

## CHAPTER 87.

## FLOOD CONTROL.

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**87.01 Definitions.** Terms used in sections 87.01 to 87.17 are defined as follows:

(1) "Railroad commission" or "commission" means the public service commission of Wisconsin.

(2) "Public corporations" means any county, town, village, city, school district, consolidated district, state graded school district, free high school district, union free high school district, whether any such district is joint or otherwise, board of education, board of park commissioners and any other public body empowered to hold property, borrow money or levy taxes.

(3) "Public service corporation" means any corporation specified in section 184.01 of the statutes.

(4) "Owner" means any person, copartnership, association or corporation having the fee title or any lesser estate in lands, except estates at will and by sufferance.

(5) "Tract of land" means all of the land separately assessed as a unit for the purpose of general taxation pursuant to section 70.23 of the statutes.

(6) "Parcel of land" means that portion of a tract of land which is benefited by the abatement or diminution of flood conditions.

(7) "Equalized assessed value" means: (a) As applied to any town, village or city, the value of the real property therein as determined by the county board pursuant to section 70.61; (b) as applied to any tract of land, such proportion of the assessed value thereof, as determined by the local assessor, as the equalized assessed value of all the real estate in the town, village or city in which such tract is located bears to the aggregate assessed value of the real estate in such town, village or city, as determined by its assessor; (c) as applied to a parcel of land, such proportion of the equalized assessed value of the tract of which such parcel is a part, as the commission shall determine to correctly represent the relative value of such parcel as compared with the remainder of the tract.

(8) "Drainage area" means any parcel or parcels of land within the area whose drainage causes or contributes to flood conditions upon or in the vicinity of a designated stream or body of water. [1931 c. 481; 1943 c. 490]

**87.02 Powers of commission.** To accomplish the purposes of sections 87.01 to 87.17, the public service commission of Wisconsin is hereby authorized and empowered:

(1) To order the straightening, widening, altering, deepening, changing or the removing of obstructions from the course of any river, watercourse, pond, lake, creek or natural stream, ditch, drain or sewer, and the concentration, diversion or division of the flow of water therein; provided, that in the case of navigable waters no such work shall substantially impair the navigability thereof.

(2) To order the construction and maintenance or the removal of ditches, canals, levees, dikes, dams, sluices, revetments, reservoirs, holding basins, floodways, pumping stations, sewers and siphons, and any other works reasonably adapted or required to accomplish the purposes of said sections 87.01 to 87.17. [1931 c. 481; 1943 c. 490]

**87.03 Petition for flood works.** Any 25 owners of lands which have been recurrently flooded by the waters of any designated stream, lake or pond or any tributaries thereof, or any public corporation within whose boundaries are located any lands subject to such overflow, may file with the commission a written petition setting forth:

(1) The necessity for the construction of such works of improvement as will abate or substantially diminish the overflow of such lands, together with a statement that the construction of such works is required by the public health, safety, convenience or welfare;

(2) A general description of the purpose of the contemplated improvement and of the territory proposed to be benefited by the construction thereof. Said description need not be given by metes and bounds nor by legal or political subdivisions but shall be sufficient if it designate in general terms the territory proposed to be benefited by the improvement;

(3) A prayer for appropriate action and relief. [1931 c. 481; 1943 c. 490]

**87.04 Action on petition.** Upon the filing of any petition as authorized by section 87.03, the commission shall give the project a name embodying the name of the principal river or body of water involved in the project, and shall fix a date and place of hearing upon the petition, the date being so fixed as to allow for the giving of the notice herein provided for. The commission shall publish, once a week for 3 successive weeks, in a newspaper in each county in which any portion of the territory referred to in the petition is located, a notice stating the nature of the proceeding and the time and place of the proposed hearing, and shall also forward a copy of such notice to the county clerk of each such county. Each such county clerk shall thereupon mail a copy of such notice to the clerk of each town, village and city within his county, and shall also post a copy of such notice in 3 public places within his county. The failure of any county clerk to comply with the foregoing requirements shall not, however, affect the jurisdiction of the commission to proceed. [1931 c. 481; 1943 c. 490]

**87.05 Scope of hearing.** The hearing provided for in section 87.04 shall be confined to the question whether the improvement prayed for in the petition is required by the public health, safety, convenience or welfare. Any person interested may appear at such hearing in person or by attorney and be heard upon said question without the filing of any formal pleading. In considering and deciding this question the commission may consider investigations and reports made by the engineering staff, provided such reports be made a part of the record of the hearing. If at the close of such hearing the commission shall determine that the public health, safety, convenience or welfare require the abatement or substantial diminution of the flood conditions referred to in the petition, it shall make written findings to that effect and shall direct the hearing upon the petition to proceed; but if its finding shall be to the contrary, it shall enter an order dismissing the petition. [1931 c. 481; 1943 c. 490]

**87.06 Court review of dismissal.** An order dismissing the petition shall be subject to review in the manner provided in chapter 227. An order directing the hearing to proceed shall not be subject to review except upon review of the final order made pursuant to section 87.07. [1931 c. 481; 1943 c. 375 s. 15; 1943 c. 490; 1945 c. 511]

**87.07 Preliminary order.** (1) **SURVEY AND REPORT.** If the commission's order, made pursuant to section 87.05, shall direct the hearing to proceed, the commission shall at the same time direct its engineering department to make a survey in the form of a preliminary investigation and to file a report:

(a) Determining and showing upon a map the lands, whether contiguous or not, which will be benefited by the abatement or substantial diminution of the flood conditions referred to in the petition; defining by legal description each parcel of such lands, other than those owned by public corporations or public service corporations; stating the most recent equalized assessed value of each such parcel of land, and stating the amount of benefit estimated to be derived by each such parcel from the abatement or substantial diminution of such flood conditions;

(b) Giving a general description of the real property of any public corporation and the real and personal property of any public service corporation which will be benefited by the abatement or substantial diminution of the flood conditions referred to in the petition; stating the fair value of each parcel of real estate and piece of personal property so described, and determining the amount of benefit estimated to be derived by each of such parcels of real estate and pieces of personal property from the abatement or substantial diminution of such flood conditions; for the purposes of sections 87.01 to 87.17, streets and highways shall be deemed to be the property of the public corporation which is under legal duty to maintain them;

(c) Defining by political subdivisions the drainage area, and stating the most recent equalized assessed value of the real estate in each of the political subdivisions constituting such area;

(d) Recommending the means deemed to be the most practical, considering cost and efficiency, for so abating or diminishing the flood conditions referred to in the petition as to effect the public purpose found by the commission in its order made pursuant to section 87.05, and stating the estimated cost of the improvement necessary to put such means into effect.

(2) **NOTICE OF PRELIMINARY REPORT, HEARING.** Upon the filing of such preliminary engineering report with the commission, it shall forward a copy thereof to the county clerk of each county in whole or in part within the drainage area as set forth in said report, at

least 30 days before the date fixed by the commission for further hearing upon the petition. The commission shall fix a date for such further hearing and shall publish notice thereof once a week for 3 successive weeks in a newspaper in each county in whole or in part within the drainage area as set forth in said report, and shall mail a copy of such notice to each party who appeared at the preliminary hearing.

(3) **HEARING ON REPORT, FINDINGS.** At the further hearing held pursuant to such notice, any person interested may appear in person or by attorney and be heard upon the several matters covered by the said preliminary engineering report, without the filing of any formal pleading on behalf of any such person. The commission shall thereupon make final findings upon the several matters covered by said preliminary engineering report, including detailed plans and specifications for the work of constructing the improvement. In determining the estimated cost of the improvement the commission shall determine and state separately: (1) The estimated cost of the lands and interest in lands necessary to be acquired for the improvement; (2) the estimated aggregate of the contract prices for the construction of the improvement; (3) the estimated expense to be incurred during the construction of the improvement for engineering, superintendence, clerical expense and other overhead expenses by the flood control board in charge of such construction, and (4) the estimated expense to be incurred by said flood control board for operation and maintenance of the improvement during the first 18 months after its completion. The commission shall also find, as to each of the landowners, public corporations and public service corporations owning property to be benefited by the proposed improvement, and as to each parcel of land so benefited, and as to each of the public corporations required by section 87.10 to contribute toward the cost of each improvement: (1) The maximum amount collectible from such parcel of land, public corporation or public service corporation under the provisions of section 87.09, and (2) the amount actually required to be collected from such public corporation, public service corporation or parcel of land to meet the estimated cost of the improvement, which amount shall be, as to each parcel of land, public corporation and public service corporation, a uniform percentage of the total amount found by the commission to be collectible therefrom.

(4) **BENEFITS AND COSTS DECISIVE.** If the aggregate of the amounts collectible, as thus found by the commission, exceeds the estimated cost of construction of the improvement, the commission shall order that the work of constructing such improvement proceed. If such aggregate amount collectible is less than the estimated cost of such improvement, the commission shall enter an order dismissing the petition, unless the difference between said aggregate amounts be deposited in cash with the state treasurer within one year. Such deposit may be made by any person or any public or private corporation. Upon the making of such deposit, the commission shall enter a further order that the work of constructing the improvement proceed.

(5) **COURT REVIEW.** Any such order may be reviewed in the manner provided in chapter 227, except that if any finding as to the amount of benefit to any property shall be challenged upon such review the petitioner shall be entitled to a trial by jury upon demand. [1931 c. 481; 1943 c. 375 s. 16; 1943 c. 490; 1945 c. 511]

**87.08 Petition of board; modification of order, court review.** Upon petition of the flood control board organized pursuant to section 87.12 for the purpose of carrying out the final order of the commission, the commission may at any time, after public hearing, modify its final orders in so far as the same relate to the plans and specifications therein adopted by it for the construction of the improvement, but no such modification shall materially change the basic plan of the improvement. The hearing upon application for such modification shall be held upon notice to the clerk of each town, village and city containing property found by the commission to be benefited by the improvement. Such order for modification may be reviewed in the same manner as the final order. [1931 c. 481; 1943 c. 375 s. 17; 1943 c. 490]

**87.09 Assessment of benefits.** The commission shall determine the parcel or parcels of land benefited directly or indirectly and shall levy such assessment in proportion to the benefit accruing to such parcel or parcels of land. [1931 c. 481; 1943 c. 490]

**87.10 Collection of assessments; bonds.** (1) Upon the making of a final order directing the work to proceed, as provided in section 87.07, the commission shall forward a certified copy of its findings and the order based thereon to the clerk of each town, village and city in which any land or other property benefited by the improvement is located; to the clerk of each public corporation owning property found to be benefited thereby, and to the clerk of each town, village and city found to be located within the drainage area. It shall thereupon be the duty:

(a) Of each town, village and city in which is located any benefited land owned otherwise than by a public corporation, or in which is located any benefited property of a public service corporation, to levy as a special assessment against the land or other property

so benefited the amount which the commission shall have found that such property should contribute to the cost of the improvement, and to collect the same in connection with the next ensuing collection of general taxes in said town, village or city; provided, that the governing body of such town, village or city may, in its discretion, make such special assessment payable in 2 equal annual instalments;

(b) Of each public corporation owning property found by the commission to be benefited, to raise the amount which the commission shall have found that such property should contribute to the cost of the improvement;

(c) Of each town, village or city containing lands or other property found to be benefited by the improvement, to raise the amount which the commission shall have found such town, village or city should contribute to the cost of the improvement;

(d) Of each town, village or city within the drainage area, to raise the amount which the commission shall have found such town, village or city should contribute to the cost of the improvement.

(2) The amount required to be raised by any public corporation pursuant to paragraphs (b), (c) and (d) of subsection (1) of this section may be raised by the issuance of bonds or by the levy of general taxes, or may be paid out of any funds of such public corporation legally available for such purpose; provided, however, that no bonds shall be issued until provision has been made to pay the liability that will accrue thereunder. Every public corporation electing to raise such sums wholly or in part by general taxation may lawfully do so, even though the tax rate of such public corporation for the year of such levy may thus be increased beyond the legal limit otherwise applicable. The moneys to be provided by any public corporation pursuant to this section, except the deferred instalments of special assessments, shall be on hand and available by March fifteenth following the commission's final order, unless the time between the certification of such order and March fifteenth is insufficient for the raising of such moneys. All such moneys shall be held by the treasurer of such public corporation in a separate fund until paid over to the flood control board created pursuant to section 87.12. [1931 c. 481; 1943 c. 490]

**87.11 When benefits exceed cost; when costs will exceed benefits; temporary borrowing; maintenance fund.** (1) If, after all contracts for construction of the improvement have been let, the aggregate of the contract prices, as certified by the flood control board created pursuant to section 87.12, added to the commission's estimated cost of acquiring the necessary lands and of overhead expense and of the first 18 months' operation and maintenance, exceeds the amount estimated by the commission as the total cost of the improvement, but is less than the total amount found by the commission to be collectible under section 87.09, the work of constructing the improvement shall nevertheless proceed and the several public corporations shall provide, not later than the time fixed for the next ensuing general tax collection therein, the amounts required to make up the deficiency, in the same proportions as the original amounts were provided by such public corporations.

(2) But should the total cost, as ascertained and certified by the flood control board after the letting of the contracts, in the manner hereinabove set forth, exceed the total amount found by the commission to be collectible under section 87.09, all contracts for the construction of the work shall be null and void. At the expiration of one year after such certification, any moneys held by the state treasurer on account of the project shall be refunded to the persons by whom they were paid to such treasurer; any funds in the hands of the flood control board shall be refunded to the public corporation by which they were paid to such board; any funds held by any town, village or city, having been collected by special assessments against property benefited, shall be refunded to the owners of such property; any funds raised by any public corporation by the issuance of bonds on account of such proposed improvements shall constitute a fund for the retirement or payment of such bonds; and any fund held by any public corporation, having been raised otherwise than by special assessments or bond issues, shall be available for the general purposes of such public corporation. Provided, however, that if within one year after the last mentioned certification of the flood control board there shall be deposited with the treasurer of said board a sum equal to the difference between the aggregate cost of constructing the improvement as estimated by the commission and the aggregate cost thereof as determined and certified by the flood control board after the letting of the contracts, said board shall proceed to relet the contracts for the construction of the improvement and to complete the same unless the aggregate of such new contract prices, together with the commission's estimate of the cost of acquiring lands and of overhead expenses and of the first 18 months' operation and maintenance, shall again exceed the amount found by the commission to be collectible under section 87.09. The deposit herein referred to may be made by any person or any public or private corporation.

(3) If, after the letting of the contracts and during the progress of the work, it shall develop that the cost of completing the work exceeds the amount available therefor, the

flood control board shall have power to borrow temporarily the amounts required for completing the work, upon promissory notes executed by the board, payable with interest on or before the fifteenth day of March next ensuing; and each town, village and city containing property found by the commission to be benefited by the improvement shall upon certification of the flood control board as to the amount to be raised by such town, village or city to repay such temporary loan, include in its next general tax levy the amount so certified. Such certification by the flood control board shall require each such town, village and city to raise the same proportion of the sum required to pay the temporary loan as to the total amount previously contributed by such town, village or city pursuant to paragraph (c) of subsection (1) of section 87.10 shall bear to the total amount contributed by all of such towns, villages and cities thereunder. If, by reason of the deferred collection of special assessments as authorized in paragraph (a) of subsection (1) of section 87.10, funds shall be required by the board before they are actually available, the board may borrow such funds upon its promissory notes payable with interest on or before March fifteenth of the year in which such deferred instalments shall become due, and shall repay such loan out of the proceeds of such instalments.

(4) If it shall develop that the total cost of constructing the improvement is less than the total amount available for the payment of such cost, the excess, except as provided in section 87.13, shall constitute the commencement of the fund provided for in section 87.14 for the maintenance and operation of the improvement. [1931 c. 481; 1943 c. 490]

**87.12 Flood control board, creation, duties, powers, pay, funds.** (1) If the commission directs the work of constructing the improvement to proceed as provided in section 87.07, it shall certify the fact of the making of such order to the governor, together with a statement of the county in which the major part of the proposed improvement, as determined by the estimated cost thereof, is to be located and the county in which the largest amount of property to be benefited, as determined by the equalized assessed value thereof, is located. The governor shall thereupon appoint a board to take charge of the construction and the maintenance and operation of the improvement, whose membership shall be determined as follows:

(a) One member to be certified by the board of supervisors of the county in which the major part of the proposed improvement is located;

(b) One member to be certified by the board of supervisors of the county in which the largest amount of property to be benefited is located;

(c) One member to be chosen by the governor from the drainage area.

(2) Any vacancy occurring by reason of the death, resignation or removal from the state, or permanent disability of any person thus appointed, shall be filled in the manner provided for the original appointment of such person. The county board making any such certification of an appointee may at any time certify to the governor the name of another appointee to succeed him, and the governor shall thereupon name such new appointee as a member of the board and the tenure of the former appointee shall terminate. The governor may at any time appoint another person to succeed the person chosen by him on said board and the tenure of the latter shall thereupon terminate.

(3) The board thus constituted shall be a body corporate and shall be known as "... Flood Control Board," the name to commence with the name of the river or body of water defined by the commission pursuant to section 87.04 as being the principal river or body of water involved in the project. The board shall organize by the election of one of its members as chairman and one as treasurer, who shall be removable at the pleasure of the board. It shall also appoint a secretary, who need not be a member of the board and who shall likewise be removable at pleasure.

(4) Each member of the board shall file the official oath with the commission, and the treasurer of the board shall file with the commission the official bond, which shall be approved by the commission and shall be in amount as follows: Up to the completion of the construction of the improvement, not less than 50 per cent of the total cost thereof as estimated by the commission; for the first 18 months thereafter, not less than 50 per cent of the cost of operation and maintenance during said period as estimated by the commission; and thereafter, not less than 50 per cent of the annual cost of maintenance and operation as certified by the board pursuant to section 87.14, except that in case of an addition to or reconstruction pursuant to section 87.15, and during the period of such work such bond shall be in an additional amount not less than one-half the cost of such addition or reconstruction as estimated by the commission.

(5) It shall be the duty of the flood control board to construct the proposed improvement by contract according to the plans and specifications prescribed by the commission. No contract for such work shall be let or indebtedness therefor incurred until there shall actually be in the hands of the several treasurers, as provided in section 87.10, or in the process of collection, the entire sum called for in said section, except the deferred instalments, if any, of special assessments, or the amount therefor is assured by contract,

lease, sale or lease with option to purchase, as provided in section 87.13. The board shall have authority to require the treasurers of the public corporations to certify from time to time the amounts actually on hand for such purpose, the amounts in process of collection, and the amounts to be collected upon deferred instalments of special assessments. The board shall apply for and obtain all necessary permits from the federal government. It shall have the power to enter upon any land for the purpose of making necessary examinations and surveys, and this right shall extend to its duly authorized assistants, representatives and employes, including any contractor engaged to do any part of the work of constructing the improvement, together with the representatives and employes of any such contractor; but any such contractor shall be responsible for any damage he may do. The board has power to borrow money for the construction of a reservoir and to issue its corporate bonds for the amount so borrowed, securing the same by a mortgage on the reservoir property. The rate of interest shall not exceed 6 per cent nor shall the time of repayment exceed 30 years.

(6) The board shall have the power to institute and prosecute in the manner provided in chapter 32 of the statutes such eminent domain proceedings as may be necessary in the construction of said improvement. When necessary for that purpose, this right of eminent domain shall be dominant over the rights of eminent domain of public or private corporations or governmental agencies. The board shall also have the power to acquire any lands or interest therein necessary for the aforesaid purpose, by gift, purchase or lease. Any title acquired by condemnation or gift, purchase or lease shall be held in the name of the flood control board in trust for the several towns, villages and cities and contributing, as provided in paragraphs (c) and (d) of subsection (1) of section 87.10, in proportion to the amounts of their several contributions. The board shall have the power to employ engineers, attorneys, agents, assistants, clerks, employes and laborers as it may deem advisable for the proper execution of its duties, and to fix their compensation.

(7) Each member of the board shall receive compensation at the rate of \$10 for each day or major part thereof actually devoted to the performance of his duties as such member and shall also be reimbursed the actual necessary expenses incurred by him in the performance of such duties, upon verified statements in each case which shall be duly audited by the board and filed with the secretary.

(8) All moneys of the board shall be deposited in such state or national banks as the board may from time to time designate, and shall be drawn out only upon checks signed by the chairman and the treasurer of the board. As funds are required by the board from time to time for the work of constructing the improvement, the board shall by resolution make requisition for the amounts so required upon the treasurers of the several public corporations holding money available for that purpose pursuant to section 87.10, and each such treasurer shall forthwith pay the amount thus requisitioned to the board. The amount to be requisitioned at any time from any such treasurer shall bear such proportion to the total amount requisitioned at such time, as the amount certified by such treasurer pursuant to this section to be on hand and available shall bear to the total amount certified by all of such treasurers to be on hand and available. [1931 c. 481; 1937 c. 425; 1943 c. 490]

**87.13 Disbursements by board.** All sums which shall be deposited with the state treasurer pursuant to subsection (4) of section 87.07 for the construction of the improvement shall be paid by said treasurer to the flood control board upon requisitions from said board. If any moneys, other than those for operation and maintenance during the first 18 months, remain unexpended in the hands of the flood control board or subject to their requisition after the completion of the construction of the improvement, and if the funds for construction of the improvement shall have been in part raised through voluntary contributions pursuant to subsection (4) of section 87.07 or subsection (2) of section 87.11, the amounts thus contributed, or such proportion thereof as the funds remaining in the hands of the board or subject to its requisition will pay, shall be returned to the persons or corporations who made such voluntary contributions, in proportion to the amounts contributed by them. [1931 c. 481; 1943 c. 490]

**87.14 Operation and maintenance.** The flood control board is authorized to sell, lease, or lease with power to purchase, any reservoir proposed to be constructed, in the process of construction or completed, to a duly organized river improvement company as defined by section 180.16, on such terms and conditions as are approved by the public service commission as hereinafter provided. Unless so leased or sold it shall be the duty of the flood control board to maintain and operate said improvement. The cost of operation and maintenance during the period intervening between the completion of said improvement and the date when funds provided under this section become available shall be paid from the funds provided for maintenance pursuant to the estimate made by the commission as provided in subsection (3) of section 87.07. Prior to the first day of

November in each year the flood control board shall certify to the clerk of each town, village and city in which lands to be benefited by the improvement are located an estimated budget, detailed as far as practicable, of the cost of operation and maintenance of said improvement for the succeeding calendar year, together with the amount due upon any judgments outstanding against the board, except those judgments from which the board has appealed or intends to appeal, and shall certify at the same time the portion of such cost to be borne by each such town, village and city. This shall be determined in the same manner and according to the same proportions as provided in paragraph (c) of subsection (1) of section 87.10. It shall thereupon become the duty of each such town, village and city to include in its next succeeding tax levy the amount so certified and to forward such amount, on or before March fifteenth following, to the flood control board. [1931 c. 481; 1937 c. 425; 1943 c. 490]

**87.15 Repairs, replacements and extensions; procedure.** Whenever the flood control board shall determine and certify that repairs or replacements are necessary to such an extent as to amount to a partial reconstruction of the improvement rather than ordinary maintenance, or whenever said board shall determine that material additions, extensions or betterments to said improvement are necessary, the board shall file a petition with the commission setting forth the necessity for such repairs, replacements, additions, extensions or betterments, and thereupon the commission shall proceed to make the same determinations and certifications as in the case of an original petition for the construction of the improvement, except that the enumeration of lands or other property benefited and of the political subdivisions included within the drainage area shall be the same as in the original order for the construction of the improvement, unless the commission shall affirmatively find that changes in such enumeration are necessary because of errors in the original findings. [1931 c. 481; 1943 c. 490]

**87.16 Court proceedings speeded.** Any action brought in any court for the purpose of enjoining, preventing or interfering with the construction, repairing, reconstruction, operation or maintenance of the improvement ordered by the commission, or any part thereof, except actions to review the orders of the commission pursuant to sections 87.01 to 87.17, shall be placed upon the current term calendar of the court as soon as such action is at issue and shall have precedence over all other actions pending upon such calendar. In addition to all other limitations, the time for appealing from any order or judgment entered in such action shall be limited to 30 days from the date of the entry of such order or judgment. In the event of such appeal the cause shall, on the filing of the papers in the supreme court, be immediately placed at the head of the state calendar of the then pending term and shall be assigned and brought to a hearing in the same manner as other causes on the state calendar. [1931 c. 481; 1943 c. 490]

**87.17 Trespass, penalty.** Any person who shall wilfully, maliciously or wantonly destroy, injure, remove, meddle or tamper with any portion of the improvements constructed pursuant to sections 87.01 to 87.17, whether during construction or after completion of the same, or shall wilfully, maliciously or wantonly obstruct, interfere with or hamper the flood control board or any of its assistants, agents, servants or employes, or any contractor employed by it in the work of constructing, repairing, reconstructing, operating or maintaining the same, shall be guilty of a misdemeanor and upon conviction shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding \$1,000, or both. [1931 c. 481; 1943 c. 490]

**87.18 Lease, sale and lease with option to purchase the project.** Whenever the flood control project consists of a storage reservoir and authority to create, operate and maintain a reservoir on the river affected by such storage reservoir is vested in a duly organized river improvement company as defined by section 180.16, and the petitioners file with the public service commission a petition and a proposed contract with such improvement company for a lease, sale, or lease with option to purchase said reservoir, and the commission finds the terms and conditions of such contract are sufficient to assure the payment of the amount the board will be obligated to pay for the cost of the reservoir and the maintenance and operation of the same, and the project will secure effective flood control and promotion of the public welfare, then notices, proceedings and assessments provided by sections 87.04 to 87.12, inclusive, are not required. The commission, however, shall make findings as required by section 87.05 and shall order that the flood control board be appointed and shall so certify to the governor as provided by section 87.12. The governor shall thereupon appoint the board as provided in said section 87.12. The proposed contract filed with the commission by petitioners for the sale, lease, or lease with option to purchase said reservoir property shall not be binding upon the board so appointed unless the board approves such contract. Upon approval the board shall so report to the commission and file with it a final contract executed by the board and lessee or purchaser. The commission has authority to approve or disapprove such con-

tract. If the commission approves such contract, then it shall be final and the commission shall thereupon order the board to proceed with the work. When such reservoir property is sold and the purchase price has been fully paid and any indebtedness assumed by the purchaser has been paid and discharged, including the fees and expenses of the board, and the commission so finds, the said board shall thereupon be dissolved by order of the commission. [1937 c. 425; 1943 c. 490]

**87.20 Flood disaster committee; duties and functions.** (1) There is created a flood disaster committee consisting of the governor, one member of the senate and one member of the assembly to be appointed by the governor, a representative of the public service commission to be designated by the commission, the director of regional planning of the state planning board, and a representative of the university to be designated by the president of the university. The governor shall be chairman. The members of said committee shall receive no compensation but shall be reimbursed for traveling expenses actually and necessarily incurred in the performance of their duties.

(2) The committee shall make a survey of the conditions resulting from the flood of September 17, 1942 in and near the village of Spring Valley and provide such emergency relief for the inhabitants affected by such flood as the committee may deem necessary in the interest of the public health and welfare, expenditures for such relief to be made from the appropriation in section 20.507.

(3) In addition to such emergency relief, the committee may make such expenditures from said appropriation as it may deem necessary in the interest of the public health and welfare for the restoration, reconstruction and repair of residential properties, business establishments, streets, roads and public utility facilities damaged or destroyed by such flood. In co-operation with the public service commission and state planning board it shall provide adequate flood control including the removal of buildings to new sites if in the judgment of the committee such action is necessary.

(4) All expenditures under this section from the appropriation made by section 20.507 shall be certified by the chairman of the committee. [1943 c. 467, 490]

**Note:** State may properly provide for emergency relief to inhabitants of village of Spring Valley as it has done under 87.20 (2). State may not, under provisions of sec. 10, art. VIII, Const., build levees, dredge channels or otherwise engage in flood control activities or restore residential properties, business establishments or public utility facilities damaged or destroyed by flood. Neither may state as incident to flood control remove buildings to new sites. Construction of streets and roads is excepted from provisions of sec. 10, art. VIII Const. Member of flood disaster committee created by 87.20 is not liable for expenditures made by committee in good faith although such expenditures may be unauthorized. 32 Atty. Gen. 420.

Ch. 467, laws of 1943, creating 20.507 and 79.20 (now 87.20), relating to a flood disaster committee in providing relief for victims of the Spring Valley flood of September 17,

1942, does not authorize the repair of damages to the village park caused by the flood, the improving of school grounds which were damaged by the flood, or the laying of a new pavement on state trunk highway No. 29 through the village of Spring Valley, nor for the building of new bridges within such village. 36 Atty. Gen. 47.

The appropriation made by ch. 467, laws of 1943, may be used to reimburse the village of Spring Valley for flood relief consisting of removal of flood debris, repairing and restoration of streets, roads and bridges and for restoration, reconstruction and repair of public utility facilities such as water system, fire-fighting equipment and buildings used for storing public utility equipment and otherwise conducting public utility business. Appropriation may not be used to reimburse village for loss of library or for restoring football field, baseball field or playground. 36 Atty. Gen. 116.