

**MARC
DUFF**

STATE REPRESENTATIVE

Chair: Environment & Utilities
Vice Chair: Urban Education
Co-Chair: Joint Legislative Council

PRESS RELEASE

April 19, 1996
Contact: Rep. Marc C. Duff
(608) 266-1190

FOR IMMEDIATE RELEASE

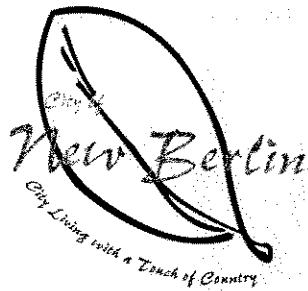
MEETING TO BE HELD ON SEWER WAR SOLUTION

Legislation intended to end the long-running "Sewer Wars" will be the topic of a joint Town-Hall meeting held at the New Berlin City Hall on April 23rd, State Representatives Marc Duff and Mary Lazich announced today.

The Town Hall meeting will center around Senate Bill 614. SB 614 would place the Milwaukee Metropolitan Sewer District (MMSD) under the oversight of the state Public Service Commission (PSC). In addition, the MMSD could be privatized if it was proven to be less costly to users of the system.

The meeting is scheduled to begin at 7:30pm. It is being held in the City Council chambers at New Berlin City Hall (3805 S. Casper Drive). Informational packets will be provided at the meeting. Rep. Duff will be holding a Citizens Advisory Board meeting beginning at 7:00pm, while Rep. Lazich will be holding Office Hours from 6:30pm to 7:30pm.





Department of Public Works
3805 South Casper Drive
New Berlin, Wisconsin 53151-5097

(414) 797-2442
Fax (414) 780-4600

June 18, 1996

Marc Duff
98th Assembly District Representative
Wisconsin State Capital
P.O. Box 8952
Madison, WI 53708-8952

Dear Representative Duff:

Thank you for your expressed concerns about sewer user rates in your letter to Mayor Cera. I have been asked to respond to your concerns. The passage of SB.614 in this past legislative session would have made a significant impact upon resolving the excessively high sewer rates in all of the FLOW communities, particularly in New Berlin. This bill did not get approved.

The Utilities first quarter bills were mailed on April 10th and an avalanche of calls came in for the past two months to both the Utility and my office. All of the callers expressed concern about the "new" rates. These will become our "standard" rates in the future if MMSD prevails in continuing with charging New Berlin on the basis of property value and not on usage as F.L.O.W. proposes.

While I have not seen the survey you sent out, I am keenly interested with what you learned. The Mayor, Council, City Staff, and I share concerns about the exorbitant sewer charges we must collect from our citizens in order to be able to pay MMSD the amount they charged us.

The current sewer user charge rates merely allows the City to collect an amount equal to what MMSD will bill us for 1996 Capital Charges for wastewater treatment. The rates will get even larger if a settlement with MMSD is reached wherein additional claimed past-dues become a reality and the City must pay more than our fair share of usage.

For sewerred customers who do not have public water available or who continue with their private well, we charge them a "flat rate". This "flat rate" is based on the same basis that MMSD bills the City for treatment use or operation charges (not the Capital portion for single family residences). The "flat rate" is an "average" residential rate for single family dwellings.

Representative Duff

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June 14, 1996

This group of customers has the option of having a water meter installed by the Utility. They are responsible to install a meter horn immediately after the pressure tank and before any branches in the plumbing system. This may typically run from \$200-\$300. The Utility will install a water meter, read it for billing purposes and maintain it. There is a quarterly charge for this of \$15.00 (\$60.00 per year and depends on meter size).

The \$60.00 per year "added cost" is more than the savings that would likely accrue on the volumetric basis for a one or two person retiree family. The sewer user charge rates provide for all customers who use 18,106 gallons per quarter to have the same bill of \$162.06, or the "average".

You suggest that perhaps "occupancy" be used as a basis for sewer rates. This is not a practical method as there is no validation, without great verification expense. Also, it is not possible to account for the increased usage due to periodic house guests of family and friends. The number of bedrooms has been used by small utilities as a means to apportion costs for one and two family residential. This is the same method used in sizing private on-site disposal systems.


We are currently doing a technical study to review the various methodologies being used to apportion sewer use/capital charges. This may conclude with recommendations for change or adjustments to our present system.

Bottom line is that the "cloud" of continuing with MMSD's method of charging us for Capital treatment charges will only push our residential customer rates even higher. Any help you can provide to circumvent this tragedy will be greatly appreciated by all of our sewer utility customers.

If you have any questions, please call me at (414) 797-2442 or Larry Wilms, Utility Superintendent, at (414) 786-7086. Thank you for your interest in this sensitive matter.

Sincerely,

CITY OF NEW BERLIN


Hamid R. Hashemizadeh
Director of Public Works

c: Mayor Mary Claire Cera
Larry Wilms, Utility Superintendent



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

April 12, 1996

TO: Representative Marc Duff
Room 306 North, State Capitol

FROM: Bob Lang, Director

SUBJECT: Amendments to Senate Bill 614 Adopted by the Joint Committee on Finance

At your request, we are providing the following summary of the amendments to Senate Bill 614 that were adopted by the Joint Committee on Finance on March 22, 1996.

The first five amendments to SB 614 had been offered and adopted by the Senate Committee on Environment and Energy. These five amendments, including the adoption of two amendments to Senate Amendment 5, were also adopted by Joint Finance. The modifications the amendments would make to SB 614 are as follows:

SENATE AMENDMENT 1 [LRBa4458/1]

Senate Amendment 1 would clarify that the charges, rates, and fees of the Milwaukee Metropolitan Sewerage District (MMSD) would be established by the Public Service Commission (PSC) pursuant to its specific statutory authority under ss. 196.03, 196.20 and 196.37. These provisions are the statutes used by the PSC as the basis of its authority to issue rate orders.

SENATE AMENDMENT 2 [LRBa4459/2], AS AMENDED BY SENATE AMENDMENT 1 TO SENATE AMENDMENT 2 [LRBa4486/1]

Senate Amendment 2, as amended by Senate Amendment 1 to SA 2 [LRBa4486/1], would change the general effective date of SB 614 to be the first day of the first month following the issuance by the PSC of its final order in a pending MMSD complaint case [Docket 9308-SR-102], but no earlier than July 1, 1996, and no later than January 1, 1997.

SENATE AMENDMENT 3 [LRBa4460/1]

Senate Amendment 3 would specify that the PSC's authority to change, amend or rescind orders applicable to MMSD rates, tolls, charges or schedules or to reopen any MMSD case would first apply to orders issued on the general effective date of the bill.

SENATE AMENDMENT 4 [LRBa4461/1]

Senate Amendment 4 would provide that when the PSC considers whether a lease or sale of MMSD assets would be in the best interests of the District's ratepayers, the PSC would have to consider whether the action meets all of the following conditions: (1) the action will provide for a reasonably adequate supply of sewerage services to meet the needs of the public; (2) the action is in the public interest when considering engineering, economic, health, safety, reliability, efficiency and environmental factors and alternate methods of providing sewerage services; (3) the action is reasonably coordinated with long-range plans and policies of other agencies or that a reasonable effort had been made to coordinate such plans and policies; and (4) the action will abate combined sewer overflows to the extent necessary to comply with federal or state law.

SENATE AMENDMENT 5 [LRBa4462/1]

Senate Amendment 5 would make the following changes to the bill:

- Sections 66.898(4)(a) and (b) of the statutes would be repealed and recreated. The recreated language would be identical to the language originally contained in Senate Bill 614. The repeal and recreate action would be taken to remove any doubt that the current law provisions are valid. These provisions had been enacted as part of a biennial budget bill (1983 Wisconsin Act 27), as were ss. 66.898(4)(c) and 66.899. The process by which these latter provisions had been enacted had been challenged in court and were found to be unconstitutional since they constituted a local law impermissibly included in a more general budget bill. Thus, the treatment of the s. 66.898(4)(a) and (b) provisions by this amendment is intended to remove any future constitutional challenge that they were originally invalidly enacted.

- Under SB 614, the PSC would have authority over the MMSD with respect to the issuance of securities by public service corporations under ch. 184 of the statutes. This amendment would establish that a regulated district (the MMSD) is a public service corporation subject to ch. 184 of the statutes and that the MMSD could not issue any securities that confer any ownership interest in that public service corporation.

- The MMSD, when proposing user and service charges, would be required to first determine its revenue requirements and to propose user and service charges that generate sufficient revenues for debt service. Further, the amendment would clarify that it is the "revenue

requirements used to calculate" the proposed user and service charges that PSC would have to presume were reasonable.

- If the MMSD uses a sinking fund basis for depreciation, the District would be subject to the same restrictions and regulations in its accounting for the entire amount credited to the depreciation reserve as are applicable to other utilities.

- The amendment would delete the provisions in SB 614 which would authorize the PSC to investigate whether MMSD's rates should be modified due to changes in the cost of energy.

- The PSC's review of MMSD's initial rate filing would be clarified as being under the agency's powers enumerated in ss. 196.03, 196.20 and 196.37 of the statutes which provide authority for the PSC to issue rate orders.

- The due date of the PSC's study of the likely effects of any sale or lease of MMSD assets on rates charged for sewage services would be changed from no later than June 30, 1998, to no later than six months after the initial filing of rates by the MMSD.

- The SB 614 requirement that the MMSD refund a portion of current reserves that are in excess of prudent reserve requirements would be modified to apply to customers of MMSD who are residents of Milwaukee County rather than to all residents of Milwaukee County.

- A total of \$488,300 PR would be appropriated to the PSC in 1996-97 and 5.0 PR permanent and 1.0 PR project position would be authorized to enable the agency to implement the provisions of Senate Bill 614.

SENATE AMENDMENT ___ [LRBa4605/1] TO SENATE AMENDMENT 5

This amendment would modify Senate Amendment 5 by shifting \$50,000 PR of the \$488,300 PR appropriated to the PSC in 1996-97 from the agency's general administrative appropriation [s. 20.155(1)(g) of the statutes] to the PSC's intervenor financing appropriation [s. 20.155(1)(j) of the statutes] to fund increased public intervention activities arising from the provisions of SB 614.

SENATE AMENDMENT ___ [LRBa4745/1] TO SENATE AMENDMENT 5

This amendment would modify Senate Amendment 5 by further clarifying that the requirement that MMSD refund a portion of current reserves that are in excess of prudent reserve requirements would apply to customers of MMSD who are residents of municipalities that have been paying service charges to MMSD since the inception of such charges (based on the equalized value of property in the municipality) for capital costs associated with MMSD's water pollution abatement program. This language would replace the provision in Senate Amendment

5 specifying that the refund would be directed to customers of MMSD who are residents of Milwaukee County. The effect of the modification would be to permit the payment of any refunds to certain customers of the District who reside outside of Milwaukee County.

In addition to the five amendments originally offered by the Senate Committee on Environment and Energy, the Joint Committee on Finance also considered and adopted the following amendments. The modifications to SB 614 that these amendments would make are as follows:

SENATE AMENDMENT ___ [LRBa4730/1]

Senate Amendment ___ [LRBa4730/1] would specify that no regulated district (the MMSD) could charge its ratepayers for any expenditure directly or indirectly incurred for advertising unless the advertising produced demonstrated, direct and substantial benefit to the ratepayers in the following areas: (1) demonstration of energy conservation methods; (2) conveyance of safety information on the use of energy; (3) demonstration of methods for reducing ratepayer costs; (4) providing of direct and substantial benefit to ratepayers; and (5) providing of information as required by law. Under the amendment, "advertising" would be defined as printed and published material and descriptive literature used in the print and electronic media, billboards and similar displays; material which provides information favorable to MMSD on an issue on which it is attempting to influence legislative or administrative action; descriptive literature and sales aids of all kinds; prepared sales talks to the public and public information facilities; and other materials or procedures enumerated by the PSC by rule.

SENATE AMENDMENT ___ [LRBa4741/1]

Senate Amendment ___ [LRBa4741/1] would direct the PSC and the Department of Natural Resources (DNR), no later than the first day of the tenth month after the effective date of the bill, to enter into a memorandum of understanding specifying the manner in which the PSC and the DNR will coordinate their activities relative to the regulation of regulated districts (the MMSD) in situations in which provisions in chapters 30, 66, 144, 147 and 196 of the statutes assign overlapping duties, powers or jurisdiction to the PSC and the DNR. Under the memorandum of understanding, the PSC could authorize the DNR to act as its agent to enforce or administer a provision in one of those chapters as it relates to a regulated district and conversely, the DNR could authorize the PSC to act as its agent to enforce or administer a provision in one of those chapters as it relates to a regulated district. The PSC and the DNR would be required to submit in proposed form any administrative rule changes necessary to implement the memorandum of understanding under this provision, to the Legislative Council staff no later than the first day of the 19th month beginning after the effective date of the bill.

SENATE AMENDMENT ___ [LRBa4767/1]

Senate Amendment ___ [LRBa4767/1] would create a clean water fund special grants program. The new appropriation would receive all moneys from the following two sources: (a) \$30,000,000 to be transferred from the MMSD to the state treasury no later than 30 days after the effective date of the bill (this amount would be deducted from the amount of any current reserves that are in excess of prudent reserve requirements, as determined by the PSC); and (b) 30% of the proceeds of the sale or lease of any MMSD assets and facilities that are distributed to the state that are not obligated under the clean water fund program.

DNR would be directed to use revenues deposited in the special grant appropriation to award special grants under the clean water fund program if all of the following apply: (a) the municipality qualifies for the clean water fund program; (b) the median household income in the municipality is 80% or less of the median household income in the state; (c) one of the following applies: (1) the estimated total annual residential wastewater treatment charges in the municipality would exceed 2% of the median household income in the municipality if the municipality receives the maximum amount of clean water fund assistance, excluding a special grant; or (2) the estimated total annual charges per residential user in the municipality that relate to wastewater treatment would exceed 2% of the median household income in the municipality without assistance under the clean water fund hardship assistance program but there is not sufficient hardship assistance funding for the municipality.

The amendment would provide special grant assistance of up to either 90% or 70% of the project costs if necessary to reduce the estimated total annual residential wastewater charges to not less than 2% of the median household income in the municipality. DNR would be directed to establish a special grant funding list that ranks eligible projects in the same order that they appear on the current hardship funding list.

DNR would be required to promulgate a rule under which a municipality seeking special grant financial assistance could request, and have conducted, a survey to determine the median household income in the municipality.

SENATE AMENDMENT ___ [LFB Motion #295] TO SENATE AMENDMENT [LRBa4767/1]

Senate Amendment ___ [LFB Motion #295] would amend Senate Amendment ___ [LRBa4767/1] to specify that instead of requiring the transfer of \$30,000,000 from the MMSD to the state treasury no later than 30 days after the effective date of the bill, the first \$30,000,000 of the portion of current reserves that are being held by the district, and that are in excess of prudent reserve requirements, as determined by the PSC, shall be transferred.

Under the amendment, if the PSC would determine that excess reserves are less than \$30,000,000, then that lesser amount would be transferred from MMSD to the state treasury. If

the PSC would determine that excess reserves equal or exceed \$30,000,000, then \$30,000,000 would be transferred from MMSD to the state treasury. Under the amendment the amount and timing of any transfer would be dependent on the PSC's determination of whether, or the extent to which, excess reserves exist at the MMSD and the approval of a plan for distribution by the PSC.

The Joint Committee on Finance directed that all of the above amendments be incorporated into Senate Substitute Amendment ____ [LRBs0654/3].

I hope that this information is helpful.

BL/dls



Legislative Fiscal Bureau

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March 21, 1996

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Senate Bill 614: Regulation of the Milwaukee Metropolitan Sewerage District

Senate Bill 614 would: (1) place the Milwaukee Metropolitan Sewerage District (MMSD) under the regulation and supervision of the Public Service Commission (PSC); (2) require MMSD to sell or lease any or all MMSD assets and facilities, subject to PSC review and several conditions; (3) authorize the dissolution of MMSD, subject to PSC review and approval; (4) require MMSD to refund to Milwaukee County residents any excess reserves that may be held by MMSD; and (5) require the PSC to study the likely effects of any sale or lease of MMSD assets on the rates charged for sewerage service in the district.

SB 614 was recommended for passage by the Senate Committee on Environment and Energy on March 18, 1996, by a vote of 3-2. Five amendments were also recommended for adoption. The vote on each amendment was 3-2, with the exception of Senate Amendment 2 and Senate Amendment 1 to Senate Amendment 2, which were both adopted by a vote of 5-0.

The following section provides a summary of the provisions of the bill that affect the Public Service Commission. Next is a section that summarizes other provisions that affect the Milwaukee Metropolitan Sewerage District. Following that is a summary of the amendments that have been offered to the bill. The last section deals with the bill's fiscal effect.

SUMMARY OF PSC PROVISIONS OF THE BILL

Milwaukee Metropolitan Sewerage District (MMSD) Made Subject to Regulation and Supervision by the Public Service Commission (PSC)

Senate Bill 614 would newly define the MMSD as a "regulated district" and would specifically grant authority to the PSC to supervise and regulate such a district in the same manner as a public utility and to do all things necessary and convenient to carry out that new jurisdiction. Under current law, PSC regulation of the MMSD is largely limited to the review authority granted under s. 66.912(5) of the statutes. Under this provision, complaints may be made to the PSC as follows: (1) for any MMSD user, a complaint that the District's charges, rules and practices are unreasonable or unjustly discriminatory according to certain statutory criteria; or (2) from any holder of MMSD debt, a complaint that the District's charges are inadequate. The PSC would have to investigate these complaints. If there appears to be sufficient cause, the PSC could conduct a public hearing into the complaint. After any hearing, if the PSC determined that the charges, rules or practices of the District are unreasonable or unjustly discriminatory, the PSC could issue an order modifying the charges, rules or practices, including the ordering of a refund.

Under the bill, PSC supervision of the MMSD would be achieved by inserting a reference to the new term "regulated district" throughout Chapter 196 of the statutes ["Regulation of Public Utilities"] wherever there is a current statutory reference to "public utility." Attachment 1 to this memorandum enumerates the individual statutory sections under Ch. 196 of the statute where this treatment has been incorporated. Also, the bill would include, where required, references to the commissioners, executive director, officer, employees or agents of the District as being subject to the actions, orders and regulations of the PSC.

The principal consequences of subjecting MMSD to PSC supervision as a regulated district would be the following:

- MMSD would be required to provide adequate service and facilities and the charges for such would have to be reasonable and just. The PSC would be authorized to hear complaints regarding MMSD charges, rules and practices and to resolve such matters in accordance with the same procedures used for resolving complaints against public utilities generally.
- MMSD would have to file schedules with the PSC showing the rates, tolls and charges used in the provision of services. Changes to the schedules could not occur except pursuant to the PSC's normal rate review process.
- The PSC would be authorized to establish service classifications for the MMSD and prescribe suitable and convenient standard commercial units for the products and services provided by the District.

- MMSD would be required to keep its books and records in a manner consistent with the uniform system of accounts for public utilities.

- The PSC would be generally authorized to obtain any information from MMSD necessary for the Commission to perform its regulatory and supervisory duties. This authority would include any necessary inspection of books and records by the PSC and any examination under oath of any MMSD officers or employees that would be required.

- The PSC would be authorized to investigate any violations of ch. 196 relating to regulated districts and to report any such violations to the Attorney General or the District Attorney of the proper county for enforcement and punishment.

- MMSD would be required to file annual reports with the PSC, containing such information as: depreciation; salaries and wages of employees; legal expenses; taxes and rentals; the quantity and value of equipment used; receipts from various residuals, by-products, services and sales; total and net costs; gross and net profit; dividend and interest payments; and the amount of surpluses and reserves.

- MMSD would be required to file estimates of the annual rate of depreciation required for its various classes of fixed capital, and these rates would be subject to PSC review and revision.

- The PSC would be authorized to establish rules and standards to ensure the accuracy of all meters and appliances used by the MMSD in the delivery of services to customers.

- MMSD could not begin the construction, installation or operation of any new plant, equipment, property or facility except in compliance with any applicable PSC order or rule.

- MMSD would be prohibited from dissolving, reorganizing, acquiring stock in any public utility, abandoning or discontinuing service, or selling, acquiring, leasing or renting its physical plant or property without PSC approval.

- The PSC would be authorized to make direct and remainder assessments of the MMSD to recover the PSC's costs of regulation of the District.

In providing for PSC jurisdiction over the MMSD, the bill would also revise certain PSC authority with respect to oversight of the District, as described below.

Revised PSC Authority: Sale or Lease of Regulated District Assets. The bill would grant the PSC specific new authority with respect to its jurisdiction over the sale or lease of MMSD assets. Under this provision, the PSC could, on demand, inspect the books, accounts, papers, records and memoranda of the MMSD and examine the District's commissioners, agents or employees under oath with respect to such assets. These actions could be undertaken for the purpose of obtaining information bearing on: (1) the sale or lease of District assets; (2) whether or not such an action would be in the best interests of the District's ratepayers; and (3) ensuring

that the District's represented employees who perform functions in relation to the assets or facilities to be leased or sold would continue to perform those functions after the lease or sale until the earlier of the expiration date of their next collective bargaining contract or for two years after the effective date of the bill.

If the PSC determines that the District's commissioners have not acted in the best interests of the ratepayers in the selling or leasing of the District's facilities or assets, the PSC would be authorized to appoint an individual to negotiate and enter into agreements for the sale or lease of any or all of MMSD's facilities or assets. The individual appointed by the PSC would be authorized to exercise on behalf of the District all powers of the District's commissioners. The District would be required to pay all costs incurred by the individual appointed by the PSC.

Revised PSC Authority: Voluntary Dissolution. The bill would stipulate that the MMSD could not undergo voluntary dissolution unless both the PSC and the Department of Natural Resources agree to such dissolution. Under current regulatory procedures applicable to public utilities, the PSC alone has the authority to consent to the voluntary dissolution of a utility.

Revised PSC Authority: Consolidation or Merger. The bill would provide that with the consent and approval of the PSC, but not otherwise, the MMSD could: (1) acquire the stock of a public utility or any part of a public utility; or (2) sell, acquire, lease or rent any District plant of property constituting an operating unit or system.

Revised PSC Authority: Excess Reserves Fund. The bill would direct the MMSD to develop and, upon approval by the PSC, implement a plan to refund to Milwaukee residents a portion of current reserves that are in excess of prudent reserve requirements, as determined by the PSC.

Under the bill, the MMSD would not become fully subject to PSC jurisdiction and supervision in certain regulatory areas until passage of certain transitional periods. These provisions are described below.

Transitional Provisions: Construction. Under the general language extending PSC jurisdiction over the MMSD, the PSC would be granted the authority to require the submission of plans, specifications and the estimated costs for the proposed construction, extension, improvement or addition to any plant, equipment, property or facility of the MMSD. The PSC could refuse to certify the project if it finds that the project would: (1) materially affect the public interest; (2) substantially impair the efficiency of the District's service; (3) provide facilities unreasonably in excess of probable future requirements; or (4) add to the costs of service without proportionately increasing the value or available quantity of service (unless the District waived consideration of those increased costs in the setting of rates).

Under the bill, these provisions would not apply to the MMSD before the first day of the 13th month beginning after the general effective date of the bill for any project with a total cost of not more than \$1,000,000. After that period, however, the above PSC approval provisions

would not apply to any MMSD project unless the project exceeds a dollar amount that would be established by the PSC by rule. The bill would require the PSC to submit the draft rules to the Legislative Council staff no later than the first day of the 7th month following the general effective date of the bill.

Transitional Provisions: Rate Filings and Schedules. Under the general language extending PSC jurisdiction over the MMSD, the District would have to file schedules with the PSC showing the rates, tolls and charges used in the provision of services. Changes to the schedules could not occur except pursuant to the PSC's normal rate review process.

Under the bill, the District would not be required to file its initial schedule of rates, tolls and charges within the first 90 days following the general effective date of the bill. However, no later than 90 days after the bill's general effective date, the District would have to make its initial rate filing. The bill would specify that this initial filing would be treated as a change constituting an increase in rates (and would therefore be subject to the PSC's rate review process). However, during the pendency of this initial filing, the rates that were in effect in the District on the general effective date of the bill would continue to be in effect until the PSC completes its review of the initial filing. The PSC would be required to complete its review of the initial rate filing no later than 18 months after the initial filing.

Transition Provision: Uniform System of Accounts. The requirement that the MMSD conform its books, forms and records to the uniform system of accounts for public utilities would first apply on the later of July 1, 1997, or the first day of the 13th month following publication of the bill.

Transitional Provision: Pending Complaints. Under the bill, enactment of these new regulatory provisions would not be deemed to divest the PSC of its responsibility over (or to change the standards to be applied in) any complaint pending before the agency on the general effective date of the bill.

PSC Study of the Effects of the Sale or Lease of MMSD Assets. The bill would direct the PSC to study the impact of the sale of MMSD's assets on the rates charged for sewerage services in the District. The PSC would be required to report its findings to the appropriate standing committees of the Legislature, the MMSD and the Governor no later than June 30, 1998.

SUMMARY OF MMSD PROVISIONS OF THE BILL

Sale or Lease of MMSD Assets and Facilities

SB 614 would direct the MMSD Commission to sell or lease any or all of MMSD's assets and facilities if the PSC determines that: (a) a lease or sale would be in the best interests of MMSD's ratepayers; and (b) under the terms of any lease or sale agreement, the employees of

MMSD who cease to be employees of MMSD on the effective date of the lease or sale and who are performing functions in relation to the assets or facilities that are leased or sold and who are covered by a collective bargaining agreement under subchapter IV of chapter 111 of the statutes which is in effect on the day before the effective date of the lease or sale, shall continue to perform the functions that they perform on the day before the effective date of the lease or sale, after the lease or sale until the expiration date of the collective bargaining agreement that applies to such employees or for two years following the effective date of the bill, whichever is sooner. The PSC would be required to consent and approve of the sale, acquisition, lease or rent of any MMSD plant or property constituting an operating unit or system.

The proceeds of any sale or lease of any or all of MMSD's assets or facilities to an entity other than the state would be required to be distributed, in a manner approved by the PSC, to the state and municipalities in proportion to the amounts paid by the state and municipalities for capital costs since MMSD was reorganized on April 27, 1982, under the statutes.

Dissolution of MMSD

The bill would authorize MMSD's Commission to dissolve MMSD if all of the following conditions are met: (a) all of MMSD's assets and facilities have been sold, following the PSC making the required two determinations; (b) all of MMSD's outstanding indebtedness has been retired; (c) all bonds issued by MMSD have been paid off; and (d) the PSC and the Department of Natural Resources (DNR) both consent to the dissolution.

Repeal of Unconstitutional Statutes

SB 614 would repeal ss. 66.898(4)(c) and 66.899 of the statutes, which relate to contract sewerage service charges with respect to capital costs based on the value of the property in the area to be served and to noncontractual sewerage service. The process by which these provisions were enacted was found to be unconstitutional because they were passed in violation of Article IV, Section 18 of the Wisconsin Constitution, which states that no local bill may be passed by the Legislature which embraces more than one subject. (*Brookfield v. Milwaukee Sewerage*, 144 Wis. 2d 896, 426 N.W. 2d 591 (1988))

GENERAL EFFECTIVE DATE

The bill would take effect the later of July 1, 1996, or the day after publication.

SENATE AMENDMENT 1 [LRBa4458/1]

Senate Amendment 1 would clarify that the charges, rates, and fees of the MMSD would be established by the PSC pursuant to its specific authority under ss. 196.03, 196.20 and 196.37. These provisions are the statutes used by the PSC as the basis of its authority to issue rate orders.

SENATE AMENDMENT 2 [LRBa4459/2], AS AMENDED BY SENATE AMENDMENT 1 TO SENATE AMENDMENT 2 [LRBa4486/1]

Senate Amendment 2, as amended by Senate Amendment 1 to SA 2 [LRBa4486/1], would modify the general effective date of the bill to be the first day of the first month following the issuance by the PSC of its final order in a pending MMSD complaint case [Docket 9308-SR-102], but no earlier than July 1, 1996, and no later than January 1, 1997.

SENATE AMENDMENT 3 [LRBa4460/1]

Senate Amendment 3 would specify that the PSC's authority to change, amend or rescind orders applicable to MMSD rates, tolls, charges or schedules or applicable to any MMSD case would first apply to orders issued on the general effective date of the bill.

SENATE AMENDMENT 4 [LRBa4461/1]

Senate Amendment 4 would provide that when the PSC considers whether a lease or sale of MMSD assets would be in the best interests of the District's ratepayers, the PSC would have to consider whether the action meets all of the following conditions: (1) the action will provide for a reasonably adequate supply of sewerage services to meet the needs of the public; (2) the action is in the public interest when considering engineering, economic, health, safety, reliability, efficiency and environmental factors and alternate methods of providing sewerage services; (3) the action reasonably coordinated with long-range plans and policies of other agencies or that a reasonable effort had been made to coordinate such plans and policies; and (4) the action will abate combined sewer overflows to the extent necessary to comply with federal or state law.

SENATE AMENDMENT 5 [LRBa4462/1]

Senate Amendment 5 would make the following changes to the bill:

- Sections 66.898(4)(a) and (b) of the statutes would be repealed and recreated. The recreated language would be identical to the language originally contained in Senate Bill 614. The repeal and recreate action would be taken to remove any doubt that the current law provisions are valid. The original enactment of these provisions had been challenged in court and found unconstitutional since they constituted a local law impermissibly included in a more general budget bill.

- Under the bill, the PSC would have authority over the MMSD with respect to the issuance of securities by public service corporations under Ch. 184 of the statutes. The amendment would establish that a regulated district (the MMSD) is a public service corporation and that the MMSD could not issue any securities that confer any ownership interest in that public service corporation.

- The MMSD when proposing user and service charges would be required to first determine its revenue requirements and to propose user and service charges that generate sufficient revenues for debt service. Further, the amendment would clarify that it is the "revenue requirements used to calculate" the proposed user and service charges that PSC would have to presume were reasonable.

- If the MMSD uses a sinking fund basis for depreciation, the District would be subject to the same restrictions and regulations in its accounting for the entire amount credited to the depreciation reserve as are applicable to other utilities.

- The amendment would delete the provisions in the bill which would authorize the PSC to investigate whether MMSD's rates should be modified because of changes in the cost of energy.

- The PSC's review of MMSD's initial rate filing would be clarified as being under the agency's powers enumerated in ss. 196.03, 196.20 and 196.37 which provide authority for the PSC to issue rate orders.

- The due date of the PSC's study of the likely effects of any sale or lease of MMSD assets on rates charged for sewage services would be changed from no later than June 30, 1998, to no later than six months after the initial filing of rates by the MMSD.

- The bill requirement that the MMSD refund a portion of current reserves that are in excess of prudent reserve requirements would be modified to apply to customers of MMSD who are residents of Milwaukee County rather than to all residents of Milwaukee County.

- A total of \$488,300 PR would be appropriated to the PSC in 1996-97 and 5.0 PR permanent and 1.0 PR project position would be authorized to enable the agency to implement the provisions of Senate Bill 614.

FISCAL EFFECT

Public Service Commission Regulation

Bill

Senate Bill 614 would amend the PSC's general administrative appropriation to allow the PSC to collect direct and remainder assessments from the MMSD for its share of the agency's operating costs and to place the revenues received in this appropriation account. The bill does not increase the expenditure authority in this appropriation or authorize any additional positions in the PSC to implement the agency's new regulatory responsibilities with respect to the MMSD.

The PSC's fiscal estimate indicates that regulation and supervision of the MMSD would result in considerable additional workload in the agency's Division of Water, Compliance and Consumer Affairs. The agency estimates that it would be required to:

- Provide oversight in the establishment of a uniform system of accounts and the development of a continuing property record for the MMSD;
- Undertake an initial review of MMSD rates and schedules commencing 90 days after the general effective date of the bill;
- Develop rules to govern thresholds above which the PSC would be required to review MMSD capital improvement requests;
- Establish a prudent reserve requirement for the MMSD as a prerequisite to the development and implementation of a plan to refund Milwaukee County residents a portion of current MMSD reserves; and
- Study and report by June 30, 1998, the likely impact of the sale or lease of MMSD assets on the rates charged for sewerage services.

The PSC estimates that these activities would require 5.0 permanent positions (engineer, accountant, rate analyst, attorney and program assistant) and 1.0 two-year project position (engineer) at a total for salaries and fringe benefits in 1996-97 of \$273,500 PR. On-going supplies and services and travel costs for the new staff are estimated at \$82,000 PR in 1996-97 plus one-time start-up costs associated with computers, office furniture and telephone installation charges of \$82,800 PR in 1996-97. The PSC also indicates that it will require an additional \$50,000 PR in 1996-97 for increased intervenor financing associated with the regulation of the

MMSD. The total funding and staffing requirements for 1996-97 identified by the PSC are summarized below in Table 1.

TABLE 1

**PSC Resource Requirements Associated with
the Regulation of the MMSD
(PR Funds)**

	<u>1996-97 Costs</u>
5.0 PR Permanent Positions	\$230,100
1.0 PR Project Position	43,400
Supplies and Services	82,000
One-Time Start-up Costs	82,800
Intervenor Financing	<u>50,000</u>
Total	\$488,300

Senate Amendments

Senate Amendment 5 [LRBa4462/1] would appropriate \$488,300 PR and authorize 6.0 positions for the regulation of MMSD as identified in the PSC fiscal estimate. As the amendment is drafted, however, all of the funding is appropriated under the Commission's s. 20.155(1)(g) appropriation. Because the PSC intends that \$50,000 PR of the funding provided in 1996-97 be used to support intervenor financing, a technical amendment to shift \$50,000 PR of the amounts provided under the amendment should be adopted to shift the monies to the PSC's intervenor financing appropriation [s. 20.155(1)(j) of the statutes].

Senate Amendment 2 [LRBa4459/2], as amended by Senate Amendment 1 (LRBa4486/1), would modify the effective date of the bill to be the first day of the first month following the issuance by the PSC of its final order in a pending MMSD complaint case [Docket 9308-SR-102], but no earlier than July 1, 1996, and no later than January 1, 1997. To the extent that the effective date is substantially after July 1, 1996, it is unlikely that the PSC would fully expend the amounts appropriated by Senate Amendment 5. However, it is not possible to estimate exactly when the PSC might issue its final order, thereby triggering the bill's effective date.

MMSD Cost of Public Service Commission Regulation

The PSC fiscal estimate indicated that the cost of PSC regulation to MMSD and local ratepayers is difficult to estimate. It is possible that MMSD would hire additional staff to work on PSC regulation issues. The PSC fiscal estimate indicates that MMSD costs to hire consultants to assist MMSD in developing an accounting system in conformance with the uniform system

of accounts, continuing property records and depreciation rates and in studying the effects of sale or lease of MMSD assets is unknown but could be as high as \$600,000.

Sale or Lease of MMSD Assets and Facilities or Dissolution of MMSD

Under the bill, the proceeds of any sale or lease of MMSD's assets or facilities to an entity other than the state would be required to be distributed, in a manner approved by the PSC, to the state and municipalities in proportion to the amounts paid by the state and municipalities for capital costs since MMSD was reorganized on April 27, 1982. The bill does not specify how the distribution shall be calculated.

MMSD has received state and federal water pollution abatement grants totalling over \$1 billion, including approximately: (a) \$400 million from the Wisconsin Fund; (b) \$200 million from the state combined sewer overflow program; and (c) \$486 million from the U.S. Environmental Protection Agency. Federal law would allow repayment of the state grants before repayment of the federal grants. MMSD has also received state clean water fund loans with a remaining principal balance of approximately \$185 million.

State and federal financial assistance has generally been provided based on a 20-year design life of the funded facility. Facilities funded in the early 1980s may not have substantial value compared to the original grant amount. More recent grants would retain a greater level of value. The bill does not specify what proportion of the grant amount would need to be repaid.

DNR requires that recipients obtain DNR approval before selling wastewater treatment works funded with grants or loans. DNR officials indicate that past sales have been approved between municipalities. Sales of treatment works to private entities could raise financial and legal issues concerning the use of state debt and the proceeds from tax-exempt general obligation and revenue bonds. While state officials are still reviewing the bill, it is probable that, absent other program requirements, repayments of grants made with GPR or from general obligation bond proceeds would be deposited in the general fund.

Clean water fund loans to MMSD have been made with a combination of: (a) revenue bonds (61%) which required GPR subsidy for low-interest loans and credit reserves; and (b) federal funds (39%). DOA officials indicate that, due to federal restrictions, repayments of revenue bond loans would have to either be reloaned within 90 days or invested at a restricted yield until the underlying bonds could be called or redeemed.

While any early repayments of clean water fund loans that may occur under the bill would be available for lending to other clean water fund loan applicants, other municipalities would not be directly affected by the provision. That is, although state costs to issue revenue bonds and the associated general obligation bond subsidy could be reduced in the short-term, municipalities are expected to be fully funded under current law except for financial hardship projects, which

are statutorily limited. Further, hardship grants could not be provided with revenue bond or federal loan proceeds repaid under the bill.

MMSD loans comprise approximately 30% of the clean water fund revenue bond portfolio. MMSD has a higher credit rating (AA by Standards and Poor's) than some other municipalities in the portfolio. DOA officials indicate that if the MMSD loans were not in the revenue bond portfolio, the program may have to provide greater reserves (with general obligation bond proceeds) in order to maintain the AA rating on the clean water fund revenue bonds.

Prepared by: Kendra Bonderud and Tony Mason

Attachment

ATTACHMENT 1

Chapter 196 Sections Affected by SB 614 to Provide that a "Regulated District," Including the MMSD, be Treated Like a Public Utility

Chapter 196 Section Amended by SB 614	Chapter 196 Section Title
s. 196.02	Commission's powers.
s. 196.03	Utility charges and service; reasonable and adequate.
s. 196.05	Public utility property; valuation; revaluation.
s. 196.06	Uniform accounting; forms; books; office.
s. 196.07	Balance sheet filed annually.
s. 196.09	Depreciation rates and practices; findings by commission; dividends from reserves; retirements.
s. 196.10	Construction; accounting.
s. 196.11	Profit sharing and sliding scales.
s. 196.12	Report by public utilities; items.
s. 196.13	Commission's report.
s. 196.14	Public record exception.
s. 196.15	Units of product or service.
s. 196.16	Standard measurements; accurate appliances.
s. 196.17	Tests of meters; fees.
s. 196.171	Examination of meters, pipes, fittings, wires and works; entering buildings for.
s. 196.18	Entry upon premises.
s. 196.19	Publish schedules; regulations; files; joint rates.
s. 196.20	Rules on service; changes in rates.
s. 196.21	Publicity of revised schedules.
s. 196.22	Discrimination forbidden.
s. 196.24	Agents of commission; powers.
s. 196.25	Questionnaires.
s. 196.26	Complaint by consumers; hearing; notice; order; costs.

Chapter 196 Section Amended by SB 614	Chapter 196 Section Title
s. 196.28	Summary investigations.
s. 196.30	Utilities may complain.
s. 196.31	Intervenor financing.
s. 196.37	Lawful rates; reasonable service.
s. 196.39	Change, amendment and rescision of orders; reopening cases.
s. 196.44	Law enforcement.
s. 196.49	Authorization from commission before transacting business; extensions and improvements to be approved; enforcement of orders, natural gas.
s. 196.525	Loans to officers or directors and loans to investments in securities of holding companies; penalty.
s. 196.58	Municipality to regulate utilities; appeal.
s. 196.60	Discrimination prohibited; penalty.
s. 196.604	Rebates, concessions and discriminations unlawful.
s. 196.61	Facilities in exchange for compensation prohibited.
s. 196.635	Unbilled utility service.
s. 196.64	Public utilities, liability for treble damages.
s. 196.643	Owner responsibility for service to rental dwelling unit.
s. 196.645	Rate changes.
s. 196.65	Penalties relating to information and records.
s. 196.66	General forfeiture provisions.
s. 196.68	Municipal officers, malfeasance.
s. 196.69	Interference with commission's equipment.
s. 196.70	Temporary alteration or suspension of rates.
s. 196.72	Accidents; public utility report; investigation.
s. 196.79	Reorganization subject to commission approval.
s. 196.81	Abandonment; commission approval required.
s. 196.85	Payment of commission's expenditures by utilities.



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

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DATE: March 18, 1996

TO: MEMBERS OF THE SENATE COMMITTEE ON ENVIRONMENT AND ENERGY

FROM: John Stolzenberg, Staff Scientist

SUBJECT: Summary of 1995 Senate Bill 614, Relating to Regulation of the Milwaukee Metropolitan Sewerage District, as Recommended by the Senate Committee on Environment and Energy

A. INTRODUCTION

This memorandum, prepared at the request of Senator Robert Cowles, Chairperson of your Committee, provides a summary of 1995 Senate Bill 614, as amended and recommended for passage by the Senate Committee on Environment and Energy on March 18, 1996. 1995 Senate Bill 614 relates to regulation and supervision by the Public Service Commission (PSC) of the Milwaukee Metropolitan Sewerage District (MMSD), the sale or lease of the MMSD's assets, authorizing the dissolution of the MMSD, distribution of excess reserves of the MMSD, granting rule-making authority, making an appropriation and providing penalties.

The Committee adopted Senate Amendments 1, 2 (as amended by Senate Amendment 1 to Senate Amendment 2), 3, 4 and 5 to Senate Bill 614. The Senate Bill and these Amendments are summarized below.

B. 1995 SENATE BILL 614

The major provisions in Senate Bill 614 do the following:

1. Public Service Commission Regulation and Supervision

a. Jurisdiction Over "Regulated Districts"

Under current law, the MMSD's Commission has the general duty to project, plan, design, construct, maintain and operate a sewerage system for the collection, transmission and

disposal of all sewage and drainage of its service area, subject to ss. 66.88 to 66.918 [s. 66.89 (1), Stats.]. The Commission has a number of specific powers and duties specified in its specific enabling law [ss. 66.88 to 66.918, Stats.], and other statutes which enable it to fulfill this general duty, including the authority to issue bonds and notes; acquire property; construct, operate and maintain its facilities and set rates and charges for its services. The PSC is currently only involved in the regulation of the MMSD in response to complaints to the PSC by a user of the MMSD's services under s. 66.076 (9) or 66.912 (5), Stats.

Senate Bill 614 establishes that for purposes of the state's general public utility law, ch. 196, Stats., a "regulated district" shall be a metropolitan sewerage district created under s. 66.882, Stats. Presently, the MMSD is the only metropolitan sewerage district that is a regulated district. Thus, this memorandum will use "regulated district" and the MMSD interchangeably.

The Bill also amends many of the provisions in ch. 196, Stats., to subject a regulated district, and, thus the MMSD, to most of the same regulations and PSC supervision as public utilities are subject to under ch. 196, Stats. The attachment to this memorandum identifies the specific sections in ch. 196, Stats., which the Bill amends to provide for this parallel regulation. These regulations include the PSC's duty to approve a regulated district's rates and charges; approve the construction by a regulated district of its physical plant; require a uniform system of accounts; approve terms of service offerings, including service extensions; review complaints on rates, rules and practices; and approve reorganizations, consolidations and mergers.

Consistent with these changes in the regulation by the PSC of the MMSD, Senate Bill 614 amends municipal law to do all of the following:

(1) Delete the MMSD's authority to set sewerage system service charges under the general law applicable to municipalities and other metropolitan sewerage districts [s. 66.076, Stats.].

(2) Convert the authority of the MMSD to establish charges under various provisions in the MMSD's specific enabling law to establish *proposed* charges which are then subject to review and approval by the PSC. The Bill requires the MMSD to file its initial schedule of rates, tolls and charges with the PSC 90 days after the Bill's general effective date. The Bill establishes that: (a) this initial filing shall be treated as a rate increase under ss. 196.20 and 196.39, Stats.; (b) the MMSD's rates in effect on the Bill's general effective date continue in effect until the PSC completes its review of the initial filing; and (c) the PSC must complete its review of the initial filing within 18 months after the Bill's general effective date [SEC. 145 (1)].

(3) Establish that other specified powers and duties of the MMSD under its specific enabling law, including the authority to acquire property; plan, construct, operate and maintain facilities; enter into contracts; borrow money and issue bonds are subject to any approval by the PSC required under ch. 196, Stats.

(4) Delete the authority of users of MMSD's service to complain to the PSC about the MMSD's rates, rules and practices under s. 66.076 (9) or 66.912 (5), Stats.

b. Effects on Pending Complaints

Senate Bill 614 establishes that, if enacted, it does not divest the PSC over, or change the standards to be applied in, any complaint pending with the PSC on the effective date of this provision [SEC. 145 (3)].

2. Sale or Lease of the MMSD's Assets and Facilities

a. Requirements

Senate Bill 614 directs the MMSD's Commission to lease or sell, subject to the PSC's consent and approval described below, any or all of the MMSD's assets and facilities if the PSC determines that all of the following apply:

(1) A lease or sale will be in the best interests of the MMSD's ratepayers.

(2) Under the terms of any lease or sale agreement, the employees of the MMSD who: (a) cease to be employees of the MMSD on the effective date of the lease or sale; (b) are performing functions in relation to the assets or facilities that are leased or sold; and (c) are covered by a collective bargaining agreement under subch. IV of ch. 111, which is in effect on the day before the effective date of the lease or sale, shall continue to perform the functions that they perform on the day before the effective date of the lease or sale, after the lease or sale until the expiration date of the collective bargaining agreement that applies to these employees, or for two years following the effective date of this provision, whichever is sooner [proposed s. 66.891 (1), Stats.].

Under Senate Bill 614, the MMSD may sell, acquire, lease or rent any of its plant or property constituting an operating unit or system with the PSC's consent and approval [proposed s. 196.80 (1s) (e), Stats.]. The PSC's consent and approval must be given in the specified process upon the PSC finding that the proposed action is consistent with the public interest [proposed amendment of s. 196.80 (3), Stats.]. The Bill also authorizes the PSC to inspect the books, accounts and records of the MMSD and examine, under oath, any MMSD commissioner, employe or agent in order to obtain information bearing upon the two PSC determinations identified above [proposed s. 196.02 (13), Stats.].

b. Appointment of a Master

If the PSC makes the two determinations specified in the preceding section, relating to the lease or sale of any or all of the MMSD's assets and facilities and if the PSC believes that the MMSD's Commission has not acted in the best interests of the MMSD's ratepayers in selling or leasing the MMSD's assets and facilities, the PSC may appoint an individual to negotiate and enter into agreements for the sale or lease of any or all of the MMSD's assets and facilities. This individual may exercise, on behalf of the MMSD, the powers given the MMSD's Commission relating to the acquisition of property and the authority to enter into contracts under ss. 66.90 (1) and 66.904 (1), Stats. The MMSD must pay all costs incurred by the individual in the performance of his or her duties under this provision [proposed s. 196.02 (13), Stats.].

c. Distribution of Proceeds

The Bill establishes that the proceeds of any sale or lease of part or all of the MMSD's assets or facilities to an entity other than the state must be distributed, in a manner approved by the PSC, to the state and municipalities in proportion to the amounts paid by the state and municipalities for the MMSD's capital costs, since the MMSD was reorganized on April 27, 1982 under s. 66.882 (1) (b), Stats. [proposed s. 66.891 (3), Stats.].

d. PSC Study

Senate Bill 614 directs the PSC to study the likely effects of any sale or lease of the assets of the MMSD on the rates charged for sewerage services in the MMSD. No later than June 30, 1998, the PSC must report the results of this study to the Legislature, under s. 13.172 (2), Stats., the MMSD and the Governor [SEC. 145 (4)].

3. Dissolution of the MMSD

The Bill authorizes the MMSD's Commission to dissolve the MMSD if all of the following conditions are met:

a. All of the MMSD's outstanding indebtedness has been retired and all bonds issued by the MMSD have been paid off.

b. All of the MMSD's assets and facilities have been sold, following the PSC making the two determinations specified in Section B, 2, a, above.

c. Both the Department of Natural Resources and the PSC consent to the dissolution [proposed s. 66.891 (2) and proposed amendment to s. 196.78, Stats.].

4. Refund of Excess Reserves

The Bill directs the MMSD's Commission to develop and, upon approval by the PSC, implement a plan to refund to Milwaukee County residents that portion of current reserves that are being held by the MMSD and that are in excess of prudent reserve requirements, as determined by the PSC [SEC. 145 (5)].

5. Acquisition of Public Utility Stock

With the consent and approval of the PSC, the Bill establishes that the MMSD may acquire the stock of a public utility or any part thereof [proposed s. 196.80 (1s) (b), Stats.].

6. Repeal of Unconstitutional Statutes

Senate Bill 614 repeals ss. 66.898 (4) (c) and 66.899, Stats., relating to contract sewerage service charges with respect to capital costs based on the value of the property in the area to be served and to noncontractual sewerage service. The process by which these provisions were

enacted was found to be unconstitutional in *Brookfield v. Milw. Sewerage*, 144 Wis. 2d 896, 426 N.W. 2d 591 (1988), because they were passed in violation of art. IV, s. 18, Wis. Const. SECTION 18 establishes that no local bill may be passed by the Legislature which embraces more than one subject.

7. Appropriation

The Bill amends the PSC's appropriation in s. 20.155 (1) (g), Stats., to authorize monies appropriated under this paragraph to be used for the regulation of the MMSD in addition to the regulation of utilities. The Bill does not alter the amount in the schedule under s. 20.005, Stats., for this appropriation.

8. Effective Date

In general, Senate Bill 614 takes effect on July 1, 1996, or on the day after publication, whichever is later.

C. SENATE AMENDMENT 1 (LRBa4458/1)

In amending s. 66.91 (5) (c) 2., Stats., Senate Bill 614 stated that: "All charges, rates and fees [of the MMSD] shall be established by the public service commission." The Amendment establishes that these charges, rates and fees shall be established under ss. 196.03, 196.20 and 196.37, Stats. The PSC cites these three sections in its public utility rate orders as its authority to issue these orders. The effect of the Amendment is to ensure that MMSD's charges, rates and fees will be established under the processes and standards applicable to public utilities' rate increases and decreases, which are set forth in these sections.

D. SENATE AMENDMENT 2 (LRBa4459/2) AND SENATE AMENDMENT 1 TO SENATE AMENDMENT 2 (LRBa4486/1)

The general effective date of Senate Bill 614 is July 1, 1996 or on the day after publication, whichever is later. [See SEC. 146 (intro).] The Amendment changes this general effective date to be the first day of the first month beginning after the PSC issues a final order in the current complaint proceeding, *Investigation of Complaint Concerning the Rates and Practices of the Milwaukee Metropolitan Sewerage District*, Docket No. 9308-SR-102, but not earlier than July 1, 1996 or on November 1, 1996, whichever is earlier. Senate Amendment 1 to Senate Amendment 2 changes the November 1, 1996 date in this effective date clause to January 1, 1997.

Senate Amendment 2 also changes the effective date for the repeal and recreation of s. 196.442, Stats., from October 1, 1996 to November 1, 1996. Senate Amendment 1 to Senate Amendment 2 establishes that this repeal and recreation takes effect on October 1, 1996 or on the general effective date of the Act, described above, whichever is later. This treatment of s. 196.44 (2), Stats., is intended to harmonize the repeal and recreation of this section by Senate Bill 614 with the existing delayed treatment of s. 196.44 (2) by 1993 Wisconsin Act 496 which is effective October 1, 1996.

E. SENATE AMENDMENT 3 (LRBa4460/1)

Currently, s. 196.39, Stats., authorizes the PSC, at any time, on its own motion or upon the motion of an interested party, following the specified procedure, to: (1) rescind, alter, or amend any order fixing rates, tolls, charges or schedules or any other order made by the PSC; or (2) reopen any case following the issuance of an order in the case for any reason. Senate Bill 614 applies this section to the MMSD by establishing that the required notice must be sent to the affected public utility or the MMSD. The Amendment establishes that this treatment of s. 196.39, Stats., first applies to PSC orders issued on the effective date of this provision, the general effective date of Senate Bill 614.

F. SENATE AMENDMENT 4 (LRBa4461/1)

Senate Bill 614 directs the MMSD's Commission to lease or sell, subject to the PSC's consent and approval, described in Section B, 2, a, in this memorandum, any or all of the MMSD's assets and facilities, if the PSC determines, among other things, that the lease or sale will be in the best interest of the MMSD's ratepayers. The Amendment establishes the following four conditions that the PSC must consider in examining whether the lease or sale will be in the best interest of the MMSD's ratepayers:

1. The lease or sale will provide for a reasonably adequate supply of sewerage services to meet the needs of the public.
2. The lease or sale is in the public interest when considering engineering, economic, health, safety, reliability, efficiency and environmental factors and alternate methods of providing sewerage services.
3. The lease or sale reasonably coordinated with long-range plans and policies of other agencies or that a reasonable effort has been made to coordinate with such plans and policies.
4. The lease or sale will abate combined sewer overflows to the extent necessary to comply with federal or state law.

G. SENATE AMENDMENT 5 (LRBA4462/1)

Senate Amendment 5 to 1995 Senate Bill 614 makes the following changes:

1. Senate Bill 614 amends s. 66.898 (4) (a) and (b), Stats. The Amendment repeals and recreates these two paragraphs with the recreated language being the same as the language resulting from the amendments in Senate Bill 614. The treatment of these amendments through repeal and recreation, rather than amendment, is intended to remove any cloud over the constitutionality of the process used to originally create s. 66.898 (4) (a) and (b), Stats. These provisions were enacted as parts of biennial budget laws as were ss. 66.898 (4) (c) and 66.899. As noted above in Section B, 6, the process by which these latter provisions were enacted was found to be unconstitutional. Thus, this treatment in the Amendment is intended to remove any future constitutional challenge to s. 66.898 (4) (a) and (b) on the grounds that they were passed in violation of art. IV, s. 18, Wis. Const. [Amendment Items 1 to 3.]

2. SECTION 19 in Senate Bill 614 establishes that, subject to ch. 196, Stats., the MMSD may borrow money and issue and execute bonds, notes and other forms of indebtedness. The Amendment establishes that the PSC's supervision under this provision will be not only under ch. 196, but also under ch. 184, Stats. Chapter 184, Stats., relates to securities of public service corporations. Currently, "public service corporation" includes every corporation, except a municipality or other public political subdivision, which is a public utility as defined in s. 196.01, e.g., investor-owned public utilities. [Amendment Items 4 and 8.]

3. Under current law, user charges and service charges established by the MMSD under s. 66.076 or 66.91 (5), Stats., to comply with any bond covenant, shall be presumed reasonable in any review of the charges by the PSC under s. 66.912 (5) [see s. 66.91 (1) (g), Stats.]. Senate Bill 614 amends par. (g) to establish that user charges and service charges *proposed* by the MMSD under ss. 66.91 (5) to comply with any bond covenant shall be presumed reasonable by the PSC in establishing these charges. The Amendment: (a) directs the MMSD, in proposing user and service charges under s. 66.91 (5), to first determine its revenue requirement and to propose user and service charges expected to generate that amount of revenue; and (b) establishes that revenue requirements used to calculate the user and service charges to comply with any bond covenant shall be presumed reasonable by the PSC. Neither Senate Bill 614 nor Senate Amendment 5 applies to any tax levied by the MMSD under s. 66.91 (6), Stats., but both apply to service charges under s. 66.91 (5), as affected by Senate Bill 614 and amendments to it, which are based upon an amount equivalent to a tax based on the value of the property served. [Amendment Items 5 to 7.]

4. Currently, s. 196.09 (7), Stats., authorizes a public utility to account for depreciation under s. 196.09, Stats., on a sinking fund basis under the conditions and procedures specified in sub. (7). Senate Bill 614 applies s. 196.09 (7) to the MMSD. The Amendment establishes that, if the MMSD uses a sinking fund basis for depreciation, the MMSD shall be subject to the same restrictions and regulations in its accounting for the entire amount to be credited to its depreciation reserve as are applicable to public utilities which account for depreciation by other methods under s. 196.09 (7). [Amendment Item 9.]

5. Senate Bill 614 applies s. 196.645, Stats., relating to rate changes due to a change in the cost of an energy, commodity or service to the MMSD. The Amendment deletes this applicability. [Amendment Item 10.]

6. Senate Bill 614 directs the MMSD to file with the PSC 90 days after the general effective date of the Bill its initial schedule of rates, tolls and charges. The Bill establishes in SEC. 145 (1) (b) that this initial filing shall be treated as a change constituting an increase in rates under ss. 196.20 and 196.39, Stats., as affected by the Bill. The Amendment deletes the references to ss. 196.20 and 196.39 and substitutes ss. 196.03, 196.20 and 196.37. These latter three sections are the sections that the PSC cites in its public utility rate orders as its authority to issue these orders. [Amendment Item 11.]

7. Senate Bill 614 directs the PSC to study the likely effects of any sale or lease of the assets of the MMSD on the rates charged for sewage services by the MMSD and to submit this report no later than June 30, 1998 to the Legislature, the MMSD and the Governor. [See SEC. 145 (4).] The Amendment changes the due date for this study to be no later than six months

after the PSC completes its review of the initial schedule of rates filed by the MMSD under SEC. 145 (1) (b). [Amendment Item 12.]

8. Senate Bill 614 directs the MMSD to develop and, upon approval of the PSC, implement a plan to refund to "Milwaukee County residents" that portion of current reserves that are being held by the MMSD that are in excess of prudent reserve requirements, as determined by the PSC. The Amendment directs that this refund must be provided to "customers of the MMSD who are residents of Milwaukee County." [Amendment Item 13.]

9. The Amendment authorizes an increase of 1.0 PR project position at the PSC to support its regulatory responsibilities associated with the MMSD for the period beginning on July 1, 1996 and ending on June 30, 1998 and appropriates \$43,400 for fiscal year 1996-97 to fund this position. The Amendment also increases the authorized FTE positions at the PSC by 5.0 PR positions to support the PSC's regulatory responsibilities associated with the MMSD. For fiscal year 1996-97, the Amendment appropriates \$230,100 to fund these permanent positions and an additional \$214,800 for the purpose of performing the PSC's regulatory responsibilities associated with the MMSD. [Amendment Item 14.]

If you would like any further information on 1995 Senate Bill 614 or Amendments to this Bill, please feel free to contact me at the Legislative Council Staff offices.

JES:ksm:lah;rjl:lah

Attachment

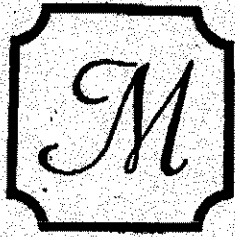
ATTACHMENT

**Chapter 196 Sections Amended by 1995 Senate Bill 614,
as Affected by Senate Amendment 5 to Senate Bill 614,
to Treat a "Regulated District," Including the MMSD,
Like a Public Utility**

CHAPTER 196 SECTION AMENDED BY SENATE BILL 614	SECTION TITLE
s. 196.02	Commission's powers.
s. 196.03	Utility charges and service; reasonable and adequate.
s. 196.05	Public utility property; valuation; revaluation.
s. 196.06	Uniform accounting; forms; books; office.
s. 196.07	Balance sheet filed annually.
s. 196.09	Depreciation rates and practices; findings by commission; dividends from reserves; retirements.
s. 196.10	Construction; accounting.
s. 196.11	Profit sharing and sliding scales.
s. 196.12	Report by public utilities; items.
s. 196.13	Commission's report.
s. 196.14	Public record exception.
s. 196.15	Units of product or service.
s. 196.16	Standard measurements; accurate appliances.
s. 196.17	Tests of meters; fees.
s. 196.171	Examination of meters, pipes, fittings, wires and works; entering buildings for.
s. 196.18	Entry upon premises.
s. 196.19	Publish schedules; regulations; files; joint rates.
s. 196.20	Rules on service; changes in rates.
s. 196.21	Publicity of revised schedules.
s. 196.22	Discrimination forbidden.
s. 196.24	Agents of commission; powers.
s. 196.25	Questionnaires.
s. 196.26	Complaint by consumers; hearing; notice; order; costs.
s. 196.28	Summary investigations.
s. 196.30	Utilities may complain.

CHAPTER 196 SECTION AMENDED BY SENATE BILL 614	SECTION TITLE
s. 196.31	Intervenor financing.
s. 196.37	Lawful rates; reasonable service.
s. 196.39	Change, amendment and rescission of orders; reopening cases.
s. 196.44	Law enforcement.
s. 196.49	Authorization from commission before transacting business; extensions and improvements to be approved; enforcement of orders; natural gas.
s. 196.525	Loans to officers or directors and loans to investments in securities of holding companies; penalty.
s. 196.58	Municipality to regulate utilities; appeal.
s. 196.60	Discrimination prohibited; penalty.
s. 196.604	Rebates, concessions and discriminations unlawful.
s. 196.61	Facilities in exchange for compensation prohibited.
s. 196.635	Unbilled utility service.
s. 196.64	Public utilities, liability for treble damages.
s. 196.643	Owner responsibility for service to rental dwelling unit.
s. 196.645	Rate changes.¹
s. 196.65	Penalties relating to information and records.
s. 196.66	General forfeiture provisions.
s. 196.68	Municipal officers, malfeasance.
s. 196.69	Interference with commission's equipment.
s. 196.70	Temporary alteration or suspension of rates.
s. 196.72	Accidents; public utility report; investigation.
s. 196.79	Reorganization subject to commission approval.
s. 196.81	Abandonment; commission approval required.
s. 196.85	Payment of commission's expenditures by utilities.

¹The amendment of s. 196.645, Stats., by Senate Bill 614 is deleted by Senate Amendment 5 to Senate Bill 614.



the Mollgaard Company

APPRAISALS • REALTORS • INSURANCE

P.O. BOX 311
HARTLAND, WISCONSIN 53029

(414) 367-5015

Wisconsin State Legislature
Committee on the Environment and Energy

Chairman Cowles

I am an owner of land in the City of Brookfield for which I have been repeatedly denied service by the Milwaukee Metropolitan Sewerage District.

That District has consistently abused its power with impunity because of the lack of an oversight process.

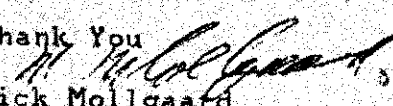
The circumstances of my specific case are too long and convoluted to repeat here and your committee is not the appropriate forum to resolve my concerns in any case.

There are two particular facets of this issue that demand that a review process be instituted.

- 1) The MMSD is a huge bureaucratic monopoly that is effectively outside the reach of the ratepayer to which it should be responsible.
- 2) The continuing abusive relationship of the District with its neighbors has an severe adverse impact upon all of the other issues of the region such as school aid and highways. These other vital issues cannot be positively addressed within the atmosphere that currently exists.

The problems that exist between the MMSD and its neighbors are well beyond the ability of the parties to resolve by themselves.

The MMSD was created under the statutory authority of your legislature; it is your Constitutional responsibility to fix it.

Thank You

Nick Mollgaard
P.O. Box 311
Hartland, Wisc.



Scott Walker

Wauwatosa's Representative in the Wisconsin State Assembly

TESTIMONY ON SENATE BILL 614

For further information, contact:
Scott Walker (608) 266-9180

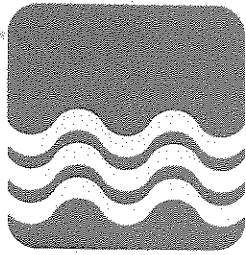
Please allow me to state my concerns regarding Senate Bill 614. I am unable to make specific comments on the bill's language since a copy of SB 614 was not yet available to me in my bill files. Therefore, my comments will be general.

Public Service Commission oversight of the Milwaukee Metropolitan Sewerage District (MMSD) is highly premature until a settlement is reached between MMSD and communities with past due charges. I will not attempt to argue for or against PSC oversight, but rather against making any changes to the system until MMSD and FLOW have come to an agreement. For communities like Wauwatosa that have paid in full, acting on this bill would be like changing the rules in the middle of the game.

It is highly impractical to attempt to make these changes at this time. Further down the road, perhaps evaluating the system could prove beneficial to all customers of MMSD, but that should not take place until an agreement is reached with those who have not paid their bills.

I urge you not to act on this legislation. Moving on this bill does nothing more than prolong the battle. Closure will only come when the communities owing past due charges recognize the need to settle.





Milwaukee Metropolitan Sewerage District
260 West Seeboth Street Milwaukee, Wisconsin 53201-3049

Office of the Executive Director
414-225-2088

October 30, 1996

Representative Marc C. Duff
District 98
Post Office Box 8952
Madison, WI 53708

Dear Representative Duff:

After 13 years of regional strife, both sides of the Sewer Wars dispute recently reached an agreement to end the conflict. Given all the activity during the past legislative session, I wanted to take the opportunity to brief you on the final resolution of this dispute:

As you may know, in September the Public Service Commission issued its ruling on a complaint filed by the FLOW communities. The PSC ruled that the Milwaukee Metropolitan Sewerage District acted lawfully when it assessed charges for infrastructure improvements on the basis of property value. The PSC further ruled that MMSD did not mislead the FLOW communities, as the FLOW complaint contended. In addition, the PSC also determined the method MMSD could use to calculate the interest owed by the communities.

After the PSC decision, both sides met in a series of negotiation sessions that proved to be increasingly productive. A compromise was reached that put an end to the Sewer Wars dispute. Under the agreement, a lump sum of \$140,670,491 will be paid by the FLOW communities to MMSD by December 30, 1996. This amount represents a reduction of approximately \$11 million that MMSD will forego in the interest of settling this dispute.

As a result of this settlement, Milwaukee County property taxpayers will see their sewer property taxes reduced from \$2.65 per \$1,000 in equalized value in 1996 to \$1.70 per \$1,000 in 1997. The owners of a \$100,000 home in Milwaukee County will see a \$95 reduction in their 1997 property tax bill because of this decrease.

Residents of the FLOW communities will save even more. Because of a PSC determination on how to assess flood control costs, the FLOW communities will receive a credit for MMSD's watercourse expenditures. The tax rate in all the FLOW communities except New Berlin will be \$1.51 per \$1,000 equalized value. In New Berlin, which was assessed for one flood control project, the rate will be \$1.60 per \$1,000 equalized value.

October 30, 1996
Page Two

This was a very important agreement for every resident in the Milwaukee metropolitan area. As you well know, this dispute cast a pall on all forms of regional cooperation in southeastern Wisconsin. Now that the Sewer Wars are over, we hope that we can turn our attention to the many pressing concerns of our region and state in a renewed spirit of cooperation.

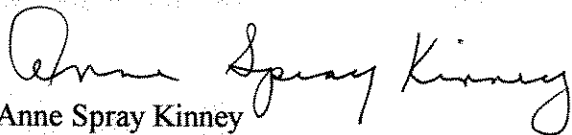
Certainly, no one expects this longstanding dispute to be forgotten overnight, but the agreement that we reached is a very positive movement towards regional harmony.

The leaders of all the FLOW communities deserve thanks for their sincere efforts to reach this compromise. In particular, I would like to thank Menomonee Falls Village President Joe Greco. His leadership was critical in reaching an agreement. I firmly believe that without his efforts the compromise would not have been reached.

At the ceremony at which MMSD and FLOW community officials signed their agreement, Mr. Greco said that for the wounds to heal we need to put this dispute behind us. I hope we can all agree to do just that.

All of us at MMSD look forward to continuing to improve District operations and to building a strong working relationship with all our customers.

Sincerely,


Anne Spray Kinney
Executive Director

FLOW
Fair Liquidation Of Waste

890 Elm Grove Road
Elm Grove, WI 53122

April 29, 1996

Representative Marc C. Duff
State Capitol Bldg., Rm. 306N
P. O. Box 8952
Madison, WI 53708

RE: Senate Bill 614 (Public Service Commission Regulation of the Milwaukee Metropolitan Sewerage District)

Dear Representative Duff:

Purpose of Letter

One of the most frequently-asked questions in the Capitol these days is: "**Will the sewer wars ever end?**" The eight FLOW communities firmly believe that Senate Bill 614 will, at long last, provide the solution!

The purpose of this letter is to provide you with a brief executive summary of what we believe to be the best roadmap for resolution of this 14-year dispute between the Milwaukee Metropolitan Sewerage District (MMSD) and 140,000 residents of the FLOW communities of Brookfield, Butler, Elm Grove, Germantown, Menomonee Falls, Mequon, New Berlin, and Thiensville.

Background

A number of intriguing ideas have been advanced to resolve the "sewer wars." Legislative hearings have been held on the matter in both houses of the Legislature. There has clearly been an increasing understanding of the policy issues, which are legislative in nature. There also exists a clear understanding that the MMSD is (1) the eighth largest taxing unit in Wisconsin, (2) the second largest utility, and (3) the largest utility whose rates are not established by the Public Service Commission (PSC) of Wisconsin. Finally, there is substantial appreciation that the MMSD is a "creature of the Legislature," and, as such, the Legislature has been historically responsible for creating the ground rules under which the special-use utility monopoly operates.

Representative Marc C. Duff
April 29, 1996
Page No. 2

Principles to Guide Resolution of the "Sewer Wars"

The Legislators who have been studying this matter for some time have suggested that the resolution of this issue must be governed by, at least, the following four major principles:

- The legislation which is passed must provide a long-term solution, one that the Legislature will not be inclined to tamper with every year or two.
- The legislation must be neutral and not choose economic sides between MMSD and FLOW.
- The solution must utilize long-established philosophical values.
- The solution must utilize long-established institutional processes.

The Legislative Solution

Since the early part of the Twentieth Century, Wisconsin has utilized the PSC as a vehicle for establishing the rates that utility monopolies can charge the various classes of users. This process accomplishes two objectives. First, it ensures a fair rate of return to the utility. Second, it ensures that each class of customers will be treated fairly in relation to the other classes of customers. The PSC has nearly a century of experience in making such decisions.

Senate Bill 614 directs the PSC to establish capital charges which may be levied by the MMSD as to all classes of customers being served by this monopoly utility. The PSC is further directed to utilize long-established philosophical and institutional processes to make its decisions. Senate Bill 614 does not choose sides but, rather, provides a long-term solution to this 14-year-old war.

Attached please find a list of those individuals who are registered to lobby on behalf of the FLOW Communities. We have asked the FLOW lobbyists to contact you and

Representative Marc C. Duff
April 29, 1996
Page No. 3

arrange an opportunity to discuss the progress and contents of Senate Bill 614. In addition, please feel free to contact the members of the FLOW Executive Committee directly if you have any additional questions. Their names, addresses, telephone and fax numbers are attached.

We fervently believe we must end the destructive battle known as the "sewer wars." There is a necessary and most appropriate role for the Legislature to play in resolving this war. We encourage your passage of Senate Bill 614.

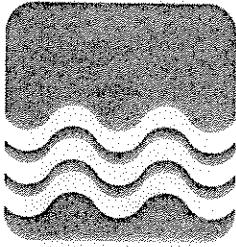
Sincerely,



Kathryn C. Bloomberg
Chair, FLOW Executive Committee

Attachment

*Dear Marc - Is this like preaching
to the choir? Thanks for all your
help - you have been a real
trooper. Kate*



Milwaukee Metropolitan Sewerage District
 260 West Seeboth Street
 P.O. Box 3049
 Milwaukee, Wisconsin 53201-3049
 (414) 272-5100

961-2002 w
 367-2110

Marc & I own numerous properties in both Brookfield & Milwaukee. This still makes no sense!
[Signature]
 1/21/96

James Wiechmann
 2727 E Newberry Blvd
 Milwaukee WI 53211

Dear Mr. Wiechmann :

Legislation being introduced by Rep. Marc Duff (R-New Berlin) that would take \$20 million out of Milwaukee County consumers' pockets each year is scheduled for deliberation by the State Assembly this month.

We need your help to keep it from passing.

In Milwaukee County, capital costs for sewer system improvements have always been billed on a property tax basis. Because these property taxes can be deducted from federal income taxes, Milwaukee County taxpayers annually receive approximately \$20 million in tax deductions.

Assembly Bill 374 would change all that by mandating that capital costs for sewer improvements could only be recovered through non-deductible user charges. If AB 374 passes, this property tax reduction would be lost, and the \$20 million that normally is returned to the Milwaukee area economy, would instead stay in Washington. As a result, Milwaukee County taxpayers would have \$20 million less to spend each year.

You don't have to be an economist to know that taking \$20 million out of Milwaukee County consumers' pockets will translate into a huge loss of revenue for metropolitan area businesses.


AB 374 would also shift an inequitable share of the cost of paying for sewer improvements onto industry. As a business leader, you can understand that a dramatic increase in the cost of doing business in the Milwaukee area would have a devastating impact on the area economy.

You may wonder why such an anti-business bill would even be considered by the Republican Legislature. The reason is simple. The FLOW communities of New Berlin, Elm Grove, Brookfield, Menomonee Falls, Butler, Mequon, Germantown and Thiensville have convinced a minority of Republican legislators, those who represent their communities to push this legislation. FLOW's primary motivation for wanting this legislation to pass is it would enable their communities to continue to pay less than half of their fair share for sewer improvements and force business and industry to pay more.

This legislation would have a punishing impact on economic development in the metropolitan area. AB 374 is set to be deliberated by the Assembly on January 23.

Act now! Call Rep. Marc Duff at (608) 266-1190 and Assembly Speaker David Prosser who has agreed to advance the bill at (608) 266-3387. Tell them that AB 374 is anti-business. Tell them to say no to FLOW.

Only the intervention of business leaders like yourself will stop this legislation from becoming law. Our metropolitan business climate depends on your involvement.

Sincerely,

 Ralph Holliman
 Executive Director

FLOW
Fair Liquidation Of Waste

890 Elm Grove Road
Elm Grove, WI 53122

FLOW EXECUTIVE COMMITTEE

Kathryn C. Bloomberg, Mayor (414) 782-9650
City of Brookfield
2000 N. Calhoun Road
Brookfield, WI 53005

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Menomonee Falls, WI 53051-3140

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Butler, WI 53007

Charles J. Hargan, President (414) 253-8250
Village of Germantown
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Germantown, WI 53022

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Mequon, WI 53092

Donald Molyneux, President (414) 242-3720
Village of Thiensville
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Thiensville, WI 53092

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[As Of 4/15/96]

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Milwaukee, WI 53202

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President
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Patrick (Pat) Essie
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The O'Connor Company
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Madison, WI 53703

Alice O'Connor
(608) 255-7211

Bright Consulting
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Madison, WI 53711

Michael P. Bright
(608) 278-1903

Daniel Meyer
P. O. Box 8050
Wisconsin Rapids, WI 54495-8050

Daniel (Dan) Meyer
(715) 422-3368



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536
Telephone (608) 266-1304
Fax (608) 266-3830

DATE: May 3, 1996
TO: MEMBERS OF THE ASSEMBLY COMMITTEE ON ENVIRONMENT AND UTILITIES
FROM: John Stolzenberg, Staff Scientist
SUBJECT: Summary of Senate Substitute Amendment 1 to 1995 Senate Bill 614, Relating to Regulation of the Milwaukee Metropolitan Sewerage District, as Recommended by the Joint Committee on Finance

INTRODUCTION

This memorandum, prepared at the request of Representative Marc Duff, Chairperson of your Committee, provides a summary of Senate Substitute Amendment 1 to 1995 Senate Bill 614 (hereafter, the Substitute Amendment), as adopted and recommended for passage by the Joint Committee on Finance on March 22, 1996. The Substitute Amendment relates to regulation and supervision by the Public Service Commission (PSC) of the Milwaukee Metropolitan Sewerage District (MMSD), the sale or lease of the MMSD's assets, authorizing the dissolution of the MMSD, distribution of excess reserves of the MMSD, Clean Water Fund program grants for certain municipalities, granting rule-making authority, making an appropriation and providing penalties.

The summary in this memorandum of the Substitute Amendment is divided into the following parts:

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A. PUBLIC SERVICE COMMISSION REGULATION AND SUPERVISION

1. Jurisdiction Over "Regulated Districts"

Under current law, the MMSD's Commission has the general duty to project, plan, design, construct, maintain and operate a sewerage system for the collection, transmission and disposal of all sewage and drainage of its service area, subject to ss. 66.88 to 66.918 [s. 66.89 (1), Stats.]. The Commission has a number of specific powers and duties specified in its specific enabling law [ss. 66.88 to 66.918, Stats.], and other statutes which enable it to fulfill this general duty, including the authority to issue bonds and notes; acquire property; construct, operate and maintain its facilities and set rates and charges for its services. The PSC is currently only involved in the regulation of the MMSD in response to complaints to the PSC by a user of the MMSD's services under s. 66.076 (9) or 66.912 (5), Stats.

The Substitute Amendment establishes that for purposes of the state's general public utility law, ch. 196, Stats., a "regulated district" shall be a metropolitan sewerage district created under s. 66.882, Stats. Presently, the MMSD is the only metropolitan sewerage district that is a regulated district. Thus, this memorandum will use "regulated district" and the MMSD interchangeably.

The Substitute Amendment also amends many of the provisions in ch. 196, Stats., to subject a regulated district, and, thus the MMSD, to most of the same regulations and PSC supervision as public utilities are subject to under ch. 196, Stats. The attachment to this memorandum identifies the specific sections in ch. 196, Stats., which the Substitute Amendment amends to provide for this parallel regulation. These regulations include the PSC's duty to approve an increase in a regulated district's rates and charges; approve the construction by a regulated district of its physical plant; require a uniform system of accounts; approve terms of service offerings, including service extensions; review complaints on rates, rules and practices; and approve reorganizations, consolidations and mergers.

Consistent with these changes in the regulation by the PSC of the MMSD, the Substitute Amendment amends municipal law to do all of the following:

a. Delete the MMSD's authority to set sewerage system service charges under the general law applicable to municipalities and other metropolitan sewerage districts [s. 66.076, Stats.].

b. Convert the authority of the MMSD to establish charges under various provisions in the MMSD's specific enabling law to *propose* charges which are then established under ss. 196.03, 196.20 and 196.37, Stats. [s. 66.91 (5) (c) 2., Stats.]. These sections set forth the processes and standards applicable to public utilities' rate increases and decreases. The Substitute Amendment does not give the PSC the authority to review any tax levied by the MMSD under s. 66.91 (6), Stats. The Substitute Amendment requires the MMSD to file its initial schedule of rates, tolls and charges with the PSC 90 days after the Substitute Amendment's general effective date. The Substitute Amendment establishes that: (1) this initial filing shall be

treated as a rate increase under ss. 196.03, 196.20 and 196.37, Stats.; (2) the MMSD's rates in effect on the Substitute Amendment's general effective date continue in effect until the PSC completes its review of the initial filing; and (3) the PSC must complete its review of the initial filing within 18 months after the Substitute Amendment's general effective date [SEC. 145 (1)].

c. Establish that other specified powers and duties of the MMSD under its specific enabling law, including the authority to acquire property; plan, construct, operate and maintain facilities; enter into contracts; borrow money and issue bonds are subject to any approval by the PSC required under chs. 184 and 196, Stats. [Chapter 184, Stats., relates to securities of public service corporations. Currently, "public service corporation" includes every corporation, except a municipality or other public political subdivision, which is a public utility as defined in s. 196.01, e.g., investor-owned public utilities.]

d. Delete the authority of users of MMSD's service to complain to the PSC about the MMSD's rates, rules and practices under s. 66.076 (9) or 66.912 (5), Stats.

2. Effects on Pending Complaints

The Substitute Amendment establishes that, if enacted, it does not divest the PSC over, or change the standards to be applied in, any complaint pending with the PSC on the effective date of this provision [SEC. 145 (3)].

B. SALE OR LEASE OF THE MMSD'S ASSETS AND FACILITIES

1. Requirements

The Substitute Amendment directs the MMSD's Commission to lease or sell, subject to the PSC's consent and approval described below, any or all of the MMSD's assets and facilities if the PSC determines that all of the following apply:

a. A lease or sale will be in the best interests of the MMSD's ratepayers. In making this best interests determination, the PSC must consider whether the lease or sale: (1) will provide for a reasonably adequate supply of sewerage services to meet the needs of the public; (2) is in the public interest when considering engineering, economic, health, safety, reliability, efficiency and environmental factors and alternate methods of providing sewerage services; (3) is reasonably coordinated with long-range plans and policies of other agencies or that a reasonable effort has been made to coordinate with such plans and policies; and (4) will abate combined sewer overflows to the extent necessary to comply with federal or state law.

b. Under the terms of any lease or sale agreement, the employees of the MMSD who: (1) cease to be employees of the MMSD on the effective date of the lease or sale; (2) are performing functions in relation to the assets or facilities that are leased or sold; and (3) are covered by a collective bargaining agreement under subch. IV of ch. 111, which is in effect on the day before the effective date of the lease or sale, shall continue to perform the functions that they perform on the day before the effective date of the lease or sale, after the lease or sale until the expiration date of the collective bargaining agreement that applies to these employees, or for

two years following the effective date of this provision, whichever is sooner [proposed s. 66.891 (1), Stats.].

Under the Substitute Amendment, the MMSD may sell, acquire, lease or rent any of its plant or property constituting an operating unit or system with the PSC's consent and approval [proposed s. 196.80 (1s) (e), Stats.]. The PSC's consent and approval must be given in the specified process upon the PSC finding that the proposed action is consistent with the public interest [proposed amendment of s. 196.80 (3), Stats.]. The Substitute Amendment also authorizes the PSC to inspect the books, accounts and records of the MMSD and examine, under oath, any MMSD commissioner, employe or agent in order to obtain information bearing upon the two PSC determinations identified above [proposed s. 196.02 (13), Stats.].

2. Appointment of a Master

If the PSC makes the two determinations specified in the preceding section, relating to the lease or sale of any or all of the MMSD's assets and facilities and if the PSC believes that the MMSD's Commission has not acted in the best interests of the MMSD's ratepayers in selling or leasing the MMSD's assets and facilities, the PSC may appoint an individual to negotiate and enter into agreements for the sale or lease of any or all of the MMSD's assets and facilities. This individual may exercise, on behalf of the MMSD, the powers given the MMSD's Commission relating to the acquisition of property and the authority to enter into contracts under ss. 66.90 (1) and 66.904 (1), Stats. The MMSD must pay all costs incurred by the individual in the performance of his or her duties under this provision [proposed s. 196.02 (13), Stats.].

3. Distribution of Proceeds

The Substitute Amendment establishes that the proceeds of any sale or lease of part or all of the MMSD's assets or facilities to an entity other than the state must be distributed, in a manner approved by the PSC, to the state and municipalities in proportion to the amounts paid by the state and municipalities for the MMSD's capital costs, since the MMSD was reorganized on April 27, 1982 under s. 66.882 (1) (b), Stats. Thirty percent of the proceeds distributed to this state under this provision that are not obligated to the Clean Water Fund must be credited to the appropriation for the Clean Water Fund Special Grants Program, described below in Section G [proposed s. 66.891 (3), Stats.].

4. PSC Study

The Substitute Amendment directs the PSC to study the likely effects of any sale or lease of the assets of the MMSD on the rates charged for sewerage services in the MMSD. No later than six months after the PSC completes its review of the initial schedule of rates filed by the MMSD under SEC. 145 (1) (b), the PSC must report the results of this study to the Legislature, under s. 13.172 (2), Stats., the MMSD and the Governor [SEC. 145 (4)].

C. DISSOLUTION OF THE MMSD

The Substitute Amendment authorizes the MMSD's Commission to dissolve the MMSD if all of the following conditions are met:

1. All of the MMSD's outstanding indebtedness has been retired and all bonds issued by the MMSD have been paid off.
2. All of the MMSD's assets and facilities have been sold, following the PSC making the two determinations specified in Section B, 1, above.
3. Both the Department of Natural Resources (DNR) and the PSC consent to the dissolution [proposed s. 66.891 (2) and proposed amendment to s. 196.78, Stats.].

D. REFUND OF EXCESS RESERVES

The Substitute Amendment directs the MMSD's Commission to develop and, upon approval by the PSC, implement a plan to make a refund to customers of the MMSD who are residents of municipalities that have been paying service charges, based on the equalized value of the property in the municipality, for capital costs associated with the MMSD's Water Pollution Abatement Program, since the inception of the service charges. The refund shall consist of that portion of current reserves that are being held by the MMSD and that are in excess of prudent reserve requirements, as determined by the PSC, less the amount transferred to the Clean Water Fund Special Grants Program described below in Section G [proposed s. 66.89 (3)].

E. ACQUISITION OF PUBLIC UTILITY STOCK

With the consent and approval of the PSC, the Substitute Amendment establishes that the MMSD may acquire the stock of a public utility or any part thereof [proposed s. 196.80 (1s) (b), Stats.].

F. REPEAL OF UNCONSTITUTIONAL STATUTES

The Substitute Amendment repeals ss. 66.898 (4) (c) and 66.899, Stats., relating to contract sewerage service charges with respect to capital costs based on the value of the property in the area to be served and to noncontractual sewerage service. The process by which these provisions were enacted was found to be unconstitutional in *Brookfield v. Milw. Sewerage*, 144 Wis. 2d 896, 426 N.W. 2d 591 (1988), because they were passed in violation of art. IV, s. 18, Wis. Const. SECTION 18 establishes that no local bill may be passed by the Legislature which embraces more than one subject, and these provisions were enacted as parts of biennial budget laws.

G. CLEAN WATER FUND SPECIAL GRANTS PROGRAM

The Substitute Amendment creates a Clean Water Fund Special Grants Program. This program is funded by two sources:

1. The first \$30 million of the MMSD's excess reserves, as determined by the PSC (see Section D) or all of these reserves, whichever is less; and
2. 30% of the proceeds of the sale or lease of MMSD assets and facilities that are distributed to the state and not obligated to the Clean Water Fund [proposed ss. 66.89 (3) and 66.891 (3)].

The DNR must provide a special grant to a municipality under the program if all of the following conditions are met:

1. The municipality qualifies for Clean Water Fund financial assistance.
2. The median household income in the municipality is 80% or less of the median household income in the state.
3. One of the following applies: (a) the estimated total annual charges per residential user in the municipality for wastewater treatment would exceed 2% of the median household income in the municipality, if the municipality receives the maximum amount of Clean Water Fund assistance, excluding any special grant; or (b) the estimated total annual charges per residential user in the municipality for wastewater treatment would exceed 2% of the median household income in the municipality without Clean Water Fund hardship assistance because insufficient hardship assistance funding is available.

The DNR may not award a special grant if the grant either: (1) results in the estimated total annual charges per residential user in the municipality for wastewater treatment being less than 2% of the median household income in the municipality; or (2) exceeds 90% of the cost of the project, if condition 3 (a), above, applies or 70% of the cost of the project for any other municipality. The DNR must also establish a funding list that ranks projects eligible for special grants in the same order that they appear on the hardship assistance priority funding list.

H. PSC AND DNR MEMORANDUM OF UNDERSTANDING

The Substitute Amendment directs the PSC and the DNR to enter into a memorandum of understanding specifying the manner in which these agencies will coordinate their regulation of the MMSD in situations in which provisions in chs. 30, 66, 144, 147 and 196 assign overlapping duties, powers or jurisdiction [proposed s. 196.025 (2)]. This memorandum must be signed no later than the first day of the 10th month after the general effective date of the Substitute Amendment. In addition, the PSC and DNR must submit any proposed rules to implement the memorandum to the Legislative Council Rules Clearinghouse no later than the first day of the 19th month after the general effective date of the Substitute Amendment [SECS. 162 (1) and 163 (2) (b)].

I. APPROPRIATIONS AND POSITION AUTHORIZATIONS

The Substitute Amendment amends the PSC's appropriation in s. 20.155 (1) (g), Stats., to authorize monies appropriated under this paragraph to be used for the regulation of the MMSD in addition to the regulation of utilities. The Substitute Amendment appropriates a total