

## CHAPTER 182

## MISCELLANEOUS CORPORATE PROVISIONS; TURNPIKE CORPORATIONS

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**182.001 Corporations and trusts prohibited from owning or carrying on farming operations. (1) PROHIBITION.** No corporation or trust may own land on which to carry on farming operations under sub. (3) or carry on farming operations under sub. (3), unless the corporation or trust meets the following standards:

(a) Its shareholders or beneficiaries do not exceed 15 in number. Lineal ancestors and descendants and aunts, uncles and 1st cousins thereof count collectively as one shareholder or beneficiary for purposes of this paragraph, but this collective authorization shall not be used for more than one family in a single corporation or trust.

(b) It does not have more than 2 classes of shares.

(c) All its shareholders or beneficiaries, other than any estate, are natural persons.

**(2) EXCEPTION.** (a) Notwithstanding the prohibition in sub. (1), a corporation or trust may own land on which to carry on farming operations if the land is acquired by bequest or devise or is acquired in the regular course of business in partial or full satisfaction of any mortgage, lien or other encumbrance held or owned by the corporation or trust on the land, provided the land is sold or otherwise transferred within 5 years after such acquisition and provided the sale or transfer can be made at fair market value.

(b) This section does not apply to a small business investment corporation, or to any corporation acting as a personal representative or trustee or in any similar fiduciary capacity where the trust meets the standards under sub. (1).

(c) This section does not apply to land:

1. Owned by a corporation on June 5, 1974.
2. Acquired by a corporation in the normal expansion of land owned by the corporation and used for agricultural purposes on June 5, 1974, provided that such expansion does not increase the acreage of such land by more than 20% in any 5-year period.
3. Acquired by a corporation to meet pollution control requirements.
4. Owned by a trust on May 27, 1978.

(d) This section does not apply to farms engaged primarily in research, breeding operations or the production of any crop primarily for seed.

(e) This section does not apply to agricultural land acquired by a corporation or trust for expansion or other corporate or trust business purposes and such land may be used for farming operations if leased to a person not prohibited from engaging in farming operations under sub. (3).

(f) This section does not apply to the use of land prohibited under sub. (3) when such use is incidental to the principal purpose for which the property is held and which purpose is not prohibited by sub. (3).

**(3) PROHIBITED ACTIVITIES.** Those farming operations prohibited under this section are the production of dairy products not including the processing of such dairy products; the production of cattle, hogs and sheep; and the production of wheat, field corn, barley, oats, rye, hay, pasture, soybeans, millet and sorghum.

**(4) PENALTY FOR NONCOMPLIANCE.** Any corporation or trust violating this section or any injunction or order issued under this section shall forfeit not more than \$1,000 for each violation. Each day of violation shall constitute a separate offense. In addition, the district attorney of any county in which a corporation or trust has acquired land on which to carry on farming operations or in which a corporation or trust commences farming operations shall bring an action to enjoin such operations when it appears there is probable cause to believe that a violation of this section has occurred. The court may permit normal farming operations to be carried on when necessary to prevent loss or damage in any instance arising under this subsection. The action also shall request a court order requiring the corporation or trust to divest itself of such land within a reasonable period of time.

**History:** 1973 c. 238; 1977 c. 411.

**182.004 Housing corporations. (1)** The articles of a corporation formed for the purpose of acquiring land, platting the same, erecting houses thereon and otherwise improving and developing the same, shall state that the purpose is to form a hous-

ing corporation under these statutes. The articles shall further provide for the issuance of preferred stock, and for the payment of dividends thereon, at a specified rate, before dividends are paid upon common stock, and for the accumulation of such dividends. No preference shall be given to such preferred stock in the distribution of the corporate assets other than profits.

(2) Such corporation shall have the powers enumerated in ss. 180.0302 and 180.1202, except as herein provided otherwise.

(3) Such corporation shall have the following additional powers:

(a) To acquire land and plat the same, laying out streets, lots, playgrounds and such other subdivisions as it may deem best; but no plat shall be valid until approved by the public land commission or city planning commission of the city in which the property of such corporation is located, or if such land be located within 6 miles of a 1st class city, by the public land commission or city planning commission of the 1st class city, if there be a public land commission or city planning commission in the city, and until accepted by the common council of the city within which the land is located, or if within 6 miles of a 1st class city, until accepted by the common council of such 1st class city; and no land shall be acquired by the corporation in any city or within 6 miles from the boundary of a city that has a local health department, as specified in s. 250.01 (4) (a) 2. or 3. or (b), unless the location of such land has been approved by the local health department as a healthful location.

(b) To improve and develop said land for residential purposes; but no single dwelling shall be erected, the cost of which shall exceed \$10,000, and sufficient ground space must be provided to furnish adequate air and light to the tenants thereof.

(c) To lease for indefinite periods parcels of land owned by it together with improvements thereon.

(d) To do all such other things as are reasonably necessary and proper to carry out the powers of said corporation, not inconsistent with the provisions of this section.

(e) To hold its first meeting and transact business with its members at any time after one-fourth of its capital stock shall have been subscribed; and may transact business with others than its members when one-fourth of its capital stock shall have been duly subscribed and one-tenth of its authorized capital stock actually paid in.

(4) No land shall be sold by the corporation, except land not necessary or desirable for the purposes of the corporation, and except improved real estate where the entire purchase price is paid in cash, and except when acting pursuant to sub. (11), and then only by a vote of three-fourths of the stock of the corporation then outstanding.

(5) No lease of any land or buildings shall be made except to a stockholder for his or her use, and no tenant shall hold stock beyond the value of the premises occupied by him or her, except that single buildings designed, built and fit for more than one family may be leased in their entirety to a stockholder, who may sublease the portion not occupied by himself or herself or his or her family to any person; but leases for an indefinite period may be made to American soldiers, sailors or marines of World War I and World War II, who are not stockholders. The corporation may also lease land to the city, town or county for any use consistent with the residential district, or to a private individual or association of the corporation, for a use beneficial to the tenants of said land. No lease shall be terminated by the corporation without the consent of the lessee, except for violation of the terms of the lease, and then only in the manner provided by law. A lease may be terminated at any time by a tenant, except that the corporation may require not to exceed 90 days' notice thereof. At the termination of a lease of a stockholder, the corporation shall cancel his or her stock, and shall be liable to him or her for the amount paid thereon, less any lawful claims of the corporation against him or her. If the corporation is unable to sell said stock at the termination of the lease, it shall give him or her, in lieu of said stock, its promissory note for

the net amount due him or her, payable on or before one year from the date thereof, with interest at the rate of 5% per year. Such stock shall be resold for not less than par before any unissued stock is sold, and as soon as sold, there shall be paid to the former owner thereof the amount due him or her from the corporation; provided, the corporation may pay the amount due either at the time of the termination of the lease or at any other time before the expiration of said year, whether said stock has been sold or not.

(6) Stock may be issued and leases made to husband and wife, and to the survivor of them, in which event title shall descend the same as in like conveyances of real property subject to ch. 766. Otherwise, title to the stock and lease shall descend to the persons to whom a homestead of the stockholder would descend except as provided in ch. 766. The interest of a tenant in the lease and stock shall be exempt from execution to the same extent as a homestead in real estate.

(7) Stock shall be sold upon such terms and conditions as may be provided in the articles or bylaws of the corporation. Sections 180.0623 and 180.0640 shall not apply to corporations organized under this section, but no dividends shall be declared until a surplus fund shall have been created equal to 2 per cent of the paid-in preferred stock and paid-in common stock, nor shall any dividends ever be declared which will impair the capital or such surplus, and no dividend exceeding 5 per cent per year shall be paid except to a tenant stockholder. There shall also be annually set aside 10 per cent of the year's profits for the purpose of retiring preferred stock.

(8) The common council of any city, the board of any town and the board of supervisors of any county may subscribe for preferred stock of any such corporation whose land, owned or to be acquired, shall be within the limits of such city, town or county, and in case of a 1st class city, within a distance of 6 miles beyond the boundaries of such city.

(9) The stockholders shall be entitled to one vote for each share of stock, common or preferred, held by them, as shown by the books of the company. The common council of the city, the board of the town and the board of supervisors of the county shall designate some person to vote their shares; and the person so designated shall be eligible as a director.

(10) The directors shall receive no compensation until the surplus fund of 2 per cent of the capital has been set aside, and until the dividends on preferred stock have been paid, and at no time shall the compensation of directors exceed \$500 each per year.

(11) When the land shall have been platted, the directors shall fix the value of the several lots and parcels of land to be used for residential purposes, and thereafter in computing the rental to be paid therefor a valuation not exceeding that so fixed shall be used.

(12) Outstanding notes or paid-up preferred or common stock may be exchanged for land contracts, mortgages or bonds of such corporation. Exchanged stock shall be canceled.

(13) Any such corporation may be dissolved in the manner provided in ch. 180, except that the resolution providing for the dissolution must be adopted by at least a majority vote of all of the stock, both common and preferred, and that after such vote the affairs of the corporation shall be placed in the hands of a trustee elected by the board of directors. Said trustee shall sell all assets on land contract or otherwise. Said corporation shall have power to pass free legal title to any purchaser or grantee of any lands, and any assignment or sale of any lands by such trustee shall pass the title of such corporation in such lands.

(14) No filing fee is required to be paid by any corporation organized under this section.

History: 1979 c. 110 s. 60 (13); 1983 a. 186; 1989 a. 303; 1993 a. 27, 246.

**182.005 Water reservoirs.** The articles of a corporation organized in whole or in part to establish, maintain or operate a system of water reservoirs for the purpose of regulating the flow of any river in the state shall guarantee to every owner of water power located below the reservoir system, who does not already

own his or her quota of stock, the right at any time to purchase from the corporation at par such a proportional share of all of the capital stock of the corporation as the cubic foot storage fall of the water power of the owner shall be of the sum of the cubic foot storage falls of all water powers benefited by the reservoir system. The cubic foot storage fall of any water power is the product of the height expressed in feet of the head obtained or obtainable by the dam at said power, multiplied by the storage capacity expressed in cubic feet of the reservoirs tributary to such power. The articles shall never be amended so as to withdraw said guaranty.

**History:** 1979 c. 110.

**182.007 Charitable corporations and community funds, amending articles.** (1) A community fund, community chest or community union corporation of a kind mentioned in sub. (1m) may change substantially the original purposes of its organization upon the affirmative vote of at least two-thirds of its members entitled to vote, at a meeting called for that purpose and in no event shall its purposes be other than charitable.

(1m) Any nonstock corporation organized solely for charitable purposes and any community fund, community chest or community union corporation, organized for the purpose of raising funds for and serving community and public welfare agencies or services may, in addition to any method provided in its articles of organization, amend its articles at any annual meeting or at any special meeting duly called for that purpose. Notice of the meeting shall be published as a class 2 notice, under ch. 985, the last insertion not less than 20 days prior thereto. The notice shall specify the time and place of such meeting, that such amendment will be proposed and a copy thereof. Unless otherwise provided in the articles 10 members shall constitute a quorum, and the amendment may be adopted by affirmative vote of two-thirds of the members present.

**182.01 Business formation records.** (1) **DEFINITION.** In this section, “department” means the department of financial institutions.

(2) **RECORD KEEPING RESPONSIBILITY.** The department shall receive and maintain business formation records.

(3) **NAME OF DRAFTER ON DOCUMENTS.** No articles of incorporation, articles of organization, articles of amendment, articles of merger, consolidation or share exchange, articles of dissolution, restated articles of incorporation, certificate of abandonment, or statement or articles of revocation of voluntary dissolution, provided for pursuant to ch. 180, 181, 183, 185 or 187; no registration statement, amendment of a registration statement, or written notice of withdrawal under s. 178.40; and no certificate of limited partnership, certificate of amendment, restated certificate of limited partnership or certificate of cancellation, provided for pursuant to ch. 179, shall be filed by the department unless the name of the individual who, or the governmental agency which, drafted such document is printed, typewritten, stamped or written thereon in a legible manner. A document complies with this subsection if it contains a statement in the following form: “This document was drafted by.... (Name)”. This subsection shall not apply to a document executed prior to December 1, 1967, or to:

- (a) A decree, order, judgment or writ of any court;
- (b) A document executed or acknowledged outside this state.

(4) **FURNISH CERTIFIED COPIES; FEES.** The department shall make a copy of any resolution, deed, bond, record, document or paper deposited or kept by the department under this section, upon request, attach a certificate and collect 50 cents per page and \$5 for a certificate; if a copy is not to be certified and if the reproduction is performed by the department, then collect a fee to cover the actual and necessary cost of reproduction and actual and necessary cost of transcription required to produce the copy or \$2, whichever is greater; also to record any document authorized or required by law to be recorded in the department, and to charge a fee of \$1 per page. The fee for certified copies of certificates of incorporations or amendments, licenses of foreign corporations,

or similar certificates, and for certificates as to results of searches of the records and files of the department, when a printed form is used, shall be \$5, but when a specially prepared form is required the fee shall be \$10. Telegraphic reports as to results of record searches shall be \$5 plus the cost of the telegram. The department shall charge and collect for preparing any record or certificate under this subsection in an expeditious manner, an expedited service fee of \$25 in addition to the fee otherwise required under this subsection, except that only one expedited service fee may be charged for multiple identical corporation or limited partnership certificates of status if the certificates of status are requested at the same time and issued at the same time.

(5) **CONDITIONAL ACCEPTANCE OF FILING FEES.** Before actually filing any document by making an endorsement on that document, the department may accept and deposit the filing fee submitted with that document upon the condition that if subsequent examination of the document establishes that it does not meet the requirements for filing, the fee may be refunded and upon the condition that if a discrepancy in the amount of the fee is subsequently discovered the department may then demand further payment of a shortage or refund an overpayment subject to s. 20.905 (3).

(6) **DISCRIMINATION BY CORPORATIONS OR LIMITED LIABILITY COMPANIES.** If a complaint is made to the department that any corporation or limited liability company authorized to do business in this state is guilty of discrimination under s. 100.22, refer the matter to the department of agriculture, trade and consumer protection, which shall, if the facts justify it in its judgment, cause appropriate administrative or judicial proceedings to be commenced against the corporation or limited liability company and its officers or managers and members.

**History:** 1995 a. 27 ss. 51c, 53ad, 4733m; 1995 a. 97, 225; 1997 a. 35.

**182.011 Corporate powers.** Every corporation may take and acquire by lease, purchase, sale, conveyance or assignment and thereafter own, hold and enjoy any right, privilege or franchise granted to any person by any law of this state where such right, privilege or franchise would be in direct aid of the business of such corporation.

**182.012 Special power to transfer property of non-stock corporation.** (1) Whenever the board of directors of any domestic corporation organized without capital stock determines that a sale or mortgaging of the whole or any part of its property is desirable, and that by reason of the removal, nonresidence of a great number of its members, or the loss of its records of membership, or other cause, it is impossible to call or hold any regular meeting at which a quorum of the members can be represented in person or by proxy, the board may cause a verified petition to be made in behalf of said corporation and presented to the circuit judge of the county in which said corporation has its location. Such petition shall set forth the date of the organization and the purpose of said corporation, the nature and extent of its property, reasons for the sale or mortgaging of the whole or any part thereof, the facts preventing the calling or holding of a meeting of a quorum of its members and such other matters as may be deemed material. Upon presentation thereof the circuit judge shall by order fix a time and place for a meeting of the members of such corporation and prescribe the time and manner of giving, and contents of a notice of said meeting, and direct the publication thereof as a class 2 notice, under ch. 985, in a newspaper designated in the order.

(2) Two-thirds of the members present at any meeting so called shall have power to sell, convey or mortgage or authorize to be sold, conveyed or mortgaged the whole or any part of the property described in such petition.

(3) If such sale or mortgaging be approved or authorized, the officers of said corporation shall cause the petition, the order of the judge, proof by affidavit of the giving of notice of said meeting as required by said order and a certified copy of the minutes of the said meeting to be promptly filed in the office of the clerk of the circuit court of said county upon payment to said clerk of the fees



properly chargeable in a special proceeding. Upon such filing, such property may be conveyed or mortgaged with the same right and authority as if such sale or mortgaging had been authorized by a sufficient affirmative vote of all members of said corporation.

**182.0135 Public utility corporation directors; not to delegate duty to manage; removal by commission.**

(1) The directors of corporations which are public utilities shall not, directly or indirectly, delegate or in any manner, temporarily or permanently, relinquish or surrender their duty to manage and direct the stock, property, affairs and business of such corporation.

(2) Any director violating the provisions of this section may be removed by the public service commission, after notice and hearing. If a director of a public utility is removed by the commission, the director shall be ineligible for a period of 2 years to serve as a director of said public utility.

(3) This section does not apply to a telecommunications utility, as defined in s. 196.01 (10).

*History:* 1993 a. 482, 496.

**182.016 River improvement corporations may flow lands.**

Any domestic corporation created in whole or in part for the purpose of improving any stream and driving, holding or handling logs therein, and any corporation owning or controlling dams, booms or improvements designed to accomplish any of said purposes, or any municipality or any domestic corporation organized for the purpose of furnishing electric current for public purposes, shall have the power to acquire all such lands as shall be necessary for its use for ponds and reservoir purposes. Nothing in this section shall be construed as repealing any provision of s. 31.30.

**182.017 Transmission lines; privileges; damages.**

(1) **RIGHT-OF-WAY FOR.** Any domestic corporation organized to furnish telegraph or telecommunications service or transmit heat, power or electric current to the public or for public purposes, an independent system operator, as defined in s. 196.485 (1) (d), an independent transmission owner, as defined in s. 196.485 (1) (dm), or a cooperative association organized under ch. 185 to furnish telegraph or telecommunications service or transmit heat, power or electric current to its members, may, subject to ss. 30.44 (3m), 30.45, 86.16 and 196.491 (3) (d) 3m. and to reasonable regulations made by any city, village or town through which its transmission lines or systems may pass, construct and maintain such lines or systems with all necessary appurtenances in, across or beneath any public highway or bridge or any stream or body of water, or upon any lands of any owner consenting thereto, and for such purpose may acquire lands or the necessary easements; and may connect and operate its lines or system with other lines or systems devoted to like business, within or without this state, and charge reasonable rates for the transmission and delivery of messages or the furnishing of heat, power or electric light.

(2) **NOT TO OBSTRUCT PUBLIC USE.** But no such line or system or any appurtenance thereto shall at any time obstruct or incommode the public use of any highway, bridge, stream or body of water.

(3) **ABANDONED LINES REMOVED.** The public service commission after a public hearing as provided in s. 196.26, and subject to the right of review as provided in ch. 227, may declare any line to have been abandoned or discontinued, if the facts warrant such finding. Whenever such a finding shall have been made the corporation shall remove such line, and on failure for 3 months after such finding of abandonment or discontinuance, any person owning land over, through or upon which such line shall pass, may remove the same, or the supervisors of any town within which said lines may be situated, may remove the said lines from the limits of its highways, and such person or supervisors shall be entitled to recover from the company owning the lines the expense for labor involved in removing the property.

(4) **LOCATION OF POLES.** In case of dispute as to the location of poles, pipes or conduits, the commissioners appointed in condemnation proceedings under ch. 32 may determine the location. In no case, except where the owner consents, shall poles be set in front of or upon any residence property, or in front of a building occupied for business purposes, unless the commissioners find that the same is necessary and the court may review the finding.

(5) **TREE TRIMMING.** Any such corporation which shall in any manner destroy, trim or injure any shade or ornamental trees along any such lines or systems, or, in the course of tree trimming or removal, cause any damage to buildings, fences, crops, livestock or other property, except by the consent of the owner, or after the right so to do has been acquired, shall be liable to the person aggrieved in 3 times the actual damage sustained, besides costs.

(6) **MUNICIPAL FRANCHISE REQUIRED.** No lighting or heating corporation shall have any right hereunder in any city, village or town until it has obtained a franchise or written consent for the erection or installation of its lines from such city, village or town.

(7) **HIGH-VOLTAGE TRANSMISSION LINES.** Any easement for rights-of-way for high-voltage transmission lines as defined under s. 196.491 (1) (f) shall be subject to the conditions and limitations specified in this subsection.

(a) The conveyance under ch. 706 and, if applicable, the petition under s. 32.06 (7), shall describe the interest transferred by specifying, in addition to the length and width of the right-of-way, the number, type and maximum height of all structures to be erected thereon, the minimum height of the transmission lines above the landscape, and the number and maximum voltage of the lines to be constructed and operated thereon.

(b) In determining just compensation for the interest under s. 32.09, damages shall include losses caused by placement of the line and associated facilities near fences or natural barriers such that lands not taken are rendered less readily accessible to vehicles, agricultural implements and aircraft used in crop work, as well as damages resulting from ozone effects and other physical phenomena associated with such lines, including but not limited to interference with telephone, television and radio communication.

(c) In constructing and maintaining high-voltage transmission lines on the property covered by the easement the utility shall:

1. If excavation is necessary, ensure that the top soil is stripped, piled and replaced upon completion of the operation.

2. Restore to its original condition any slope, terrace, or waterway which is disturbed by the construction or maintenance.

3. Insofar as is practicable and when the landowner requests, schedule any construction work in an area used for agricultural production at times when the ground is frozen in order to prevent or reduce soil compaction.

4. Clear all debris and remove all stones and rocks resulting from construction activity upon completion of construction.

5. Satisfactorily repair to its original condition any fence damaged as a result of construction or maintenance operations. If cutting a fence is necessary, a temporary gate shall be installed. Any such gate shall be left in place at the landowner's request.

6. Repair any drainage tile line within the easement damaged by such construction or maintenance.

7. Pay for any crop damage caused by such construction or maintenance.

8. Supply and install any necessary grounding of a landowner's fences, machinery or buildings.

(d) The utility shall control weeds and brush around the transmission line facilities. No herbicidal chemicals may be used for weed and brush control without the express written consent of the landowner. If weed and brush control is undertaken by the landowner under an agreement with the utility, the landowner shall receive from the utility a reasonable amount for such services.

(e) The landowner shall be afforded a reasonable time prior to commencement of construction to harvest any trees located within the easement boundaries, and if the landowner fails to do so, the landowner shall nevertheless retain title to all trees cut by the utility.

(f) The landowner shall not be responsible for any injury to persons or property caused by the design, construction or upkeep of the high-voltage transmission lines or towers.

(g) The utility shall employ all reasonable measures to ensure that the landowner's television and radio reception is not adversely affected by the high-voltage transmission lines.

(h) The utility may not use any lands beyond the boundaries of the easement for any purpose, including ingress to and egress from the right-of-way, without the written consent of the landowner.

(i) The rights conferred under pars. (c) to (h) may be specifically waived by the landowner in an easement conveyance which contains such paragraphs verbatim.

**History:** 1971 c. 40; 1975 c. 68, 199; 1979 c. 34, 323; 1985 a. 297 s. 76; 1989 a. 31; 1993 a. 213, 246, 371; 1997 a. 204.

Liability of power company for locating a pole close to a traveled roadway discussed. *Weiss v. Holman*, 58 W (2d) 608, 207 NW (2d) 660.

Sub. (5) is limited to damages arising from the construction, maintenance or abandonment of facilities within a right-of-way. *Vogel v. Grant-Lafayette Electric Cooperative*, 195 W (2d) 198, 536 NW (2d) 140 (Ct. App., 1995).

**182.0175 Damage to transmission facilities. (1) DEFINITIONS.** In this section:

(am) "Emergency" means a condition that poses a clear and immediate danger to life or health, or a significant loss of property.

(b) "Excavation" means any operation in which earth, rock or other material in or on the ground is moved, removed or otherwise displaced by means of any tools, equipment or explosives and includes grading, trenching, digging, ditching, drilling, augering, tunneling, scraping, cable or pipe plowing and driving and means any operation by which a structure or mass of material is wrecked, razed, rended, moved or removed.

(bm) "Excavator" means a person who engages in excavation.

(c) "Transmission facilities" includes all pipes, pipelines, wires, cables, ducts, wirelines and associated facilities, whether underground or aboveground, regardless of the nature of their transmittants or of their in-service application. The term includes, but is not restricted to, utility facilities, government-owned facilities, facilities transporting hazardous materials, communications and data facilities, drainage and water facilities and sewer systems. The term does not include any of the following:

1. A culvert.
2. A fuel storage tank and a fuel storage pipeline, if the pipeline does not cross a public right-of-way and if the tank and pipeline are located on property that is owned or leased by the user of the tank and pipeline.

(d) "Working days" means days other than Saturday, Sunday and legal holidays.

**(1m) ONE-CALL SYSTEM.** (a) *Statewide system.* Transmission facilities owners shall establish or designate a nonprofit organization governed by a board of directors as the operator of a one-call system. The one-call system shall be a statewide communication system in which a single operational center receives excavation notices and transmits notice information to affected-member transmission facilities owners.

(b) *Membership.* 1. Except as provided in subd. 2., a transmission facilities owner shall be a member of the one-call system.

2. A transmission facilities owner or lessee is not required to be a member of the one-call system if all of that person's transmission facilities are located on property owned or leased by that person. This subdivision does not apply to a governmental unit that is a transmission facilities owner.

(bm) *Membership fees.* Members may be assessed an initial start-up fee equal to the system's costs in adding the member to the one-call system, except that any initial start-up fee may not

exceed \$100 for a member whose transmission facilities serve less than 5,000 customers. For purposes of assessing the initial start-up fee, affiliated transmission facilities owners shall be considered a single member. Under this paragraph, a transmission facilities owner is affiliated with another transmission facilities owner if the transmission facilities owner, directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the other transmission facilities owner. Members shall also be assessed a fee per notice of intended excavation activity. Membership in the one-call system ceases if a fee assessed under this paragraph is more than 90 days past due. A transmission facilities owner may be reinstated as a member upon payment of the amount past due.

(c) *Liability.* Any transmission facilities owner who is required to be a member of the one-call system and has not complied with the membership requirement is liable for all damages to the owner's transmission facilities and for any other damages that occur as a result of a properly noticed excavation to the one-call system.

(d) *System functions.* The one-call system shall do all of the following:

1. Publicize the availability and use of the one-call system.
2. Provide toll-free communication to the one-call system.
3. Accept notices of intended excavation activity.
4. Accept notices of intended emergency location or emergency excavation activity 24 hours a day.
5. Inform the person providing notice of the names of transmission facilities owners who will receive the notice information.
6. Promptly transmit notice information to affected-member transmission facilities owners.
7. Retain records of notices for a period of not less than 6 years.

**(2) EXCAVATOR AND PLANNER RESPONSIBILITIES.** (a) *Planning.* Every person who is responsible for the preparation of plans and specifications for nonemergency excavation and every excavator shall do all of the following:

1. Take reasonable action to learn the location of any transmission facilities in and near the area where the excavation is to be conducted.

2. Plan the excavation to avoid to the extent possible interference with transmission facilities in and near the excavation area.

(am) *Excavation notice.* An excavator shall do all of the following:

1. Provide advance notice not less than 3 working days before the start of nonemergency excavation to the one-call system.

2. In an emergency, take all reasonable precautions to avoid to the extent possible interference with existing transmission facilities in and near the excavation area and notify as promptly as possible the owners of transmission facilities which may be affected by the emergency excavation.

3. Maintain an estimated minimum clearance of 18 inches between an unexposed underground transmission facility marked under sub. (2m) and the cutting edge or point of any power-operated excavating or earth moving equipment. If the transmission facility is exposed, the excavator may reduce the clearance to 2 times the known limit of control of the cutting edge or point of the equipment or 12 inches, whichever is greater.

4. Provide a repeat notice to the one-call system if marks are destroyed or covered by excavation site activities, if the excavation does not start within 10 days of the scheduled start date or if excavation is interrupted for more than 10 days.

5. Provide support for existing transmission facilities in and near the excavation area that may be reasonably necessary or that is specified by the transmission facility owner for the protection of the facilities, unless protection is required of the owner of the transmission facility under s. 66.047.

6. Before backfilling, inspect all transmission facilities exposed during excavation to ascertain if the transmission facilities

ties have been or may have been struck, damaged, dislocated or disrupted.

6m. Refrain from backfilling an excavation until an inspection is conducted and any necessary repairs have been made by the owner of the transmission facility.

7. Immediately notify the owner of a transmission facility if an inspection reveals that the transmission facility has been or may have been struck, damaged, dislocated or disrupted.

8. Backfill an excavation as specified by the owner of the existing transmission facilities or in a manner and with materials that may be reasonably necessary for the protection of, and to provide reliable support during backfilling and following backfilling for, existing transmission facilities in and near the excavation area.

(bm) *Notice*. An excavation notice shall include all of the following information:

1. The name of the person providing notice.
2. The name, address and telephone number of the excavator.
3. The specific location and description of the excavation area, including the county, place, street address, nearest intersecting road, distance and direction from the nearest intersection and marking instructions.
4. A description of the intended excavation activity.
5. The intended starting date of the excavation.

(2m) TRANSMISSION FACILITIES OWNER REQUIREMENTS. (a) *Responsibilities*. A transmission facilities owner shall do all of the following:

1. Respond to a planning notice within 10 days after receipt of the notice by conducting field markings, providing records and taking other appropriate responses.
2. Respond to an excavation notice within 3 working days by marking the location of transmission facilities as provided under par. (b) in the area described in the excavation notice.
3. Provide emergency locator service within 24 hours after receiving a request for that service.

(b) *Facilities marking*. A person owning transmission facilities, upon receipt of an excavation notice, shall mark in a reasonable manner the locations of transmission facilities at the area described in the notice to enable the excavator to locate the transmission facilities without endangering the security of the facilities or the public. The marking of facilities shall be completed within 3 working days after receipt of the notice, or if notice is given more than 10 days before excavation is scheduled to begin, marking shall be completed at least 3 working days before excavation is scheduled to begin. If the approximate location of a transmission facility is marked with paint, flags, stakes or other physical means, the following color coding of lines, cables or conduits shall comply with the uniform color code adopted by the American National Standards Institute:

1. Electric power: red.
2. Gas, oil, steam, petroleum or gaseous materials: yellow.
3. Communications, cable television or alarm or signal systems: orange.
4. Water, irrigation or slurry systems: blue.
5. Sewer or drain systems: green.
6. Temporary survey markings: pink.
7. Proposed excavation: white.

(c) *Facilities inspection and repair*. Every person owning transmission facilities who receives a notice of possible damage shall inspect the facilities for damage within 6 hours after receipt of the notice if there is risk of personal injury or loss of life or within 24 hours after receipt of the notice if there is not a risk of personal injury or loss of life and shall repair any damage found as soon as practicable. Unless the owner of any transmission facility is notified or has knowledge of damage to transmission facilities by an excavator, the owner is not responsible for or required to make an inspection of its transmission facilities, nor shall the

owner, in the absence of notification or knowledge, be responsible for supervising in any manner the excavation.

(3) PENALTIES. (a) *Forfeitures*. Any person who wilfully and knowingly violates this section may be required to forfeit \$2,000 for each offense. Each day of continued violation constitutes a separate offense.

(b) *Misdemeanor*. Whoever intentionally removes, moves or obliterates a transmission facilities marking placed by the transmission facilities owner may be fined not more than \$500 or imprisoned for not more than 30 days or both. This paragraph does not apply to an excavator who removes or obliterates markings during an excavation.

(4) RIGHT OF ACTION. This section shall not affect any right of action or penalty which this state or any person may have.

(5) RIGHT TO INJUNCTION. If any person engages in or is likely to engage in excavation inconsistent with this section and which results or is likely to result in damage to transmission facilities, the person who owns or operates the facilities may seek injunctive relief in the circuit court for the county in which the transmission facilities are located. If the transmission facilities are owned or operated by a public utility as defined in s. 196.01 (5), including a telecommunications carrier, as defined in s. 196.01 (8m), and the public utility does not seek injunctive relief, the attorney general, upon request of the public service commission, shall seek injunctive relief in the circuit court for the county in which the transmission facilities are located.

*History*: 1973 c. 277; 1977 c. 350; 1977 c. 449 s. 497; 1983 a. 189; 1985 a. 297 s. 76; 1993 a. 482, 496; 1995 a. 135.

**182.018 Wires over railroads.** (1) All wires strung over any railroad prior to August 1, 1949, shall be tied to insulators fastened to double cross-arms attached to a pole at each side of the crossing. The poles if of wood shall not be less than 6 inches in diameter at the top (if of other materials at least the equivalent strength thereof), set not less than 5 feet in the ground, securely guyed, and, unless the railroad right-of-way is over 100 feet in width, shall be set not more than 100 feet apart. The cross-arms shall be attached to the poles by machine bolts, and braced by at least one iron brace from each cross-arm to the pole. All wires shall be maintained not less than 25 feet above the rails.

(2) Any person ordered by the public service commission to change its wires so as to conform to this section failing to comply with such order within 10 days from the service thereof shall forfeit \$25, and a like forfeiture for every additional 10 days of non-compliance with the order, unless a greater length of time to make such change shall be granted.

(3) All wires strung over any railroad on or after August 1, 1949 shall be strung in such a way as to meet requirements of the Wisconsin state electrical code. Any person stringing wires in violation of the code shall be subject to a forfeiture of not more than \$100 nor less than \$25. Each 10-day period, after the first day, that such violation occurs shall be a separate violation and shall subject the violator to an additional forfeiture of not less than \$25 nor more than \$100 for each such violation.

*History*: 1977 c. 29 s. 1654 (10) (b); 1985 a. 187.

**182.019 Damages for nondelivery of message or power.** Persons owning or operating any telegraph, telephone or power transmission line or heat system for public purposes shall be liable for all damages occasioned by the failure or negligence of their operators, servants or employes in receiving, copying, transmitting or delivering dispatches, messages or the furnishing of power to its patrons for public purposes, including damages for mental anguish resulting directly and proximately from or occasioned by such failure or negligence in receiving, copying, transmitting or delivering dispatches or messages, but not to exceed \$500 for mental anguish.

**182.020 Driving park corporation.** Notwithstanding ch. 562, any corporation formed under this chapter to establish, maintain and manage any driving park may have grounds and courses



for improving and testing the speed of horses and may offer and award prizes for competition; but no racing for any bet or wager shall be allowed; and any such corporation may prevent gambling or betting of any kind, and preserve order on its grounds, and establish rules therefor, and appoint officers and agents who, for that purpose, shall have the power of constables.

**History:** 1987 a. 354.

**182.021 Gun clubs.** Any domestic corporation formed for the purpose of sharpshooting or improving in the use of firearms may acquire suitable grounds therefor, and may establish, use and maintain a rifle range for its exercises. After such grounds and range are permanently located and improved by the erection of buildings, breastworks, ramparts or otherwise, no public street shall be opened through the tract so used or occupied, unless the necessity therefor shall be first established by verdict of a jury; nor shall any suit be maintained against such corporation to restrain, enjoin or impede its exercises at the place so selected on complaint of any private individuals or parties, who shall acquire title to any property adversely affected by such exercises after such grounds and range are permanently located and improved as aforesaid.

**182.025 Mortgages. (1)** Any domestic corporation formed to furnish water, heat, light, power, telegraph or telecommunications service or signals by electricity may, subject to the provisions of ch. 200 and by an affirmative vote of at least two-thirds of its outstanding shares entitled to vote thereon, or any cooperative association organized under ch. 185 to furnish water, heat, light, power, telegraph or telecommunications service to its stockholders or members only may, by a vote of a majority of a quorum of its stockholders or members present at any regular or special meeting held upon due notice as to the purpose of the meeting or when authorized by the written consent of the holders of a majority of its capital stock outstanding and entitled to vote or of a majority of its members, mortgage or trust deed any or all of the property, rights and privileges and franchises that it may then own or thereafter acquire, to secure the payment of its bonds or notes to a fixed amount or in amounts to be from time to time determined by the board of directors, and may, in and by such mortgage or deed of trust, provide for the disposal of any of its property and the substitution of other property in its place. Every such mortgage or deed of trust may be recorded in the office of the register of deeds of the county in which such corporation is located at the time of such recording, and such record shall have the same effect as if the instrument were filed in the proper office as a chattel mortgage or financing statement, and so remain until satisfied or discharged without any further affidavit, continuation statement or proceeding whatever. For this purpose the location of such corporation shall be deemed to be: as to a corporation or a cooperative association not at the time subject to either s. 180.0501 or 185.08, the location designated in its articles as then in effect; as to a corporation subject to s. 180.0501, the location of its registered office; and as to a cooperative association subject to s. 185.08, the location of its principal office or registered agent as designated thereunder.

**(2)** Any foreign corporation licensed to transact any business in this state defined in ss. 76.02 (5) and 76.28 (1) and duly authorized to do so in accordance with the laws of the state of incorporation and by its charter may borrow money and execute its bonds or notes therefor; and to secure the payment of such bonds or notes to a fixed amount or in amounts to be from time to time determined by the board of directors may mortgage or trust deed any or all of the property, rights, privileges and franchises that it may own or thereafter acquire in this state and may, in and by mortgage or deed of trust, provide for the disposal of any of such property and the substitution of other property in its place. Every such mortgage or deed of trust may be recorded in the office of the register of deeds of the county designated by the corporation as its registered office in this state at the time of such recording and such record shall have the same effect as if such instrument were filed in the

proper office as a chattel mortgage or financing statement and so remain until satisfied or discharged without any further affidavit, continuation statement or proceeding whatever.

**(3)** Any mortgage or deed of trust issued and executed by such foreign corporation and heretofore [July 6, 1957] recorded as a real estate mortgage and filed as a chattel mortgage in one or more counties in accordance with any other statute, including any supplements thereto, shall continue in full force and effect as provided by this section without any requirement for future filing of any further affidavit or proceeding and any such mortgage or deed of trust and any supplement thereto shall continue to be effective if recorded as provided in sub. (2).

**History:** 1983 a. 27 s. 2202 (45); 1985 a. 30 s. 42; 1985 a. 297 s. 76; 1989 a. 303; 1997 a. 35, 140.

**182.026 Boards of trade.** An incorporated board of trade shall have the right to establish reasonable bylaws or rules for the government of the business transactions of its members, and to establish committees of reference or arbitration for the determination of differences and controversies according to the usages of other similar bodies. And any award by such committee on arbitration, made according to such bylaws and rules, may be filed in the circuit court of the county and judgment entered thereupon according to the practice and subject to review as provided in case of awards under ch. 788.

**History:** 1979 c. 32 s. 92 (15).

**182.027 Lyceum, libraries and art galleries.** Any corporation formed for the establishment and maintenance of lyceums, libraries, art galleries and the like shall have power to make bylaws for the protection of its property, and to provide fines upon its members or patrons for their infraction by way of liquidated damages; and may collect the same in a tort action.

**182.028 School corporations.** Any corporation formed for the establishment and maintenance of schools, academies, seminaries, colleges or universities or for the cultivation and practice of music shall have power to enact bylaws for the protection of its property, and provide fines as liquidated damages upon its members and patrons for violating the bylaws, and may collect the same in tort actions, and to prescribe and regulate the courses of instruction therein, and to confer such degrees and grant such diplomas as are usually conferred by similar institutions or as shall be appropriate to the courses of instruction prescribed, except that no corporation shall operate or advertise a school that is subject to s. 39.51 (10) without complying with the requirements of s. 39.51. Any stockholder may transfer his or her stock to the corporation for its use; and if the written transfer so provides the stock shall be perpetually held by the board of directors with all the rights of a stockholder, including the right to vote.

**History:** 1979 c. 170; 1997 a. 27.

**182.029 Universities and colleges may unite. (1)** Any university or college may receive any other university or college, upon resolution of the board of trustees of both institutions, as a branch of the former, and shall be subject to such rules, regulations, agreements and liabilities as may be agreed upon. The receiving university or college may grant such diplomas and confer such degrees as shall be appropriate to courses of instruction prescribed and pursued in such received university or college, and any such university or college so received may upon such terms as shall be agreed to by its corporate members and trustees sell, or give an option to purchase, all its property, business and effects to such receiving college or university.

**(2)** Any privately supported school, academy or seminary may receive any other privately supported school, academy or seminary upon resolution of the board of trustees of both institutions, as a branch of the former, and shall be subject to such rules, regulations, agreements and liabilities as may be agreed upon. Any such privately supported school, academy or seminary so received may, upon such terms as shall be agreed to by two-thirds

of its corporate members and trustees, convey all its property, business and effects to such receiving school, academy or seminary.

**182.030 Corporations having church affiliations.** Whenever any corporation shall be formed for the benefit of, or be in any manner connected with, any church or religious denomination or society, its articles of organization may provide that it shall be under the supervision and control of such church, denomination or society; and that the officers or trustees be communicants thereof.

**182.031 Railway equipment companies. (1) DIRECTORS; STOCKS; BONDS.** The board of directors of any corporation organized under the laws of this state for the purpose of buying, selling, leasing or in any manner dealing in railway cars, locomotive engines or other railway equipment may classify or divide its property into series or classes, and suitably designate each such series or class; and may, by a resolution, ratified by vote of a majority of its common stock, authorize the issue of a special or a preferred stock based in whole or in part upon any such class or series, with such provision as to preference dividends out of the earnings of or profits upon the property of the series or class upon which such stock is based, and with such voting power, if any, and other such rights and provisions generally as may be defined in said resolution; and such stock may be issued in as many classes or series as the said corporation may have classes or series of equipment property, and in such amount as to each series or class as may be stated in said resolution, and the same may be issued from time to time and sold or disposed of in such manner and upon such terms as said board shall determine; and every such corporation shall have the power to issue, in like manner, its bonds or obligations for such amount and upon such terms as shall be defined by the resolution, and may secure the same by mortgage or deed of trust upon all of its property then owned or thereafter to be acquired, or upon any one or more of the classes or series of its property, or it may issue and secure both said general and special bonds or obligations in like manner.

**(2) POWERS; PLACE OF BUSINESS.** Every such corporation shall possess all the rights and powers conferred upon corporations by chs. 180 and 200. It may have its principal place of business without the state. If its principal place of business is outside the state, process in actions against it may be served as provided in s. 180.1510 for service on a foreign stock corporation authorized to transact business in this state.

**NOTE:** Sub. (2) is shown as affected by two acts of the 1997 legislature and as merged by the revisor under s. 13.93 (2) (c).

**History:** 1989 a. 303; 1995 a. 27; 1997 a. 79, 140; s. 13.93 (2) (c).

**182.104 Title to property after dissolution. (1)** Whenever any domestic corporation shall have been dissolved, owning any real property in this state, the resolution of dissolution required by s. 182.103, 1953 stats., to be recorded with the register of deeds of the county in which such corporation is located, or in the case of any corporation which was dissolved prior to June 29, 1945, owning any interest in real estate, the affidavit of the person who was the president or the secretary of such corporation at the date of its dissolution stating the names of the persons holding stock in said corporation and the number of shares or proportional interest of said persons in the corporate property at such date, when recorded with the register of deeds of the county in which such corporation was located, shall be prima facie evidence of the title of said persons in said corporate property.

**(2)** This section shall not affect the rights of creditors of the corporation, and shall not apply where any court has made disposition of the property, or where the property has been conveyed by the corporation, or distributed among the stockholders, and the conveyance is of record in the office of the register of deeds.

**History:** 1983 a. 192 s. 304.

**182.202 Mutual telecommunications company; quorum; proxies. (2)** At any meeting of the stockholders of a farmers' mutual telecommunications company, members representing 20 per cent of the outstanding stock, shall constitute a quorum. Any member may hold and vote the proxy of not exceeding 3 stockholders.

**History:** 1985 a. 297 s. 76.

**182.219 Mutual telecommunications company; dividends. (4)** No dividend in excess of 7 per cent of its capital shall be paid in any year by any farmers' mutual telecommunications company.

**History:** 1985 a. 297 s. 76.

**182.220 Examination by attorney general and legislature.** The attorney general, whenever required by the governor, shall examine into the affairs of any corporation in this state and report in writing a detailed statement of the facts to the governor, who shall lay the same before the legislature, and for that purpose the attorney general may conduct hearings and examine the vaults, books, papers and documents belonging to such corporation or pertaining to its affairs and condition; and the legislature, or either house thereof, shall have like power at all times, and for that purpose any legislative committee may examine any person in relation to the affairs and condition of such corporation, and its vaults, safes, books, papers and documents, and compel the production of all keys, books, papers and documents by contempt proceedings.

**History:** 1983 a. 36 s. 96 (2).

**182.23 Facsimile signatures on corporate obligations.** On any bond, note or debenture issued by a corporation organized or created under the laws of this state which is countersigned or otherwise authenticated by the signature of a trustee acting in connection with the issuance, the signatures of the officers of the corporation and its seal may be facsimiles. If any officer who has signed or whose facsimile signature has been placed upon a bond, note or debenture has ceased to be such officer before such bond, note or debenture is issued, it may be issued by the corporation with the same effect as if the former officer were such officer at the date of its issue.

**History:** 1993 a. 482.

**182.24 Transfers from joint tenants.** If any security issued by a corporation, whether or not organized or created under the laws of this state, is registered in the names of 2 or more individuals who are named in the registration as joint tenants, then any bank, broker, issuer, transfer agent or purchaser for value, acting either within or without this state in connection with a sale, exchange, transfer, redemption or retirement of such security, incurs no liability by treating the interest created by the registration as a joint tenancy and, if one or more of the named individuals is deceased, incurs no liability by treating the survivor or survivors as the owner or owners unless the bank, broker, issuer, transfer agent or purchaser for value has actual knowledge of a contrary adjudication under s. 867.04.

**History:** 1971 c. 40 s. 93; 1971 c. 307 s. 118; 1987 a. 27.

**182.25 Stock transfers on books, how compelled.** Whenever it is made to appear to the circuit court by affidavit or otherwise that the proper officer or agent of an issuer, in violation of the issuer's duty under s. 408.401 (1) has neglected or refused for 2 days after proper demand to register the transfer of a security, the court immediately shall issue an order requiring the officer or agent to show cause why the officer or agent should not register the transfer of the security. The court shall in the order prescribe the manner of its service and the date, not more than 10 days after the date of the order, when the issuer's officer or agent must show cause before the court. Unless the officer or agent at that time shows to the satisfaction of the court why the transfer should not



be registered, the court shall order the officer or agent to register the transfer at a time and place the court deems reasonable.

**History:** 1993 a. 482.

**182.30 Turnpike act; title.** Sections 182.30 to 182.48 shall be known and may be cited as the “Wisconsin Turnpike Corporation Act”.

**182.31 Definitions.** As used in ss. 182.30 to 182.48, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(1) “Corporation” or “turnpike corporation” means any corporation organized not for profit and without stock for the purposes and with the powers set forth hereunder.

(2) “Cost” as applied to a turnpike project shall embrace the cost of construction, including bridges over or under existing highways and railroads, the cost of acquisition of all land, rights-of-way, property, rights, easements and interests acquired by the corporation for such construction, the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved, the cost of diverting highways, interchange of highways, access roads to private property, including the cost of land or easements therefor, the cost of all machinery and equipment, financing charges, interest prior to, during and after construction, cost of traffic estimates and of engineering and legal expenses, plans, specifications, surveys, estimates of costs and revenues, other expenses, necessary or incidental to determining the feasibility or practicability of constructing any such project, administrative expenses, and such other expenses as may be necessary or incidental to the construction of the project, the financing of such construction and the placing of the project in operation.

(3) “Owner” includes all individuals, partnerships, associations, or corporations having any title or interests in any property, right, easement and interest authorized and required to be taken under authority of ss. 182.30 to 182.48.

(4) “Project” or “turnpike project” means any highway, express highway, superhighway or motorway constructed under the provisions of ss. 182.30 to 182.48, including all bridges, tunnels, overpasses, underpasses, interchanges, entrance plazas, approaches, toll houses, service stations, weighing stations, administration, storage and other buildings and facilities which the corporation may deem necessary for the operation of the project, together with all property, rights, easements and interests which may be acquired by the corporation for the construction or the operation of the project.

(5) “Revenues” shall mean all tolls, rentals, gifts, grants, moneys, and all other forms of property coming into the possession or under the control of the corporation by virtue of the terms and provisions hereof, except the proceeds from the sale of bonds issued under the provisions of ss. 182.30 to 182.48.

**History:** 1983 a. 189; 1993 a. 490.

**182.32 General powers.** Turnpike corporations may be organized under ch. 181 and shall have the powers enumerated therein except as otherwise provided in ss. 182.30 to 182.48.

**182.33 Additional powers.** Such corporation shall have the following additional powers:

(1) To construct, maintain, repair, police and operate turnpike projects as hereinbefore defined, upon such routes as are agreed to by the department of transportation by and with the written consent of the governor; and to establish rules and regulations for the use of any such turnpike project.

(2) To fix, devise, charge and collect tolls for transit over each turnpike project and to provide and issue special licenses authorizing transit over the turnpike project without the payment of such tolls during the period specified in the license and to fix and devise fees to be charged for such licenses.

(3) To designate the locations, and to establish, limit and control such points of ingress and egress from each turnpike project as may be necessary or desirable in the judgment of the corporation to insure the proper operation and maintenance of such project, and to prohibit ingress to such project from any point not so designated. The corporation shall cause to be erected, at its cost, at all points of ingress and egress, large and suitable signs facing the traffic from each direction on the turnpike. Such signs shall designate the number and other designations, if any, of all highways of ingress and egress, the names of all appropriate municipalities of the state and the distance in miles to such designated municipalities.

(4) (a) To employ consulting engineers, superintendents, managers, and such other engineers, construction and consultant experts, attorneys, and other employes and agents as may be necessary in its judgment, and to fix their compensation; provided that all such expenses shall be payable solely from the proceeds of turnpike revenue bonds issued under the provisions of ss. 182.30 to 182.48 or from revenues.

(b) State employes may be employed by the corporation with the consent of the governor and the department concerned. Such employes shall retain uninterrupted their civil service rating, sick leave, vacation and other rights under ch. 230 and after termination of their employment by the corporation shall be returned to the respective departments and agencies from which they were transferred for resumption of their regular employment.

(5) To lease suitable parcels of land for or to construct and lease to private persons, after competitive bidding, gasoline stations, garages, stores, hotels, motels, restaurants, tourist rooming houses, and such other facilities as the corporation may deem to be necessary or desirable. The corporation shall have full power to determine the number and location of such facilities.

(6) To receive and accept from any federal agency, subject to the approval of the governor, grants for or in aid of the construction or maintenance of any turnpike project, and to receive and accept aid, gifts or contributions from any source of either money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants and contributions may be made.

(7) To do all acts and things necessary or proper to carry out the powers expressly or impliedly granted in ss. 182.30 to 182.48.

**History:** 1977 c. 29 s. 1654 (8) (c); 1977 c. 196 s. 131.

**182.34 Issuance of bonds.** (1) The corporation is authorized to provide by resolution at one time or from time to time for issuance of turnpike revenue bonds in such amount as may be required to pay for all or part of the cost of any one or more turnpike projects. It is likewise authorized similarly to provide for the issuance of refunding bonds, to retire any bonds then outstanding at the principal amount thereof plus any redemption premium and accrued interest thereon; and to pay for all or part of the cost of future extensions, enlargements, or improvements of the project for which the bonds being refunded were issued.

(2) The bonds to be so issued may be offered and sold by the corporation in such manner as is determined by the corporation to be most suitable and economical. The bonds shall be signed by the chairperson and vice chairperson of the corporation or by their facsimile signatures, and the official seal of the corporation shall be affixed thereto and attested by the secretary–treasurer of the corporation, and any coupons attached thereto shall bear the facsimile signature of the chairperson of the corporation. In case any officer whose signature or facsimile of whose signature appears on any bonds or coupons ceases to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient, for all purposes the same as if that officer had remained in office until such delivery. All bonds issued under ss. 182.30 to 182.48 shall have and are hereby declared to have all the qualities and incidents of negotiable instruments under ch. 408.

(3) To the extent that the proceeds of any bonds sold exceed the cost of the project or projects for which such bonds were issued, those funds shall be applied to the credit of the sinking fund reserve or other reserve for such issue.

(4) The corporation is authorized to take any action in connection with the mechanics of setting up and servicing the issuing of bonds which will provide proper and adequate protection for the purchasers, and which may be required by the circumstances then in force.

(5) Turnpike revenue bonds and refunding bonds issued under the provisions of ss. 182.30 to 182.48 shall be payable solely from the funds pledged for their payment as herein authorized and shall not constitute a debt of the state or of any political subdivision of the state.

(6) All expenses incurred by a turnpike corporation shall be payable solely from funds provided under the authority of ss. 182.30 to 182.48 and nothing contained in this act shall be construed to authorize a turnpike corporation to incur indebtedness or liability on behalf of or payable by the state or any political subdivision of the state.

(7) (a) Tolls and license fees authorized under s. 182.33 (2) shall be so fixed and adjusted in respect of the aggregate of tolls of each turnpike project including any extension or section thereof in connection with which the bonds of any issue shall have been issued as to provide a fund sufficient, with other revenue from the turnpike project or extensions or sections thereof, if any, to do the following:

1. Pay the cost of maintaining, repairing and operating the turnpike project or extension or section thereof, including the legal liabilities of the corporation.

2. Pay the principal of and the interest on the bonds described in par. (a) (intro.) as those bonds shall become due and payable.

3. Create reserve for the purposes described in subds. 1. and 2.

(b) The tolls described in par. (a) (intro.) shall not be subject to supervision or regulation by any commission, board, bureau or agency of the state.

(c) The tolls and all other revenues derived from each turnpike project or extensions or sections in connection with which the bonds of any issue shall have been issued, except the amount necessary to pay the costs described in par. (a) 1. and to provide reserves therefor as may be provided for in the resolution authorizing the issuance of the bonds or in the trust agreement securing the bonds, shall be set aside in a sinking fund at regular intervals provided for in the resolution or trust agreement. The sinking fund shall be pledged to and charged with the payment of the principal of and the interest on the bonds as those bonds become due and the payment of the redemption price and the purchase price of bonds retired by call or purchase as provided for in the resolution or trust agreement.

(d) The pledge of the sinking fund under par. (c) shall be valid and binding from the time when the pledge is made. The tolls or other revenues or other moneys so pledged and thereafter received by the corporation shall immediately be subject to the lien of the pledge without any physical delivery thereof, or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the corporation. All trust agreements and all resolutions relating thereto shall be filed with the department of financial institutions and recorded in the records of the corporation.

(8) All moneys received pursuant to the authority of ss. 182.30 to 182.48, whether as proceeds from the sale of bonds, or as revenues, shall be deemed to be trust funds, to be held and applied solely as provided in ss. 182.30 to 182.48. Such funds shall be kept in such depositories as are selected by the corporation.

(9) Any holder of bonds issued under the provisions of ss. 182.30 to 182.48 or any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent the rights herein given may be restricted by such trust agreement,

may, either at law or in equity, by suit, action, mandamus or other proceedings, protect and enforce any and all rights under the laws of the state or granted hereunder or under such trust agreement or the resolution authorizing the issuance of such bonds, and may enforce and compel the performance of all duties required by ss. 182.30 to 182.48 or by such trust agreement or resolution to be performed by the corporation or by any officer thereof, including the fixing, charging and collecting of tolls.

(10) The issuance of turnpike revenue bonds or turnpike revenue refunding bonds under the provisions of ss. 182.30 to 182.48 need not comply with the requirements of any other law applicable to the issuance of bonds.

History: 1993 a. 184; 1995 a. 27, 225.

### 182.35 Acquisition of lands and interests therein.

(1) Turnpike corporations may acquire by gift, devise, purchase or condemnation any lands determined by them to be necessary for establishing, laying out, widening, enlarging, extending, constructing, reconstructing, improving and maintaining its project including lands which may be necessary for toll houses and appropriate concessions and for any other purpose authorized by ss. 182.30 to 182.48. Title may be acquired in fee simple and any other interest in lands may be acquired as may be deemed expedient or necessary by the corporation. Any lands determined to be unneeded by the corporation may be sold by the corporation at public or private sale with or without restrictions or reservations concerning the future use and occupation of such lands so as to protect the project and improvements and their environs and to preserve the view, appearance, light, air and usefulness of the project.

(2) If the lands or interests therein cannot be purchased expeditiously for a reasonable price, the corporation may acquire the same by condemnation under ch. 32.

### 182.36 Authority to construct grade separations and relocate public roads, streets, highways, railroads and public utilities.

(1) It is declared that the construction of modern toll roads in this state is in the promotion of public and social welfare and for the benefit of public travel. It is recognized that in the construction of such highways, it will become necessary to make changes and adjustments in the lines and grades of public roads, streets, highways, railroads and public utility systems and, in some instances, to relocate the same.

(2) In the furtherance of the public interest, the corporation is hereby granted the authority to construct grade separations at intersections of any turnpike project with public roads, streets, highways and railroads and to change and adjust the lines and grades of public roads, streets and highways, and, if necessary, to relocate the same. Such changes in public roads, streets and highways shall be made with the approval of the appropriate governmental highway or street authority. If the corporation and local authority cannot agree in any matter, such changes may be made with the consent of the department of transportation. The cost of the grade separations and changes and any damages incurred thereby shall be ascertained and paid by the turnpike corporation as a part of the cost of such turnpike project.

(3) The corporation may enter into contracts with public utilities, including railroads, for the removal or change in location of the lines of such public utilities where the same is deemed necessary by the corporation in the construction of the project. Such contracts shall be for the payment of damages caused the utilities by the relocation of their lines. In the event the corporation and the utility are unable to reach an agreement, the public service commission shall direct the manner, location and time allowed for the change in the utility line and the corporation shall be liable for the reasonable costs of such change. In the event the public utility fails to comply with the order of the public service commission it shall be liable to the corporation for all damages occasioned by such failure.

History: 1977 c. 29 s. 1654 (8) (c).

**182.37 Rights of public utilities.** All public utilities shall have the right to cross the lands or easements of the corporation with any lines at such reasonable place and in such reasonable manner, either over or under the project, as the corporation may direct upon payment of damages to the corporation. In cases of dispute, utilities shall have the right to condemn easements under ch. 32 but such easements shall not conflict with the planned operation, or operation of the project.

**182.38 Entry upon lands.** The turnpike corporation by its authorized agents and employes may enter upon any lands in the state for the purpose of making such surveys and examinations as are necessary or proper for the purposes of ss. 182.30 to 182.48. Such entry shall not be deemed a trespass nor entry under any kind of condemnation proceedings which may be then pending. The corporation shall make reimbursement for any actual damage resulting to such lands or premises and to private property located on the same as a result of such activities.

**182.39 Use of state lands.** This state, subject to the approval of the governor, hereby consents to the use of all lands owned by it, including lands lying under water which are necessary or proper for the operation and construction of any turnpike project provided adequate compensation is made for such use.

**182.40 Toll exemptions. (1)** The following government agencies are to be exempt from the payment of tolls: All armed forces of the United States including the Wisconsin national guard and national guard units from other states; the Wisconsin state defense force; and civilian defense organizations.

**(2)** When not traveling on an emergency mission the corporation shall have the power to designate the time of such use, the length and timing of convoys, serials and march units, rate of march, and intervals, and make such other requirements as may be necessary to properly control traffic in the interest of general safety and convenience of travel.

**(3)** The corporation shall have the power to exempt law enforcement officers and those operating emergency vehicles from the payment of tolls upon such conditions as it may direct.

**History:** 1987 a. 63 s. 13; 1997 a. 35.

**182.41 Corporation to be nonprofit.** All turnpike corporations shall be nonprofit corporations, that is, corporations formed without capital stock, operated not for profit and exclusively for the purposes set forth in ss. 182.30 to 182.48 and which declare no dividend, benefit or pecuniary profit to be paid to or received by any of their members, directors or officers.

**182.42 Not to be considered public utilities.** Turnpike corporations are not to be subject to regulations under ch. 196 as a public utility.

**182.43 Underpass authorized.** Wherever a turnpike project divides the land of one owner so as to prevent ingress to and egress from said lands, the corporation is authorized to provide an underpass or culvert sufficient to provide ingress and egress between said lands. Plans for the existence of an underpass shall be admissible in evidence in condemnation proceedings.

**182.44 Limitations on powers.** Turnpike corporations shall not have the power to secure any of their obligations by mortgage or pledge of all or any of their properties, either real, personal or mixed, except the pledging of tolls as herein provided.

**182.45 Reports.** On or before the first day of February of each year, the corporation shall make an annual report of its activities for the preceding calendar year to the department of financial institutions. Each such report shall set forth a complete operating and financial statement covering its operations during the year. The corporation shall cause an audit of its books to be made at least once each year by certified public accountants and the cost thereof

may be treated as a part of the cost of the construction or of operations of the project.

**History:** 1995 a. 27.

**182.46 Tax exemptions.** The exercise of the powers granted by ss. 182.30 to 182.48 will be in all respects for the benefit of the people of this state, for the increase of their commerce and prosperity and for the improvement of their health and living conditions, therefore the corporation shall not be required to pay any taxes or assessments upon any turnpike project or any property acquired or used by the corporation under the provisions of ss. 182.30 to 182.48 or upon the income therefrom, and the bonds issued under the provisions of ss. 182.30 to 182.48, their transfer and the income therefrom (including any profit made on the sale thereof) shall at all times be free from taxation within this state.

**182.47 Motor vehicle laws to apply. (1)** The provisions of chs. 86, 341 to 349 and 351 relative to the operation of motor vehicles on highways and the protection of public highways including the weight restriction laws shall be applicable to turnpikes and for the purpose of these laws, turnpikes shall be deemed to be public highways. Turnpikes shall be considered as class "A" highways under s. 348.15 and all limitations on the use of such class "A" highways shall be applicable. Turnpikes shall not be subject to traffic control by any local governmental ordinance or rule.

**(2)** The corporation is authorized to hire suitable persons to enforce the statutes referred to in sub. (1), and, upon approval of the governor, they are vested for that purpose with the powers of state traffic officers. Such authority shall be evidenced by the governor's certificate of approval.

**History:** 1979 c. 333 s. 5.

**182.48 State may acquire.** When all turnpike revenue bonds issued under the provisions of ss. 182.30 to 182.48 in connection with any turnpike project or extension or sections thereof and the interest thereon shall have been paid or a sufficient amount for the payment of all such bonds and the interest thereon to the maturity thereof shall have been set aside in trust for the benefit of the bondholders, such project or extension or sections thereof, shall become a part of the state trunk highway system and shall thereafter be maintained by the department of transportation and shall be free of tolls.

**History:** 1977 c. 29 s. 1654 (8) (c).

**182.50 Establishment of foreign trade zones. (1) DEFINITIONS.** AS used in this section:

(a) "Act of congress" means the act of congress, entitled "An act to provide for the establishment, operation and maintenance of foreign trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes" (19 USC 81 et. seq.).

(b) "Private corporation" means any corporation organized under ch. 180 for the purpose of establishing, operating and maintaining foreign trade zones under this section.

(c) "Public corporation" means the state, or any county, town, city or village within the state, or any state or municipal authority or similar organization financed in whole or in part by public funds.

**(2) ESTABLISHMENT, OPERATION AND MAINTENANCE.** Any public or private corporation may make application for the privilege of establishing, operating and maintaining a foreign trade zone under the act of congress. Any public or private corporation, whose application is granted under the act of congress, may establish, operate and maintain a foreign trade zone subject to the conditions and restrictions of the act of congress and any amendments thereto, and under such rules and regulations and for the period of time that may be prescribed by the board established by the act of congress to carry out the provisions of such act.

**History:** 1977 c. 110; 1983 a. 189.



**182.70 Wisconsin Valley Improvement Company.**

**(1) DEFINITIONS.** In this section:

(a) “Capital invested” means capital actually paid in and the par value of all negotiable bonds or other obligations issued by the company.

(b) “Commission” means the public service commission.

(c) “Company” means the Wisconsin Valley Improvement Company, its successors and assigns.

(d) “Department” means the department of natural resources.

**(2) PURPOSE OF THE COMPANY.** (a) The company shall produce as nearly a uniform flow of water as practicable in the Wisconsin and Tomahawk rivers by storing in reservoirs surplus water for discharge when the water supply is low to improve the usefulness of the rivers for all public purposes and to reduce flood damage.

(b) If maintaining uniform flow in the Wisconsin river below and above the north line of Lincoln county at the same time is impracticable, the company shall give preference to maintaining uniform flow in portions of the river above this line.

**(3) RIGHTS, POWERS AND AUTHORITY.** Subject to chs. 30 and 31:

(a) 1. The company may create, acquire or lease an entire reservoir project or otherwise maintain, operate or control a system of water reservoirs located in or along the Wisconsin river. These reservoirs shall be located north of township 37 north in or along the Wisconsin river, and in or along any tributary of the Wisconsin river that discharges into the river at any point north of the south line of township 23 north. The company may create, acquire, maintain and operate waterways to divert flood waters from or to the Wisconsin river to or from reservoirs on other rivers. Diversion of flood waters shall be subject to approval by the department. The company may construct, acquire and maintain dams, booms and other structures in, along or across this portion of the Wisconsin river and its tributaries to accomplish the purposes of this section. The company may clean out, straighten, deepen or otherwise improve any tributary to improve navigation of the tributary or of the Wisconsin river, or to prevent injury to property bordering on the rivers.

2. The company may not exercise the authority granted in subd. 1. on that part of the Eagle river and lakes lying between the point where the Eagle river enters Cranberry lake, in section 31, township 40 north, range 11 east, and the Wisconsin river.

(b) 1. All franchises, other than corporate franchises, and all riparian rights and rights of flowage acquired by purchase or grant by any person or by any corporation organized to improve the navigation of the Wisconsin or Tomahawk river, or any of their tributaries may be assigned to the company.

2. Subdivision 1. shall not amend or repeal [chapter 532, laws of 1887](#), [chapter 252, laws of 1889](#), [chapter 483, laws of 1905](#), [chapter 26, laws of 1903](#), or any amendment to those chapters. The company may not exercise eminent domain over any property used under those chapters, nor any other property devoted to public uses except as authorized in pars. (c) and (f).

(c) The dam authorized by [chapter 532, laws of 1887](#), may be raised, or a new dam or dams may be constructed and maintained, in the Eagle river between Long and Cranberry lakes in townships 39 and 40 north, range 11 east, to raise the water in Long lake 6 inches higher than the high water mark established by the dam authorized by [chapter 532, laws of 1887](#). Between May 1 and the succeeding November 1 the waters shall not be drawn down in Long lake more than 18 inches below the high water mark. The company shall maintain the navigability of Eagle river between Long and Cranberry lakes for boats up to 50 feet in length with 12-foot beam and drawing 5 feet of water. If the construction, maintenance or operation of the new dam or dams requires the removal of the dam maintained under [chapter 532, laws of 1887](#), or impairs the use of the dam or its appurtenances as a bridge across the Eagle river, the company shall either:

1. Provide a suitable bridge for H 15 loading, as provided in the standard specifications for highway bridges, adopted by the American association of state highway and transportation offi-

cial (1977), with suitable approaches, for safe and convenient passage over the new dam, or if more than one dam is built, over the dam nearest to the dam maintained under [chapter 532, laws of 1887](#); or

2. At its election provide a suitable new bridge and approaches across the river at a point that will conveniently connect with the highway crossing the river.

(d) The company may collect uniform tolls for the passage of boats over the dam the company builds under par. (c), proportioned to the size of the boat. The total fees collected may not exceed the cost of the care, maintenance and operation of the means of passage.

(e) The company may acquire by condemnation any property, interest in property or other right necessary to create, maintain or operate any reservoir, dam or other improvement, if the property cannot be purchased at an agreed price.

(f) The commission shall appraise the damage caused by a taking or overflow of state lands occurring under this section. The company shall pay the amount appraised to the state treasury.

**(4) PRIVATE REMEDIES.** Any owner whose premises or access to the premises are injured by being divided, surrounded by water, flooded or waterlogged, or whose natural drainage is destroyed or injured by any dam or other construction built or operated by the company, may sue for damages or an injunction in the circuit court for the county where some part of the damaged lands are located. The injured party may choose a trial by jury.

**(5) TOLLS.** (a) If the company improves any navigable tributary of the Wisconsin river, except that part of the Eagle river designated in sub. (3) (a) 2., or acquires the improvements or control of the improvements of any river improvement company already operating on these tributaries, and operates the works to allow the driving of logs and other floatables to the mouth of the tributary, the company:

1. May charge uniform tolls for floatables driven on the tributary; and

2. Shall have all of the rights and remedies granted to river improvement companies by law.

(b) If the company operates water reservoirs under this section capable of storing and discharging 2 billion cubic feet of water that would not be naturally stored, it may charge uniform tolls to the owners, lessees or operators of every improved and operated water power located upon the Wisconsin river or any of its tributaries below any of these reservoirs and benefited by the operation of these reservoirs. The sum of the tolls may not exceed the reasonable costs of operation and maintenance, including taxes and depreciation, plus a net return not exceeding 7% on the capital invested and a reasonable allowance for working capital. The tolls shall be a first lien, subject only to taxes, on the water power, dam, franchise and flowage rights of the person or corporation charged with the tolls. The company may sue to enforce the lien or for sale of the encumbered property.

(c) The commission shall fix the tolls semiannually in proportion to the benefits received from the reservoir system by each improved and operated water power. A water power liable to tolls and operated 2 months or more during a 6-month toll period shall be subject to tolls for the entire period. A water power operating for less than 2 months during a 6-month period shall not be subject to a toll. The company shall employ hydraulic engineers to assist the company and the commission in determining the tolls to be charged. The expense of employing the engineers shall be a part of the cost of maintenance and operation of the works.

(d) The owners or operators of the improved water power shall pay tolls charged under this subsection, unless the improved water power is operated by lessees under a contract made prior to October 6, 1939. In that case the lessees shall pay the tolls.

(e) The commission shall provide notice to each water power operator to be charged with tolls. The commission shall determine and certify the amount of the tolls to be collected from each water

power operator for the period under consideration. The tolls shall then be due the company.

**(6) REVIEW.** A party aggrieved by the determination of tolls to be collected may petition for a hearing. A person whose substantial interests have been adversely affected by the commission's decision may seek judicial review under ss. 227.53 to 227.58, in the circuit court in the county where the property affected is located.

**(7) REPORTS TO THE COMMISSION.** On or before June 30 and December 31 of each year, the company shall provide the commission with a statement showing:

(a) All expenditures made or necessary to be made for the 6-month period preceding the next July 1 or January 1. Expenditures itemized shall include maintenance, operation and depreciation of the reservoir systems.

(b) The location of each reservoir.

(c) All reports and data obtained from engineers employed to determine tolls charged.

(d) A recommendation of the amount of tolls necessary to pay the cost of maintenance, operation, taxes and depreciation, a net return not exceeding 7% on the capital invested, and a reasonable allowance for working capital, together with a recommendation on the apportionment of costs against the owners or operators of improved powers.

(e) Other information and statements the commission may require.

**(8) DUTIES OF THE DEPARTMENT.** The department shall mark the height to which any dam may raise the water level by permanent monuments and bench marks, shall supervise and control the times and extent of the drawing of the water from the reservoirs, and may compel the maintenance of all reservoirs established.

**(9) ISSUE OF CAPITAL STOCK AND SECURED BONDS APPROVED BY THE COMMISSION.** (a) The company may, after certification from the commission according to the procedures under ss. 200.03 and 200.04, issue bonds or other obligations secured by pledge, assignment, mortgage or trust deed of its property.

(b) The company may retire its secured obligations by issuing stock as payment.

**(10) STATE ACQUISITION.** This state shall have the right, whenever it may have the constitutional power, to take over to itself, and become the owner of all reservoirs and other works and property acquired by the company, under this section, by paying therefor the total capital invested, including outstanding bonds or other obligations of the company lawfully issued and outstanding, (computation to include outstanding bonds or other obligations and stock or stocks plus undistributed earned surplus) or the actual value of the physical properties so taken over, without any allowance for franchise or goodwill of the business; and if the actual value cannot be agreed upon by the state and the owner, then the same shall be determined by the commission.

**History:** 1979 c. 90 s. 19; 1983 a. 189; 1985 a. 182 s. 57; 1995 a. 196; 1997 a. 140.

**Legislative Council Note, 1979:** The Wisconsin Valley Improvement Company was created by ch. 335, laws of 1907, for the purpose of building, maintaining and operating dams and reservoirs on the Wisconsin river and its tributaries. These improvements on the river serve to improve navigation, decrease the hazard of flooding and provide a uniform flow for all public purposes.

**Chapter 335, laws of 1907,** as amended, is incorporated into the statutes and amended to reflect current statutory drafting practices, without any intention of making substantive changes in the law. [Bill 458–A]

### 182.71 The Chippewa and Flambeau Improvement Company. (1) In this section:

(a) "Commission" means the public service commission.

(b) "Company" means the Chippewa and Flambeau Improvement Company.

(c) "Department" means the department of natural resources.

**(2)** (a) The company shall produce as nearly a uniform flow of water as practicable in the Chippewa and Flambeau rivers, by storing in reservoirs surplus water for discharge when the water

supply is low, to improve the usefulness of the rivers for all public purposes, and to reduce flood damage.

(b) If maintaining uniform flow throughout the length of these rivers is impracticable, the company shall maintain as nearly a uniform flow in the upper portions of these rivers as is practicable.

**(3)** (a) The company may create, acquire, lease, maintain and operate a system of water reservoirs located in or along:

1. The Court Oreilles river and its tributaries above the north line of township 38 north.

2. The east and west forks of the Chippewa river and their tributaries above a point one mile below the junction of such east and west forks.

3. The Thornapple river and its tributaries above its mouth.

4. Butternut creek and its tributaries above its mouth.

5. The north fork of the Flambeau river and its tributaries above a point one mile below the junction of the Manitowish and Turtle rivers.

6. The south fork of the Flambeau river and its tributaries, including the Elk river, above the junction of the south fork of the Flambeau river and the Elk river.

(b) The company may construct, acquire, maintain and operate dams, booms and other structures in, along, or across any of these portions of the rivers and their tributaries to accomplish the purposes of this section. The company may clean out, straighten, deepen or otherwise improve any of these rivers and tributaries to improve navigation or to prevent injury to property bordering on the rivers.

(c) All franchises and all riparian rights and rights of flowage of any person or any corporation organized to improve the navigation of these rivers or their tributaries may be assigned to the company.

**(4)** (a) The company may acquire by condemnation any property, interest in property or other right necessary to create, maintain or operate any reservoir, dam or other improvement, if the property cannot be purchased at an agreed price.

(b) The commission shall appraise the damage a taking or overflow of state lands may cause. The company shall pay the amount appraised into the state treasury prior to the taking or overflow.

**(5)** (a) If the company improves any tributary of the Chippewa river, or acquires the improvements or the control of the improvements of any river improvement company already operating on any tributary, and operates the works to allow the driving of logs and other floatables to the mouth of the tributaries, the company may charge uniform tolls for floatables driven on the tributary.

(b) If the company operates water reservoirs under this section capable of storing and discharging 1.5 billion cubic feet of water that would not be naturally stored, it may charge uniform tolls to the owners, lessees or operators of every improved and operated water power located upon the Chippewa or Flambeau rivers or any of their tributaries below any of these reservoirs and benefited by the operation of these reservoirs. The sum of the tolls may not exceed the reasonable costs of operation and maintenance including rent paid for leased properties and a net annual return on the cash capital actually paid in on the stock subscriptions to the company and on the par value of all negotiable bonds issued by the company. The commission shall determine the net annual return.

(c) The commission shall fix the tolls semiannually in proportion to the benefits received from the reservoir system by each improved and operated water power. A water power liable to tolls and operated 2 months or more during a 6-month toll period shall not be subject to tolls for the entire period. A water power operating for less than 2 months during a 6-month toll period shall not be subject to a toll. The company shall employ hydraulic engineers, selected by the commission, to assist the company and the commission in determining the tolls to be charged. The expense

of employing the engineers shall be a part of the cost of maintenance and operation of the works.

(d) The owners or operators of the improved water power shall pay tolls charged under this subsection, unless the improved water power is operated by lessees under a contract made prior to July 12, 1911. In that case the lessees shall pay the tolls.

(e) The commission shall provide notice to each water power operator to be charged with tolls. The commission shall determine and certify the amount of the tolls to be collected from each water power operator for the period under consideration. The tolls shall then be due the company.

(f) No tolls shall be levied or used to pay for any part of the original acquisition or improvement of the reservoir system. The tolls shall be a lien on the water power, dam, franchises and flowage rights of the person or corporation charged with the tolls. The company may sue to enforce the lien or for the sale of the encumbered property.

(g) A party aggrieved by the determination of tolls to be collected may petition for a hearing. A person whose substantial interests have been adversely affected by the commission's decision may seek judicial review under ss. 227.53 to 227.58, in the circuit court in the county where the property affected is located.

(6) On or before June 15 and December 15 of each year, the company shall provide the commission with a statement showing:

(a) All expenditures made or necessary to be made for the 6-month period preceding the next July 1 or January 1 for maintenance and operation of the reservoir system.

(b) All capital stock the company issued and all outstanding negotiable bonds.

(c) The cash capital actually paid in.

(d) The storage capacity and location of each reservoir.

(e) All reports and data obtained from engineers employed to determine tolls charged.

(f) A recommendation of the amount of tolls necessary to pay the cost of maintenance and operation and a net return of 6% per year on the capital invested, including the par value of the outstanding negotiable bonds, together with a recommendation as to the apportionment of the tolls against the owners or operators of improved powers under sub. (5); and

(g) Other information the commission may require.

(7) (a) The commission shall appraise and fix the price of any dam, land or flowage rights to be purchased by the company under this section. The commission shall approve any lease of property by the company prior to the payment of rent. The commission may require the department to aid in appraising the value of the land.

(b) If the company intends to acquire and overflow property, the commission shall approve the need to overflow the property.

The department shall mark the height to which any dam may raise the water level by permanent monuments and bench marks, shall supervise and control the time and extent of the drawing of water from the reservoirs, and may compel the maintenance of all reservoirs established. The commission and the department may employ, at the expense of the company, hydraulic engineers and other persons to assist in obtaining information necessary to enforce this section. The cost of hiring the engineers shall be included as a part of the cost of construction or maintenance and operation of the reservoir system.

(c) The company may, after certification from the commission according to the procedures under ss. 200.03 and 200.04, issue capital stock or negotiable bonds. The money received by the company upon account of capital stock or sale of its negotiable bonds shall be used to pay the original cost of purchase, construction or improvement of the reservoir system. All tolls collected under sub. (5) shall be applied only to the payment of cost of maintenance and operation of the system and payment of the net return on capital so that the capital stock and bonds of the corporation shall be maintained at par value at all times.

(d) Subject to approval of the commission, the company may issue negotiable interest-bearing bonds to provide funds to acquire dams, reservoirs and rights under this section. The issue shall not exceed one-half of the total cost of the improvement. The company may secure payment by mortgage of its property. If any bonds are issued and outstanding, all earnings of the capital stock shall be invested subject to the approval of the commission as a sinking fund for the purpose of retiring outstanding bonds, and while any bonds are outstanding, no dividends shall be paid to the stockholders of record.

(8) This state shall have the right at any time, whenever it may have the constitutional power, to take over to itself and become owner of all reservoirs and other works and property acquired by the Chippewa and Flambeau Improvement Company, under this section, by paying therefor the cash capital actually paid on the capital stock of the company theretofore lawfully issued and outstanding or the actual value of the physical properties so taken over and without any allowance for franchises or goodwill of the business, such actual value to be determined by the commission.

(9) This section shall not release any right, title or interest acquired by the state or that may be acquired under any federal law.

**History:** 1979 c. 90 s. 20; 1979 c. 177; 1985 a. 182 s. 57; 1995 a. 196; 1997 a. 140.

**Legislative Council Note, 1979:** The Chippewa and Flambeau Improvement Company was created by ch. 640, laws of 1911, for the purpose of building, maintaining and operating dams and reservoirs on the Chippewa and Flambeau rivers. These improvements on the river serve to improve navigation, decrease the hazard of flooding and provide a uniform flow for all public purposes.

**Chapter 640, laws of 1911,** as amended, is incorporated into the statutes and amended to reflect current statutory drafting practices, without any intention of making substantive changes in the law. [Bill 458–A]