



1995 ASSEMBLY BILL 374

May 16, 1995 - Introduced by Representatives DUFF, LAZICH, URBAN, HOVEN, SCHNEIDERS, GROTHMAN and FREESE, cosponsored by Senators FARROW and PANZER. Referred to Committee on Environment and Utilities.

1 **AN ACT to repeal** 66.898 (4) (c), 66.899 and 144.241 (8) (L) 2.; **to amend** 66.076
2 (5), 66.076 (8), 66.886 (2) (a) 1., 66.898 (4) (b), 66.91 (5) (a), 66.91 (5) (c) 2., 66.912
3 (5), 144.241 (8) (L) (intro.) and 144.241 (8) (L) 1.; **to repeal and recreate** 66.91
4 (5) (b); and **to create** 66.894 (1m) and 144.241 (8) (L) 3. of the statutes; **relating**
5 **to:** the authority of the Milwaukee Metropolitan Sewerage District to charge
6 for capital costs and to undertake certain projects, the methods by which the
7 district may assess capital costs, capital cost loans under the clean water fund
8 program and an evaluation of wastewater treatment services provided by the
9 Milwaukee Metropolitan Sewerage District.

Analysis by the Legislative Reference Bureau

Under current law, the Milwaukee Metropolitan Sewerage District (MMSD) provides sewerage services within its district boundaries, which include Milwaukee County and small portions of Waukesha and Ozaukee counties. The district also provides sewerage services on a contract basis to several nearby cities and villages (contract communities) that are outside its boundaries.

Current law authorizes MMSD to establish, assess and collect from any user of the system sewerage service charges. These service charges may be used to collect capital costs from all users of the system, and the schedule of sewerage service charges for capital costs that are imposed on users within the district and on the contract communities must be uniform.

Under this bill, MMSD and other entities that provide sewerage services are required to calculate their charges based on a method that reasonably recovers

capital costs in the proportion to which the user's discharge contributes to capital costs.

Current law provides 2 methods by which MMSD may recover capital costs from both users within the district and the contract communities that are based on taxable property value.

This bill changes current law, as it relates to one of these 2 methods, and overturns a decision of the Court of Appeals by abolishing MMSD's authority to recover capital costs from contract communities, or from any other user of the system, by levying property taxes on property within a contract community or by basing charges upon the property value of property within a contract community. This bill also changes current law, as it relates to the other method by which MMSD may recover capital costs, by abolishing MMSD's authority to recover capital costs from both contract communities and from any other user of the system by levying property taxes on any users' property or by basing charges upon the property value of the users' property, subject to one exception. The exception allows a property tax levy or the imposition of charges based on property value only if there is a substantial and unexpected shortfall in revenue such that without such a financing system, MMSD's general obligation bonds would not be paid.

Current law also authorizes MMSD, as a complete or partial alternative to any other allowable method of recovering capital costs, to recover capital costs from any user by computing a schedule of charges based on the capital costs and by considering any improvements or additions to the sewerage system. The bill repeals this method of recovering capital costs. Under this bill, MMSD may recover capital costs for certain specified projects, such as river and stream alterations, water diversion projects and storm water management projects, by individually assessing the municipality in which the project is located. Under the bill, capital costs for such projects may not be assessed to all MMSD users.

Under current law, MMSD is required to project, plan, design, construct, maintain and operate a sewerage system for the collection, transmission and disposal of all sewerage and drainage in its service area and to abate combined sewer overflows. To carry out these duties, current law authorizes MMSD to conduct certain activities, including projecting, planning, designing, adopting, constructing, operating and maintaining things such as sewers, conduits, drains, facilities for the treatment and disposal of sewage, pumping stations and buildings and other facilities appurtenant to other authorized structures.

This bill prohibits MMSD from projecting, planning, designing, adopting, constructing, operating, maintaining or acquiring real property for certain purposes, such as for park land, harbor improvements or fire protection services.

Under the clean water fund program, this state provides financial assistance for purposes related to the control of water pollution. One type of financial assistance that may be provided under the clean water fund program is called a capital cost loan. The total amount of capital cost loans may not exceed \$120,000,000. Under current law, a capital cost loan may be made only if the cities of Brookfield, Mequon, Muskego and New Berlin and the villages of Butler, Elm Grove, Germantown, Menomonee Falls and Thiensville have entered into an agreement with MMSD under which each

municipality agrees to pay a portion of the \$120,000,000 in capital cost loans to MMSD for MMSD's capital costs and the total amount that the municipalities agree to pay equals at least \$120,000,000.

This bill changes the clean water fund program capital cost loan provisions. The bill deletes Muskego from the capital cost loan provisions. Under the bill, a capital cost loan may be made only if one of the following has occurred:

1. Each of the remaining municipalities has agreed to make a payment to MMSD for MMSD's capital costs and MMSD agrees to accept the payments.

2. Each of the remaining municipalities have been required by court order or judgment to pay a portion of the capital costs of MMSD.

This bill requires the department of natural resources to evaluate whether the provision of wastewater treatment services in the southeastern area of this state by MMSD would be improved by increasing the number of entities providing wastewater treatment services in that area.

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

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

1 **SECTION 1.** 66.076 (5) of the statutes is amended to read:

2 66.076 (5) For the purpose of making equitable charges for all services
3 rendered by the sewerage system to the municipality or to citizens, corporations and
4 other users, ~~the property benefited thereby may be classified, taking into~~
5 consideration charges for sewerage services shall, to the extent practicable, be
6 proportionate to the costs of the sewerage system that the municipality may
7 reasonably attribute to the user. In establishing sewerage service charges, the
8 municipality may consider any reasonable factor, including the volume of water,
9 including surface or drain waters, the character of the sewage or waste and the
10 nature of the use made of the sewerage system, including the sewage disposal plant
11 except that a metropolitan sewerage district created under ss. 66.88 to 66.918 may
12 not recover capital costs under this section from any party by levying property taxes
13 against property or by basing charges upon the value of property of any user. The

1 charges may also include standby charges to property not connected but for which
2 such facilities have been made available.

3 **SECTION 2.** 66.076 (8) of the statutes is amended to read:

4 66.076 (8) The governing body of any municipality, and the officials in charge
5 of the management of the sewerage system as well as other officers of the
6 municipality, shall be governed in the discharge of their powers and duties under this
7 section by s. 66.069 or 66.071 (1) (e), or, in the case of a metropolitan sewerage district
8 created under ss. 66.88 to 66.918, by ss. 66.91 and 66.912 which are hereby made a
9 part of this section so far as applicable and not inconsistent herewith ~~or, in the case~~
10 ~~of a metropolitan sewerage district created under ss. 66.88 to 66.918, by ss. 66.91 and~~
11 ~~66.912.~~

12 **SECTION 3.** 66.886 (2) (a) 1. of the statutes is amended to read:

13 66.886 (2) (a) 1. No resolution adopted by the commission under s. 66.91 (1),
14 (3) (c) or (6), 67.05 (1) or 67.12 (12), no schedule of charges under s. 66.076, or 66.898
15 (4), ~~66.899 or 66.91 (5) (b) 3.~~, no decision to borrow against taxes under s. 67.12 (1)
16 and no decision to borrow under s. 24.61 (3) (a) 7. is valid unless adopted by an
17 affirmative vote of at least a two-thirds majority of all commissioners.

18 **SECTION 4.** 66.894 (1m) of the statutes is created to read:

19 66.894 (1m) RESTRICTIONS ON THE COMMISSION. The commission may not project,
20 plan, design, adopt, construct, operate and maintain, or acquire real property for, any
21 of the following:

22 (a) Park lands, conservancy districts or other open space uses of land.

23 (b) Water supply sources for any residential, industrial or commercial user.

24 (c) Fire protection services along waterways.

25 (d) Harbor improvements.

1 **SECTION 5.** 66.898 (4) (b) of the statutes is amended to read:

2 66.898 (4) (b) ~~Except as provided in par. (c), the charges~~ Charges assessed
3 under this subsection shall be established in accordance with s. 66.076 or 66.91 (5).
4 In computing the schedule of charges under this subsection, the commission may
5 consider the factors specified in s. 66.076 (5) or 66.91 (5), or any other reasonable
6 factor, except that the commission may not recover capital costs from any contracting
7 party by levying property taxes against property located within the territorial limits
8 of the contracting party or basing charges upon the property value of property within
9 the territorial limits of the contracting party. In computing the schedule of charges
10 under this subsection, the commission may also consider the fact that sewerage
11 service may not be available to or may be available to but not utilized by a part of the
12 property located within the territorial limits of a contracting party at the time of
13 computing the schedule.

14 **SECTION 6.** 66.898 (4) (c) of the statutes is repealed.

15 **SECTION 7.** 66.899 of the statutes is repealed.

16 **SECTION 8.** 66.91 (5) (a) of the statutes is amended to read:

17 66.91 (5) (a) ~~For~~ Except as provided in par. (b), for sewerage service provided
18 to any user, the commission may establish, assess and collect service charges under
19 s. 66.076 or under this subsection. ~~For service to any user outside the district and~~
20 ~~not located in a municipality which has contracted with the district under s. 66.898,~~
21 ~~the commission may establish, assess and collect service charges under s. 66.899.~~
22 ~~Except as provided under s. 66.899 (2), any~~ Any charge made by the district under
23 this subsection is reviewable under s. 66.912 (5). The sewerage service charges
24 established under s. 66.076 or under this subsection with respect to capital costs for
25 service to any user shall be uniform.

1 **SECTION 9.** 66.91 (5) (b) of the statutes is repealed and recreated to read:

2 66.91 (5) (b) The commission may recover, and bill for, capital costs for the
3 following projects only by individually assessing the municipality in which the
4 project is located:

5 1. River and stream alterations under s. 66.894 (8).

6 2. Water diversion projects under s. 66.894 (9).

7 3. Shoreline protection projects under s. 66.894 (14).

8 4. Storm water management projects authorized or required by state or federal
9 law.

10 5. Combined sewer system repairs.

11 6. Separating combined sewers under s. 66.892 (2).

12 **SECTION 10.** 66.91 (5) (c) 2. of the statutes is amended to read:

13 66.91 (5) (c) 2. The commission may classify users on the basis of uses and may
14 establish separate charges for separate classes. In computing charges, the
15 commission may consider any reasonable factor, including wastewater flow or
16 drainage, the character of the sewage or waste, delivery flow characteristics, water
17 consumption, type and number of sewerage connections or plumbing fixtures,
18 population served, lot size, and portion of lot improved and assessed value of property
19 served, and the municipality shall use a method of establishing charges that
20 reasonably recovers capital costs in the proportion to which the user's discharge
21 contributes to capital costs and in an amount sufficient to cover the district's capital
22 budget. The commission may not recover capital costs from any user by levying
23 property taxes on the users' property or by basing charges upon the property value
24 of the users' property unless there is a substantial and unexpected shortfall in
25 revenue such that general obligation bonds would not be paid. The commission may

1 also compute its fee schedules as needed to meet the requirements of s. 66.076 or of
2 title II of the water pollution control act, 33 USC 1251 et seq.

3 **SECTION 11.** 66.912 (5) of the statutes is amended to read:

4 66.912 (5) REVIEW BY PUBLIC SERVICE COMMISSION. ~~Except as provided under s.~~
5 ~~66.899 (2), upon~~ Upon complaint to the public service commission by any user that
6 charges, rules and practices under this section are unreasonable or unjustly
7 discriminatory, according to the standards and criteria which the commission is
8 required to follow under state or federal law, including, without limitation because
9 of enumeration, this section, 33 USC 1251 et. seq. and ch. 147, or upon complaint of
10 a holder of a revenue bond or other evidence of debt, secured by a mortgage on the
11 sewerage system or any part thereof or pledge of the income of sewerage service
12 charges, that charges are inadequate, the public service commission shall
13 investigate the complaint. If sufficient cause therefor appears, the public service
14 commission shall set the matter for a public hearing upon 10 days' notice to the
15 complainant and the commission. After the hearing, if the public service commission
16 determines that the charges, rules or practices complained of are unreasonable or
17 unjustly discriminatory, it shall determine and by order fix reasonable charges, rules
18 and practices and shall make such other order respecting such complaint as may be
19 just and reasonable. The proceedings under this subsection shall be governed, as far
20 as applicable, by ss. 196.26 to 196.40. The commission may submit the factual data,
21 reports and analyses considered by it in establishing the charges, rules or practices
22 subject to a complaint under this subsection. The public service commission shall
23 give due weight to such data, reports and analyses. Judicial review of the
24 determination of the public service commission may be had by any person aggrieved
25 in the manner prescribed under ch. 227. If any user pays a charge and the public

1 service commission or court, on appeal from the public service commission, finds
2 such charge, after reviewing a complaint filed under this subsection, to be excessive,
3 the district shall refund to the user the excess plus the interest thereon computed at
4 the rate then paid by the district for borrowing funds for a term of one year or less.

5 **SECTION 12.** 144.241 (8) (L) (intro.) of the statutes is amended to read:

6 144.241 (8) (L) (intro.) The total amount of capital cost loans made under this
7 section and s. 144.2415 may not exceed \$120,000,000, ~~and no.~~ If the total amount
8 of capital cost loans sought exceeds \$120,000,000, each applicant is eligible for the
9 proportion of \$120,000,000 equal to its proportion of the total amount that the
10 applicants are obligated to pay the metropolitan sewerage district organized under
11 ss. 66.88 to 66.918. No capital cost loan funds may be released under this section and
12 s. 144.2415 until the secretary of administration has found in writing that all any of
13 the following facts have has occurred:

14 **SECTION 13.** 144.241 (8) (L) 1. of the statutes is amended to read:

15 144.241 (8) (L) 1. The Each of the cities of Brookfield, Mequon, Muskego and
16 New Berlin and the villages of Butler, Elm Grove, Germantown, Menomonee Falls
17 and Thiensville ~~have signed an agreement with~~ has, individually or as a group,
18 agreed to make a payment to a metropolitan sewerage district organized under ss.
19 66.88 to 66.918, under which ~~each~~ the municipality agrees to ~~pay some portion of the~~
20 ~~amount of \$120,000,000 authorized in this paragraph~~ make a payment to the
21 metropolitan sewerage district for the district's capital costs ~~and the sum of the~~
22 ~~amount that each municipality agrees to pay equals at least \$120,000,000~~ and the
23 metropolitan sewerage district organized under ss. 66.88 to 66.918 has agreed to
24 accept the payments.

25 **SECTION 14.** 144.241 (8) (L) 2. of the statutes is repealed.

