

ASSEMBLY BILL 483
REP. DAVID BRANDEMUEHL
OCTOBER 9, 1997

THE INTENT OF AB 483 IS TO ALLOW THE DEPARTMENT OF TRANSPORTATION TO CONTRACT WITH PUBLIC UTILITIES AND RURAL ELECTRIC COOPERATIVE ASSOCIATIONS FOR COOPERATIVE ACQUISITION, DEVELOPMENT OR MAINTENANCE OF JOINTLY USED RIGHTS-OF-WAY.

AT THIS TIME, DOT AND UTILITY RIGHT-OF-WAY ACQUISITIONS ARE HANDLED SEPARATELY. THIS INCONVENIENCES LANDOWNERS AND CAUSES UNNECESSARY DELAYS IN HIGHWAY PROJECTS. SINCE THE DEPARTMENT AND THE UTILITIES CANNOT WORK TOGETHER, THE PROCESS TAKES LONGER AND HIGHWAY CONTRACTORS OFTEN MUST BEGIN WORK BEFORE THE FINAL ACQUISITIONS ARE COMPLETE. THIS WASTES TAXPAYER DOLLARS.

UNDER AB 483, THE DOT COULD CONTRACT WITH PUBLIC UTILITIES OR RURAL ELECTRIC COOPERATIVES TO JOINTLY ACQUIRE RIGHT-OF-WAYS WHEN IT IS IN THE BEST INTEREST OF THE DEPARTMENT TO DO SO. THIS PROPOSAL WILL SAVE MONEY, MINIMIZE CONSTRUCTION TIME, AND LESSEN PUBLIC INCONVENIENCE. AB 483 IS A RESULT OF A 1994 JOINT DOT/UTILITY STUDY ON THIS ISSUE AND HAS THE SUPPORT OF ALL PARTIES INVOLVED.

I URGE YOUR SUPPORT OF AB 483. THANK YOU.

1997 ASSEMBLY BILL 483
WISDOT TESTIMONY IN SUPPORT
October 9, 1997
Committee on Highways and Transportation

The Wisconsin Department of Transportation (WISDOT) supports 1997 Assembly Bill 483.

Enabling, Not Mandatory, Legislation.

Complements Present Law.

Section 66.30(1)(a), Stats. Intergovernmental Cooperation.

Section 84.063, Stats., and Chapter Trans 220, Wis. Admin. Code.
Utility Facilities Relocation.

Clear Public Purpose. Allows WISDOT to enter into agreements with public utilities or rural electric cooperatives for the joint exercise of any power or duty already authorized by law for rights-of-way to be used jointly by WISDOT and the public utility or rural electric cooperative.

What's Problem? WISDOT acquires property from a private property owner for the highway or transportation project and shortly thereafter, when the property owner thinks it's all over, the utilities come along and acquire their own easements from the same owner adjacent to the project. The private property owner feels disgruntled; the owner is getting a hit two or more times and feels blind sided by not being fully aware of the full potential consequences of the public project. Also, subsequent utility action may prevent WISDOT from fulfilling commitments (utility may not know WISDOT commitment made to save tree and utility comes along and takes it down.) Bottom Line = inefficient duplication of efforts by WISDOT and public utilities, delays in public project work, increased costs to the public, and aggravation of private land owners affected by WISDOT highway and transportation projects.

What's Solution? Joint, cooperative acquisition and use of property by WISDOT and public utilities. 1997 Assembly Bill 483 allows WISDOT and public utilities to enter into cooperative agreements for the joint acquisition and joint use of rights-of-way. Complements existing law by allowing utilities and WISDOT to enter into cooperative agreements on mutually acceptable terms when opportunities are identified during the Trans 220 process.

Some Examples.

- Past. USH 14 in Richland Center, Pine River Bridge Replacement -- WISDOT had acquired all proposed right of way, after which three utilities came in and contacted adjacent property owners to obtain their necessary easements (gas, electric, communications). Could have been accomplished all at same time cooperatively.
- Future. STH 11, Janesville Bypass-West, Rock County -- In northeast quadrant of the USH 51/STH 351 intersection, Wisconsin Power & Light (WPL) has an electric substation that conflicts with the bypass project. WPL also has a wide electric easement occupied by a transmission pole line along the north side of STH 351. Save the public money and private property owner aggravation by entering into an agreement to acquire the property interests needed for the project, substation and pole line relocation jointly, at the same time.

Reduces Costs and Bother to Public Without Expanding Authority or Property Acquired. Does not increase the property needed or acquired for WISDOT highway improvements nor increase WISDOT costs for present or future utility relocations; allows better coordination of WISDOT and public utility property acquisition activities and should reduce costs and bother to the public.

WISDOT, public utilities and rural electric cooperatives have statutory authority to acquire property by purchase or condemnation/eminent domain under existing law for public purposes. Does not expand the legal authority of utilities or rural electric cooperatives to acquire property needed for public purposes, nor WISDOT authority. Allows cooperation in the exercise of existing powers. James S. Thiel, General Counsel, WISDOT, 608 266 8928



WISCONSIN UTILITIES ASSOCIATION, INC.

44 EAST MIFFLIN STREET • SUITE 202 • P.O. BOX 2117 • MADISON, WISCONSIN 53701-2117 • TELEPHONE (608) 257-3151 • FAX (608) 257-9124

NICKOLAS C. GEORGE, JR.
Vice President
Programs & Governmental Affairs

To: Assembly Committee on Highways & Transportation
From: Nick George, Jr., Wisconsin Utilities Association
Date: October 9, 1997
Re: AB 483, Relating to DOT/Utilities Cooperative Acquisitions

The Wisconsin Utilities Association (WUA) supports Assembly Bill 483, which allows the Wisconsin Department of Transportation (DOT), and other units of government, to enter into cooperative agreements (contracts) with public utilities and rural electric cooperatives for the acquisition, development or maintenance of jointly used rights-of-way.

Right-of-way acquisitions for DOT and utilities often occur separately which can add time and cost to a project. The purpose of this bill is to establish a more efficient and less costly way of jointly acquiring needed right-of-way by DOT and a utility. If right-of-way acquisition can be accomplished jointly, the utility can complete its work earlier and the projects can be completed on time.

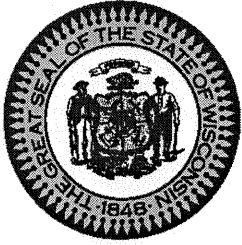
Cooperative agreements are not a new arrangement. Under current law, WISDOT enters into agreements with other units of government for the joint, cooperative exercise of any of their existing, separate legal powers. This bill complements existing law by allowing utilities and rural electric cooperatives to coordinate with DOT on mutually acceptable terms when opportunities are identified and agreed upon during the Trans 220 process.

It is important to note that:

- This bill does **not require** DOT or public utilities or other units of government to enter into such agreements. Any agreement is voluntary and on a case-by-case basis.
- This bill does **not expand** the legal authority of utilities to acquire property. Public utilities and rural electric cooperatives already have legal authority to acquire property by eminent domain/condemnation.
- This bill does **not increase** the property needed for DOT highway improvements nor increase DOT costs.
- This bill **will help** keep highway projects on schedule and reduce overall costs.

AB 483 will allow better coordination between DOT, public utility and rural electric cooperative right-of-way activities and reduces costs and bother to the public. We urge your support of this legislation.





Gunderson
Zukowski
Ainsworth

DAVID BRANDEMUEHL

State Representative
49th Assembly District

TO: All Legislators
FROM: Rep. David Brandemuehl
DATE: July 24, 1997
RE: Co-sponsorship of LRB 2975/2, relating to allowing the department of transportation to contract with public utilities and rural electric cooperative associations for cooperative acquisition, development or maintenance of jointly used rights-of-way.

Handwritten names: Powers, Sedzie, Musser, Goetsch, Plache, Freese, Kelso, Otte, Farrow, Albers, Grothman, Huelsman, Hahn, Ott, Moen, Vrakas, Schaefer, Seratti, Schultz

Right-of-way acquisitions for DOT and utilities often occur sequentially. This can add time and costs to a project. When DOT's right-of-way finalization is late, it leaves insufficient time for utilities to accomplish any related acquisition on their parts before the highway contractor starts work. As such, utilities often have to deal with an unhappy landowner, who is being impacted for a second time.

The intent of LRB 2975/2 is to establish a more efficient (and thus less costly) way of jointly acquiring needed right-of-way when its acquisition is needed by both DOT and a utility. If utility and highway acquisition can be accomplished jointly, the utility can complete its work earlier and there is a greater opportunity for the highway contractor to bid the work based on no direct utility involvement in the road project. This saves the public money, minimizes construction time, and lessens public inconvenience.

LRB 2975/2 is a result of a joint DOT/Utility study on this issue in 1994 and has the support of both parties. If you would like to co-sponsor this bill, please contact my office by **Friday, August 15th**.

Analysis by the Legislative Reference Bureau

With specific limits, current law authorizes any municipality to contract with another municipality, and with federally recognized Indian tribes and bands in this state, for the receipt or furnishing of services or the joint exercise of any power or duty required or authorized by law. If municipal or tribal parties to a contract have varying powers or duties under the law, each may act under the contract to the extent of its lawful powers and duties.

This bill allows the department of transportation to contract with any public utility or rural electric cooperative association for the joint exercise of any power or duty required or authorized by law relating to the acquisition, development or maintenance of rights-of-way to be used jointly by the contracting parties. However, no contract may authorize a party to exceed the party's legal authority.

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

FAX

DATE: July 17, 1997

TO: Sheri @ Rep. Brandemuehl
FAX 267 4358

FROM: Jim Thiel, OGC, WISDOT
608 266 8928
FAX 608 267 6734

RE: LRB 2975/2
Cooperative Acquisition of Rights of Way

MESSAGE: I do **NOT** recommend striking out "rural" in the draft and substituting any "electric cooperative organized under ch. 185" for the following reasons:

1. Only a "rural electric cooperative association" has specific condemnation authority under sec. 32.02(10), Stats. An "electric cooperative association" or "cooperative association" under ch. 185 does **NOT**. Don't think you want to expand authority or want WISDOT to condemn any extra for any entity that doesn't have condemnation authority.
2. Current law allows WISDOT to permit a "rural electric cooperative association" to occupy WISDOT owned land without Building Commission approval under sec. 13.48(12)(b)1, Stats., for the same purposes as the rural electric has condemnation authority. The law does **NOT** allow WISDOT to permit electric cooperative associations under ch. 185 to occupy WISDOT land.
3. Electric cooperatives organized under ch. 185 are specifically **EXCLUDED** from the definition of "public utility" under sec. 196.01(5), Stats., if they simply provide service to their members, and would not be subject to the scrutiny of the PSC or the public purpose limitations on use of property condemned by public utilities under sec. 32.075, Stats.

A genuine electric cooperative association serving the public would qualify as a public utility anyway under sec. 196.01(5), Stats. Something isn't quite right with this request, Sheri. **LRB 2975/2 looks o.k. to me.**

cc: Gene Kussart with copy of draft

LRB or Bill No./Adm. Rule No.
LRB 2975/2

Amendment No. if Applicable

FISCAL ESTIMATE
DOA-2048 N(R10/96)

- ORIGINAL
- UPDATED
- CORRECTED
- SUPPLEMENTAL

Subject
Sharing Utility and Transportation Rights of Way

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

Increase Costs - May be possible to Absorb Within Agency's Budget Yes No

- Increase Existing Appropriation
- Decrease Existing Appropriation
- Create New Appropriation
- Increase Existing Revenues
- Decrease Existing Revenues

Decrease Costs

Local: No local government costs

- 1. Increase Costs
 - Permissive
 - Mandatory
- 2. Decrease Costs
 - Permissive
 - Mandatory

- 3. Increase Revenues
 - Permissive
 - Mandatory
- 4. Decrease Revenues
 - Permissive
 - Mandatory

5. Types of Local Governmental Units Affected:
- Towns
 - Villages
 - Cities
 - Counties
 - Others _____
 - School Districts
 - WTCS Districts

Fund Sources Affected

- GPR
- FED
- PRO
- PRS
- SEG
- SEG-S

Affected Ch. 20 Appropriations

20.155(l)(g)

Assumptions Used in Arriving at Fiscal Estimate

This bill would allow the Department of Transportation, utilities, and cooperatives to enter into contracts for joint use of right-of-ways. As drafted, this bill would not fiscally impact the Public Service Commission.

Long-Range Fiscal Implications
None.

APPROVED

Chairman cep

Commissioner dlE

Commissioner _____

Agency/Prepared by: (Name & Phone No.)
Gordon O. Grant 267-9086

Authorized Signature/Telephone No.

Gordon O. Grant

Date
7-25-97

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2975/2dn

PEN:mfd:hmh

Thursday, June 5, 1997

This language is based on s. 66.30 (2) and (3), stats.

This draft does not authorize the issuance of bonds or establish procedural limitations on contracting with out-of-state utilities or associations. See s. 66.30 (2g) and (5), stats. The draft does not authorize the formation of commissions. See ss. 15.01 (2) and 66.30 (3n), stats.

Please let me know if other powers and limitations of s. 66.30, stats., are wanted in this draft.

Paul E. Nilsen
Legislative Attorney
261-6926

BILL**SECTION 1**

1 **SECTION 1.** 84.095 of the statutes is created to read:

2 **84.095 Cooperative acquisition of rights-of-way.** (1) The department
3 may contract with a public utility, as defined in s. 196.01 (5), or with a rural electric
4 cooperative association, as described in s. 32.02 (10), for the receipt or furnishing of
5 services, or the joint exercise of any power or duty required or authorized by law,
6 relating to the acquisition, development or maintenance of rights-of-way to be used
7 jointly by the department and a public utility or rural electric cooperative
8 association. If parties to a contract under this section have varying powers or duties
9 under the law, each may act under the contract to the extent of its lawful powers and
10 duties. This section shall be interpreted liberally in favor of cooperative action
11 between the department and a public utility or rural electric cooperative association.

12 (2) Any contract under this section may provide a plan for administration of
13 the function or project, which may include provisions as to proration of the expenses
14 involved, deposit and disbursement of funds appropriated, submission and approval
15 of budgets and formation and letting of contracts.

16

(END)

1997-99
WISCONSIN DEPARTMENT OF TRANSPORTATION
LEGISLATIVE PROPOSAL FORM
BUDGET / NON-BUDGET

SHORT TITLE OF ISSUE: Cooperative Acquisition of Rights-of-Way

DIVISION(S): Division of Transportation Infrastructure Development	DIVISION ADMINISTRATORS' SIGNATURES:
DATE: July 24, 1996	
OPB CONTACT PERSON:	TELEPHONE #:
LEAD DIVISION CONTACT PERSON: Bob Bovy	TELEPHONE #: 266-2941
OGC CONTACT PERSON: <i>Jim Thiel</i>	TELEPHONE #:
DEFINE PROBLEM PRECISELY	
<p>Right-of-way acquisitions for DOT and Utilities often occur sequentially. This can add time and costs to a project. When DOT's right-of-way finalization is late, it leaves insufficient time for utilities to accomplish any related acquisition on their parts before the highway contractor starts work. As such, utilities often have to deal with an unhappy landowner, who is being impacted for a second time.</p> <p>The goal is to find a more efficient (and thus less costly) way of jointly acquiring needed right-of-way when its acquisition is needed by both DOT and a utility. If utility and highway acquisition can be accomplished jointly, the utility can complete its work earlier and there is a greater opportunity for the highway contractor to bid the work based on no direct utility involvement in the road project. This saves the public money, minimizes construction time, and lessens public inconvenience.</p>	
PROPOSED SOLUTION	
Modify S. 66.30 to include utilities as municipalities which would permit DOT to enter into agreements with utilities for cooperative acquisition when it is clearly in DOT's best interests to do so.	
LEGISLATIVE BACKGROUND	
Utilities have long sought such a change. As a result of a joint DOT/Utility study of this issue in 1994, Jim Thiel drafted some proposed legislation.	

INTERNAL DISCUSSION PURPOSES ONLY

**DRAFT ENABLING LEGISLATION
COOPERATIVE AGREEMENTS WITH PUBLIC UTILITIES**

Section 66.30 (1) (a), Stats., is amended to read:

66.30 "Intergovernmental cooperation. (1) (a) In this section "municipality" means the state or any department or agency thereof, or any city, village, town, county, school district, public library system, public inland lake protection and rehabilitation district, sanitary district, farm drainage district, metropolitan sewerage district, sewer utility district, solid waste management system created under s. 59.07 (135), water utility district, public utility as defined in s. 196.01 (5) or cooperative association mentioned in s. 32.02 (10), mosquito control district, municipal electric company, county or city transit commission, commission created by contract under this section, taxation district or regional planning commission."

- "Municipality" already includes the state or any department or agency of the state.

LAW NOTE

Under the present law, WISDOT enters into agreements with other units of government for the joint, cooperative exercise of any of their existing, separate legal powers. These cooperative agreements may identify a lead agency, divide work tasks, assign risks or cost shares, or address other subjects as the parties may agree. Section 66.30(3), Stats. If the parties to the contract have varying powers or duties under the law, each may act under the agreement to the extent of its lawful powers and duties. This existing law is interpreted liberally in favor of cooperative action. Section 66.30(2), Stats.

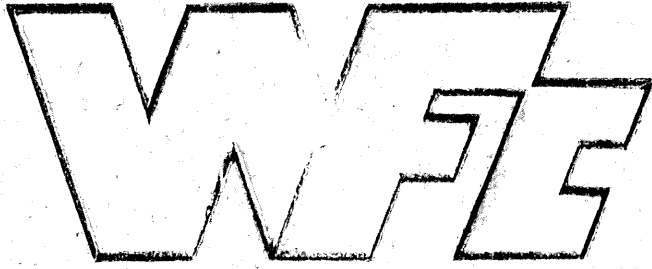
This draft enabling legislation allows WISDOT and other units of government to enter into cooperative agreements (contracts) with public utilities in the same way, i.e. by agreement for the receipt or furnishing of services or the joint exercise of any power or duty required or authorized by law. This draft enabling legislation does not require WISDOT or public utilities or other units of government to enter into such agreements.

Under present law, public utilities as defined in sec. 196.01(5) and cooperative association mentioned in sec. 32.02(10), Stats., already have legal authority to acquire property by eminent domain/condemnation. See secs. 32.02(4) (telegraph and telecommunications), (5) (heat, power and light), (6) (gas), (8) (water), (9) (oil), (10) (rural electric coop), (12) (waste), (13) (hydrocarbons), and sec. 32.075(2), Stats. (no further necessity determination required under sec. 32.06(7), Stats., if Public Service Commission (PSC) has already approved.) Under present law, property acquired by utilities by condemnation must be used for approved utility public purposes or be returned to prior owners. Section 32.075, Stats. Falkner v. Northern States Power, 75 Wis2d 116, 125, 248 NW2d 885 (1977). Electric utilities also need a certificate under sec. 196.491, Stats., from the PSC for high-voltage transmission lines before proceeding with acquisitions of property for those facilities. Sections 32.03(5)(a) and 32.07(1), Stats. This draft enabling legislation does not expand the legal authority of utilities to acquire property.

Under present law, public utilities may locate their lines in WISDOT and other highway rights of way subject to WISDOT's approval and reasonable conditions as may be imposed by WISDOT or the authority having jurisdiction over the highway. Sections 86.047, 86.07(2), 86.16(1), and 182.017(1), Stats. With respect to State Trunk Highways (STH, USH & I System), WISDOT and public utilities are required to follow a rigorous procedure to prevent highway contractor delay and expenses due to uncertain scheduling of utility relocations by utility facility owners. Existing law prescribes the method by which WISDOT notifies utility facility owners of proposed highway improvements as well as the method by which owners advise WISDOT of facilities located in the area of the improvement project. After WISDOT furnishes its improvement plans to the owners, the owners furnish work plans for altering or relocating their facilities to the WISDOT. WISDOT reviews and approves a work plan for utility facility relocation or alteration. Thus, a defined process and scheduling procedure is established to deal with utility conflicts and arrange for their resolution. Sections 84.093, Stats., and Chapter Trans 220, Wis. Admin. Code.

This draft enabling legislation complements existing law by allowing utilities and WISDOT to enter into cooperative agreements on mutually acceptable terms when opportunities are identified during the Trans 220 process. This enabling legislation does not increase the property needed or acquired for WISDOT highway improvements nor increase WISDOT costs for present or future utility relocations; it allows better coordination of WISDOT and public utility property acquisition activities and reduces costs and bother to the public.

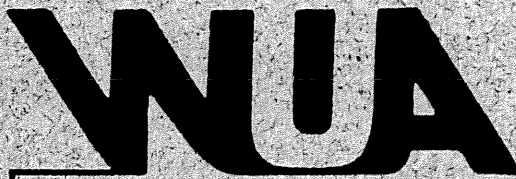
Jim Thiel
General Counsel, WISDOT
State Bar #1012582
608 266 8810
FAX 608 267 6734



Ruthann Nelson
Director of
Government Relations

Wisconsin Federation of Cooperatives

30 West Mifflin St., Suite 401 • Madison, WI 53703
(608) 258-4400 FAX (608) 258-4407



**WISCONSIN UTILITIES
ASSOCIATION, INC.**

NICKOLAS C. GEORGE, JR.

Vice President
Programs & Governmental Affairs

44 EAST MIFFLIN STREET
P.O. BOX 2117
MADISON, WI 53701-2117

SUITE 202
TELEPHONE (608) 257-3151
FAX (608) 257-9124

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 4/7/97

To: Representative Brandemuehl

Relating to LRB drafting number: LRB-2975

Topic

Intergovernmental cooperation agreements; public utilities and rural electric cooperatives

Subject(s)

Transportation - miscellaneous

1. **JACKET** the draft for introduction _____

Brandemuehl

in the **Senate** _____ or the **Assembly** _____ (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____.

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____.

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Paul E. Nilsen, Legislative Attorney
Telephone: (608) 261-6926

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2975/1dn

PEN:mfd:arm

Friday, April 4, 1997

Please note that this draft authorizes broad contracting authority between any "municipality", as defined in s. 66.30 (1), stats., and a public utility or qualified rural electric cooperative.

This draft is not limited to contracts between the department of transportation (DOT) and public utilities or qualified rural electric cooperatives.

This draft must be redrafted if your intent is to authorize a public utility and rural electric cooperative: 1) to contract only with DOT for the receipt or furnishing of services or the joint exercise of any power or duty required or authorized by law; 2) to contract with DOT only for acquisitions of rights of way; or 3) to contract only with DOT only for acquisitions of rights of way.

Paul E. Nilsen
Legislative Attorney
261-6926

Co-ops

6-4-87

Keenan Kies

- looking for Sen. Dem.

UT Utilities

Dave Jenkins

Feel. of Co-ops / on board
Warren

Concerned: retail shaking

Jim Thiel (6-8810)
DOT

work together - get in done
speed up the process
Not money issue
Owners think done, but
then utilities come
along

PHONE CALL

FOR <u>Deve</u>	DATE <u>3/27</u>	TIME <u>9:20</u>	AM/PM: <u>AM</u>
M <u>Kenyon Kies</u>			
OF <u>WI Utilities Assoc.</u>	<input checked="" type="checkbox"/> PHONED		
PHONE <u>257-2151</u>	<input type="checkbox"/> RETURNED YOUR CALL		
AREA CODE <u>257</u>	NUMBER <u>2151</u>	EXTENSION	
MESSAGE <u>Re: co-op Agmt w/ this</u>	<input type="checkbox"/> PLEASE CALL		
<u>Agreements between</u>	<input type="checkbox"/> WILL CALL AGAIN		
<u>Co-ops & DOT. is support</u>	<input type="checkbox"/> CAME TO SEE YOU		
<u>Deve Jenkins will call.</u>	<input type="checkbox"/> WANTS TO SEE YOU		
SIGNED	TOPS FORM 4003		

- put into drafting for
Kenyon Kies

257 - 3151

257 - 9124 (Fax)

- John Manske called
to say coops OK
w/ bill

03/31/97 17:02
03/31/97 14:06

608 257 9124
WI DOT GEN. COUNSEL → 608 257 9124

WI UTILITIES

005/007

NO. 536 P002/005
LRE-0950/100

PEN:mfd:jf

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

Monday, November 25, 1996

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✓ 4/9/97 called Paul
Paul E. Nilsen
Legislative Attorney
261-6926

ch 85

RECs as defined in Chap. 185



*Dave Jenkins
12/28/88*

**PROPOSED LEGISLATION
COOPERATIVE AGREEMENTS WITH PUBLIC UTILITIES**

Under the present law, WISDOT enters into agreements with other units of government for the joint, cooperative exercise of any of their existing, separate legal powers. These cooperative agreements may identify a lead agency, divide work tasks, assign risks or cost shares, or address other subjects as the parties may agree. Section 66.30(3), Stats. If the parties to the contract have varying powers or duties under the law, each may act under the agreement to the extent of its lawful powers and duties. This existing law is interpreted liberally in favor of cooperative action.

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Under present law, public utilities as defined in sec. 198.01(5) and cooperative association mentioned in sec. 32.02(10), Stats., already have legal authority to acquire property by eminent domain/condemnation. See secs. 32.02(4) (telegraph and telecommunications), (5) (heat, power and light), (6) (gas), (8) (water), (9) (oil), (10) (rural electric coop), (12) (waste), (13) (hydrocarbons), and sec. 32.075(2), Stats. (no further necessity determination required under sec. 32.06(7), Stats., if Public Service Commission (PSC) has already approved.) Under present law, property acquired by utilities by condemnation must be used for approved utility public purposes or be returned to prior owners. Section 32.075, Stats. Falkner v. Northern States Power, 75 Wis2d 116, 125, 248 NW2d 885 (1977). Electric utilities also need a certificate under sec. 196.491, Stats., from the PSC for high-voltage transmission lines before proceeding with acquisitions of property for those facilities. Sections 32.03(5)(a) and 32.07(1), Stats. This draft enabling legislation does not expand the legal authority of utilities to acquire property.

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PROPOSED LEGISLATION
COOPERATIVE AGREEMENTS WITH PUBLIC UTILITIES

Section 66.30 (1) (a), Stats., is amended to read:

66.30 "Intergovernmental cooperation. (1) (a) in this section 'municipality' means the state* or any department or agency thereof, or any city, village, town, county, school district, public library system, public inland lake protection and rehabilitation district, sanitary district, farm drainage district, metropolitan sewerage district, sewer utility district, solid waste management system created under s. 59.07 (135), water utility district, public utility as defined in s. 196.01 (5) or cooperative association mentioned in s. 32.02 (10), mosquito control district, municipal electric company, county or city transit commission, commission created by contract under this section, taxation district or regional planning commission."

* "Municipality" already includes the state or any department or agency of the state.



State of Wisconsin
1997 - 1998 LEGISLATURE

LRB-2975/1
PEN:mfd:arm

1997 BILL

Post-it® Fax Note	7671	Date	4/7/97	# of pages	2
To	Kenyon Kies	From	Melanie Ohnstad		
Co./Dept.	WI Utilities	Co.	Rep. David Brandemuhl		
Phone #	257-3151	Phone #	266-1170		
Fax #	257-9124	Fax #			

1 **AN ACT to amend** 66.30 (1) (a) of the statutes; **relating to:** intergovernmental
2 cooperation agreements, public utilities and certain rural electric cooperatives.

Analysis by the Legislative Reference Bureau

With specific limits, current law authorizes any "municipality" to contract with another "municipality", and with federally recognized Indian tribes and bands in this state, for the receipt or furnishing of services or the joint exercise of any power or duty required or authorized by law. If municipal or tribal parties to a contract have varying powers or duties under the law, each may act under the contract to the extent of its lawful powers and duties. "Municipality" is, for purposes of contracting for services or the joint exercise of any power or duty, defined broadly and includes this state, any department or agency of this state, any city, village, town, county, school district, public library system, public inland lake protection and rehabilitation district, sanitary district, farm drainage district, metropolitan sewerage district, sewer utility district, solid waste management system, local professional baseball park district, water utility district, mosquito control district and other similar bodies.

This bill adds public utilities and rural electric cooperatives to this definition of municipality. Under the bill, public utilities and certain rural electric cooperatives may contract with another "municipality", and with federally recognized Indian tribes and bands in this state, for the receipt or furnishing of services or the joint exercise of any power or duty required or authorized by law.

BILL

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

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

1 **SECTION 1.** 66.30 (1) (a) of the statutes is amended to read:

2 66.30 (1) (a) In this section, “municipality” means the state or any department
3 or agency thereof, or any city, village, town, county, school district, public library
4 system, public inland lake protection and rehabilitation district, sanitary district,
5 farm drainage district, metropolitan sewerage district, sewer utility district, solid
6 waste management system created under s. 59.70 (2), local exposition district
7 created under subch. II of ch. 229, local professional baseball park district created
8 under subch. III of ch. 229, water utility district, public utility, as defined in s. 196.01
9 (5), mosquito control district, municipal electric company, rural electric cooperative
10 described in s. 32.02 (10), county or city transit commission, commission created by
11 contract under this section, taxation district or regional planning commission.

12

(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

PEN:mfd:jf

Monday, November 25, 1996

Please note that this draft authorizes broad contracting authority between any "municipality", as defined in s. 66.30 (1), stats., and a public utility or qualified rural electric cooperative.

This draft is not limited to contracts between the department of transportation (DOT) and public utilities or qualified rural electric cooperatives.

This draft must be redrafted if your intent is to authorize a public utility and rural electric cooperative: 1) to contract only with DOT for the receipt or furnishing of services or the joint exercise of any power or duty required or authorized by law; 2) to contract with DOT only for acquisitions of rights of way; or 3) to contract only with DOT only for acquisitions of rights of way.

Paul E. Nilsen
Legislative Attorney
261-6926