notice shall state the purpose, date, time and location of the meeting. If notice is posted, the same time and content requirements apply.

**(4) LOCATION.** (a) A special town meeting may be held in the town or in any other town, village, or city in the same county or in an adjoining county.

(b) A special town meeting shall be held where the preceding annual town meeting was held, unless the location is changed by the town board.

**(5) ADJOURNMENT.** A special town meeting may be recessed to a time and date certain if the resumed meeting is held within 30 days after the date of the originally scheduled meeting.

**(6) JURISDICTION.** Any business which may be transacted at an annual town meeting may be transacted at a special town meeting.

**History:** 1983 a. 532; 2005 a. 312.

**60.13 Presiding officer. (1) WHO PRESIDES.** (a) If present, the town board chairperson shall chair the town meeting. If the town board chairperson is absent, another town board supervisor shall chair the town meeting. If no town board supervisor is present, the town meeting shall elect the chairperson of the meeting.

(b) If the annual town meeting is held in a year when the office of town board chairperson is filled by election, the person holding the office on the day prior to the date of the election to fill the office shall preside at the annual town meeting and is entitled to receive the per diem which is ordinarily paid to the presiding officer. If such person is absent or refuses to serve as the presiding officer, the presiding officer shall be chosen under par. (a).

**(2) DUTIES.** The town meeting chairperson shall conduct the meeting's proceedings in accordance with accepted parliamentary procedure.

**(3) ENFORCEMENT AUTHORITY.** The town meeting chairperson shall maintain order and decorum, and may order any person to leave a town meeting if the person has conducted himself or herself in a disorderly manner and persisted in such conduct after being directed by the chairperson to cease the conduct. If the person refuses the chairperson's order to withdraw, the town meeting chairperson may order a constable or other law enforcement officer to take the person into custody until the meeting is adjourned.

**History:** 1983 a. 532.

**60.14 Procedure. (1) QUALIFIED VOTERS.** Any qualified elector of the town, as defined under ch. 6, may vote at a town meeting.

**(2) METHOD OF ACTION; NECESSARY VOTES.** All actions of a town meeting shall be by vote. All questions shall be decided by a majority of the electors voting.

**(3) ORDER OF BUSINESS.** At the beginning of the town meeting, the town meeting chairperson shall state the business to be transacted and the order in which the business will be considered. No proposal to levy a tax, except a tax for defraying necessary town expenses, may be acted on out of the order stated by the town meeting chairperson.

**(4) RECONSIDERATION OF ACTIONS.** (a) A vote of the town meeting may be reconsidered at the same meeting at which the vote was taken if the town meeting votes to reconsider within one hour after the initial vote was taken.

(b) No action of a town meeting may be reconsidered at a subsequent town meeting held prior to the next annual town meeting unless a special town meeting is convened under s. 60.12 (1) (b) or (c) and the written request or the call for the meeting states that a purpose of the meeting is reconsideration of the action.

**History:** 1983 a. 532.

**60.15 Clerk.** The town clerk shall serve as clerk of the town meeting. If the town clerk is absent, the deputy town clerk shall serve as town meeting clerk. If the deputy clerk is absent, the town meeting chairperson shall appoint a clerk for the meeting. The clerk of the town meeting shall keep minutes of the proceedings. The clerk of the town meeting shall keep a poll list if required by the annual town meeting under s. 60.11 (7). The town meeting minutes shall be signed by the clerk of the town meeting and filed in the office of the town clerk within 5 days after the meeting.

**History:** 1983 a. 532.

**60.16 First town meeting in new towns. (1) WHEN HELD.** The first town meeting in a newly organized town shall be held at 8 p.m. on the 3rd Tuesday of the first April after the town is organized. If the 3rd Tuesday of the first April after a town is organized has passed and the first town meeting has not been held, 3 qualified electors of the town may call the first town meeting any time thereafter by posting notice of the town meeting in at least 3 public places at least 10 days prior to the date of the meeting.

**(2) WHERE HELD.** The first town meeting shall be held at the location designated in the documents which established the town. The location may be within the town or, if convenient, within any

other town or within a city or village in the county in which the town is located.

(3) **OFFICERS.** The qualified electors present at the first town meeting shall choose one elector as chairperson of the town meeting, 2 electors as inspectors and one elector as clerk. The inspectors and clerk shall take and sign the oath required of inspectors at elections under s. 7.30 (5). The oath may be administered to the inspectors and clerk by the chairperson and either inspector may then administer the oath to the chairperson. After they have signed the oath, the chairperson, clerk and inspectors shall conduct the first town meeting.

(4) **JURISDICTION.** The first town meeting may conduct any business that a town meeting may conduct under ss. 60.11 and 60.12.

**History:** 1983 a. 532, 538; 2005 a. 312; 2011 a. 115.

## SUBCHAPTER IV

### TOWN BOARD

**60.20 Town board.** (1) **MEMBERSHIP.** The town board consists of the supervisors of the town. The board shall be designated “Town Board of ....”.

(2) **QUORUM.** Two supervisors constitute a quorum of a 3–member town board, 3 supervisors constitute a quorum of a 4–member or 5–member town board, and 4 supervisors constitute a quorum of a 7–member town board under s. 60.21 (3).

(3) **MEETINGS.** Meetings of the town board may be held in the town or in any other town, city or village in the same county or in an adjoining county, subject to subch. V of ch. 19.

**History:** 1983 a. 532; 1991 a. 39; 2005 a. 312.

**60.21 Town board, increased size authorized.** (1) **IN TOWNS WHERE BOARD HAS VILLAGE POWERS.** Any town board authorized to exercise village powers may, by ordinance, increase the number of supervisors to no more than 5. If the number of supervisors is increased to 4, the town shall elect 2 supervisors each year. If the number is increased to 5, the town shall elect 3 supervisors in odd–numbered years and 2 supervisors in even–numbered years. An increase in the number of town board supervisors under this subsection does not create a vacancy on the town board.

(2) **WHERE TOWN OF CERTAIN POPULATION.** (a) If directed by the town meeting under s. 60.10 (2) (b), a town board of 5 members, elected at–large, shall be established in towns having a population of 2,500 or more.

(b) If a 5–member board is established and the seats of the board are numbered, the board may, by ordinance, stagger the terms of its supervisors so that the chairperson and 2 supervisors running for even–numbered seats on the town board serve 2–year terms and the other 2 supervisors serve one–year terms, with each subsequent election to be for 2–year terms so that elections occur in both odd–numbered and even–numbered years.

(c) If a 5–member board is established and the seats of the board are not numbered, the board may, by ordinance, stagger the terms of its members so that the chairperson and 2 supervisors receiving the highest number of votes in the next election serve 2–year terms and the other 2 supervisors serve one–year terms, with each subsequent election to be for 2–year terms so that elections occur in both odd–numbered and even–numbered years.

(d) An ordinance to stagger the terms of supervisors may be adopted to apply to the initial election of 5 supervisors or to any subsequent election.

(e) An increase or reduction in the membership of a town board under this subsection takes effect on January 1 of the first odd–numbered year following the most recent federal decennial or special census, but does not create any vacancy on a town board prior to the spring election.

(3) **IN A COUNTY CONTAINING ONE TOWN.** (a) The town board of a town in any county containing only one town may consist of not more than 7 members. One or more members shall be elected from the town at–large and one member shall be elected from each town board ward, of which there shall be not less than 2 nor more than 5. The member elected from the town at–large who has the highest number of votes shall be the town board chairperson.

(b) The number and boundaries of the town board wards and the number of town board members to be elected from the town at–large shall be designated by the legislature when the town is first established. Thereafter, the number of wards shall be subject to reapportionment and increase or decrease and the number of town board members elected at–large shall be subject to increase or decrease by majority vote of the town board. In order to provide that all inhabitants are adequately represented, each ward shall have substantially the same number of inhabitants, shall, insofar as practicable, consist of contiguous territory and shall be in compact form. The total number of town board members may not be changed from the number initially fixed by the legislature.

**History:** 1983 a. 532; 1985 a. 135.

**60.22 General powers and duties.** The town board:

(1) **CHARGE OF TOWN AFFAIRS.** Has charge of all affairs of the town not committed by law to another body or officer or to a town employee.

(2) **CHARGE OF ACTIONS.** Has charge of any action or legal proceeding to which the town is a party.

(3) **VILLAGE POWERS.** If authorized under s. 60.10 (2) (c), may exercise powers relating to villages and conferred on village boards under ch. 61, except those powers which conflict with statutes relating to towns and town boards.

(4) **JURISDICTION OF CONSTABLE.** Shall determine the jurisdiction and duties of the town constable. The town board may also require the town constable to complete training under s. 165.85 (4m).

(5) **PURSUE CERTAIN CLAIMS OF TOWN.** Shall demand payment of penalties and forfeitures recoverable by the town and damages incurred by the town due to breach of official bond, injury to property or other injury. If, following demand, payment is not made, the board shall pursue appropriate legal action to recover the penalty, forfeiture or damages.

**History:** 1983 a. 532; 1987 a. 237.

The state regulatory scheme for tobacco sales preempts municipalities from adopting regulations that are not in strict conformity with those of the state. *U.S. Oil, Inc. v. City of Fond du Lac*, 199 Wis. 2d 333, 544 N.W.2d 589 (Ct. App. 1995), 95–0213.

A town with village powers has the authority to adopt ordinances authorizing its plan commission to review and approve industrial site plans before issuing a building permit. An ordinance regulating development need not be created with a particular degree of specificity other than is necessary to give developers reasonable notice of the areas of inquiry that the town will examine in approving or disapproving proposed sites. *Town of Grand Chute v. U.S. Paper Converters, Inc.* 229 Wis. 2d 674, 600 N.W.2d 33 (Ct. App. 1999), 98–2797.

A town board exercising village powers is not entitled to purchase land and contract for construction when doing so would conflict with statutes relating to towns and town boards. The village board power to acquire land and construct buildings under s. 61.34 (3) is in direct conflict with s. 60.10 (2) (e) and (f), which relates to towns and town boards and which confers that power of authorization on the town meeting. *Town of Clayton v. Cardinal Construction Company, Inc.* 2009 WI App 54, 317 Wis. 2d 424, 767 N.W.2d 605, 08–1793.

The line distinguishing general police power regulation from zoning ordinances is far from clear. The question of whether a particular enactment constitutes a zoning ordinance is often a matter of degree. Broad statements of the purposes of zoning and the purposes of an ordinance are not helpful in distinguishing a zoning ordinance from an ordinance enacted pursuant to non–zoning police power. The statutorily enumerated purposes of zoning are not the exclusive domain of zoning regulation. A more specific and analytically helpful formulation of the purpose of zoning, at least in the present case, is to separate incompatible land uses. Multiple factors are considered and discussed. *Zwiefelhofer v. Town of Cooks Valley*, 2012 WI 7, 338 Wis. 2d 488, 809 N.W.2d 362, 10–2398.

**60.23 Miscellaneous powers.** The town board may:

(1) **JOINT PARTICIPATION.** Cooperate with the state, counties and other units of government under s. 66.0301, including cooperative arrangements involving the acquisition, development, remodeling, construction, equipping, operation and maintenance

of land, buildings and facilities for regional projects, whether or not located in the town.

**(2) UTILITY DISTRICTS.** Establish utility districts under s. 66.0827 and provide that any convenience or public improvement in the district be paid for under that section.

**(3) APPROPRIATIONS FOR CIVIC AND OTHER FUNCTIONS.** If authorized under s. 60.10 (3) (b), appropriate reasonable amounts of money for gifts or donations to be used to:

- (a) Further civic functions and agricultural societies.
- (b) Advertise the attractions, advantages and natural resources of the town.
- (c) Attract industry.
- (d) Establish industrial complexes.
- (e) Establish, maintain and repair ecological areas.
- (f) Provide for the organization, equipment and maintenance of a town museum or a municipal band, or for the employment of other bands to give concerts and municipal entertainment in the town.

(g) Construct or otherwise acquire, equip, furnish, operate and maintain, with the county in which the town is located, a county-town auditorium. The provisions of s. 66.0925, as they apply to cities, shall apply to towns, and the powers and duties conferred and imposed by s. 66.0923 upon mayors, councils and specified city officials are hereby conferred upon town board chairpersons, town boards and town officials performing duties similar to the duties of such specified city officials respectively, except those provisions or powers that conflict with statutes relating to towns and town boards.

**(4) TOWN INDUSTRIAL DEVELOPMENT AGENCY.** In order to promote and develop the resources of the town, appropriate money for and create a town industrial development agency or appoint an executive officer and provide staff and facilities for a nonprofit organization organized to act under this subsection. A town industrial development agency created under this subsection may:

- (a) Develop data regarding the industrial needs of, advantages of and sites in the town.
- (b) Engage in promotional activities to acquaint prospective purchasers with industrial products manufactured in the town.
- (c) Coordinate its activities with the county planning commission, the Wisconsin Economic Development Corporation, and private credit development organizations.
- (d) Engage in any other activity necessary for the continued improvement of the town's industrial climate.

**(5) COOPERATION IN COUNTY PLANNING.** Cooperate with the county in rural planning under ss. 27.019, 59.54 (4) and (4m) and 59.69.

**(6) CONSERVATION OF NATURAL RESOURCES.** If authorized by the town meeting under s. 60.10 (3) (a), appropriate money for the conservation of natural resources or for payment to a bona fide nonprofit organization for the conservation of natural resources within the town or beneficial to the town. No payment may be made to a nonprofit organization unless the organization submits and the town board approves a detailed plan of the work to be done. The plan shall include the name of the owner of any property on which work is to be performed.

**(8) EMERGENCY PEST AND DISEASE CONTROL.** Appropriate money for the control of insects, weeds or plant or animal diseases if:

- (a) An emergency arises within the town due to insects, weeds or plant or animal diseases; and
- (b) The board determines that any delay resulting from calling a special town meeting to authorize the town board to appropriate money for this purpose under s. 60.10 (3) (c) would result in serious harm to the general welfare of the town.

**(9) RESIDENT PHYSICIANS, PHYSICIAN ASSISTANTS AND NURSES IN CERTAIN TOWNS.** In a town comprised entirely of one or more islands, annually appropriate money to retain a physician or, if no

physician is available, a physician assistant or nurse practitioner, as a resident within the town.

**(10) BOWLING CENTERS, DANCE HALLS, ROADHOUSES, PLACES OF AMUSEMENT, POOL TABLES AND AMUSEMENT DEVICES.** Regulate, including the licensing of, bowling centers, dance halls, roadhouses, other places of amusement, billiard and pool tables and amusement devices maintained in commercial facilities. If a license is required, the board shall establish the term of the license, not to exceed one year, and the license fee. The board may suspend or revoke, for cause, a license issued under this subsection. Any person violating a regulation adopted under this subsection shall forfeit to the town an amount established by the town board.

**(12) REIMBURSEMENT OF SCHOOL DISTRICTS FOR PROVIDING TRANSPORTATION IN HAZARDOUS AREAS.** Reimburse a school district for costs incurred by the district under s. 121.54 (9) in transporting pupils who reside in the town.

**(13) EXCHANGE TAX CREDIT FOR COUNTY LAND.** Authorize the town treasurer to exchange any credit the town has with the county, arising from delinquent real estate taxes, for county-owned land.

**(14) ASSOCIATIONS OF TOWNS.** Appropriate money to purchase membership in any association of town boards for the protection of town interests and improvement of town government.

**(15) VACATION OF ALLEYS.** Vacate any alley in the town under s. 66.1003. The town board may not vacate, under this subsection, an alley adjacent to land fronting a state or county trunk highway.

**(16) CEMETERIES.** Provide for cemeteries under subch. II of ch. 157.

**(17) CHANGE STREET NAMES.** Name, or change the name of, any street in the town under s. 82.03 (7).

**(17m) NEIGHBORHOOD WATCH PROGRAM AND SIGNS.** Authorize a neighborhood watch program. The town board may place within the right-of-way of a street or highway under the jurisdiction of the town a neighborhood watch sign of a uniform design approved by the department of transportation. If the town board obtains the approval of the county board, the town board may place a sign under this subsection within the right-of-way of a county trunk highway within the limits of the town. No sign under this subsection may be placed within the right-of-way of a highway designated as part of the national system of interstate and defense highways.

**(19) FENCES IN SUBDIVISIONS.** If authorized under s. 60.10 (2) (c) to exercise village powers, by ordinance require a subdivider to construct a fence under s. 90.02 on the boundary of a subdivision, as defined under s. 236.02 (8), as a condition of plat approval by the town. The fence shall be maintained under s. 90.05 (2) and repaired under ss. 90.10 and 90.11.

**(20) DISPOSITION OF DEAD ANIMALS.** Notwithstanding s. 59.54 (21), dispose of any dead animal within the town or contract for the removal and disposition with any private disposal facility. A town may enter into a contract with any other governmental unit under s. 66.0301 to provide for the removal and disposition. A town may recover its costs under this subsection by imposing a special charge under s. 66.0627.

**(22) CONTRIBUTION TO TRUANCY.** If the town board has established a municipal court under s. 755.01 (1), adopt an ordinance to prohibit conduct that is the same as or similar to that prohibited by s. 948.45 and impose a forfeiture for a violation of the ordinance.

**(22m) SCHOOL ATTENDANCE.** If the town board has established a municipal court under s. 755.01 (1), enact and enforce an ordinance to impose a forfeiture, which is the same as the fine provided under s. 118.15 (5), upon a person having under his or her control a child who is between the ages of 6 and 18 years and whose child is not in compliance with s. 118.15.

**(23) POWER TO PROHIBIT CERTAIN CONDUCT.** Enact and enforce ordinances, and provide forfeitures for violations of those ordi-

nances, that prohibit conduct which is the same as or similar to that prohibited by chs. 941 to 948, except as provided in s. 66.0107 (3).

(25) SELF-INSURED HEALTH PLANS. Provide health care benefits to its officers and employees on a self-insured basis, subject to s. 66.0137 (4).

(27) TOWN HOUSING AUTHORITIES, BLIGHTED AREAS. Engage in certain housing and redevelopment activities. The provisions of ss. 66.1201 to 66.1211, 66.1301 to 66.1329, 66.1331 to 66.1333 and 66.1335, except the provisions of s. 66.1201 (10) and any other provisions that conflict with statutes relating to towns and town boards, apply to towns, and the powers and duties conferred and imposed by ss. 66.1201 to 66.1211, 66.1301 to 66.1329, 66.1331 to 66.1333 and 66.1335, except the powers and duties conferred and imposed by s. 66.1201 (10) and any other powers that conflict with statutes relating to towns and town boards, upon mayors, common councils and specified city officials are conferred upon town board chairpersons, town boards and town officials performing duties similar to the duties of the specified city officials and common councils respectively. Any town housing authorities created under this subsection may participate in any state grants-in-aid for housing in the same manner as city housing authorities created under ss. 66.1201 to 66.1211.

(28) SAFETY BUILDINGS. Construct, acquire, equip, furnish, operate and maintain a safety building. The provisions of s. 66.0925, as they apply to cities, shall apply to towns, and the powers and duties conferred and imposed by s. 66.0925 upon mayors, common councils and specified city officials are hereby conferred upon town board chairpersons, town boards and town officials performing duties similar to the duties of such specified city officials and common councils respectively, except those provisions or powers that conflict with statutes relating to towns and town boards.

(29) BILLBOARD REGULATION. Enact and enforce an ordinance, and provide a forfeiture for a violation of the ordinance, that regulates the maintenance and construction of billboards and other similar structures on premises abutting on highways in the town that are maintained by the town or by the county in which the town is located so as to promote the safety of public travel on the highways.

(30) RIDING HORSES, DOGS RUNNING AT LARGE. Enact and enforce ordinances, and provide forfeitures for violations of those ordinances, that are the same as or similar to ordinances that may be enacted by a county to regulate riding horses and commercial stables under s. 59.54 (19) or to regulate dogs running at large under s. 59.54 (20).

(31) UNIFIED LOCAL TRANSPORTATION SYSTEM. Cooperate with a county under s. 59.58 (2) (j) in the establishment of a comprehensive unified local transportation system, as defined in s. 59.58 (2) (c) 2.

(32) TOWN TAX INCREMENT POWERS. Subject to s. 66.1105 (16), exercise all powers of cities under s. 66.1105. If the town board exercises the powers of a city under s. 66.1105, it is subject to the same duties as a common council under s. 66.1105 and the town is subject to the same duties and liabilities as a city under s. 66.1105.

(33) COMPREHENSIVE PLAN. Adopt or amend a master plan under s. 62.23.

**History:** 1983 a. 532; 1985 a. 316 s. 25; 1987 a. 205; 1989 a. 121, 197, 276, 359; 1991 a. 28, 296; 1993 a. 105, 246, 456; 1995 a. 27 ss. 3300m, 9116 (5); 1995 a. 77, 201, 289, 448; 1997 a. 27, 111, 155, 237; 1999 a. 115; 1999 a. 150 ss. 8, 9, 672; 2001 a. 16; 2003 a. 214; 2005 a. 13, 116; 2007 a. 42; 2009 a. 42, 372; 2011 a. 32.

**NOTE:** 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.

One who deals with a municipality does so at his or her own risk and may be subject to any provisions of law that might prevent him or her from being paid by a municipality even though the services are rendered. Unless the power to bind the municipality financially has been specifically delegated, the only entity with the statutory authority to contract is the municipality. *Holzbauer v. Safway Steel Products, Inc.* 2005 WI App 240, 288 Wis. 2d 250, 712 N.W.2d 35, 04–2058.

Sub. (1) applies to joint undertakings involving a regional project. It did not apply to authorization for building a fire station by a town that provided fire protection through a cooperative arrangement with another town when each town was responsible for furnishing and maintaining its own current fire station and there is nothing in

the authorizing resolution that provided for any involvement by the joint fire board in decisions about additional fire stations. The decision to build was subject to town meeting authorization under s. 60.10 (2) (e) and (f). *Town of Clayton v. Cardinal Construction Company, Inc.* 2009 WI App 54, 317 Wis. 2d 424, 767 N.W.2d 605, 08–1793.

While sub. (28) permits a town board to construct or acquire a safety building, when read in its entirety, its application is reasonably limited to the construction of joint county–city safety buildings. Sub. (28) extends the provisions of s. 66.0925, as they apply to cities, to towns, and s. 66.0925 addresses county–city safety buildings, or joint safety buildings. *Town of Clayton v. Cardinal Construction Company, Inc.* 2009 WI App 54, 317 Wis. 2d 424, 767 N.W.2d 605, 08–1793.

A county has the authority under both s. 59.69 (1) and (4) and s. 59.70 (22) to enact ordinances regulating billboards and other similar structures. When a town approves a county zoning ordinance under s. 59.69 (5) (c) that includes a billboard ordinance, the town's billboard ordinance adopted under sub. (29) does not preempt a county's authority to regulate billboards in that town. *Adams Outdoor Advertising, L.P. v. County of Dane.* 2012 WI App 28, 340 Wis. 2d 175, 811 N.W.2d 421, 10–0178.

## 60.24 Powers and duties of town board chairperson.

(1) GENERAL POWERS AND DUTIES. The town board chairperson shall:

(a) *Preside at board meetings.* Preside over meetings of the town board.

(b) *Preside at town meetings.* Preside over town meetings as provided under s. 60.13.

(c) *Sign documents.* 1. Sign all ordinances, resolutions, bylaws, orders, regulations, commissions, licenses and permits adopted or authorized by the town board unless the town board, by ordinance, authorizes another officer to sign specific types of documents in lieu of the chairperson. The board, by ordinance, may authorize use of a facsimile signature under this paragraph.

2. Sign all drafts, order checks and transfer orders as provided under s. 66.0607.

(d) *Assure administration of statutes.* Supervise the administration of statutes relating to the town and town operations to see that they are faithfully executed.

(e) *Act on behalf of board.* Act, on behalf of the town board, to:

1. See that town orders and ordinances are obeyed.
2. See that peace and order are maintained in the town.
3. Obtain necessary assistance, if available, in case of emergency, except as provided under ch. 323.

(f) *Act on authorization of board.* If authorized by the town board, act on behalf of the board, to:

1. Direct, as appropriate, the solicitation of bids and quotations for the town's purchase of equipment, materials and services and submit the bids and quotations to the town board for approval.
2. Represent, or designate another officer to represent, the town at meetings of, and hearings before, governmental bodies on matters affecting the town.

(2) ADMINISTER OATHS. The town board chairperson may administer oaths and affidavits on all matters pertaining to the affairs of the town.

(3) OTHER RESPONSIBILITIES. In addition to the powers and duties under this section, the town board chairperson has the following responsibilities:

(a) Nominate individuals for service as election officials to the town board whenever the town board disapproves the nominee of a party committee under s. 7.30 (4) and the names of additional nominees are not available.

(b) Serve as caucus official under s. 8.05 (1) (c).

(c) Sue on official bonds under s. 19.015.

(d) Execute and sign a certificate of indebtedness in connection with obtaining a state trust fund loan under s. 24.67.

(e) Serve as town fire warden under ss. 26.13 and 26.14.

(f) Appoint members of the board of harbor commissioners under s. 30.37 (3).

(g) Appoint members of library boards under ss. 43.54 (1) (a) and 43.60 (3).

(h) Exercise the powers and duties specified for a mayor under s. 62.13 if the town creates a joint board of police and fire commissioners or joint police or fire department with a village under s.

61.65 (3g) (d) 2. or a board of police and fire commissioners under s. 60.57.

(i) Provide an annual estimate of funds necessary for any utility district established under s. 66.0827 (2).

(j) Appoint, at his or her discretion, one or more commissioners of noxious weeds under s. 66.0517.

(L) If authorized by the town board, represent the interests of the town in connection with appearances before the state tax appeals commission under s. 70.64 (5).

(m) Approve the bond of the town treasurer delivered to the county treasurer under s. 70.67 (1).

(o) Sign orders for payment of work performed and materials furnished on town highways.

(p) See that all tunnels in the town are constructed under s. 82.37 and that they are kept in good repair.

(q) Serve as a member of the county highway committee under s. 83.015 (1) (d).

(r) Close county trunk highways when rendered dangerous for travel and notify the highway commissioner under s. 83.09.

(s) Appoint members to the airport commission under s. 114.14 (2).

(v) Under s. 167.10 (8), enforce regulation of fireworks under s. 167.10.

(w) Perform the town chairperson's duties related to stray animals and lost goods under ch. 170.

(x) Perform the town chairperson's duties related to distrained animals under ch. 172.

(xm) Perform the town chairperson's duties related to animals that have caused damage in the town under ch. 172.

(y) Perform the town chairperson's duties related to municipal power and water districts under ch. 198.

(ym) Cause actions to be commenced for recovery of forfeitures for violations of town ordinances that can be recovered in municipal court under s. 778.11.

(z) Notify the district attorney of forfeitures which may not be recovered in municipal court under s. 778.12.

(zm) Approve bonds furnished by contractors for public works under s. 779.14 (1m).

**History:** 1983 a. 532; 1985 a. 225; 1987 a. 197, 399; 1989 a. 336; 1997 a. 127, 192, 287; 1999 a. 150 ss. 10, 672; 2003 a. 214; 2009 a. 42.

**NOTE:** 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.

The offices of president of a common school district board and chairperson of a town board within the school district and the offices of school board member and town clerk are probably compatible. 74 Atty. Gen. 50.

## SUBCHAPTER V

### TOWN OFFICERS AND EMPLOYEES

**60.30 Election, appointment of town officers; general provisions.** (1) ELECTED TOWN OFFICERS. (a) At the annual spring election in odd-numbered years, each town shall elect:

1. Except as provided under par. (b), 3 town board supervisors. One of the supervisors shall be designated on the ballot as town board chairperson.

2. Except as provided in sub. (1e), a town clerk and a town treasurer or a person to serve in the combined office of town clerk and town treasurer under s. 60.305 (1).

3. A town assessor, if election of the assessor is required, or a person to serve in the combined office of town clerk and town assessor under s. 60.305 (2).

4. The number of constables established by the last preceding town meeting unless the office has been abolished and has not been reestablished by the town meeting under s. 60.10 (1) (b) 4.

(b) If the town board has increased the number of supervisors under s. 60.21, town board supervisors shall be elected at the annual spring election as provided in that section.

(1e) APPOINTED TOWN OFFICERS. (a) Notwithstanding sub. (1) (a) 2. and subject to pars. (b) and (c), a town board may enact an ordinance that provides for the appointment of a person by a majority of the members-elect of the town board, as defined in s. 59.001 (2m), to fill the office of town clerk, town treasurer, or both, or to fill the combined office of town clerk and town treasurer under s. 60.305 (1).

(b) An ordinance enacted under par. (a) may not take effect until it is approved in a referendum called by the town board for that purpose at the next spring or general election, to be held not sooner than 70 days after the referendum is called by the town board. The referendum question shall be: "Shall the person holding the office of ... [town clerk or town treasurer, or both; or the combined office of town clerk and town treasurer] in the town of ... be appointed by the town board?"

(c) If an ordinance is approved in a referendum under par. (b), the change from an elective office to an appointive office may not take effect until the term of office of the incumbent town clerk, town treasurer, or combined town clerk and town treasurer expires. If an ordinance is approved under par. (b) at a general election, the ordinance takes effect upon the expiration of the term or terms of the incumbent officer or officers. If an ordinance is approved under par. (b) at a spring election at which the office of town clerk or town treasurer is filled, the ordinance takes effect upon the expiration of the term or terms of each officer who is elected at that election. A person appointed to the office of town clerk or town treasurer, or to the combined office of town clerk and town treasurer, shall serve for a term, not to exceed 3 years, that is set by the town board. The person may be reappointed and may be dismissed by the board only for cause, as defined in s. 17.001.

(d) Not sooner than 2 years after an ordinance is approved in a referendum under par. (b), the town board may enact an ordinance to return to a system of electing the town clerk and town treasurer or the combined office of town clerk and town treasurer, under sub. (1) (a) 2., without a referendum. If the ordinance under this paragraph is enacted on or after the date of the spring election and on or before November 1 in any year, a town clerk, town treasurer or combined town clerk and town treasurer shall be elected to succeed the appointive officer at the next spring election following enactment of the ordinance. If the ordinance is enacted on any other date, a town clerk, town treasurer or combined town clerk and town treasurer shall be elected to succeed the appointive officer at the 2nd spring election following enactment of the ordinance.

(e) Notwithstanding sub. (1) (a) 2. and subject to pars. (f) and (g), a town board that is authorized to do so by a town meeting under s. 60.10 (1) (b) 2m. shall appoint, by a majority of the members-elect of the town board, as defined in s. 59.001 (2m), a person to fill the office of town clerk, town treasurer, or both, or to fill the combined office of town clerk and town treasurer under s. 60.305 (1). The town board shall make the initial appointment not less than 30 days nor more than 60 days after the annual town meeting at which the authorization is given.

(f) If a person is appointed to office under par. (e), the person initially appointed may not take office until the term of office of the incumbent town clerk, town treasurer, or combined town clerk and town treasurer expires. A person appointed to the office of town clerk or town treasurer, or to the combined office of town clerk and town treasurer, shall serve for a term, not to exceed 3 years, that is set by the town board. The person may be reappointed and may be dismissed by the board only for cause, as defined in s. 17.001.

(g) Not sooner than 2 years after a person is appointed to office under par. (e), the town board may enact an ordinance to return to a system of electing the town clerk and town treasurer or the com-



bined office of town clerk and town treasurer, under sub. (1) (a) 2. without a vote of a town meeting. An ordinance enacted under this paragraph shall follow the procedures in par. (d).

**(1m) PART-TIME SUPERVISORS.** Town board supervisors shall be part-time officers, unless designated as full-time by the town meeting under s. 60.10 (1) (b) 6.

**(2) RESTRICTIONS.** (a) Only an elector of the town may hold a town office, other than an assessor appointed under s. 60.307 or a town clerk, town treasurer or combined town clerk and town treasurer appointed under sub. (1e).

(b) No person may hold the offices of town treasurer and town assessor at the same time.

(c) No assessor may be elected in any town appointing assessors under s. 60.307 or in any town which is under the jurisdiction of a county assessor under s. 70.99.

(d) No person may assume the office of town assessor unless certified by the department of revenue, under s. 73.09, as qualified to perform the functions of the office of town assessor. If a person is elected to the office and is not certified by June 1 of the year elected, the office is vacant and the town board shall fill the vacancy from a list of persons certified by the department of revenue.

**(3) NOTICE OF ELECTION.** Within 5 days after completion of the canvass under s. 7.53, the town clerk shall transmit a notice of election to each person elected to a town office.

**(4) TERM OF OFFICE.** (a) Every elected town officer shall hold the office for 2 years.

(b) The regular term of elected town officers, other than the town assessor, commences on the 3rd Tuesday of April in the year of their election. The regular term of an elected assessor commences on June 1 in the year of the assessor's election.

**(5) TEMPORARY VACANCY.** (a) If any elected town officer, other than a town board supervisor, is absent or temporarily incapacitated from any cause, the town board may appoint, if there is no deputy officer for the office, a suitable person to discharge the duties of the office until the officer returns or the disability is removed, except that the appointment procedures of this paragraph apply to a town board supervisor if he or she is absent because of entry into the U.S. armed forces. Appointees shall file the official oath and bond required under s. 60.31.

(b) If any elected town officer, other than a town board supervisor, refuses to perform any official duty, the town board may appoint a suitable person to perform those duties which the officer refuses to perform. An appointee shall file the official oath and bond required of the office under s. 60.31. This paragraph does not preclude a finding that refusal to perform official duties constitutes cause under s. 17.13 (3).

**(6) TOWN OFFICERS RESIDING IN NEW INCORPORATED MUNICIPALITY OR ANNEXED TERRITORY.** Notwithstanding s. 17.03 (4), if, due to incorporation or annexation, any town officer, except a town board supervisor or a municipal judge, becomes a resident of a city or village, the officer shall continue in the town office and discharge the duties of the office until completion of the term for which elected.

**History:** 1983 a. 532, 538; 1991 a. 39; 1993 a. 246; 1995 a. 34; 1997 a. 27; 2001 a. 103; 2011 a. 75, 115.

**60.305 Combined and part-time offices. (1) CLERK AND TREASURER.** Except as provided under sub. (3), the town meeting may:

(a) Combine the offices of town clerk and town treasurer. If the offices are combined, the town board shall provide for an annual audit under s. 60.43 (2).

(b) Designate as part-time the office of town clerk, the office of town treasurer or the combined office of town clerk and town treasurer.

**(2) CLERK AND ASSESSOR.** Except as provided under sub. (3), the town meeting may combine the offices of town clerk and town

assessor. If a person elected to a combined office is not certified under s. 73.09 by June 1 of the year elected, the combined office is vacant.

**(3) TOWN IN COUNTY WITH ONLY ONE TOWN.** (a) In the town in any county containing only one town, the town board may, by resolution:

1. Combine 2 or more town offices.

2. Designate any town office as a part-time position.

3. Combine, if concurred in by the county board, the offices of town clerk and county clerk and any other town and county offices if the offices combined are not incompatible and the combination is not expressly forbidden by law.

(b) If the town board and county board agree to combine a county and town office under this subsection, the election to fill the combined office shall be under s. 59.20 (2). No separate election for the town office may be held until the county board, by resolution, revokes the combination and the town board, by resolution, concurs.

**(4) GENERAL PROVISIONS.** (a) A combination of offices under this section takes effect on the latest date that any current term of an office to be combined expires.

(b) Except as provided under sub. (3) (b) for combined town and county offices, the election to fill any combined office shall be under s. 60.30.

(c) The combination of town offices may be revoked in the same way that they were combined. No separate election for a town office, if combined, may be held until the combination is so revoked.

**History:** 1983 a. 532; 1995 a. 201.

Compensation may be increased to the clerk for service on the board of review if the clerk has been designated part-time by the town meeting. 79 Atty. Gen. 176.

**60.307 Appointment of town assessors. (1) APPLICABILITY.** This section does not apply to any town within the jurisdiction of a county assessor under s. 70.99.

**(2) TOWN MEETING AUTHORIZATION.** If authorized by the town meeting under s. 60.10 (2) (j), the town board may select assessors by appointment.

**(3) METHOD OF SELECTION.** If authorized under sub. (2), a town board may appoint an assessor and any assistants by one of the following methods:

(a) If the town has a civil service system, under that system. If the town has no civil service system, the town board may adopt a civil service system under s. 66.0509 (2) (b) for the selection of assessors.

(b) If the town does not have or adopt a civil service system, the town board shall appoint assessors on the basis of merit, experience and general qualifications for a term not to exceed 3 years.

**(4) INDEPENDENT CONTRACTOR AS ASSESSOR.** (a) In this subsection, "independent contractor" means a person who either is under contract to furnish appraisal and assessment services or is customarily engaged in an independently established trade, business or profession in which the services are offered to the general public.

(b) An independent contractor may be appointed as the town assessor. The independent contractor shall designate the individual responsible for the assessment. The designee shall file the official oath under s. 19.01 and sign the affidavit of the assessor attached to the assessment roll under s. 70.49. No individual may be designated by an independent contractor unless he or she has been granted the appropriate certification under s. 73.09.

**(5) ASSESSORS; ASSISTANTS; NUMBER AND SALARIES.** The town board shall determine the number of assistant assessors required and the salaries to be paid the assessor and assistant assessors. If the assessor and assistant assessors are appointed under civil service, the salaries shall be within the civil service salary schedule and appointments shall be from the civil service lists.

**(6) COMMENCEMENT OF OFFICE.** An initial appointee under this section shall take office at the expiration of the terms of the last elected assessors.

**History:** 1983 a. 532; 1993 a. 246; 1999 a. 150 s. 672.

**60.31 Official oath and bond. (1) OFFICIAL OATH.** Except as provided in sub. (3), every elected or appointed town officer shall take and file the oath under s. 19.01 within 5 days after notification of election or appointment.

**(2) OFFICIAL BOND.** Every town clerk, deputy town clerk, town treasurer, deputy town treasurer, elected assessor and town constable shall execute and file an official bond provided by the town or by sufficient sureties, or the town may provide a schedule or blanket bond that includes any or all of these officials. The official bond or schedule or blanket bond provided by the town may be furnished by a surety company under s. 632.17 (2). The amount of the bond shall be fixed by the town board. If the amount of the bond is not fixed by the board, the amount shall be the same as that required of the last incumbent of the office. If the town board at any time determines that the bond is insufficient, it may require an additional bond to be filed within 10 days, in an amount fixed by the board.

**(3) EXCEPTIONS.** (a) An elected assessor shall take and file the official oath and bond at any time between May 27 to May 31.

(b) Municipal judges shall take and file the official oath and bond under s. 755.03.

**(4) FAILURE TO FILE OATH OR BOND.** If any person elected or appointed to a town office fails to file a required official oath or bond within the time prescribed by law, the failure to file constitutes refusal to serve in office.

**History:** 1983 a. 532; 1991 a. 39; 1993 a. 246.

**60.32 Compensation of elective town offices.**

**(1) ESTABLISHED BY TOWN MEETING OR BOARD.** (a) Except as provided under par. (b) and s. 66.0507, the town meeting shall establish the compensation of elective town offices.

(b) If authorized by the town meeting under s. 60.10 (2) (k), the town board shall establish the compensation of elective town offices, other than the office of town board supervisor.

**(2) NATURE OF COMPENSATION.** Compensation under this section may be:

(a) An annual salary.

(b) A per diem compensation for each day or part of a day necessarily devoted to the service of the town and the discharge of duties.

(c) A combination of pars. (a) and (b).

**(3) CHANGES DURING TERM.** Subject to sub. (4), the town meeting or, if authorized to establish compensation, the town board may make a change in the compensation of an elective town office to take effect during the term of office.

**(4) WHEN ESTABLISHED.** Compensation under this section shall be established prior to the latest date and time for filing nomination papers for the office. After that date and time, no change may be made in the compensation of the office that applies to the current term of office.

**History:** 1983 a. 532; 1993 a. 246; 1999 a. 150 s. 672.

**60.321 Reimbursement of expenses. (1) GENERALLY.** The town board may provide for reimbursement of expenses necessarily incurred by any officer or employee of the town in the performance of official town duties. The board may determine who is eligible for expense reimbursement, which expenses are reimbursable and the amount of reimbursement. Expenses reimbursable under this section include, but are not limited to:

(a) Traveling expenses, including mileage, lodging and meal expenses.

(b) Costs associated with programs of instruction related to the officer's or employee's office or employment.

**(2) MANUALS.** The town board may purchase handbooks and manuals that will materially assist town officials and employees in the performance of official duties.

**History:** 1983 a. 532.

**60.323 Compensation when acting in more than one official capacity.** Except for offices combined under s. 60.305, no town may compensate a town officer for acting in more than one office of the town at the same time.

**History:** 1983 a. 532; 2001 a. 16.

**60.33 Duties of town clerk.** The town clerk shall:

**(1) CLERK OF TOWN MEETING.** Serve as clerk of the town meeting under s. 60.15.

**(2) CLERK OF TOWN BOARD.** (a) Serve as clerk of the town board, attend meetings of the board and keep a full record of its proceedings.

(b) File all accounts approved by the town board or allowed at town meetings and enter a statement of the accounts in the town's record books.

(c) File with the town board claims approved by the clerk, as required under s. 60.44 (2) (c).

**(3) FINANCE BOOK.** Maintain a finance book, which shall contain a complete record of the finances of the town, showing the receipts, with the date, amount and source of each receipt; the disbursements, with the date, amount and object of each disbursement; and any other information relating to town finances prescribed by the town board.

**(4) ELECTIONS AND APPOINTMENTS.** (a) Perform the duties required by chs. 5 to 12 relating to elections.

(b) Transmit to the county clerk, within 10 days after election or appointment and qualification of any town supervisor, treasurer, assessor or clerk, a written notice stating the name and post-office address of the elected or appointed officer. The clerk shall promptly notify the county clerk of any subsequent changes in such offices.

(c) Transmit to the clerk of circuit court, immediately after the election or appointment of any constable or municipal judge in the town, a written notice stating the name of the constable or municipal judge and the term for which elected or appointed. If the judge or constable was elected or appointed to fill a vacancy in the office, the clerk shall include in the notice the name of the incumbent who vacated the office.

**(5) SALE OF REAL PROPERTY.** Execute the conveyance of real property of the town.

**(6) NOTICES.** (a) Publish or post ordinances and resolutions as required under s. 60.80.

(b) Give notice of annual and special town meetings as required under ss. 60.11 (5) and 60.12 (3).

**(7) RECORDS.** (a) Comply with subch. II of ch. 19 concerning any record of which the clerk is legal custodian.

(b) Demand and obtain the official books and papers of any municipal judge if the office becomes vacant and the judge's successor is not elected or appointed and qualified, or if any municipal judge dies. The town clerk shall dispose of the books and papers as required by law.

**(8) LICENSES.** Issue any license or permit granted by the town board when presented with a receipt from the town treasurer indicating that any required fee has been paid.

**(8m) STREET TRADE PERMITS.** Stamp or endorse street trade permits at the request of an employer under s. 103.25 (3m) (b).

**(8p) TRAVELING SALES CREW WORKER PERMITS.** Stamp or endorse traveling sales crew worker permits at the request of an employer under s. 103.34 (11) (c).

**(9) SCHOOLS.** (a) Perform the clerk's duties under chs. 115 to 121, relating to public instruction.

(b) Within 10 days after the clerk's election or appointment, report his or her name and post-office address to the administrator

of each cooperative educational service agency which contains any portion of the town. The clerk shall report to the administrator the name and post-office address of each school district clerk within 10 days after the name and address is filed in the clerk's office.

(c) Make and keep in the clerk's office a map of the town, showing the exact boundaries of school districts within the town.

(d) Apportion, as provided by law, tax revenues collected by the town for schools.

**(10) HIGHWAYS AND BRIDGES.** Perform the duties specified in chs. 82 to 92, relating to highways, bridges and drains.

**(10m) NOTICE OF PROPERTY TAX REVENUE.** Notify the treasurer of the county in which the town is located, by February 20, of the proportion of property tax revenue and of the credits under s. 79.10 that is to be disbursed by the taxation district treasurer to each taxing jurisdiction located in the town.

**(11) IN GENERAL.** Perform all other duties required by law, ordinance or lawful direction of the town meeting or town board.

**History:** 1983 a. 532; 1985 a. 39 s. 17; 1989 a. 113; 1991 a. 39; 1995 a. 27; 1997 a. 27; 2003 a. 214; 2009 a. 3.

**NOTE:** 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.

The offices of president of a common school district board and chairperson of a town board within the school district and the offices of school board member and town clerk are probably compatible. 74 Atty. Gen. 50.

**60.331 Deputy town clerk.** Each town clerk may appoint one or more deputies for whom the town clerk is responsible. A deputy shall take and file the official oath and bond under s. 60.31. The town clerk may designate a deputy to perform the clerk's duties during the absence, sickness or other disability of the clerk.

**History:** 1983 a. 532.

**60.34 Duties of town treasurer.** The town treasurer shall:

**(1) RECEIVE AND DISBURSE TOWN MONEY.** (a) Except as provided in s. 66.0608, receive and take charge of all money belonging to the town, or which is required by law to be paid into the town treasury, and disburse the money under s. 66.0607.

(b) Keep an itemized account of all moneys received and disbursed, specifying the source from which it was received, the person to whom it was paid and the object for which it was paid. The treasurer shall issue numbered receipts for all funds received. At the request of the town board, the treasurer shall present the account books, and any supporting documents requested, to the board.

**(2) DEPOSIT OF TOWN MONEY.** (a) Deposit as soon as practicable the funds of the town in the name of the town in the public depository designated by the town board. Failure to comply with this paragraph is grounds for removal from office.

(b) When money is deposited under par. (a), the treasurer and the treasurer's sureties are not liable for any loss as defined in s. 34.01 (2). The interest arising from the money deposited shall be paid into the town treasury.

**(3) RECORDS.** Comply with subch. II of ch. 19 concerning records of which the treasurer is legal custodian.

**(4) TAXES.** Perform all of the duties relating to taxation required of the town treasurer under chs. 70 to 79.

**History:** 1983 a. 532; 1985 a. 25 s. 15; 1985 a. 29; 1985 a. 135 s. 85; 1985 a. 218 s. 22; 1987 a. 27, 378; 1999 a. 150 s. 672; 2001 a. 16.

**60.341 Deputy town treasurer.** Each town treasurer may appoint a deputy for whom the treasurer is responsible. The deputy shall take and file the official oath and bond under s. 60.31. In case of the absence, sickness or other disability of the treasurer, the deputy shall perform the treasurer's duties.

**History:** 1983 a. 532.

**60.35 Duties of town constable.** (1) A town constable shall perform the duties established by the town board under s. 60.22 (4).

(2) A town constable shall keep his or her office in the town. No constable who keeps his or her office outside the limits of the town may receive fees for any service performed.

**History:** 1983 a. 532.

**60.351 Town constable fees.** (1) Town constables shall collect the fees prescribed for sheriffs in s. 814.70 for similar services, unless a higher fee is applicable under s. 814.705 (1) (d).

(2) If any person except a party to an action performs the services of a town constable, the person shall collect the fees to which the town constable would be entitled.

(3) No town constable may serve or execute any summons, writ or process in any action or proceeding in which he or she is agent or attorney for the plaintiff or if he or she is interested in the collection of any claim which is the subject of the action or proceeding. A town constable may not recover any costs, fees or expenses, nor may any costs or fees be taxed for any services rendered in violation of this subsection.

**History:** 1983 a. 532; 1987 a. 181; 1997 a. 27.

**60.36 Municipal judge.** The town board may provide for the election of a municipal judge under ch. 755.

**History:** 1983 a. 532.

**60.37 Town employees.** (1) **GENERAL.** The town board may employ on a temporary or permanent basis persons necessary to carry out the functions of town government including, subject to sub. (4), any elected officer of the town. The board may establish the qualifications and terms of employment, which may include the residency of the employee. The board may delegate the authority to hire town employees to any town official or employee.

(2) **LEGAL ASSISTANCE.** The town board may designate, retain or employ one or more attorneys on a temporary or continuing basis to counsel the town on legal matters or represent the town in legal proceedings.

(3) **TOWN ADMINISTRATOR.** (a) The town board may create the position of town administrator and establish the qualifications, compensation and terms of employment for the position. The town administrator may be employed to serve at the pleasure of the town board or for a fixed term. If employed for a fixed term, the town board may suspend or remove the town administrator for cause.

(b) The town administrator shall perform all lawful duties assigned by the town board which do not conflict with duties and powers conferred by law on other town officers.

(c) No elected town officer may serve as town administrator.

(d) A town may join with one or more towns, villages or cities, in any combination, to employ a person as administrator for the towns, villages or cities. The governing body of each town, village and city may enter into an agreement for this purpose, which may include agreement to share the costs of the position. The town board may not enter into an agreement under this paragraph to employ an administrator for more than 3 years unless the town meeting approves the agreement.

(4) **ELECTED OFFICERS SERVING AS EMPLOYEES.** (a) An elected town officer, other than a town clerk, a town treasurer, or an officer serving in a combined office of town clerk and town treasurer, who also serves as a town employee may be paid an hourly wage for serving as a town employee, not exceeding a total of \$5,000 each year. An elected town officer, who is a town clerk, a town treasurer, or an officer serving in a combined office of town clerk and town treasurer, who also serves as a town employee may be paid an hourly wage for serving as a town employee, not exceeding a total of \$15,000 each year. Amounts that are paid under this paragraph may be paid in addition to any amount that an individual receives under s. 60.32 or as a volunteer fire fighter, emergency medical technician, or first responder under s. 66.0501 (4). The \$5,000 maximum in this paragraph includes amounts paid to

a town board supervisor who is acting as superintendent of highways under s. 82.03 (1).

(b) 1. Except as provided in subd. 2., the town meeting shall establish the hourly wage to be paid an elected town officer for serving as a town employee.

2. If authorized by the town meeting under s. 60.10 (2) (L), the town board may establish the hourly wage to be paid an elected town officer, other than a town board supervisor, for serving as a town employee.

**History:** 1983 a. 532; 2001 a. 16; 2003 a. 214; 2007 a. 20.

**NOTE:** 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.

## SUBCHAPTER VI

### FINANCE

**60.40 Preparation and adoption of budget.** (1) FISCAL YEAR; ANNUAL BUDGET. The town fiscal year is the calendar year. A town budget shall be adopted annually.

(2) PREPARATION. The town board is responsible for preparation of the proposed budget required under s. 65.90. In preparing the budget, the town board may provide for assistance by any person.

(3) HEARING. The town board shall conduct the budget hearing required under s. 65.90.

(4) ADOPTION. The town board shall adopt the town budget.

(5) AMENDMENT. The town budget may be amended by the town board under s. 65.90 (5).

**History:** 1983 a. 532.

Local units of government may not create and accumulate unappropriated surplus funds. However, a local unit of government may maintain reasonable amounts necessary in the exercise of sound business principles to meet the immediate cash flow needs of the municipality during the current budgetary period or to accumulate needed capital in non-lapsing funds to finance specifically identified future capital expenditures. 76 Atty. Gen. 77.

Article VIII, section 5 restricts the state from levying taxes to create a surplus having no public purpose. Although the constitutional provision does not apply directly to municipalities, the same limitation applies indirectly to them because the state cannot delegate more power than it has. 76 Atty. Gen. 77.

**60.41 Annual financial statement.** The town board annually shall prepare a statement of the financial condition of the town and present the statement to the annual town meeting. In preparing the statement, the town board may provide for assistance by any person. The statement shall include the previous year's revenues and expenditures and the current indebtedness of the town.

**History:** 1983 a. 532.

**60.42 Finance book.** The town clerk shall maintain a finance book under s. 60.33 (3).

**History:** 1983 a. 532.

**60.43 Financial audits.** (1) GENERAL. The town board may provide for financial audits under s. 66.0605.

(2) AUDIT OF COMBINED CLERK AND TREASURER OFFICE. If the offices of town clerk and town treasurer are combined under s. 60.305 (1) (a), the town board shall arrange for an audit of the town financial records at least once every year. The audit may be conducted either by a certified public accountant, appointed by the town board and not otherwise employed by the town, or by the department of revenue if the department provides such a service.

**History:** 1983 a. 532; 1999 a. 150 s. 672.

**60.44 Claims against town.** (1) GENERAL PROCEDURE. (a) Claims for money against a town or against officers, officials, agents or employees of the town arising out of acts done in their official capacity shall be filed with the town clerk as provided under s. 893.80 (1d) (b). This paragraph does not apply to actions commenced under s. 19.37, 19.97 or 281.99.

(b) The town board shall allow or disallow the claim. Notice of disallowance shall be made as provided under s. 893.80 (1g).

(2) ALTERNATIVE PROCEDURE. (a) The town board, by ordinance, may provide a procedure for approving financial claims against the town which are in the nature of bills and vouchers. The ordinance shall provide that payment may be made from the town treasury under s. 66.0607 after the town clerk reviews and approves in writing each bill or voucher as a proper charge against the treasury, after having determined that:

1. Funds are available under the town budget to pay the bill or voucher.

2. The item or service covered by the bill or voucher has been duly authorized.

3. The item or service covered by the bill or voucher has been supplied or rendered in conformity with the authorization.

4. The claim appears to be a valid claim against the town.

(b) The town clerk may require submission of proof to determine compliance with the conditions under par. (a) 1. to 4.

(c) The ordinance shall require that the clerk file with the town board at least monthly a list of the claims approved, showing the date paid, name of claimant, purpose and amount.

(3) COURT ACTIONS TO RECOVER CLAIMS. Subsection (2), or an ordinance adopted under that subsection, does not affect the applicability of s. 893.80. No action may be brought or maintained against a town upon a claim unless the claimant complies with s. 893.80. This subsection does not apply to actions commenced under s. 19.37, 19.97 or 281.99.

**History:** 1983 a. 532; 1995 a. 158; 1997 a. 27; 1999 a. 150 s. 672; 2011 a. 162.

**60.45 Disbursements from town treasury.** Disbursements from the town treasury shall be made under s. 66.0607.

**History:** 1983 a. 532; 1999 a. 150 s. 672.

**60.46 Public depository.** The town board shall designate one or more public depositories for depositing funds of the town. The treasurer and the treasurer's surety are not liable for loss, as defined under s. 34.01 (2), of money deposited in the name of the town in a designated public depository. Interest accruing from town money in a public depository shall be credited to the town.

**History:** 1983 a. 532; 1985 a. 25 s. 15.

**60.47 Public contracts and competitive bidding.**

(1) DEFINITIONS. In this section:

(a) "Public contract" means a contract for the construction, execution, repair, remodeling or improvement of any public work or building or for the furnishing of materials or supplies, with an estimated cost greater than \$5,000.

(b) "Responsible bidder" means a person who, in the judgment of the town board, is financially responsible and has the capacity and competence to faithfully and responsibly comply with the terms of the public contract.

(2) NOTICE; ADVERTISEMENT FOR BIDS. Except as provided in subs. (4) and (5):

(a) No town may enter into a public contract with an estimated cost of more than \$5,000 but not more than \$25,000 unless the town board, or a town official or employee designated by the town board, gives a class 1 notice under ch. 985 before execution of that public contract.

(b) No town may enter into a public contract with a value of more than \$25,000 unless the town board, or a town official or employee designated by the town board, advertises for proposals to perform the terms of the public contract by publishing a class 2 notice under ch. 985. The town board may provide for additional means of advertising for bids.

(3) CONTRACTS TO LOWEST RESPONSIBLE BIDDER. The town board shall let a public contract for which advertising for proposals is required under sub. (2) (b) to the lowest responsible bidder. Section 66.0901 applies to public contracts let under sub. (2) (b).

(4) CONTRACTS WITH GOVERNMENTAL ENTITIES. This section does not apply to public contracts entered into by a town with a municipality, as defined under s. 66.0301 (1) (a).

**(5) EXCEPTION FOR EMERGENCIES AND DONATED MATERIALS AND LABOR.** This section is optional with respect to public contracts for the repair and construction of public facilities when damage or threatened damage to the facility creates an emergency, as declared by resolution of the town board, that endangers the public health or welfare of the town. This subsection no longer applies when the town board declares that the emergency no longer exists. This section is optional with respect to a public contract if the materials related to the contract are donated or if the labor that is necessary to execute the public contract is provided by volunteers.

**(6) APPLICATION TO WORK BY TOWN.** This section does not apply to any public work performed directly by the town.

**History:** 1983 a. 532; 1989 a. 272; 1999 a. 9; 1999 a. 150 s. 672; 2005 a. 202.

Sub. (3) does not imply a broad range of discretion beyond determining whether a bidder is responsible. *D.M.K., Inc. v. Town of Pittsfield*, 2006 WI App 40, 290 Wis. 2d 474, 711 N.W.2d 672, 05–0221.

An unsuccessful bidder was not entitled to maintain a suit for damages, but was instead required to seek an injunction. Only if the bidder successfully obtained an injunction would it be entitled to limited damages, not including lost profits, as, if successful, the bidder could force the town to award it the contracts, or alternatively, to relet them. *D.M.K., Inc. v. Town of Pittsfield*, 2006 WI App 40, 290 Wis. 2d 474, 711 N.W.2d 672, 05–0221.

A disappointed bidder may recover bid preparation expenses for a violation of the competitive bidding statute regardless of whether it has sought injunctive relief. *North Twin Builders, LLC v. Town of Phelps*, 2011 WI App 77, 334 Wis. 2d 148, 800 N.W.2d 1, 09–3036.

## SUBCHAPTER VII

### PUBLIC WORKS AND PUBLIC SAFETY

**60.50 Public works.** Without limitation because of enumeration, the town board may:

**(1) ACQUIRE LANDS.** Notwithstanding s. 60.10 (2) (e), acquire lands to lay, construct, alter, extend or repair any highway, street or alley in the town.

**(2) STREETS, SEWERS AND SERVICE MAINS.** Provide for laying, constructing, altering, extending, replacing, removing or repairing any highway, street, alley, sanitary sewer, storm sewer, water main or any other service pipes, under s. 62.16 (2) (d), in the town.

**(3) SIDEWALKS.** Provide for construction, removal, replacement or repair of sidewalks under s. 66.0907.

**(4) LIGHTING HIGHWAYS.** Provide for lighting for highways, as defined under s. 340.01 (22), located in the town.

**(5) LAKE IMPROVEMENTS.** Provide for making improvements in any lake or waterway located in the town.

**(6) INSPECTIONS.** Gather at the site of a public works project or a highway, street or alley project that has been approved by the town board for the sole purpose of inspecting the work that has been completed or that is in progress if, before gathering at the site, the chairperson of the board or the chairperson's designee notifies by telephone or facsimile transmission those news media who have filed a written request for notice of such inspections in relation to that project and if the chairperson of the board or the chairperson's designee submits at the next board meeting a report that describes the inspection. The board may not take any official action at the inspection site.

**History:** 1983 a. 532; 1993 a. 246; 1995 a. 185; 1999 a. 150 s. 672.

**60.52 Sewer and water systems of adjoining municipality.** **(1)** With the approval of the town board, any city or village adjoining a town may construct and maintain extensions of its sewer or water system in the town. An extension of a sewer or water system under this subsection is subject to s. 62.175 (1) and the rights of abutting property owners.

**(2)** An abutting property owner who is permitted to connect with and use a sewer or water system constructed under sub. (1) may not be deprived of the use of the sewer or water system, except for nonpayment of water or sewer charges, without the approval of the town board.

**History:** 1983 a. 532.

A city or village sewer extension through town lands that does not provide service for town residents does not require approval of the town board under sub. (1). *Danielson v. City of Sun Prairie*, 2000 WI App 227, 239 Wis. 2d 178, 619 N.W.2d 108, 99–2719.

In determining under *Danielson* whether the extension through a town serves the town and thus requires the town's approval, the extension project must be looked at as a whole, and not in its component parts. *Town of Union v. City of Eau Claire*, 2003 WI App 161, 265 Wis. 2d 879, 667 N.W.2d 810, 02–3393.

**60.53 Service pipes and laterals.** Sections 62.16 (2) and 66.0911, relating to service pipes and laterals, are applicable to towns.

**History:** 1983 a. 532; 1999 a. 150 s. 672.

**60.54 Solid waste transportation.** **(1)** The town board may designate any town highway which provides reasonable access to a solid waste disposal site or facility licensed under s. 289.31 as appropriate for the transportation of solid waste into, within or through the town for the purpose of disposing of the waste at the site or facility and may prohibit the use of other town highways for that purpose.

**(2)** Any person violating a prohibition enacted under sub. (1) shall forfeit not more than \$1,000.

**History:** 1983 a. 532; 1995 a. 227.

**60.55 Fire protection.** **(1) GENERAL AUTHORITY.** (a) The town board shall provide for fire protection for the town. Fire protection for the town, or any portion of the town, may be provided in any manner, including:

1. Establishing a town fire department.
2. Joining with another town, village or city to establish a joint fire department. If the town board establishes a joint fire department with a village under s. 61.65 (2) (a) 3., the town board shall create a joint board of fire commissioners with the village under s. 61.65 (2) (b) 2.
3. Contracting with any person.
4. Utilizing a fire company organized under ch. 213.
5. Creating a combined protective services department under s. 60.553.

(b) The town board may provide for the equipping, staffing, housing and maintenance of fire protection services.

**(2) FUNDING.** The town board may:

- (a) Appropriate money to pay for fire protection in the town.
- (b) Charge property owners a fee for the cost of fire protection provided to their property under sub. (1) (a) according to a written schedule established by the town board.
- (c) Levy taxes on the entire town to pay for fire protection.
- (d) Levy taxes on property served by a particular source of fire protection, to support the source of protection.

**History:** 1983 a. 532; 1987 a. 399; 2011 a. 32.

Any fire department created under this section, whether formed under ch. 181 or 213, is a government subdivision or agency entitled to immunity under s. 893.80 (4). *Mellenthin v. Berger*, 2003 WI App 126, 265 Wis. 2d 575, 663 N.W.2d 817, 02–2524.

This section does not create an exception to the grant of power to the town meeting to authorize land purchases or construction by the town board. If a town board chooses to meet the requirements of this section to provide fire protection by providing housing for fire protection services and also chooses to purchase land and construct that housing, then the town board must proceed with the authorization of the town meeting under s. 60.10 (2) (e) and (f) to purchase the land and construct the building. *Town of Clayton v. Cardinal Construction Company, Inc.* 2009 WI App 54, 317 Wis. 2d 424, 767 N.W.2d 605, 08–1793.

**60.553 Combined protective services.** **(1)** Any town may provide police and fire protection services by any of the following:

(a) A combined protective services department which is neither a police department under s. 60.56 (1) (a) nor a fire department under s. 60.55 (1) (a), and in which the same person may be required to perform police protection and fire protection duties without being required to perform police protection duties for more than 8 hours in each 24 hours except in emergency situations, as described under s. 62.13 (7n).

(b) Persons in a police department or fire department who, alone or in combination with persons designated as police officers or fire fighters, may be required to perform police protection and

fire protection duties without being required to perform police protection duties for more than 8 hours in each 24 hours except in emergency situations, as described under s. 62.13 (7n).

(2) The governing body of a town acting under sub. (1) may designate any person required to perform police protection and fire protection duties under sub. (1) as primarily a police officer or fire fighter for purposes described in ss. 62.13 (7m), (7n), (10m), and (11), 891.45, 891.453, and 891.455.

**History:** 2011 a. 32; s. 35.17 correction in sub. (2).

**60.555 Fire safety regulations.** The town board, by ordinance, may adopt regulations to prevent, detect and suppress fire and related fire hazards. The regulations may include provision for the inspection, at reasonable times, of property in the town for compliance with regulations adopted under this section.

**History:** 1983 a. 532.

**60.557 Reimbursement for fire calls on highways.**

(1) If a town incurs costs for a fire call by responding to a vehicle fire on a county trunk highway, the county maintaining that portion of the highway where the vehicle was located at the time of the fire shall reimburse the town up to \$200 for the costs if the town submits written proof that the town has made a reasonable effort to collect the cost from the insurer of the person to whom the fire call was provided or from the person to whom the fire call was provided, except that the town may attempt to collect the cost from the person only if the town is unsuccessful in its efforts to collect from the person's insurer or if the person has no insurer. If the town collects the cost from an insurer or such person after the county reimburses the town, the town shall return the amount collected to the county.

(2) If a town incurs costs for a fire call on a state trunk highway or any highway that is a part of the national system of interstate highways and maintained by the department of transportation, the department of transportation shall reimburse the town up to \$500 for the costs, even if the fire equipment is not actually used, if the town submits written proof that the town has made a reasonable effort to collect the cost from the insurer of the person to whom the fire call was provided or from the person to whom the fire call was provided, except that the town may attempt to collect the cost from the person only if the town is unsuccessful in its efforts to collect from the person's insurer or if the person has no insurer. If the town collects the cost from an insurer or such person after the department reimburses the town, the town shall return the amount collected to the department.

**History:** 1983 a. 532, 538; 1993 a. 16; 1999 a. 131; 2003 a. 205.

**60.56 Law enforcement. (1) GENERAL AUTHORITY.** (a) The town board may provide for law enforcement in the town or any portion of the town in any manner, including:

1. Establishing a town police department.
2. Joining with another town, village or city to create a joint police department. If the town board establishes a joint police department with a village under s. 61.65 (1) (a) 3., the town board shall create a joint board of police commissioners with the village under s. 61.65 (1) (b) 1. b.
3. Contracting with any person.
4. Creating a combined protective services department under s. 60.553.

(am) If a town board establishes a town police department under par. (a) 1. or 2. and does not create a board of police commissioners singly or in combination with another town, village or city, or if a town board establishes a combined protective services department under s. 60.553 and does not create a board of police and fire commissioners, the town may not suspend, reduce, suspend and reduce, or remove any police chief, chief of a combined protective services department, or other law enforcement officer

who is not probationary, and for whom there is no valid and enforceable contract of employment or collective bargaining agreement which provides for a fair review prior to that suspension, reduction, suspension and reduction or removal, unless the town board does one of the following:

1. Establishes a committee of not less than 3 members, none of whom may be an elected or appointed official of the town or be employed by the town. The committee shall act under s. 62.13 (5) in place of a board of police and fire commissioners. The town board may provide for some payment to each member for the member's cost of serving on the committee at a rate established by the town board.

2. Appoint a person who is not an elected or appointed official of the town and who is not employed by the town. The person shall act under s. 62.13 (5) in place of a board of police and fire commissioners. The town board may provide for some payment to that person for serving under this subdivision at a rate established by the town board.

(b) The town board may provide for the equipping, staffing, housing and maintenance of law enforcement services.

(2) FUNDING. The town board may appropriate money to fund law enforcement services.

**History:** 1983 a. 532; 1985 a. 166 ss. 1, 8; 1987 a. 27; 2011 a. 32.

A town cannot "establish" a police department without official action. *Christian v. Town of Emmett*, 163 Wis. 2d 277, 471 N.W.2d 252 (Ct. App. 1991).

That a police chief served on a volunteer basis without compensation did not render him a probationary officer under sub. (1) (am). "At-will" employment has no relevance to whether the procedures outlined in this section must be followed. *Town of LaGrange v. Auchinleck*, 216 Wis. 2d 84, 573 N.W.2d 232 (Ct. App. 1997), 96-3313.

A sheriff may not unilaterally withdraw investigative services provided to one urbanized town within the county because the town maintains its own police department. 81 Atty. Gen. 98.

**60.563 Rewards for crime information.** When any heinous offense or crime has been committed against life or property within a town, the town board chairperson, with the consent of a majority of the members of the town board, may offer a reward for the apprehension of the criminal or perpetrator of such offense.

**History:** 1993 a. 246.

**60.565 Ambulance service.** The town board shall contract for or operate and maintain ambulance services unless such services are provided by another person. If the town board contracts for ambulance services, it may contract with one or more providers. The town board may determine and charge a reasonable fee for ambulance service provided under this section. The town board may purchase equipment for medical and other emergency calls.

**History:** 1983 a. 532; 1991 a. 39.

**60.57 Police and fire commission. (1)** The town board may:

(a) If the town has a police department, establish a board of police commissioners.

(b) If the town has a fire department, establish a board of fire commissioners.

(c) If the town has both a police and fire department, or a combined protective services department, establish a board of police and fire commissioners.

(2) A board created under this section shall be organized in the same manner as boards of police and fire commissioners under s. 62.13 (1).

(3) A board created under this section is subject to the provisions of s. 62.13 (2) to (5) and (7) to (12) to the extent that the provisions apply to 2nd and 3rd class cities. In applying s. 62.13 under this section, the town board chairperson has the powers and duties specified for a mayor, the town board has the powers and

duties specified for a common council and the town has the powers and duties specified for a city.

**History:** 1983 a. 532; 2011 a. 32.

## SUBCHAPTER VIII

### LAND USE AND PLANNING

**60.61 General zoning authority. (1) PURPOSE AND CONSTRUCTION.** (a) Ordinances adopted under this section shall be designed to promote the public health, safety and general welfare.

(b) Authority granted under this section shall be liberally construed in favor of the town exercising the powers. This section may not be construed to limit or repeal any powers possessed by any town.

**(1m) BUILDING CODE ENFORCEMENT.** A town board may enact and enforce building code ordinances under ss. 62.17, 101.65, 101.76 and 101.86.

**(2) EXTENT OF AUTHORITY.** Subject to subs. (3) and (3m), if a town is located in a county which has not enacted a county zoning ordinance under s. 59.69, the town board, by ordinance, may:

- (a) Regulate, restrict and determine all of the following:
  1. The areas within which agriculture, forestry, mining and recreation may be conducted, except that no ordinance enacted under this subsection may prohibit forestry operations that are in accordance with generally accepted forestry management practices, as defined under s. 823.075 (1) (d).
  2. The location of roads, schools, trades and industries.
  3. The location, height, bulk, number of stories and size of buildings and other structures.
  4. The percentage of a lot which may be occupied.
  5. The size of yards, courts and other open spaces.
  6. The density and distribution of population.
  7. The location of buildings designed for specified uses.
  8. The trades, industries or purposes that may be engaged in or subject to regulation.
  9. The uses for which buildings may not be erected or altered.
- (b) Establish districts of such number, shape and area necessary to carry out the purposes under par. (a). The town board may establish mixed-use districts that contain any combination of uses, such as industrial, commercial, public, or residential uses, in a compact urban form.
- (c) Establish building setback lines.
- (d) Regulate, restrict and determine the areas in or along natural watercourses, channels, streams and creeks in which trades and industries, filling or dumping, erection of structures and the location of buildings may be prohibited or restricted.
- (e) Adopt an official map showing areas, outside the limits of villages and cities, suited to carry out the purposes of this section. Any map adopted under this paragraph shall show the location of any part of an airport, as defined in s. 62.23 (6) (am) 1. a., located in the town and of any part of an airport affected area, as defined in s. 62.23 (6) (am) 1. b., located in the town.
- (f) Regulate, restrict and determine the location, height, bulk, number of stories and size of buildings and other structures and objects of natural growth in any area of the town in the vicinity of an airport owned by the town or privately owned, divide the territory into several areas and impose different restrictions for each area. In exercising its power under this paragraph, the town board may, by eminent domain, remove or alter any buildings, structures or objects of natural growth which are contrary to the restrictions imposed in the area in which they are located, except railroad buildings, bridges or facilities other than telegraph, telephone and overhead signal system poles and wires.
- (g) Encourage the protection of groundwater resources.
- (h) Provide for the preservation of burial sites, as defined in s. 157.70 (1) (b).

(i) Provide adequate access to sunlight for solar collectors and to wind for wind energy systems.

**(3) EXERCISE OF AUTHORITY.** Before exercising authority under sub. (2), the town board shall petition the county board to initiate, at any regular or special meeting, action to enact a county zoning ordinance under s. 59.69. The town board may proceed under sub. (2) if:

(a) The county board fails or refuses, at the meeting, to direct the county zoning agency to proceed under s. 59.69;

(b) The county zoning agency's report and the recommended county zoning ordinance prepared pursuant to the report are not presented to the county board within one year; or

(c) The county zoning agency report and recommended county zoning ordinance are presented to the county board within one year and the county board at its next meeting following receipt of the report fails to adopt the ordinance.

**(3c) ANTENNA FACILITIES.** The town board may not enact an ordinance or adopt a resolution on or after May 6, 1994, or continue to enforce an ordinance or resolution on or after May 6, 1994, that affects satellite antennas with a diameter of 2 feet or less unless one of the following applies:

(a) The ordinance or resolution has a reasonable and clearly defined aesthetic or public health or safety objective.

(b) The ordinance or resolution does not impose an unreasonable limitation on, or prevent, the reception of satellite-delivered signals by a satellite antenna with a diameter of 2 feet or less.

(c) The ordinance or resolution does not impose costs on a user of a satellite antenna with a diameter of 2 feet or less that exceed 10% of the purchase price and installation fee of the antenna and associated equipment.

**(3d) AMATEUR RADIO ANTENNAS.** The town board may not enact an ordinance or adopt a resolution on or after April 17, 2002, or continue to enforce an ordinance or resolution on or after April 17, 2002, that affects the placement, screening, or height of antennas, or antenna support structures, that are used for amateur radio communications unless all of the following apply:

(a) The ordinance or resolution has a reasonable and clearly defined aesthetic, public health, or safety objective, and represents the minimum practical regulation that is necessary to accomplish the objectives.

(b) The ordinance or resolution reasonably accommodates amateur radio communications.

**(3m) MIGRANT LABOR CAMPS.** The town board may not enact an ordinance or adopt a resolution that interferes with any repair or expansion of migrant labor camps, as defined in s. 103.90 (3), that are in existence on May 12, 1992, if the repair or expansion is required by an administrative rule promulgated by the department of workforce development under ss. 103.90 to 103.97. An ordinance or resolution of the town that is in effect on May 12, 1992, and that interferes with any repair or expansion of existing migrant labor camps that is required by such an administrative rule is void.

**(4) PROCEDURE.** (a) The town board shall appoint a town zoning committee consisting of 5 members. The town zoning committee shall also include, as a nonvoting member, a representative from a military base or installation, with at least 200 assigned military personnel or that contains at least 2,000 acres, that is located in the town, if the base's or installation's commanding officer appoints such a representative.

(b) Before the town board may adopt an ordinance under sub. (2), the town zoning committee shall recommend zoning district boundaries and appropriate regulations and restrictions for the districts. In carrying out its duties, the town zoning committee shall develop a preliminary report and hold a public hearing on the report before submitting a final report to the town board. The town zoning committee shall give notice of the public hearing on the preliminary report and of the time and place of the public hearing on the report by a class 2 notice under ch. 985. The town zoning committee shall consider any comments made, or submitted, by

the commanding officer, or the officer's designee, of a military base or installation, with at least 200 assigned military personnel or that contains at least 2,000 acres, that is located in or near the town. If the town zoning committee makes a substantial change in its report following the public hearing, it shall hold another public hearing on the report. After the final report of the town zoning committee is submitted to the town board, the board may adopt an ordinance under sub. (2) following a public hearing held by the board on the proposed ordinance. The town board shall give notice of the public hearing on the proposed ordinance and of the time and place of the public hearing on the ordinance by a class 2 notice under ch. 985. If the proposed ordinance has the effect of changing the allowable use of any property, the notice shall include either a map showing the property affected by the ordinance or a description of the property affected by the ordinance and a statement that a map may be obtained from the town board. A copy of an adopted ordinance shall be sent to the commanding officer, or the officer's designee, of any military base or installation, with at least 200 assigned military personnel or that contains at least 2,000 acres, that is located in or near the town.

(c) 1. After the town board has adopted a town zoning ordinance, the board may alter, supplement or change the boundaries or regulations established in the ordinance if a public hearing is held on the revisions. The board shall give notice of any proposed revisions in the zoning ordinance and of the time and place of the public hearing on them by a class 2 notice under ch. 985. If the proposed amendment would have the effect of changing the allowable use of any property, the notice shall include either a map showing the property affected by the amendment or a description of the property affected by the amendment and a statement that a map may be obtained from the town board. The board shall allow any interested person to testify at the hearing, and shall consider any comments made, or submitted, by the commanding officer, or the officer's designee, of a military base or installation, with at least 200 assigned military personnel or that contains at least 2,000 acres, that is located in or near the town. If any proposed revision under this subdivision would make any change in an airport affected area, as defined in s. 62.23 (6) (am) 1. b., the board shall mail a copy of such notice to the owner or operator of the airport bordered by the airport affected area.

2. A proposed amendment, supplement or change to the town zoning ordinance must be adopted by not less than a three-fourths vote of the town board if a protest against the proposed amendment, supplement or change is presented to the town board prior to or at the public hearing under subd. 1. and:

a. The protest is signed and acknowledged by the owners of at least 50% of the area proposed to be altered; or

b. The protest is signed and acknowledged by the abutting owners of at least 50% of the total perimeter of the area proposed to be altered that is included within 300 feet of the parcel or parcels to be rezoned.

3. A proposed amendment, supplement or change to the town zoning ordinance must be adopted by not less than a two-thirds vote of the town board if the proposed amendment, supplement or change would make any change in an airport affected area, as defined under s. 62.23 (6) (am) 1. b. and if a protest against the proposed revision is presented to the town board prior to or at the public hearing under subd. 1. by the owner or operator of the airport bordered by the airport affected area.

(d) 1. In this paragraph, "comprehensively revise" means to incorporate numerous and substantial changes in the zoning ordinance.

2. The town board may, by a single ordinance, comprehensively revise an existing town zoning ordinance. The ordinance shall be adopted under par. (b).

(e) Neither the town board nor the town zoning committee may condition or withhold approval of a permit under this section based upon the property owner entering into a contract, or discontinuing, modifying, extending, or renewing any contract, with a 3rd party under which the 3rd party is engaging in a lawful use of the property.

tinuing, modifying, extending, or renewing any contract, with a 3rd party under which the 3rd party is engaging in a lawful use of the property.

(f) The town board shall maintain a list of persons who submit a written request to receive notice of any proposed ordinance or amendment that affects the allowable use of the property owned by the person. If the town zoning committee completes a final report on a proposed zoning ordinance and the town board is prepared to vote on the proposed ordinance under par. (b) or if the town board is prepared to vote on a proposed amendment under par. (c) 1., the town board shall send a notice, which contains a copy of the proposed ordinance or amendment, to each person on the list whose property, the allowable use of which, may be affected by the proposed ordinance or amendment. The notice shall be by mail or in any reasonable form that is agreed to by the person and the town board. The town board may charge each person on the list who receives a notice a fee that does not exceed the approximate cost of providing the notice to the person. An ordinance or amendment that is subject to this paragraph may take effect even if the town board fails to send the notice that is required by this paragraph.

(5) NONCONFORMING USES. (ab) In this subsection "nonconforming use" means a use of land, a dwelling, or a building that existed lawfully before the current zoning ordinance was enacted or amended, but that does not conform with the use restrictions in the current ordinance.

(am) An ordinance adopted under this section may not prohibit the continued use of any building, premises, structure, or fixture for any trade or industry for which the building, premises, structure, or fixture is used when the ordinance takes effect. An ordinance adopted under this section may prohibit the alteration of, or addition to, any existing building, premises, structure, or fixture used to carry on an otherwise prohibited trade or industry within the district. If a use that does not conform to an ordinance adopted under this section is discontinued for a period of 12 months, any future use of the land, building, premises, structure, or fixture shall conform to the ordinance.

(b) Except as provided in par. (d), immediately after the publication of a town zoning ordinance, the town board shall provide for the compilation of a record of the present use of all buildings and premises used for purposes not in conformity with the zoning ordinance. The record shall contain the names and addresses of the owner of the nonconforming use and any occupant other than the owner, the legal description of the land, and the nature and extent of the use of the land. The record shall be published in the town as a class 1 notice under ch. 985. Within 60 days after final publication, upon presentation of proof to the town board, errors or omissions in the record may be corrected. At the expiration of the 60-day period, the record shall be filed in the office of the town clerk after the record is first recorded in the office of the register of deeds. The record is prima facie evidence of the extent and number of nonconforming uses existing at the time the ordinance takes effect. Errors or omissions in the record shall be corrected by the town board upon petition of any citizen or by the board on its own motion. The decision of the board concerning errors or omissions is final.

(c) Immediately after the record of nonconforming uses is filed with the town clerk, the clerk shall furnish the town assessor the record of nonconforming uses within the town. After the assessment for the following year and each succeeding assessment, the town assessor shall file a written report, certified by the board of review, with the town clerk listing all nonconforming uses which have been discontinued since the prior assessment. The town clerk shall record discontinued nonconforming uses as soon as reported by the assessor. In this paragraph, "town assessor" includes the county assessor assessing the town under s. 70.99.

(d) Paragraphs (b) and (c) do not apply to towns issuing building permits as a means of enforcing the zoning ordinance or of



identifying nonconforming uses or to towns which have established other procedures for this purpose.

(e) 1. In this paragraph, “amortization ordinance” means an ordinance that allows the continuance of the lawful use of a nonconforming building, premises, structure, or fixture that may be lawfully used as described under par. (am), but only for a specified period of time, after which the lawful use of such building, premises, structure, or fixture must be discontinued without the payment of just compensation.

2. Subject to par. (am), an ordinance enacted under this section may not require the removal of a nonconforming building, premises, structure, or fixture by an amortization ordinance.

**(5e) REPAIR AND MAINTENANCE OF CERTAIN NONCONFORMING STRUCTURES.** (a) In this subsection:

1. “Development regulations” means the part of a zoning ordinance enacted under this section that applies to elements including setback, height, lot coverage, and side yard.

2. “Nonconforming structure” means a dwelling or other building that existed lawfully before the current zoning ordinance was enacted or amended, but that does not conform with one or more of the development regulations in the current zoning ordinance.

(b) An ordinance enacted under this section may not prohibit, or limit based on cost, the repair, maintenance, renovation, or remodeling of a nonconforming structure.

**(5m) RESTORATION OF CERTAIN NONCONFORMING STRUCTURES.**

(a) Restrictions that are applicable to damaged or destroyed nonconforming structures and that are contained in an ordinance adopted under this section may not prohibit the restoration of a nonconforming structure if the structure will be restored to the size, subject to par. (b), location, and use that it had immediately before the damage or destruction occurred, or impose any limits on the costs of the repair, reconstruction, or improvement if all of the following apply:

1. The nonconforming structure was damaged or destroyed on or after March 2, 2006.

2. The damage or destruction was caused by violent wind, vandalism, fire, flood, ice, snow, mold, or infestation.

(b) An ordinance adopted under this section to which par. (a) applies shall allow for the size of a structure to be larger than the size it was immediately before the damage or destruction if necessary for the structure to comply with applicable state or federal requirements.

**(6) ENFORCEMENT.** The town board may by ordinance provide for the enforcement of all ordinances adopted under this section. The board may impose forfeitures and other penalties for violation of ordinances adopted under this section. To enforce compliance with ordinances adopted under this section, the town or the owner of real estate within a district affected by the ordinance may seek a court order.

**History:** 1983 a. 532, 538; 1985 a. 136, 316; 1991 a. 255; 1993 a. 246, 301, 400, 414, 491; 1995 a. 27 s. 9130 (4); 1995 a. 201; 1997 a. 3.; 2001 a. 50; 2005 a. 26, 79, 81, 112, 171, 208; 2007 a. 97; 2009 a. 351; 2011 a. 170.

### 60.62 Zoning authority if exercising village powers.

**(1)** Except as provided in s. 60.23 (33) and subject to subs. (2), (3) and (4), if a town board has been granted authority to exercise village powers under s. 60.10 (2) (c), the board may adopt zoning ordinances under s. 61.35.

**(2)** If the county in which the town is located has enacted a zoning ordinance under s. 59.69, the exercise of the authority under sub. (1) is subject to approval by the town meeting or by a referendum vote of the electors of the town held at the time of any regular or special election. The question for the referendum vote shall be filed as provided in s. 8.37.

**(3)** In counties having a county zoning ordinance, no zoning ordinance or amendment of a zoning ordinance may be adopted under this section unless approved by the county board.

**(4)** (a) Notwithstanding ss. 61.35 and 62.23 (1) (a), a town with a population of less than 2,500 that acts under this section may create a “Town Plan Commission” under s. 62.23 (1) (a) that has 5 members, all of whom shall be appointed by the town board chairperson, subject to confirmation by the town board. The town chairperson shall also select the presiding officer. The town board chairperson may appoint town board members to the commission and may appoint other town elected or appointed officials to the commission, except that the commission shall always have at least one citizen member who is not a town official. Appointees to the town plan commission may be removed only by a majority vote of the town board. All other provisions of ss. 61.35 and 62.23 shall apply to a town plan commission that has 5 members.

(b) If a town plan commission consists of 7 members and the town board enacts an ordinance or adopts a resolution reducing the size of the commission to 5 members, the commission shall continue to operate with 6 or 7 members until the expiration of the terms of the 2 citizen members, who were appointed under s. 62.23 (1) (a), whose terms expire soonest after the effective date of the ordinance or resolution that reduces the size of the commission.

(c) If a town plan commission consists of 5 members and the town board enacts an ordinance or adopts a resolution increasing the size of the commission to 7 members, the town board chairperson shall appoint the 2 new members under s. 62.23 (1) (a).

(d) Notwithstanding ss. 61.35 and 62.23 (1) (a), if a town with a population of at least 2,500 acts under this section and creates a “Town Plan Commission” under s. 62.23 (1) (a), all members of the commission shall be appointed by the town board chairperson, subject to confirmation by the town board. The town chairperson shall also select the presiding officer. The town board chairperson may appoint town board members to the commission and may appoint other town elected or appointed officials to the commission, except that the commission shall always have at least 3 citizen members who are not town officials. Appointments shall be made by the town board chairperson during the month of April for terms that expire in April or at any other time if a vacancy occurs during the middle of a term except that the appointees to the town plan commission may be removed before the expiration of the appointee’s term by a majority vote of the town board. All other provisions of ss. 61.35 and 62.23 shall apply to a town plan commission to which this paragraph applies.

**History:** 1983 a. 532; 1995 a. 201; 1997 a. 27; 1999 a. 9, 182; 2005 a. 207; 2009 a. 372.

An amended PUD ordinance that allowed the placement of a PUD in any district, subject only to the approval of the town board as a conditional use, was invalid as it allowed the town to rezone without county board approval. *City of Waukesha v. Town of Waukesha*, 198 Wis. 2d 592, 543 N.W.2d 515 (Ct. App. 1995), 94–0812.

Judicial review of a county board’s legislative decision concerning approval or disapproval of town zoning ordinances submitted under sub. (3) is limited to cases of abuse of discretion, excess of power, or error of law. 79 Atty. Gen. 117.

**60.625 Required notice on certain approvals. (1)** In this section, “wetland” has the meaning given in s. 23.32 (1).

**(2)** (a) Except as provided in par. (b), a town that issues a building permit or other approval for construction activity, shall give the applicant a written notice as specified in subs. (3) and (4) at the time the building permit is issued.

(b) 1. A town is not required to give the notice under par. (a) at the time that it issues a building permit if the town issues the building permit on a standard building permit form prescribed by the department of safety and professional services.

2. A town is not required to give the notice under par. (a) at the time that it issues a building permit or other approval if the building permit or other approval is for construction activity that does not involve any land disturbing activity including removing protective ground cover or vegetation, or excavating, filling, covering, or grading land.

**(3)** Each notice shall contain the following language: “YOU ARE RESPONSIBLE FOR COMPLYING WITH STATE AND FEDERAL LAWS CONCERNING CONSTRUCTION NEAR

OR ON WETLANDS, LAKES, AND STREAMS. WETLANDS THAT ARE NOT ASSOCIATED WITH OPEN WATER CAN BE DIFFICULT TO IDENTIFY. FAILURE TO COMPLY MAY RESULT IN REMOVAL OR MODIFICATION OF CONSTRUCTION THAT VIOLATES THE LAW OR OTHER PENALTIES OR COSTS. FOR MORE INFORMATION, VISIT THE DEPARTMENT OF NATURAL RESOURCES WETLANDS IDENTIFICATION WEB PAGE OR CONTACT A DEPARTMENT OF NATURAL RESOURCES SERVICE CENTER.”

(4) The notice required in sub. (2) (a) shall contain the electronic Web site address that gives the recipient of the notice direct contact with that Web site.

(5) A town in issuing a notice under this section shall require that the applicant for the building permit sign a statement acknowledging that the person has received the notice.

History: 2009 a. 373; 2011 a. 32.

**60.627 Town construction site erosion control and storm water management zoning.** (1) DEFINITION. In this section, “department” means the department of natural resources.

(2) AUTHORITY TO ENACT ORDINANCE. (a) To effect the purposes of s. 281.33 and to promote the public health, safety and general welfare, if a town board may enact zoning ordinances under s. 60.62, the town board may enact a zoning ordinance, that is applicable to all of its area, for construction site erosion control at sites where the construction activities do not include the construction of a building and for storm water management. This ordinance may be enacted separately from ordinances enacted under s. 60.62.

(b) A county ordinance enacted under s. 59.693 does not apply and has no effect in a town in which an ordinance enacted under this section is in effect.

(4) APPLICABILITY OF VILLAGE ZONING PROVISIONS. (a) Except as otherwise specified in this section, the provisions of s. 61.35, as they apply to villages, apply to any ordinance or amendment to an ordinance enacted under this section.

(b) Variances and appeals regarding a construction site erosion control and storm water management ordinance under this section are to be determined by the board of appeals or similar agency for the town. To the extent specified under s. 61.35, procedures under s. 62.23 (7) (e) apply to these determinations.

(c) An ordinance enacted under this section supersedes all provisions of an ordinance enacted under s. 60.62 that relate to construction site erosion control at sites where the construction activities do not include the construction of a building or to storm water management regulation.

(5) APPLICABILITY OF COMPREHENSIVE ZONING PLAN OR GENERAL ZONING ORDINANCE. An ordinance enacted under this section shall accord and be consistent with any comprehensive zoning plan or general zoning ordinance applicable to the enacting town, so far as practicable.

(6) APPLICABILITY OF LOCAL SUBDIVISION REGULATION. All powers granted to a town under s. 236.45 may be exercised by it with respect to construction site erosion control at sites where the construction activities do not include the construction of a building or with respect to storm water management regulation, if the town has or provides a planning commission or agency.

(7) APPLICABILITY TO LOCAL GOVERNMENTS AND AGENCIES. An ordinance enacted under this section is applicable to activities conducted by a unit of local government and an agency of that unit of government. An ordinance enacted under this section is not applicable to activities conducted by an agency, as defined under s. 227.01 (1) but also including the office of district attorney, which is subject to the state plan promulgated or a memorandum of understanding entered into under s. 281.33 (2).

(8) INTERGOVERNMENTAL COOPERATION. (a) Except as provided in par. (c), s. 66.0301 applies to this section, but for the purposes of this section any agreement under s. 66.0301 shall be effected by ordinance.

(b) If a town is served by a regional planning commission under s. 66.0309 and if the commission consents, the town may empower the commission by ordinance to administer the ordinance enacted under this section throughout the town, whether or not the area otherwise served by the commission includes all of that town.

(c) If a town is served by the Dane County Lakes and Watershed Commission, and if the commission consents, the town may empower the commission by ordinance to administer the ordinance enacted under this section throughout the town, whether or not the area otherwise served by the commission includes all of that town. Section 66.0301 does not apply to this paragraph.

(9) VALIDITY UPON ANNEXATION. An ordinance enacted under this section by a town continues in effect in any area annexed by a city or village after the effective date of that ordinance unless the city or village enacts, maintains and enforces a city or village ordinance which complies with minimum standards established by the department and which is at least as restrictive as the town ordinance enacted under this section. If, after providing notice and conducting a hearing on the matter, the department determines that an ordinance enacted by a city or village which is applicable to an area annexed after the effective date of the town ordinance does not meet these standards or is not as restrictive as the town ordinance, the department shall issue an order declaring the city or village ordinance void and reinstating the applicability of the town ordinance to the annexed area.

History: 1993 a. 246; 1995 a. 201, 227; 1999 a. 150 s. 672.

**60.63 Community and other living arrangements.** For purposes of s. 60.61, the location of a community living arrangement for adults, as defined in s. 46.03 (22), a community living arrangement for children, as defined in s. 48.743 (1), a foster home, as defined in s. 48.02 (6), or an adult family home, as defined in s. 50.01 (1), in any town shall be subject to the following criteria:

(1) No community living arrangement may be established after March 28, 1978 within 2,500 feet, or any lesser distance established by an ordinance of the town, of any other such facility. Agents of a facility may apply for an exception to this requirement, and such exceptions may be granted at the discretion of the local town. Two community living arrangements may be adjacent if the town authorizes that arrangement and if both facilities comprise essential components of a single program.

(2) Community living arrangements shall be permitted in each town without restriction as to the number of facilities, so long as the total capacity of the community living arrangements does not exceed 25 or one percent of the town’s population, whichever is greater. If the capacity of the community living arrangements in the town reaches such total, the town may prohibit additional community living arrangements from locating in the township. Agents of a facility may apply for an exception to this requirement, and such exceptions may be granted at the discretion of the town.

(3) A foster home that is the primary domicile of a foster parent and that is licensed under s. 48.62 or an adult family home certified under s. 50.032 (1m) (b) shall be a permitted use in all residential areas and is not subject to subs. (1) and (2) except that foster homes operated by corporations, child welfare agencies, churches, associations, or public agencies shall be subject to subs. (1) and (2).

(3m) (a) No adult family home described in s. 50.01 (1) (b) may be established within 2,500 feet, or any lesser distance established by an ordinance of the town, of any other adult family home described in s. 50.01 (1) (b) or any community living arrangement. An agent of an adult family home described in s. 50.01 (1) (b) may apply for an exception to this requirement, and the exception may be granted at the discretion of the town.

(b) An adult family home described in s. 50.01 (1) (b) that meets the criteria specified in par. (a) and that is licensed under s.

**50.033 (1m) (b)** is permitted in the town without restriction as to the number of adult family homes and may locate in any residential zone, without being required to obtain special zoning permission except as provided in sub. (10).

**(4)** If the community living arrangement has capacity for 8 or fewer persons being served by the program, meets the criteria listed in subs. (1) and (2), and is licensed, operated, or permitted under the authority of the department of health services or the department of children and families, the community living arrangement is entitled to locate in any residential zone, without being required to obtain special zoning permission except as provided under sub. (10).

**(5)** In all cases where the community living arrangement has capacity for 9 to 15 persons being served by the program, meets the criteria listed in subs. (1) and (2), and is licensed, operated, or permitted under the authority of the department of health services or the department of children and families, that facility is entitled to locate in any residential area except areas zoned exclusively for single-family or 2-family residences except as provided in sub. (10), but is entitled to apply for special zoning permission to locate in those areas. The town may grant such special zoning permission at its discretion and shall make a procedure available to enable such facilities to request such permission.

**(6)** In all cases where the community living arrangement has capacity for serving 16 or more persons, meets the criteria listed in subs. (1) and (2), and is licensed, operated, or permitted under the authority of the department of health services or the department of children and families, that facility is entitled to apply for special zoning permission to locate in areas zoned for residential use. The town may grant such special zoning permission at its discretion and shall make a procedure available to enable such facilities to request such permission.

**(7)** The department of health services shall designate a single subunit within that department to maintain appropriate records indicating the location and the capacity of each community living arrangement for adults, and such information shall be available to the public. The department of children and families shall designate a single subunit within that department to maintain appropriate records indicating the location and the capacity of each community living arrangement for children, and such information shall be available to the public.

**(8)** In this section, “special zoning permission” includes but is not limited to the following: special exception, special permit, conditional use, zoning variance, conditional permit and words of similar intent.

**(9)** The attorney general shall take all necessary action, upon the request of the department of health services or the department of children and families, to enforce compliance with this section.

**(10)** Not less than 11 months nor more than 13 months after the first licensure of an adult family home under s. 50.033 or of a community living arrangement and every year thereafter, the town board of a town in which a licensed adult family home or a community living arrangement is located may make a determination as to the effect of the adult family home or community living arrangement on the health, safety or welfare of the residents of the town. The determination shall be made according to the procedures provided under sub. (11). If the town board determines that the existence in the town of a licensed adult family home or a community living arrangement poses a threat to the health, safety or welfare of the residents of the town, the town board may order the adult family home or community living arrangement to cease operation unless special zoning permission is obtained. The order is subject to judicial review under s. 68.13, except that a free copy of the transcript may not be provided to the licensed adult family home or community living arrangement. The licensed adult family home or community living arrangement must cease operation within 90 days after the date of the order, or the date of final judicial review of the order, or the date of the denial of special zoning permission, whichever is later.

**(10m)** The fact that an individual with acquired immunodeficiency syndrome or a positive HIV test, as defined in s. 252.01 (2m), resides in a community living arrangement with a capacity for 8 or fewer persons may not be used under sub. (10) to assert or prove that the existence of the community living arrangement in the town poses a threat to the health, safety or welfare of the residents of the town.

**(11)** A determination made under sub. (10) shall be made after a hearing before the town board. The town shall provide at least 30 days’ notice to the licensed adult family home or the community living arrangement that such a hearing will be held. At the hearing, the licensed adult family home or the community living arrangement may be represented by counsel and may present evidence and call and examine witnesses and cross-examine other witnesses called. The town board may call witnesses and may issue subpoenas. All witnesses shall be sworn by the town board. The town board shall take notes of the testimony and shall mark and preserve all exhibits. The town board may, and upon request of the licensed adult family home or the community living arrangement shall, cause the proceedings to be taken by a stenographer or by a recording device, the expense thereof to be paid by the town. Within 20 days after the hearing, the town board shall deliver to the licensed adult family home or the community living arrangement its written determination stating the reasons therefor. The determination shall be a final determination.

**History:** 1983 a. 532; 1985 a. 281; 1987 a. 161; 1989 a. 56, 201; 1993 a. 27, 327, 446, 491; 1995 a. 27 s. 9126 (19); 1995 a. 225, 417; 2007 a. 20 ss. 1861 to 1866, 9121 (6) (a); 2009 a. 28, 209; 2011 a. 32.

**60.64 Historic preservation.** The town board, in the exercise of its zoning and police powers for the purpose of promoting the health, safety and general welfare of the community and of the state, may regulate any place, structure or object with a special character, historic interest, aesthetic interest or other significant value for the purpose of preserving the place, structure or object and its significant characteristics. The town board may create a landmarks commission to designate historic landmarks and establish historic districts. The board may regulate all historic landmarks and all property within each historic district to preserve the historic landmarks and property within the district and the character of the district.

**History:** 1983 a. 532.

**60.65 Board of adjustment.** **(1)** TOWN BOARD SHALL APPOINT. If a zoning ordinance has been adopted under s. 60.61, the town board shall establish and appoint a board of adjustment.

**(2)** MEMBERSHIP. The board of adjustment consists of 3 members. Not more than one town board supervisor may be a member of the board of adjustment. The initial terms of the members of the board of adjustment are one, 2 and 3 years, respectively, starting from the first day of the month next following the appointment. Successors shall be appointed or elected at the expiration of each term and their term of office shall be 3 years and until their successors are appointed or elected. Members of the board of adjustment shall reside within the town. The board shall choose a chairperson. Vacancies shall be filled for the unexpired term of any member whose office becomes vacant. The town board may compensate the members of the adjustment board.

**(3)** POWERS AND DUTIES. The town board may authorize the board of adjustment to, in appropriate cases and subject to appropriate conditions and safeguards, permit special exceptions to the terms of the zoning ordinance under s. 60.61 consistent with the ordinance’s general purpose and intent and with applicable provisions of the ordinance. This subsection does not preclude the granting of special exceptions by the town zoning committee designated under s. 60.61 (4) or the town board, in accordance with regulations and restrictions adopted under s. 60.61.

**(4)** PROCEDURE. The town board shall adopt regulations for the conduct of the business of the board of adjustment consistent with ordinances adopted under s. 60.61. The board of adjustment may adopt rules necessary to implement the regulations of the

town board. Meetings of the board shall be held at the call of the chairperson and other times as the board may determine. The chairperson or, in his or her absence, the acting chairperson, may administer oaths and compel the attendance of witnesses. The board shall keep minutes of its proceedings showing the vote of each member upon each question or, if absent, indicating that fact and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record. In any action involving a historic property, as defined in s. 44.31 (3), the board shall consider any suggested alternatives or recommended decision submitted by the landmarks commission or the zoning committee.

**(5) EXERCISE OF COUNTY BOARD OF ADJUSTMENT POWERS.** Boards of adjustment under town zoning ordinances shall have the powers and duties provided for boards of adjustment under s. 59.694 and shall carry out their duties in the manner provided for boards of adjustment by s. 59.694.

**History:** 1983 a. 532; 1985 a. 135; 1987 a. 395; 1995 a. 201.

General, rather than explicit, standards regarding the granting of special exceptions may be adopted and applied by the governing body. The applicant has the burden of formulating conditions showing that the proposed use will meet the standards. Upon approval, additional conditions may be imposed by the governing body. *Kraemer & Sons v. Sauk County Adjustment Board*, 183 Wis. 2d 1, 515 N.W.2d 256 (1994).

Sub. (3) requires that the authority of a town board of adjustment to grant conditional use permits be contained in the town zoning ordinance. There is no statutory authority for a town board of adjustment to hear appeals from decisions of town boards granting or denying conditional use permits. *Magnolia Township and Western Rock County Citizens Against Factory Farming v. Town of Magnolia*, 2005 WI App 119, 284 Wis. 2d 361, 701 N.W.2d 60, 04–1591

**60.66 Town park commission.** (1) ESTABLISHED BY ANNUAL TOWN MEETING. The annual town meeting may establish a town park commission consisting of 7 members.

**(2) APPOINTMENT AND TERM.** (a) The town board shall appoint the members of the commission within 60 days after the commission is established. Each member shall take and file the official oath.

(b) Except as provided under par. (c), members shall serve a term of 7 years, commencing July 1 of the year in which appointed. The town board shall appoint a successor during the month of June immediately preceding the expiration of the member's term.

(c) The first 7 members shall be appointed for staggered terms so that on the first day of July in each of the 7 years next following the year in which they are appointed, the term of one member expires.

(d) A member shall hold his or her office until his or her successor is appointed and qualified.

**(3) ORGANIZATION.** (a) Within 30 days after the appointment and qualification of the initial members of the commission, the commission shall hold a meeting to appoint officers and establish bylaws for its operation.

(b) The commission may appoint necessary assistants and employees to carry out its functions, make rules and regulations concerning their work and remove them at pleasure.

(c) The town board shall provide sufficient office space for the maps, plans, documents and records of the commission.

**(4) POWERS AND DUTIES.** (a) In this subsection, "park" means a public park, parkway, boulevard or pleasure drive.

(b) The commission shall have charge of and supervision over all parks located in the town and may exercise the powers of a board of park commissioners under ss. 27.08 and 27.10 (1).

(c) Within 2 years after its organization under sub. (3), the commission shall:

1. Make a thorough study of the town with reference to reserving lands for park purposes.
2. Make plans and maps of a comprehensive town park system.
3. Present the results of its study and its plans to the town meeting.

(d) The commission may:

1. Lay out, improve and maintain parks in the town.
2. Lay out, grade, construct, improve and maintain highways, roads and bridges in a park or connecting the park with any other park or with any municipality.
3. Establish regulations for the use and enjoyment of the parks by the public.
4. With town board approval, acquire, in the name of the town, by purchase, land contract, lease, condemnation or otherwise, tracts of land suitable for parks. No land acquired by the commission may be disposed of by the town without the consent of the commission. If the land is disposed of, all money received for the land shall be paid into a town park fund.
5. Accept, in the name of the town, grants, conveyances and devises of land and bequests and donations of money to be used for parks located in the town.

**History:** 1983 a. 532.

## SUBCHAPTER IX

### TOWN SANITARY DISTRICTS

**60.70 Definitions.** In this subchapter:

**(1)** "Commission" means the town sanitary district commission.

**(1m)** "Commissioner" means a member of a commission.

**(2)** "Equalized full value" means the assessed full value adjusted to reflect the full value as determined under s. 70.57.

**(3)** "Municipality" means a city, village or town.

**(4)** "Pollution" means contaminating or rendering unclean or impure the waters of the state, or making them injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal or plant life.

**(5)** "Private on-site wastewater treatment system" has the meaning given under s. 145.01 (12).

**(6)** "Sewerage system" means all structures, conduits and pipelines by which sewage is collected, transported, pumped, treated and disposed of, except plumbing inside and in connection with buildings served, and service pipes from building to street main.

**(7)** "Solid waste" has the meaning given under s. 289.01 (33).

**(8)** "Solid waste disposal" has the meaning given under s. 289.01 (34).

**(9)** "Town sanitary district" or "district" means a town sanitary district created under this subchapter.

**(10)** "Water system" means all structures, conduits and appurtenances by means of which water is delivered to consumers except piping and fixtures inside buildings served and service pipes from building to street main.

**(11)** "Waters of the state" has the meaning given under s. 281.01 (18).

**History:** 1983 a. 532; 1991 a. 189; 1995 a. 227, 378; 2011 a. 146.

**60.71 Creation of town sanitary district by town board order.** (1) TOWN BOARD AUTHORITY. (a) The town board may establish one or more town sanitary districts under this section.

(b) If a proposed town sanitary district is in more than one town, the town board of the town containing the largest portion of the equalized full value of taxable property within the proposed district has exclusive jurisdiction to establish the town sanitary district.

**(2) PETITION.** (a) At least 51% of the persons owning land or the owners of at least 51% of the land within the limits of the territory proposed to be organized into a town sanitary district may petition the town board for the establishment of a town sanitary district. The petition shall be addressed to the town board and filed with the town clerk. The petition shall contain the following information:

1. The proposed name of the town sanitary district.

2. A statement of the necessity for the proposed work.
  3. A statement that the public health, safety, convenience or welfare will be promoted by the establishment of the town sanitary district and that the property to be included will be benefited by the proposed district.
  4. A legal description of the boundaries of the proposed town sanitary district.
  5. A plat or sketch showing the approximate area and boundaries of the proposed town sanitary district.
  6. A general description of the proposed improvements.
- (b) One or more of the petitioners shall verify that the petition was signed personally by the persons whose signatures appear on the petition, or a person who signs a petition may have his or her signature notarized. The petition is presumed to have been signed by the persons whose signatures appear on the petition. No petition with the requisite number of valid signatures may be declared void because of alleged defects in the information required to be included in the petition. The town board at any time may permit a petition to be amended to conform to the facts.

**(3) BOND.** At least 15 days prior to the hearing under sub. (4), the petitioners shall file a personal or a surety bond with the town clerk, with security approved by the town board, sufficient to pay all of the expenses connected with the proceedings if the town board refuses to organize the district. The petitioners shall maintain the bond until either the town board issues an order to organize the district, the petitioners pay the costs of the town board under sub. (6) (f) or the proceedings are otherwise terminated. If the town board determines that a bond is insufficient, it may order the execution of an additional bond within a specified time, but not less than 10 days from the date of the order. If the petitioners fail to execute or maintain the bond, the town board may dismiss the petition.

**(4) HEARING.** (a) The town board shall schedule and conduct a hearing within 30 days after receipt of any petition with the requisite number of valid signatures.

(b) The town board shall publish a class 2 notice, under ch. 985, of the hearing. The notice shall contain an announcement of the hearing and a description of the boundaries of the proposed town sanitary district. The town board shall mail the notice to the department of safety and professional services and the department of natural resources at least 10 days prior to the hearing.

(c) Any person may file written comments on the formation of the district with the town clerk. Any owner of property within the boundary of the proposed district may appear at the hearing and offer objections, criticisms or suggestions as to the necessity of the proposed district and the question of whether his or her property will be benefited by the establishment of the district. A representative of the department of safety and professional services and of the department of natural resources may attend the hearing and advise the town board.

**(5) TERRITORY COMPRISING A DISTRICT.** (a) A town sanitary district may not include any territory located within a village or city.

(b) A town sanitary district may include territory located within a metropolitan sewerage district or any other similar district outside of the boundaries of a village or city for the purpose of auxiliary sewer construction by the town sanitary district.

**(6) DECISION BY THE TOWN BOARD.** (a) Within 30 days after the conclusion of the hearing under sub. (4), the town board shall issue written findings and a decision on formation of the proposed town sanitary district.

- (b) As part of its findings, the town board shall determine if:
1. The proposed work is necessary.
  2. Public health, safety, convenience or welfare will be promoted by the establishment of the district.
  3. Property to be included in the district will be benefited by the district.

(c) If the town board's findings required by par. (b) are all in the affirmative, the town board shall issue an order establishing the boundaries of the town sanitary district, declaring the district organized and giving the district a corporate name. After the district is established, the town board and the petitioners may submit to the commission certified bills covering their reasonable costs and disbursements in connection with the petition and hearing. The commission shall pay the expenses out of the funds of the district.

(d) If the town board's findings required by par. (b) are in the affirmative, except that part of the territory described in the petition will not be benefited by the establishment of the district, the town board shall issue an order under par. (c), but shall exclude such territory from the district.

(e) If the town board determines that other territory not described in the original petition should be included within the town sanitary district, the town board shall continue the hearing for not more than 30 days and publish a class 2 notice, under ch. 985, of the continued hearing. The notice shall contain a description of the revised boundaries of the proposed town sanitary district.

(f) Except as provided in par. (d), if any of the town board's findings under par. (b) are partly or wholly in the negative, the town board shall dismiss the proceedings and order the petitioners to pay, within 30 days, all reasonable costs and disbursements of the town board in connection with the proceedings.

**(7) FILING AND RECORDING THE ORDER.** The town board shall file copies of the order establishing the town sanitary district with the department of natural resources and record the order with the register of deeds in each county in which the district is located.

**History:** 1983 a. 532; 1985 a. 281; 1987 a. 77; 1993 a. 301; 1995 a. 27 ss. 3302, 3303, 9116 (5); 2001 a. 88; 2011 a. 32.

**60.72 Creation of town sanitary district by order of the department of natural resources. (1) DEFINITION.** In this section, "department" means the department of natural resources.

**(2) HEARING.** The department shall conduct a public hearing to determine whether to order the establishment of a town sanitary district under this section.

**(3) NOTICE.** The department shall give notice of a hearing under this section by mail to the town clerk of each town in the area to be affected at least 30 days prior to the hearing. The town board shall publish a class 2 notice, under ch. 985, of the hearing. The notice by the town board shall contain an announcement of the hearing and a description of the area identified by the department for inclusion in the town sanitary district.

**(4) FINDING.** Following the public hearing, the department shall determine if private on-site wastewater treatment systems or private domestic water systems, or both, in the affected towns constitute a threat to public health, safety, convenience or welfare or of pollution of waters of the state, and that there is no local action to correct the situation. The department shall issue its determination as written findings.

**(5) ORDER.** If the department's findings under sub. (4) are in the affirmative, the department shall issue an order specifying the work which is necessary and designating the property which is to be included in the proposed town sanitary district.

**(6) TOWN BOARD ACTION.** Notwithstanding s. 60.71, upon receipt of an order from the department under sub. (5), the town board may order the establishment of a town sanitary district or create a utility district under s. 66.0827.

**(7) TOWN BOARD FAILURE TO ACT.** If the town board fails to establish a town sanitary district within 45 days after receipt of the department's order, the department shall issue an order establishing boundaries of the town sanitary district, declaring the district organized and giving the district a corporate name. The department's order establishes the district without any further action by the town board. The department shall record the order with the register of deeds in each county in which the district is situated and

file a copy of the order with the town clerk of each town in which the district is situated.

**(8) COMMISSIONERS.** (a) After a town sanitary district has been established under sub. (6) or (7), the town board shall appoint or provide for the election of commissioners or constitute itself as the commission under s. 60.74 within 60 days after the expiration of the review period under s. 60.73, if no appeal is filed, or within 60 days after the department's order is affirmed in a proceeding under s. 60.73. If the town board does not appoint or provide for the election of commissioners or constitute itself as the commission, the department shall appoint, for 2-year terms, 3 commissioners who meet the residence and property-ownership requirements of s. 60.75 (3).

(b) If the department appoints commissioners under par. (a), the town board, after the initial 2-year terms, shall appoint or provide for the election of commissioners under s. 60.74 or constitute itself as the commission. If the town board does not appoint or provide for the election of commissioners or constitute itself as the commission within 60 days after the initial 2-year terms expire, the department shall appoint, for staggered terms as provided in s. 60.74, 3 commissioners who meet the residence and property-ownership requirements of s. 60.75 (3).

(c) If the town board fails to fill any vacancy on the commission within 60 days, the department shall appoint a person who meets the residence and property-ownership requirements of s. 60.75 (3) to fill the vacancy.

(d) The department shall file notice of all appointments of commissioners with the town clerk in each town in which the district is located.

**(9) STATUTES APPLICABLE.** Except as otherwise provided in this section, and unless clearly inapplicable, all other statutes relating to town sanitary districts shall apply to any town sanitary district created under sub. (6) or (7).

**History:** 1983 a. 532; 1993 a. 301; 1995 a. 378; 1999 a. 150 s. 672; 2011 a. 146.

**60.726 Property with private on-site wastewater treatment system included.** (1) Property that is excluded from a town sanitary district under s. 60.725 (1), 1995 stats., or subject to sub. (2), property that is excluded from a town sanitary district under s. 60.725 (2), 1995 stats., shall be included in the town sanitary district, retroactive to April 19, 1990, and shall be subject to all property taxes, special assessments, special charges or other charges imposed or assessed by the town sanitary district on or after April 19, 1990.

(2) If a property owner installed on his or her property a private on-site wastewater treatment system that conforms with the state plumbing code, before a town sanitary district that encompasses that property came into existence, that property shall be included in the town sanitary district. If the private on-site wastewater treatment system was installed on or after 10 years before May 14, 1992, and if the property owner provides the town sanitary district with any information about the cost of the private on-site wastewater treatment system required by the district, the town sanitary district, when the district issues any assessment or charges or imposes property taxes to construct a sewage service system, shall pay or credit the property owner an amount equal to 10% of the cost of the private on-site wastewater treatment system, less any grants or aids received by the property owner for construction of the private on-site wastewater treatment system, multiplied by the number of years of remaining life of the private on-site wastewater treatment system. The number of years of remaining life of the private on-site wastewater treatment system is equal to 10 minus the number of years that the private on-site wastewater treatment system has been in operation.

**History:** 1991 a. 270; 1993 a. 213; 1997 a. 252; 2011 a. 146.

Homeowners did not have a constitutionally protected vested property right in being excluded from a sanitary district; retroactive application of sub. (1) requiring connection was constitutional. *Vanderbloemen v. Town of West Bend*, 188 Wis. 2d 458, 525 N.W.2d 133 (Ct. App. 1994).

**60.73 Review of orders creating town sanitary districts.** Any person aggrieved by any act of the town board or the department of natural resources in establishing a town sanitary district may bring an action in the circuit court of the county in which his or her lands are located, to set aside the final determination of the town board or the department of natural resources, within 90 days after the final determination, as provided under s. 893.73 (2). If no action is taken within the 90-day period, the determination by the town board or the department of natural resources is final.

**History:** 1983 a. 532.

**60.74 Commissioners; method of selection.** (1) SINGLE TOWN DISTRICTS. If a town sanitary district is located entirely within one town, the town board shall determine how commissioners will be selected. The town board may appoint the commissioners, provide for their election or constitute itself as the commission. If the town board constitutes itself as the commission, it shall do so by an affirmative vote of at least two-thirds of the town board supervisors. The town board shall determine the method of selection for the initial commissioners within 60 days after the town sanitary district is established.

(2) MULTIPLE TOWN DISTRICTS. (a) If a town sanitary district is located in 2 or more towns, the town board of the town containing the largest portion of the equalized full value of taxable property of the district shall determine, within 60 days after the district is established, how commissioners will be selected. The town board may appoint commissioners or provide for their election.

(b) If, as a result of a change in each town's share of the equalized full value of taxable property in the district, a town's share exceeds the share of the town first authorized to determine selection under par. (a), the town board of the town with the greater share, within 60 days, may provide for the election or appointment of commissioners to replace the commissioners selected under par. (a). Any commissioner selected under par. (a) shall serve until new commissioners are appointed or elected under this paragraph.

(3) ELECTION OF COMMISSIONERS. (a) If the town board provides for the election of commissioners, the town board shall either schedule the election of the first commissioners at the next regular spring election or call a special election. If the town board schedules the election of the first commissioners at the next regular spring election, the town board shall appoint commissioners, within the time limits specified in sub. (1) or (2), to serve until the 3rd Monday of April in the year when the next regular spring election is held.

(b) After the first commissioners are elected, all subsequent commissioners shall be elected at a regular spring election.

(4) CHANGE FROM APPOINTMENT TO ELECTION. (a) If the commissioners of a district have been appointed, a petition requesting that commissioners be elected may be submitted, subject to sub. (5m) (b), to the town board responsible for the selection of commissioners under sub. (1) or (2). The petition shall state whether the petitioners wish to have the first commissioners elected at a special election or at the spring election. The petition shall conform to the requirements of s. 8.40 and shall be signed by qualified electors of the district equal to at least 20% of the vote cast for governor in the district at the last gubernatorial election.

(b) Upon receipt of the petition, the town board shall provide for the election of commissioners. If the petition requests the election of the first commissioners at the spring election and the petition is filed on or after the date of the spring election and on or before November 15 in any year, they shall be elected at the succeeding spring election; otherwise they shall be elected at the 2nd succeeding spring election. If the petition requests the election of the first commissioners at a special election, the town board shall order the special election in accordance with s. 8.50 (2) (a). After the first commissioners are elected, all subsequent commissioners shall be elected at the spring election.

(c) If the commissioners are elected at a special election, the current appointed commissioners continue to serve until their successors are elected and qualify. If the commissioners are elected at a regular spring election, the current appointed commissioners continue to serve until the 3rd Monday of April following the election of the commissioners.

**(5) CHANGE FROM ELECTION TO APPOINTMENT.** (a) If the commissioners have been elected as the result of a petition under sub. (4), the town board may not change the method of selection from election to appointment except as provided under par. (b).

(b) A petition conforming to the requirements of s. 8.40 signed by qualified electors of the district equal to at least 20% of the vote cast for governor in the district at the last gubernatorial election, requesting a change to appointment of commissioners, may be submitted to the town board, subject to sub. (5m) (a). The petition shall be filed as provided in s. 8.37. Upon receipt of the petition, the town board shall submit the question to a referendum at the next regular spring election or general election, or shall call a special election for that purpose. The inspectors shall count the votes and submit a statement of the results to the commission. The commission shall canvass the results of the election and certify the results to the town board which has authority to appoint commissioners.

(c) If the change in the method of selection of commissioners is approved at the referendum, the town board shall appoint commissioners within 60 days after the referendum is conducted.

**(5m) FREQUENCY OF CHANGES BETWEEN ELECTION AND APPOINTMENT RESTRICTED.** (a) If the commissioners have been elected as a result of a petition and election under sub. (4), no petition may be submitted under sub. (5) (b) to change the method of selection from election to appointment within 5 years after the date on which the election of the commissioners was held.

(b) If the commissioners have been appointed as the result of a petition and referendum under sub. (5), no petition may be submitted under sub. (4) (a) to change the method of selection from appointment to election within 5 years after the date on which the results of a referendum held under sub. (5) have been certified under sub. (5) (b).

**(6) ELECTOR DETERMINATION.** Whenever in this section the number of names of electors required on a petition cannot be determined on the basis of reported election statistics, the number shall be determined as follows:

(a) The area of the district in square miles shall be divided by the area, in square miles, of the municipality in which it lies.

(b) The vote for governor at the last general election in the municipality within which the district lies shall be multiplied by the quotient determined under par. (a).

(c) If a district is in more than one municipality, the method of determination under pars. (a) and (b) shall be used for each part of the district which constitutes only a fractional part of any area for which election statistics are available.

**History:** 1983 a. 532; 1987 a. 391; 1989 a. 192, 359; 1993 a. 167; 1999 a. 182.

**60.75 Commissioners; requirements. (1) NUMBER OF COMMISSIONERS.** (a) Except as provided in par. (b), the commission shall consist of 3 members.

(b) If the town board constitutes itself as the commission, the number of commissioners shall be the number of town board supervisors.

**(2) TERMS.** (a) Except as provided in pars. (b) and (c), commissioners shall serve for staggered 6-year terms.

(b) Except as provided under par. (c), of the commissioners first appointed or elected in a newly established town sanitary district, one shall be appointed or elected for a term of 2 years, one for a term of 4 years and one for a term of 6 years. If the commissioners first elected in a newly established town sanitary district are elected at a special election, the town board shall specify shorter staggered terms for the commissioners so that their successors may be elected at a regular spring election.

(c) If the town board constitutes itself as the commission, the terms of the commissioners are concurrent with the terms of the town board supervisors.

(d) An elected commissioner shall hold office until the 3rd Monday of April in the year that his or her successor is elected. An appointed commissioner shall hold office until a successor takes office.

**(3) RESIDENCE; REQUIREMENT TO OWN PROPERTY.** (a) Except as provided in par. (b) or (c), all commissioners shall be residents of the town sanitary district.

(b) If commissioners are elected or appointed and if the sanitary district is composed primarily of summer resort property, at least one of the commissioners shall be a resident of the district. Any commissioner who is not a resident shall own property within the town sanitary district.

(c) If the town board constitutes itself as the commission, par. (a) does not apply.

**(4) VACANCIES.** Any vacancy on an elective or appointive commission may be filled by appointment by the town board for the remainder of the unexpired term, except as provided in s. 9.10. Any vacancy on a commission consisting of town board supervisors remains vacant until a successor town board supervisor is appointed or elected.

**(5) OATH OF OFFICE.** Before assuming office, each commissioner shall take and sign the oath of office required under s. 19.01 and file the oath with the town clerk.

**History:** 1983 a. 532; 2007 a. 56.

**60.76 Organization of the commission. (1) ELECTION OF OFFICERS.** (a) Except as provided in par. (b), the commission shall organize by electing one of its members president and appointing a secretary and treasurer.

(b) When the town board constitutes the commission, the town chairperson shall be the commission president, the town clerk shall be the commission secretary and the town treasurer shall be the commission treasurer.

**(2) SECRETARY; DUTIES.** The secretary shall keep a separate record of all proceedings and minutes of meetings and hearings. At the end of each fiscal year, the secretary shall submit to the town board of each town in which the district is located a report showing a complete audit of the financial transactions of the commission during the fiscal year. The report shall be incorporated in the annual financial statement of the town containing the largest portion of the equalized full value of all taxable property in the district.

**(3) TREASURER.** The commission may require the treasurer to execute an indemnity bond, provided by the district, in an amount which the commission finds appropriate for the proper performance of the treasurer's duties.

**(4) FISCAL YEAR.** The town sanitary district fiscal year is the calendar year.

**History:** 1983 a. 532.

**60.77 Powers and duties. (1) AUTHORITY OF THE COMMISSION.** The commission has charge of all affairs of the town sanitary district.

**(2) CORPORATE STATUS.** The district is a body corporate with the powers of a municipal corporation for the purposes of carrying out this subchapter. The district may sue and be sued and may enter into contracts. The commission may provide for a corporate seal of the town sanitary district.

**(3) COMPENSATION; EXPENSES.** The town board of the town having the largest portion of the equalized full value of all taxable property in the district may fix the compensation of the commissioners, the secretary and the treasurer. The commissioners and the secretary and treasurer of the commission may receive actual and necessary expenses incurred while in the performance of the duties of the office in addition to any other compensation.

**(4) GENERAL POWERS AND DUTIES.** The commission may project, plan, construct and maintain a water, solid waste collection

and sewerage system, including drainage improvements, sanitary sewers, surface sewers or storm water sewers, or all of the improvements or activities or any combination of them necessary for the promotion of the public health, comfort, convenience or welfare of the district. The commission may provide chemical or mechanical treatment of waters for the suppression of swimmers' itch, algae and other nuisance-producing aquatic growths.

**(5) SPECIFIC POWERS.** The commission may:

(a) Sell any of its services to users outside of its corporate limits.

(b) Require the installation of private on-site wastewater treatment systems.

(bm) Require the inspection of private on-site wastewater treatment systems that have been already installed to determine compliance with the state plumbing code and may report violations of the state plumbing code to the governmental unit responsible for the regulation of private on-site wastewater treatment systems for enforcement under s. 145.20.

(bs) Provide direct financial assistance for costs related to the replacement of private on-site wastewater treatment systems that are failing.

(c) Issue rules or orders, which shall be published either in their entirety, as a class 1 notice under ch. 985, or as a notice, as described under sub. (5s) (b).

(d) Provide an office for the district.

(e) Fix and collect charges for solid waste collection and disposal, sewage service and water service. The commission may fix and collect sewage service charges under s. 66.0821 and water service charges under s. 66.0809.

(f) Except as provided in s. 66.0721, levy special assessments to finance the activities of the district, using the procedures under s. 66.0703.

(g) Provide for the operation as a single enterprise of its water, solid waste or sewerage system, or any part or combination of parts of the system.

(h) Lease or acquire, including by condemnation, any real property situated in this state and any personal property that may be needed for the purposes of this subchapter.

(i) Sell, convey or dispose of any part of its interest in real or personal property which it has acquired that is not needed to carry out the powers and duties of the commission.

(j) Administer the private on-site wastewater treatment system program if authorized under s. 145.20 (1) (am).

(k) Gather at the site of a public works project that has been approved by the commission for the sole purpose of inspecting the work that has been completed or that is in progress if, before gathering at the site, the president of the commission or the president's designee notifies by telephone or facsimile transmission those news media who have filed a written request for notice of such inspections in relation to that project and if the president of the commission or the president's designee submits at the next commission meeting a report that describes the inspection. The commission may not take any official action at the inspection site.

**(5m) AUTHORITY TO ENACT ORDINANCES.** The commission may enact and enforce ordinances to implement the powers listed under sub. (5). The ordinances shall be published either in their entirety, as a class 1 notice under ch. 985, or as a notice, as described under sub. (5s) (b).

**(5s) REQUIREMENTS FOR NOTICE.** (a) In this subsection, "summary" has the meaning given in s. 59.14 (1m) (a).

(b) A notice of an ordinance, rule, or order that may be published under this subsection shall be published as a class 1 notice under ch. 985 and shall contain at least all of the following:

1. The number and title of the ordinance, rule, or order.
2. The date of enactment.
3. A summary of the subject matter and main points of the ordinance, rule, or order.

4. Information as to where the full text of the ordinance, rule, or order may be obtained, including the phone number of the commission's secretary, a street address where the full text of the ordinance, rule, or order may be viewed, and a Web site, if any, at which the ordinance, rule, or order may be accessed.

**(6) SPECIFIC DUTIES.** The commission shall:

(a) Let contracts for any work or purchase that involves an expenditure of \$25,000 or more to the lowest responsible bidder in the manner prescribed by the commission. Section 66.0901 applies to contracts let under this paragraph.

(b) On or before November 1 of each year, levy a tax on all taxable property in the district and apportion the tax among the municipalities in which the district is located on the basis of equalized full value, for the purpose of carrying out the provisions of this subchapter. The amount of the tax in excess of that required for maintenance and operation of the district and for principal and interest on bonds or promissory notes may not exceed, in any one year, one mill on each dollar of the equalized full value of all taxable property in the district. The commission shall certify in writing to the clerk of every municipality in which the district is located the total amount of tax levied in the municipality.

**(7) INTEREST IN CONTRACTS; PENALTY.** No commissioner may have an interest, directly or indirectly, in a contract with, work or labor done for or material furnished to the town sanitary district or to anyone on the district's behalf, unless the interest is in a contract not exceeding \$1,000 in any one year or in the publication of required legal notices by the district or a commissioner if the publication rate does not exceed the rate prescribed by law. A commissioner who violates this subsection shall forfeit not less than \$50 nor more than \$500.

**History:** 1983 a. 532; 1989 a. 31, 56, 159, 322; 1991 a. 39; 1993 a. 16; 1995 a. 185, 349, 378; 1999 a. 150 s. 672; 2001 a. 16; 2005 a. 202; 2007 a. 72; 2011 a. 146.

Sub. (6) (b) does not prevent the levy under s. 66.09 (1) (b) [now s. 66.0117 (2) (b)] of the full amount of a judgment against a district. *Davy Engineering Co. v. Town of Mentor*, 221 Wis. 2d 744, 585 N.W.2d 832 (Ct. App. 1998), 97–3575.

Sub. (5) (f) authorizes town sanitary districts to levy special assessments and makes the procedures under s. 66.0703 applicable to those districts. As such, service of a notice of appeal on the district clerk was proper under this section. *Mayek v. Cloverleaf Lakes Sanitary District #1*, 2000 WI App 182, 238 Wis. 2d 261, 617 N.W.2d 235, 99–2895.

**60.78 Powers to borrow money and issue municipal obligations.** A town sanitary district may, under ss. 66.0621 and 66.0713 and ch. 67, borrow money and issue and execute municipal obligations, as defined under s. 67.01 (6).

**History:** 1983 a. 532; 1987 a. 197; 1999 a. 150 s. 672.

**60.782 Power to act as a public inland lake protection and rehabilitation district. (1)** In this section, "public inland lake" means a lake, reservoir or flowage within the boundaries of the state that is accessible to the public via contiguous public lands or easements giving public access.

**(2)** A town sanitary district that has at least 60% of the footage of shoreline of a public inland lake within its boundaries for which a public inland lake protection and rehabilitation district is not in effect may do any of the following that is authorized by the commission:

(a) Create, operate and maintain a water safety patrol unit, as defined in s. 30.79 (1) (b) 2.

(b) Undertake projects to enhance the recreational uses of the public inland lake, including recreational boating facilities, as defined in s. 30.92 (1) (c).

(c) Appropriate money for the conservation of natural resources or for payment to a bona fide nonprofit organization for the conservation of natural resources within the district or beneficial to the district.

(d) Lease or acquire, including by condemnation, any real property situated in this state that may be needed for the purposes of s. 23.09 (19), 23.094 (3g) or 30.275 (4).

**(3)** The commissioners of a town sanitary district that has the powers of a public inland lake protection and rehabilitation district under sub. (2) shall possess the powers of the board of com-



missioners of a public inland lake protection and rehabilitation district that are authorized by resolution of the town sanitary district.

**History:** 1995 a. 349.

**60.785 Changes in district boundaries. (1) ADDITIONS.** (a) Territory may be added to a town sanitary district under the procedure in s. 60.71. The required signatures shall be obtained from property owners in the territory proposed to be added to the district.

(b) In lieu of commencing the process of adding territory by petition of property owners, the commission may request the town board to add territory to the town sanitary district. Except for the requirement of a petition, the town board shall use the procedure in s. 60.71.

**(1m) REMOVAL.** (a) Territory may be removed from a town sanitary district under the procedure in s. 60.71 if the town board, after the hearing, finds that one or more of the standards of s. 60.71 (6) (b) are not met for all or part of the territory subject to a petition under par. (b) 1. or a request under par. (b) 2.

(b) 1. The petition for removal of territory from a town sanitary district under par. (a) shall state why the portion of the town sanitary district which is subject to the petition does not meet the standards in s. 60.71 (6) (b). The signatures required on the petition shall be obtained from property owners in the territory proposed to be removed from the district.

2. In lieu of commencing the process of removing territory from a town sanitary district by petition of property owners, the commission may commence the process by requesting the town board to remove the territory. The town board shall use the procedure in s. 60.71 to act on the request.

**(2) CONSOLIDATION.** (a) Any town sanitary district may be consolidated with a contiguous town sanitary district by resolution passed by a two-thirds vote of all of the commissioners of each district, fixing the terms of the consolidation and ratified by the qualified electors of each district at a referendum held in each district. The resolution shall be filed as provided in s. 8.37. The ballots shall contain the words “for consolidation”, and “against consolidation”. If a majority of the votes cast on the referendum in each town sanitary district are for consolidation, the resolutions are effective and have the force of a contract. Certified copies of the resolutions and the results of the referendum shall be filed with the secretary of natural resources and the original documents shall be recorded with the register of deeds in each county in which the consolidated district is situated.

(b) Within 60 days after the referendum, the appropriate town board shall appoint or provide for the election of commissioners or constitute itself as the commission for the consolidated district, as provided in s. 60.74.

(c) Consolidation of a district does not affect the preexisting rights or liabilities of any town sanitary district and actions may be commenced or completed on such rights or liabilities as though no consolidation had occurred.

**(3) DISSOLUTION.** (a) 1. A town sanitary district may be dissolved in whole using the procedure for creating a town sanitary district under s. 60.71. The petition shall state why the town sanitary district does not meet the standards of s. 60.71 (6) (b). If the town board, after the hearing, finds that one or more of the standards of s. 60.71 (6) (b) are not met, the town board shall order the dissolution of the town sanitary district, except that a board may not order the dissolution of a district if, following dissolution, all outstanding indebtedness of the district would not be paid or provision for payment of the indebtedness would not be made.

2. A town sanitary district may be dissolved in part under subd. 1. if that sanitary district was created on October 31, 1967.

**NOTE:** Subd. 2. was created by 1987 Wis. Act 27. Section 3204 (57) (fm) states that the creation of subd. 2. takes effect retroactively to June 20, 1983.

(b) Any unexpended funds remaining after dissolution of the district shall be distributed by the commission on an equitable basis to the municipalities or persons who supplied the funds.

**(4) REVIEW OF ORDERS.** The town board’s order under sub. (1), (1m) or (3) may be reviewed under the procedures and time limits in s. 60.73.

**History:** 1983 a. 532; 1987 a. 27, 77; 1993 a. 301; 1999 a. 182.

**60.79 Alteration of town sanitary districts. (1) INCORPORATION OR ANNEXATION OF ENTIRE TOWN SANITARY DISTRICT.** If any territory which includes an entire town sanitary district is incorporated as a city or village or if the territory is annexed by a city or village:

(a) The incorporation or annexation dissolves the district without further action by the commission or the town board and without any right to appeal the dissolution.

(b) The property of the district passes to the city or village and the city or village shall assume all assets and liabilities of the district. If any revenue bond, revenue bond anticipation notes, mortgage bonds or mortgage certificates issued under s. 66.0621 are outstanding, the transfer of the property is subject to the bonds, notes or certificates. If any general obligation bonds or notes issued under ch. 67 are outstanding, the city or village shall levy and collect an annual irrepealable tax on all taxable property in the city or village in an amount necessary to pay the interest and principal of the bonds and notes when due.

(c) The city or village continues to collect special assessments levied by the former district and shall apply the special assessments to the purpose for which the original assessment was made.

**(2) INCORPORATION OR ANNEXATION OF PART OF A TOWN SANITARY DISTRICT.** (a) The incorporation or annexation of territory within the town sanitary district detaches that territory from the district.

(b) The city or village and the town sanitary district are subject to pars. (c) to (e) if territory constituting less than the entire town sanitary district is annexed or incorporated and:

1. The territory is served by the town sanitary district with a water or sewerage system; or

2. The territory is not served by the town sanitary district with a water or sewerage system, but the district has obligations related to the territory subject to incorporation or annexation which require payment for longer than one year following the incorporation or annexation.

(c) The city or village and the town sanitary district shall divide the assets and liabilities of the town sanitary district under s. 66.0235 or by entering into an intergovernmental cooperation agreement under s. 66.0301, except that the ownership of any water or sewerage system shall be determined under par. (dm).

(d) 1. Any water or sewerage system, including all mains and all property of the system, shall belong to and be operated by the district or the city or village, in whichever the major portion of the patrons reside on the date of annexation or incorporation, unless other provision is made by agreement of the governing body of the city or village and the commission. Express power is hereby granted to the governing body of the city or village and the commission to contract with each other relative to the operation and property of any water or sewerage system.

2. In determining the major portion of the patrons, each location served shall be considered as one patron irrespective of the manner in which the title to the property is held.

(dm) If the responsibility for continuing the operation is vested in the town sanitary district, it shall continue, except by agreement, until the proportion of users changes so that a majority of the patrons reside in the city or village, at which time the property and the responsibility shall shift to the city or village.

(e) Any special assessment levied before the incorporation or annexation shall continue to be collected by the district or city or village which is operating the water or sewerage system and shall be applied to the purpose for which the original assessment was made.

**(3) SERVICE AREA.** No city or village which secures a water or sewerage system under this section is required to serve an area

outside its corporate limits greater than that included in the town sanitary district at the time of annexation or incorporation. The city or village shall continue to serve the area previously included within the district.

**(4) CITY OR VILLAGE AUTHORITY.** A city or village which obtains a water or sewerage system under this section may:

(a) Continue, alter or discontinue operation by a commission.

(b) Continue or discontinue existing methods of financing construction and operation of the system.

(c) Finance or refinance the system under s. 66.0621, 67.04 or 67.12.

(d) Levy special assessments within the area of the former town sanitary district under s. 66.0703. Special assessments may be levied regardless of the time when the improvement was commenced or completed, when used for refunding purposes in conjunction with issuance of general obligation–local improvement bonds under s. 67.16 or special assessment bonds under s. 66.0713 (4).

**(5) COLLECTION OF SPECIAL ASSESSMENTS BY TOWNS.** Towns shall aid cities and villages, and villages and cities shall aid towns, in the levy and collection of special assessments, property taxes and all service charges under this section by entering them on town, city or village assessment and tax rolls and collecting and forwarding the moneys to the levying municipality.

**History:** 1983 a. 532; 1987 a. 197; 1989 a. 359; 1991 a. 315; 1995 a. 378; 1997 a. 237; 1999 a. 150 s. 672; 2001 a. 30.

Sub. (2) (b) requires selective rather than automatic application of subs. (2) (c) to (e). *Town of Hallie v. City of Eau Claire*, 173 Wis. 2d 450, 496 N.W.2d 656 (Ct. App. 1992).

Sub. (2) (d) is inapplicable to annexed property that contains no commercial or personal patrons of a town water system that runs through it. Under sub. (1) the annexed property lies within the annexing city's domain as a matter of law and the city bears the responsibility of providing water. *Town of Sheboygan v. City of Sheboygan*, 203 Wis. 2d 274, 553 N.W.2d 275 (Ct. App. 1996), 95–1839.

## SUBCHAPTER X

### MISCELLANEOUS

**60.80 Publication or posting of ordinances and resolutions. (1) GENERAL REQUIREMENT.** The town clerk shall publish either in its entirety, as a class 1 notice under ch. 985, or as a notice, as described under sub. (5) (b), or post in at least 3 places in the town likely to give notice to the public, the following, within 30 days after passage or adoption:

(a) Resolutions, motions and other actions adopted by the town meeting, or in the exercise of powers, under s. 60.10.

(b) Ordinances adopted by the town board.

(c) Resolutions of general application adopted by the town board and having the effect of law.

**(1m) EXCEPTION FOR MUNICIPAL OBLIGATIONS.** Nothing under sub. (1) may be deemed to require notice under this subsection of the passage of any resolution authorizing the issuance of municipal obligations, as defined under s. 67.01 (6).

**(2) REQUIREMENT FOR FORFEITURES.** If an ordinance imposes a forfeiture, posting may not be used in lieu of publication under sub. (1).

**(3) EFFECTIVE UPON PUBLICATION.** An ordinance, resolution, motion or other action required to be published or posted under this section shall take effect the day after its publication or posting, or at a later date if expressly provided in the ordinance, resolution, motion or action.

**(4) AFFIDAVIT OF POSTING.** If an ordinance, resolution, motion or other action is posted under this section, the town clerk shall sign an affidavit attesting that the item was posted as required by this section and stating the date and places of posting. The affidavit shall be filed with other records under the jurisdiction of the clerk.

**(5) REQUIREMENTS FOR NOTICE.** (a) In this subsection, “summary” has the meaning given in s. 59.14 (1m) (a).

(b) A notice of a resolution, motion, ordinance, or action that may be published under this subsection shall be published as a class 1 notice under ch. 985 and shall contain at least all of the following:

1. The number and title of the resolution, motion, ordinance, or action.

2. The date of enactment.

3. A summary of the subject matter and main points of the resolution, motion, ordinance, or action.

4. Information as to where the full text of the resolution, motion, ordinance, or action may be obtained, including the phone number of the town clerk, a street address where the full text of the resolution, motion, ordinance, or action may be viewed, and a Web site, if any, at which the resolution, motion, ordinance, or action may be accessed.

**History:** 1983 a. 532; 1987 a. 197; 2007 a. 72.

**60.81 Population; use of federal census.** If the census of a town is required, the last federal census, including a special federal census, if any, shall be used.

**History:** 1983 a. 532.

**60.82 Regional planning programs.** The town board may act jointly with other municipalities in the area to establish and maintain a regional planning program to protect the health, safety and general welfare of the town as part of the region. The board may make payments out of the general fund for the town's share of the cost of the program.

**History:** 1983 a. 532.

**60.83 Destruction of obsolete town records.** The town board may provide for the destruction of obsolete town records under s. 19.21 (4).

**History:** 1983 a. 532.

**60.84 Monuments. (1) SURVEY, CONTRACT FOR.** The town board may contract with the county surveyor or any registered land surveyor to survey all or some of the sections in the town and to erect monuments under this section as directed by the board.

**(2) BOND.** Before the town board executes a contract under sub. (1), the surveyor shall execute and file with the town board a surety bond or other financial security approved by the town board.

**(3) MONUMENTS.** (a) Monuments shall be set on section and quarter–section corners established by the United States survey. If there is a clerical error or omission in the government field notes or if the bearing trees, mounds or other location identifier specified in the notes is destroyed or lost, and if there is no other reliable evidence by which a section or quarter–section corner can be identified, the surveyor shall reestablish the corner under the rules adopted by the federal government in the survey of public lands. The surveyor shall set forth his or her actions under this paragraph in the certificate under sub. (4).

(b) All monuments set under this section are presumed to be set at the section and quarter–section corners, as originally established by the United States survey, at which they respectively purport to be set.

(c) To establish, relocate or perpetuate a corner, the surveyor shall set in the proper place a monument, as determined by the town board, consisting of:

1. A stone or other equally durable material, not less than 3 feet long and 6 inches square, with perpendicular, dressed sides and a square, flat top. As prescribed by the town board, the top shall be engraved with either:

a. A cross formed by lines connecting the corners of the top;

or

b. If the monument is set at a section corner, the number of the section or, if set at a quarter–section corner, “1/4S”; or

2. A 3–inch diameter iron pipe, not less than 3 feet long, with pipe walls not less than one–quarter inch thick, galvanized or coal–charred to prevent rust. The pipe shall have a flat plate,

screwed to the top, engraved as prescribed in subd. 1. The pipe shall have a suitable bottom plate or anchor.

(d) A monument under par. (c) shall be set 2 1/2 feet in the ground. If the monument is located in a highway, the top of the monument shall be even with or below the surface of the highway.

(4) **CERTIFICATE.** The surveyor shall prepare a certificate setting forth a complete and accurate record of any survey under this section, including the exact bearings and distances of each monument from each other monument nearest it on any line in the town. The certificate shall be recorded in the office of the register of deeds of the county in which the surveyed land is located.

**History:** 1983 a. 532.

**60.85 Town tax increment law. (1) DEFINITIONS.** In this section, unless a different intent clearly appears from the context:

(a) “Agricultural project” means agricultural activities classified in the North American Industry Classification System, 1997 edition, published by the U.S. office of management and budget, under the following industry numbers:

1. 111 – Crop production
2. 112 – Animal production
3. 1151 – Support activities for agriculture.
4. 1152 – Support activities for animal production.
5. 493120 – Farm product warehousing and storage, refrigerated.

(b) “Environmental pollution” has the meaning given in s. 299.01 (4).

(c) “Forestry project” means forestry activities classified in the North American Industry Classification System, 1997 edition, published by the U.S. office of management and budget, under the following industry numbers:

1. 113 – Forestry and logging.
2. 1153 – Support activities for forestry.

(d) “Highway” has the meaning provided in s. 340.01 (22).

(e) “Manufacturing project” means manufacturing activities classified in the North American Industry Classification System, 1997 edition, published by the U.S. office of management and budget, under the following industry numbers:

1. 3116 – Animal slaughtering and processing.
2. 321 – Wood product manufacturing
3. 322 – Paper manufacturing.
4. 325193 – Ethyl alcohol manufacturing.

(f) “Personal property” has the meaning prescribed in s. 70.04.

(g) “Planning commission” means a plan commission created under s. 62.23, if the town board exercises zoning authority under s. 60.62 or the town zoning committee under s. 60.61 (4) if the town board is not authorized to exercise village powers.

(h) 1. “Project costs” means, subject to sub. (2) (b), any expenditures made or estimated to be made or monetary obligations incurred or estimated to be incurred by the town which are listed in a project plan as costs of public works or improvements within a tax incremental district or, to the extent provided in subd. 1. j., without the district, plus any incidental costs, diminished by any income, special assessments, or other revenues, including user fees or charges, other than tax increments, received or reasonably expected to be received by the town in connection with the implementation of the plan. Only a proportionate share of the costs permitted under this subdivision may be included as project costs to the extent that they benefit the tax incremental district. To the extent the costs benefit the town outside the tax incremental district, a proportionate share of the cost is not a project cost. “Project costs” include:

a. Capital costs including, but not limited to, the actual costs of the construction of public works or improvements, new buildings, structures, and fixtures; the demolition, alteration, remodeling, repair or reconstruction of existing buildings, structures and fixtures other than the demolition of listed properties as defined in s. 44.31 (4); the acquisition of equipment to service the district;

the removal or containment of, or the restoration of soil or groundwater affected by, environmental pollution; and the clearing and grading of land.

b. Financing costs, including, but not limited to, all interest paid to holders of evidences of indebtedness issued to pay for project costs and any premium paid over the principal amount of the obligations because of the redemption of the obligations prior to maturity.

c. Real property assembly costs, meaning any deficit incurred resulting from the sale or lease as lessor by the town of real or personal property within a tax incremental district for consideration which is less than its cost to the town.

d. Professional service costs, including, but not limited to, those costs incurred for architectural, planning, engineering, and legal advice and services.

e. Imputed administrative costs, including, but not limited to, reasonable charges for the time spent by town employees in connection with the implementation of a project plan.

f. Relocation costs, including, but not limited to, those relocation payments made following condemnation under ss. 32.19 and 32.195.

g. Organizational costs, including, but not limited to, the costs of conducting environmental impact and other studies and the costs of informing the public with respect to the creation of tax incremental districts and the implementation of project plans.

h. Payments made, in the discretion of the town board, which are found to be necessary or convenient to the creation of tax incremental districts or the implementation of project plans.

i. That portion of costs related to the construction or alteration of sewerage treatment plants, water treatment plants or other environmental protection devices, storm or sanitary sewer lines, water lines, or amenities on streets or the rebuilding or expansion of streets the construction, alteration, rebuilding or expansion of which is necessitated by the project plan for a district and is within the district.

j. That portion of costs related to the construction or alteration of sewerage treatment plants, water treatment plants or other environmental protection devices, storm or sanitary sewer lines, water lines, or amenities on streets outside the district if the construction, alteration, rebuilding or expansion is necessitated by the project plan for a district, and if at the time the construction, alteration, rebuilding or expansion begins there are improvements of the kinds named in this subdivision on the land outside the district in respect to which the costs are to be incurred.

k. Costs for the removal or containment of lead contamination in buildings or infrastructure if the town declares that such lead contamination is a public health concern.

L. A fee imposed by the department of revenue under sub. (5) (a).

2. Notwithstanding subd. 1., none of the following may be included as project costs for any tax incremental district:

a. The cost of constructing or expanding administrative buildings, police and fire buildings, libraries, community and recreational buildings and school buildings.

b. The cost of constructing or expanding any facility, if the town generally finances similar facilities only with utility user fees.

c. General government operating expenses unrelated to the planning or development of a tax incremental district.

d. Cash grants made by the town to owners, lessees, or developers of land that is located within the tax incremental district.

(i) “Project plan” means the properly approved plan for the development or redevelopment of a tax incremental district, including all properly approved amendments thereto.

(j) “Real property” has the meaning prescribed in s. 70.03.

(k) “Residential development” means sleeping quarters, within a proposed tax incremental district, for employees who work for an employer engaged in a project that is allowed under

sub. (2) (b) 1. to 4. but does not include hotels, motels, or general residential housing development within a proposed tax incremental district.

(L) “Tax increment” means that amount obtained by multiplying the total county, town, school, and other local general property taxes levied on all taxable property within a tax incremental district in a year by a fraction having as a numerator the value increment for that year in the district and as a denominator that year’s equalized value of all taxable property in the district. In any year, a tax increment is “positive” if the value increment is positive; it is “negative” if the value increment is negative.

(m) “Tax incremental base” means the aggregate value, as equalized by the department of revenue, of all taxable property located within a tax incremental district on the date as of which the district is created, determined as provided in sub. (5) (b).

(n) “Tax incremental district” means a contiguous geographic area within a town defined and created by resolution of the town board, consisting solely of whole units of property as are assessed for general property tax purposes, other than railroad rights-of-way, rivers or highways. Railroad rights-of-way, rivers or highways may be included in a tax incremental district only if they are continuously bounded on either side, or on both sides, by whole units of property as are assessed for general property tax purposes which are in the tax incremental district. “Tax incremental district” does not include any area identified as a wetland on a map under s. 23.32.

(o) “Taxable property” means all real and personal taxable property located in a tax incremental district.

(p) “Tourism project” means activities that involve retailers classified in the North American Industry Classification System, 1997 edition, published by the U.S. office of management and budget, under the following industry numbers:

1. 721214 — Recreational and vacation camps.
2. 721211 — Recreational vehicle parks and campgrounds.
3. 711212 — Racetracks.
4. Dairy product stores included in 445299.
5. Public golf courses included in 71391.

(q) “Value increment” means the equalized value of all taxable property in a tax incremental district in any year minus the tax incremental base. In any year “value increment” is positive if the tax incremental base is less than the aggregate value of taxable property as equalized by the department of revenue; it is negative if that base exceeds that aggregate value.

**(2) POWERS OF TOWNS.** (a) Subject to par. (b) and except as provided under par. (c) and in addition to any other powers conferred by law, a town may exercise any powers necessary and convenient to carry out the purposes of this section, including the power to:

1. Create tax incremental districts and define the boundaries of the districts.
2. Cause project plans to be prepared, approve the plans, and implement the provisions and effectuate the purposes of the plans.
3. Deposit moneys into the special fund of any tax incremental district.
4. Enter into any contracts or agreements, including agreements with bondholders, determined by the town board to be necessary or convenient to implement the provisions and effectuate the purposes of project plans. The contracts or agreements may include conditions, restrictions, or covenants which either run with the land or which otherwise regulate the use of land.
5. Designate, by ordinance or resolution, the town industrial development agency, as agent of the town, to perform all acts under this section.

(b) The only projects for which a town may expend money or incur monetary obligations as a project cost are the following:

1. Agricultural projects.
2. Forestry projects.

3. Manufacturing projects.

4. Tourism projects.

5. Residential development, but only to the extent that it has a necessary and incidental relationship to a project listed in subs. 1. to 4.

6. Retail development that is limited to the retail sale of products that are produced due to a project that is developed under subd. 1., 2. or 3.

7. A project that is related either to retail purposes, or to a purpose for which a city may create a district under s. 66.1105, except that this subdivision applies only to the town of Brookfield in Waukesha County, and the town may create only one district to which this subdivision applies.

(c) Except as provided in par. (b) 7., no town may exercise any power under this subsection within the extraterritorial zoning jurisdiction of a city or village, as that term is defined in s. 62.23 (7a) (a), unless the city’s or village’s governing body adopts a resolution which approves the town’s exercise of power under this subsection within such an extraterritorial zoning jurisdiction.

**(3) CREATION OF TAX INCREMENTAL DISTRICTS AND APPROVAL OF PROJECT PLANS.** In order to implement the provisions of this section, the following steps and plans are required:

(a) Holding of a public hearing by the planning commission at which interested parties are afforded a reasonable opportunity to express their views on the proposed creation of a tax incremental district and the proposed boundaries of the district. Notice of the hearing shall be published as a class 2 notice, under ch. 985. Before publication, a copy of the notice shall be sent by first class mail to the chief executive officer or administrator of all local governmental entities having the power to levy taxes on property located within the proposed district and to the school board of any school district which includes property located within the proposed district. For a county with no chief executive officer or administrator, notice shall be sent to the county board chairperson.

(b) Designation by the planning commission of the boundaries of a tax incremental district recommended by it and submission of the recommendation to the town board.

(c) Identification of the specific property to be included in the proposed tax incremental district. Owners of the property identified shall be notified of the proposed finding and the date of the hearing to be held under par. (e) at least 15 days prior to the date of the hearing.

(d) Preparation and adoption by the planning commission of a proposed project plan for each tax incremental district.

(e) At least 30 days before adopting a resolution under par. (h), holding of a public hearing by the planning commission at which interested parties are afforded a reasonable opportunity to express their views on the proposed project plan. The hearing may be held in conjunction with the hearing provided for in par. (a). Notice of the hearing shall be published as a class 2 notice, under ch. 985. The notice shall include a statement advising that a copy of the proposed project plan will be provided on request. Before publication, a copy of the notice shall be sent by 1st class mail to the chief executive officer or administrator of all local governmental entities having the power to levy taxes on property within the district and to the school board of any school district which includes property located within the proposed district. For a county with no chief executive officer or administrator, notice shall be sent to the county board chairperson.

(f) Adoption by the planning commission of a project plan for each tax incremental district and submission of the plan to the town board. The plan shall include a statement listing the kind, number and location of all proposed public works or improvements within the district or, to the extent provided in sub. (1) (h) 1. j., outside the district, an economic feasibility study, a detailed list of estimated project costs, and a description of the methods of financing all estimated project costs and the time when the related costs or monetary obligations are to be incurred. The plan shall also include a map showing existing uses and conditions of real

property in the district; a map showing proposed improvements and uses in the district; proposed changes of zoning ordinances, master plan, if any, map, building codes and town ordinances; a list of estimated nonproject costs; and a statement of the proposed method for the relocation of any persons to be displaced. The plan shall indicate how creation of the tax incremental district promotes the orderly development of the town. The town shall include in the plan an opinion of the town attorney or of an attorney retained by the town advising whether the plan is complete and complies with this section.

(g) Approval by the town board of a project plan prior to or concurrent with the adoption of a resolution under par. (h). The approval shall be by resolution which contains findings that the plan is feasible and in conformity with the master plan, if any, of the town.

(h) Adoption by the town board of a resolution which:

1. Describes the boundaries, which may, but need not, be the same as those recommended by the planning commission, of a tax incremental district with sufficient definiteness to identify with ordinary and reasonable certainty the territory included in the district. The boundaries shall include only those whole units of property as are assessed for general property tax purposes.

2. Creates the district as of January 1 of the same calendar year for a resolution adopted before October 1 or as of January 1 of the next subsequent calendar year for a resolution adopted after September 30.

3. Assigns a name to the district for identification purposes. The first district created shall be known as “Tax Incremental District Number One, Town of ... in ... County”. Each subsequently created district shall be assigned the next consecutive number.

4. Declares the district to be either an agricultural project district, forestry project district, manufacturing project district, or tourism project district, and identifies the North American Industry Classification System industry number of each activity under each project for which project costs are to be expended; or declares the district to be a project described in sub. (2) (b) 7.

5. Contains all of the following findings:

a. That not less than 75 percent, by area, of the real property within the district is to be used for projects of a single one of the project types listed under sub. (2) (b) 1. to 4. or 7. and in accordance with the declaration under subd. 4.

b. That the improvement of the area is likely to enhance significantly the value of substantially all of the other real property in the district. It is not necessary to identify the specific parcels meeting the criteria.

c. That the project costs of the district are limited to those specified under sub. (2) (b) and relate directly to a project described in sub. (2) (b) 7. or to promoting agriculture, forestry, manufacturing, or tourism development.

d. That either the equalized value of taxable property of the district plus all existing districts does not exceed 7 percent of the total equalized value of taxable property within the town or the equalized value of taxable property of the district plus the value increment of all existing districts within the town does not exceed 5 percent of the total equalized value of taxable property within the town.

6. Confirms that any real property within the district that is intended to be used for a manufacturing project is zoned for industrial use and will remain zoned for industrial use for the life of the tax incremental district.

(i) Review by a joint review board, acting under sub. (4), that results in its approval of the resolution under par. (h).

(j) 1. Subject to subd. 2., the planning commission may, by resolution, adopt an amendment to a project plan. The amendment is subject to approval by the town board and approval requires the same findings as provided in pars. (g) and (h). Any amendment to a project plan is also subject to review by a joint review board, acting under sub. (4). Adoption of an amendment to a project plan

shall be preceded by a public hearing held by the plan commission at which interested parties shall be afforded a reasonable opportunity to express their views on the amendment. Notice of the hearing shall be published as a class 2 notice, under ch. 985. The notice shall include a statement of the purpose and cost of the amendment and shall advise that a copy of the amendment will be provided on request. Before publication, a copy of the notice shall be sent by 1st class mail to the chief executive officer or administrator of all local governmental entities having the power to levy taxes on property within the district and to the school board of any school district which includes property located within the proposed district. For a county with no chief executive officer or administrator, this notice shall be sent to the county board chairperson.

2. Not more than once during the 5 years after the tax incremental district is created, the planning commission may adopt an amendment to a project plan under subd. 1. to modify the district’s boundaries by adding territory to the district that is contiguous to the district and that is served by public works or improvements that were created as part of the district’s project plan. Expenditures for project costs that are incurred because of an amendment to a project plan to which this subdivision applies may be made for not more than 2 years after the date on which the town board adopts a resolution amending the project plan.

(k) The town board shall provide the joint review board with the following information and projections:

1. The projects included in the district and the specific project costs, the total dollar amount of these project costs to be paid with the tax increments, and the amount of tax increments to be generated over the life of the tax incremental district.

2. The amount of the value increment when the project costs in subd. 1. are paid in full and the tax incremental district is terminated.

3. The reasons why the project costs in subd. 1. may not or should not be paid by the owners of property that benefits by improvements within the tax incremental district.

4. The share of the projected tax increments in subd. 1. estimated to be paid by the owners of taxable property in each of the taxing jurisdictions overlying the tax incremental district.

5. The benefits that the owners of taxable property in the overlying taxing jurisdictions will receive to compensate them for their share of the projected tax increments in subd. 4.

(L) Calculation by the local assessor of the value of all tax-exempt town-owned property, except property described in sub. (5) (c), in the proposed tax incremental district, as of the day of the district’s creation. This information shall be sent to the department of revenue for inclusion in the tax incremental district’s tax incremental base that is determined under sub. (5) (b) or (d) 1.

(4) JOINT REVIEW BOARD. (a) 1. Any town that seeks to create a tax incremental district or amend a project plan shall convene a joint review board to review the proposal. Except as provided in subd. 2., and subject to par. (am), the joint review board shall consist of one representative chosen by the school district that has power to levy taxes on the property within the tax incremental district, one representative chosen by the technical college district that has power to levy taxes on the property within the tax incremental district, one representative chosen by the county that has power to levy taxes on the property within the tax incremental district, one representative chosen by the town and one public member. If more than one school district, more than one union high school district, more than one elementary school district, or more than one technical college district has the power to levy taxes on the property within the tax incremental district, the unit in which is located property of the tax incremental district that has the greatest value shall choose that representative to the joint review board. The public member and the joint review board’s chairperson shall be selected by a majority of the other joint review board members before the public hearing under sub. (3) (a) or (j) 1. is held. All joint review board members shall be appointed and the first joint review board meeting held within 14 days after the notice is pub-

lished under sub. (3) (a) or (j) 1. Additional meetings of the joint review board shall be held upon the call of any member. The town that seeks to create the tax incremental district or to amend its project plan shall provide administrative support for the joint review board. By majority vote, the joint review board may disband following approval or rejection of the proposal.

2. If a town seeks to create a tax incremental district that is located in a union high school district, the seat that is described under subd. 1. for the school district representative to the joint review board shall be held by 2 representatives, each of whom has one-half of a vote. One representative shall be chosen by the union high school district that has the power to levy taxes on the property within the tax incremental district and one representative shall be chosen by the elementary school district that has the power to levy taxes on the property within the tax incremental district.

(am) 1. A representative chosen by a school district under par. (a) 1. or 2. shall be the president of the school board, or his or her designee. If the school board president appoints a designee, he or she shall give preference to the school district's finance director or another person with knowledge of local government finances.

2. The representative chosen by the county under par. (a) 1. shall be the county executive or, if the county does not have a county executive, the chairperson of the county board, or the executive's or chairperson's designee. If the county executive or county board chairperson appoints a designee, he or she shall give preference to the county treasurer or another person with knowledge of local government finances.

3. The representative chosen by the town under par. (a) 1. shall be the town board chairperson, or his or her designee. If the town board chairperson appoints a designee, he or she shall give preference to the person in charge of administering the town's economic development programs, the town treasurer, or another person with knowledge of local government finances.

4. The representative chosen by the technical college district under par. (a) 1. shall be the district's director or his or her designee. If the technical college district's director appoints a designee, he or she shall give preference to the district's chief financial officer or another person with knowledge of local government finances.

(b) 1. The joint review board shall review the public record, planning documents and the resolution passed by the town board or planning commission under sub. (3) (h) or (j) 1. As part of its deliberations the joint review board may hold additional hearings on the proposal.

2. No tax incremental district may be created and no project plan may be amended unless the joint review board approves the resolution adopted under sub. (3) (h) or (j) 1. by a majority vote not less than 10 days nor more than 30 days after receiving the resolution.

3. The joint review board shall submit its decision to the town no later than 7 days after the board acts on and reviews the items in subd. 2.

(c) 1. The joint review board shall base its decision to approve or deny a proposal on the following criteria:

a. Whether the project costs to be expended in the tax incremental district comply with the limitations specified in sub. (2) (b).

b. Whether the development expected in the tax incremental district would occur without the use of tax incremental financing.

c. Whether the economic benefits of the tax incremental district, as measured by increased employment, business and personal income, and property value, are insufficient to compensate for the cost of the improvements.

d. Whether the benefits of the proposal outweigh the anticipated tax increments to be paid by the owners of property in the overlying taxing districts.

2. The joint review board shall issue either a written statement that, in its judgment, all of the criteria under subd. 1. have been met or a written explanation describing why any proposal it rejects fails to meet one or more of the criteria specified in subd. 1.

(5) DETERMINATION OF TAX INCREMENT AND TAX INCREMENTAL BASE. (a) Subject to sub. (10) (d), upon the creation of a tax incremental district or upon adoption of any amendment subject to par. (d) 1., its tax incremental base shall be determined as soon as reasonably possible. The department of revenue may impose a fee of \$1,000 on a town to determine or redetermine the tax incremental base of a tax incremental district under this subsection.

(b) Upon application in writing by the town clerk, in a form prescribed by the department of revenue, the department shall determine according to its best judgment from all sources available to it the full aggregate value of the taxable property and, except as provided in par. (c), of the town-owned property in the tax incremental district. Subject to sub. (10) (d), the department shall certify this aggregate valuation to the town clerk, and the aggregate valuation constitutes the tax incremental base of the tax incremental district. The town clerk shall complete these forms upon the creation of a tax incremental district or upon the amendment of a district's project plan and shall submit the application on or before December 31 of the year the tax incremental district is created, as defined in sub. (3) (h) 2. or, in the case of an amendment, on or before December 31 of the year in which the changes to the project plan take effect.

(c) The value of real property owned by a town and used for police and fire buildings, administrative buildings, libraries, community and recreational buildings, parks, streets and improvements within any street right-of-way, parking facilities and utilities shall not be included in the tax incremental base established under par. (b) or (d) 1.

(d) 1. If the town adopts an amendment to the original project plan under sub. (3) (j) for any district which includes additional project costs at least part of which will be incurred after the period specified in sub. (6) (b) 1., the tax incremental base for the district shall be redetermined by adding to the tax incremental base the value of the taxable property, and, except as provided in par. (c), of the town-owned property, that is added to the existing district as of the January 1 of the same calendar year for a resolution adopted before October 1 or as of January 1 of the next subsequent calendar year for a resolution adopted after September 30. The tax incremental base as redetermined under this subdivision is effective for the purposes of this section only if it exceeds the original tax incremental base determined under par. (b).

2. If after January 1 a city or village annexes town territory that contains part of a tax incremental district that is created by the town, the department of revenue shall redetermine the tax incremental base of the district by subtracting from the tax incremental base the value of the taxable property that is annexed from the existing district as of the following January 1, and if the annexation becomes effective on January 1 of any year, the redetermination shall be made as of that date. The tax incremental base as redetermined under this subdivision is effective for the purposes of this section only if it less than the original tax incremental base determined under par. (b).

(e) Annually, no later than May 15, the town clerk shall file with the department of revenue, on a form provided by the department, a list of the expenditures for the district that were made in the previous year.

(f) The town clerk shall annually, after May 1 but before May 21, by written notice, inform the department of revenue of any amendment to the project plan which has been adopted. The town clerk shall also give written notice of the adoption of an amendment to the department of revenue within 60 days after its adoption. The department of revenue may prescribe forms to be used by the town clerk when giving notice as required by this paragraph.

(g) The department of revenue may not certify the tax incremental base as provided in par. (b) until it determines that each of the procedures and documents required by sub. (3) (a), (b), (h) or (j) and par. (b) has been timely completed and all notices required under sub. (3) (a), (b), (h) or (j) timely given. The facts supporting any document adopted or action taken to comply with sub. (3) (a), (b), (h) or (j) are not subject to review by the department of revenue under this paragraph, except that the department may not certify the tax incremental base as provided in par. (b) until it reviews and approves the findings made under sub. (3) (h) 4. and 5. d.

(h) The town assessor shall identify upon the assessment roll returned and examined under s. 70.45 those parcels of property which are within each existing tax incremental district, specifying the name of each district. A similar notation shall appear on the tax roll made by the town clerk under s. 70.65.

(i) The department of revenue shall annually give notice to the designated finance officer of all governmental entities having the power to levy taxes on property within each district as to the equalized value of the property and the equalized value of the tax increment base. The notice shall also explain that the tax increment allocated to a town shall be paid to the town as provided under sub. (6) (c) from the taxes collected.

**(6) ALLOCATION OF POSITIVE TAX INCREMENTS.** (a) If the joint review board approves the creation of the tax incremental district under sub. (4), and subject to par. (am), positive tax increments with respect to a tax incremental district are allocated to the town which created the district for each year commencing after the date when a project plan is adopted under sub. (3) (g). The department of revenue may not authorize allocation of tax increments until it determines from timely evidence submitted by the town that each of the procedures and documents required under sub. (3) (d) to (f) has been completed and all related notices given in a timely manner. The department of revenue may authorize allocation of tax increments for any tax incremental district only if the town clerk and assessor annually submit to the department all required information on or before the 2nd Monday in June. The facts supporting any document adopted or action taken to comply with sub. (3) (d) to (f) are not subject to review by the department of revenue under this paragraph except as provided under par. (e). After the allocation of tax increments is authorized, the department of revenue shall annually authorize allocation of the tax increment to the town that created the district until the sooner of the following events:

1. The department of revenue receives a notice under sub. (10) and the notice has taken effect under sub. (10) (b).

2. Sixteen years after the tax incremental district is created.

(am) With regard to each district for which the department of revenue authorizes the allocation of a tax increment under par. (a), the department shall charge the town that created the district an annual administrative fee of \$150 that the town shall pay to the department no later than May 15. If the town does not pay the fee that is required under this paragraph, by May 15, the department may not authorize the allocation of a tax increment under par. (a) for that town.

(b) 1. No expenditure may be made for a tax incremental district that is created under this section later than 5 years after the tax incremental district is created.

2. The limitations on the period during which expenditures may be made under subd. 1. do not apply to expenditures to pay project costs incurred under ch. 32.

3. The limitations on the period during which expenditures may be made under subd. 1. do not apply to expenditures authorized by the adoption of an amendment to the project plan under sub. (3) (j), except that in no case may the total number of years during which expenditures are made exceed 7 years.

(c) Every officer charged by law to collect and pay over or retain local general property taxes shall, on the settlement dates provided by law, pay over to the town treasurer out of all the taxes which the officer has collected the proportion of the tax increment

due the town that the general property taxes collected in the town bears to the total general property taxes levied by the town for all purposes included in the tax roll, exclusive of levies for state trust fund loans, state taxes and state special charges.

(d) All tax increments received with respect to a tax incremental district shall, upon receipt by the town treasurer, be deposited into a special fund for that district. The town treasurer may deposit additional moneys into such fund pursuant to an appropriation by the town board. No moneys may be paid out of such fund except to pay project costs with respect to that district, to reimburse the town for such payments, or to satisfy claims of holders of bonds or notes issued with respect to such district. Moneys paid out of the fund to pay project costs with respect to a district may be paid out before or after the district is terminated under sub. (9). Subject to any agreement with bondholders, moneys in the fund may be temporarily invested in the same manner as other town funds if any investment earnings are applied to reduce project costs. After all project costs and all bonds and notes with respect to the district have been paid or the payment thereof provided for, subject to any agreement with bondholders, if there remain in the fund any moneys, they shall be paid over to the treasurer of each county, school district or other tax levying municipality or to the general fund of the town in the amounts that belong to each respectively, having due regard for that portion of the moneys, if any, that represents tax increments not allocated to the town and that portion, if any, that represents voluntary deposits of the town into the fund.

(e) 1. Any of the following persons may file a written request with the department of revenue requesting a review of a tax incremental district created under this section to determine whether money expended, or debt incurred, by the district in the prior year complied with the requirement under sub. (2) (b):

a. An owner of taxable property that is located in the town that has created the district.

b. An owner of taxable property that is located in a taxing jurisdiction which overlies the town in which the district is located.

c. An owner of taxable property in a city or village that borders the town in which the district is located.

d. A taxing jurisdiction that overlies the town in which the district is located.

e. A city or village that borders the town in which the district is located.

2. A written request described under subd. 1. shall be on a form that is prescribed by the department of revenue, shall contain the grounds on which the request is based, and shall be filed with the department no later than July 1.

3. The department of revenue may deny any request for review that is made under this paragraph if the department believes, based on a review of the request, that insufficient grounds exist to support the alleged noncompliance with sub. (2) (b). The department shall send written notification of its decision to the person who made the request for review and to the town.

4. If the department of revenue grants a request for review that is made under this paragraph, it shall hold a hearing and it shall send written notification of the hearing to the clerk of the town that created the tax incremental district, the person who requested the review, the clerk of each overlying taxing jurisdiction, and the clerk of every city or village that borders the town. The written notification shall include the time, date, and location of the hearing.

5. The secretary of revenue, or the secretary's designee, shall preside at the hearing and shall receive testimony and evidence on all issues that are related to the request for review. Following the hearing, the secretary shall make one of the following determinations:

a. The town is in compliance with sub. (2) (b).

b. The town has made expenditures or incurred debts that are not allowed under sub. (2) (b). If the secretary makes this determination, the secretary shall either order the town to pay back all

ineligible costs to the district's overlying taxing jurisdictions, on a proportional basis that relates to each jurisdiction's share of the tax increment, from funds other than tax increments allocated under this subsection, or shall order the district to be terminated. If the secretary orders the district to be terminated, the town becomes liable for all unpaid project costs actually incurred which are not paid from the special fund under sub. (6) (d).

6. Any person or unit of government that received a notice under subd. 4. may appeal the secretary's decision to the circuit court in Dane County.

**(7) NOTIFICATION OF POSITION OPENINGS.** (a) Any person who operates for profit and is paid project costs under sub. (1) (h) 1. a., d., i., and j. in connection with the project plan for a tax incremental district shall notify the department of workforce development and the local workforce development board established under 29 USC 2832 of any positions to be filled in the county in which the town that created the tax incremental district is located during the period commencing with the date the person first performs work on the project and ending one year after receipt of its final payment of project costs. The person shall provide this notice at least 2 weeks prior to advertising the position.

(b) Any person who operates for profit and buys or leases property in a tax incremental district from a town for which the town incurs real property assembly costs under sub. (1) (h) 1. c. shall notify the department of workforce development and the local workforce development board established under 29 USC 2832 of any position to be filled in the county in which the town creating the tax incremental district is located within one year after the sale or commencement of the lease. The person shall provide this notice at least 2 weeks prior to advertising the position.

**(8) REVIEW.** (a) The town shall cause a certified public accountant to conduct audits of each tax incremental district to determine if all financial transactions are made in a legal and proper manner and to determine if the tax incremental district is complying with its project plan and with this section. Any town that creates a tax incremental district under this section and has an annual general audit may include the audits required under this subsection as part of the annual general audit.

(b) Audits shall be conducted at all the following times:

1. No later than twelve months after 30 percent of the project expenditures are made.
2. No later than twelve months after the end of the expenditure period specified in sub. (6) (b) 1.
3. No later than twelve months after the termination of the tax incremental district under sub. (9).

(c) The town shall prepare and make available to the public updated annual reports describing the status of each existing tax incremental district, including expenditures and revenues. The town shall send a copy of the report to each overlying district by May 1 annually.

**(9) TERMINATION OF TAX INCREMENTAL DISTRICTS.** A tax incremental district terminates when the earliest of the following occurs:

(a) That time when the town has received aggregate tax increments with respect to the district in an amount equal to the aggregate of all project costs under the project plan and any amendments to the project plan for the district.

(b) Eleven years after the last expenditure identified in the original, unamended project plan is made.

(c) The town board, by resolution, dissolves the district, at which time the town becomes liable for all unpaid project costs actually incurred which are not paid from the special fund under sub. (6) (d).

(d) The secretary of revenue determines that tax increments have been used to pay for ineligible costs and the secretary of revenue orders that the district be terminated under sub. (6) (e) 5. b.

**(10) NOTICE OF DISTRICT TERMINATION.** (a) A town which creates a tax incremental district under this section shall give the

department of revenue written notice within 10 days of the termination of the tax incremental district under sub. (9).

(b) If the department of revenue receives a notice under par. (a) during the period from January 1 to May 15, the effective date of the notice is the date the notice is received. If the notice is received during the period from May 16 to December 31, the effective date of the notice is the first January 1 after the department of revenue receives the notice.

(c) Not later than February 15 of the year immediately following the year in which a town transmits to the department of revenue the notice required under par. (a), the town shall send to the department, on a form prescribed by the department, all of the following information that relates to the terminated tax incremental district:

1. A final accounting of all expenditures made by the town.
2. The total amount of project costs incurred by the town.
3. The total amount of positive tax increments received by the town.

(d) If a town does not send to the department of revenue the form specified in par. (c), the department may not certify the tax incremental base of a tax incremental district in the town under sub. (5) (a) and (b) until the form is sent to the department.

**(11) FINANCING OF PROJECT COSTS.** Payment of project costs may be made by any one or more of the following methods:

(a) Payment by the town from the special fund of the tax incremental district.

(b) Payment out of its general funds.

(c) Payment out of the proceeds of the sale of bonds or notes issued by it under ch. 67.

(d) Payment out of the proceeds of the sale of public improvement bonds issued by it under s. 66.0619.

(e) Payment as provided under s. 66.0713 (2) and (4) or 67.16.

(f) Payment out of the proceeds of revenue bonds or notes issued by it under s. 66.0621.

(g) Payment out of the proceeds of revenue bonds issued by the town as provided by s. 66.1103, for a purpose specified in that section.

**(12) OVERLAPPING TAX INCREMENTAL DISTRICTS.** (a) Subject to any agreement with bondholders, a tax incremental district may be created, the boundaries of which overlap one or more existing districts, except that districts created as of the same date may not have overlapping boundaries.

(b) If the boundaries of 2 or more tax incremental districts overlap, in determining how positive tax increments generated by that area which is within 2 or more districts are allocated among the overlapping districts, but for no other purpose, the aggregate value of the taxable property in the area as equalized by the department of revenue in any year as to each earlier created district is that portion of the tax incremental base of the district next created which is attributable to the overlapped area.

**(13) EQUALIZED VALUATION FOR APPORTIONMENT OF PROPERTY TAXES.** With respect to the county, school districts and any other local governmental body having the power to levy taxes on property located within a tax incremental district, if the allocation of positive tax increments has been authorized by the department of revenue under sub. (6) (a), the calculation of the equalized valuation of taxable property in a tax incremental district for the apportionment of property taxes may not exceed the tax incremental base of the district until the district is terminated.

**(16) USE OF TAX INCREMENTAL FINANCING FOR INLAND LAKE PROTECTION AND REHABILITATION PROHIBITED.** Notwithstanding sub. (11), no tax incremental financing project plan may be approved and no payment of project costs may be made for an inland lake protection and rehabilitation district or a county acting under s. 59.70 (8).

**(17) PAYMENT OF ELIGIBLE COSTS FOR ANNEXED TERRITORY, REDETERMINATION OF TAX INCREMENTAL BASE.** If a city or village annexes territory from a town and if all or part of the territory that



is annexed is part of a tax incremental district created by the town, the city or village shall pay to the town that portion of the eligible costs that are attributable to the annexed territory. The city or village, and the town, shall negotiate an agreement on the amount that must be paid under this subsection. The department shall redetermine the tax incremental base of any parcel of real property for which the tax incremental base was determined under sub. (5) if part of that parcel is annexed under this subsection.

**(18) SUBSTANTIAL COMPLIANCE.** Substantial compliance with subs. (2), (3) (a), (b), (c), (d), (e), (f), and (j), (4), and (5) (b) by a town that creates, or attempts to create, a tax incremental district is sufficient to give effect to any proceedings conducted under this

section if, in the opinion of the department of revenue, any error, irregularity, or informality that exists in the town's attempts to comply with subs. (2), (3) (a), (b), (c), (d), (e), (f), and (j), (4), and (5) (b) does not affect substantial justice. If the department of revenue determines that a town has substantially complied with subs. (2), (3) (a), (b), (c), (d), (e), (f), and (j), (4), and (5) (b), the department of revenue shall determine the tax incremental base of the district, allocate tax increments, and treat the district in all other respects as if the requirements under subs. (2), (3) (a), (b), (c), (d), (e), (f), and (j), (4), and (5) (b) had been strictly complied with based on the date that the resolution described under sub. (3) (h) 2. is adopted.

**History:** 2003 a. 231, 326, 327; 2005 a. 330; 2009 a. 28, 312; 2011 a. 11, 32.