

No. 575, S.]

[Published July 29, 1955.

**CHAPTER 471**

AN ACT to amend 30.085; and to create 67.04 (1) (j) of the statutes, relating to harbor improvements by counties having a population of less than 500,000.

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

SECTION 1. 30.085 of the statutes is amended to read:

30.085 (1) *Any county, except counties having a population of 500,000 or more, and any city of the first, second or third class, whether*

organized under general or special charter, situated on a navigable waterway may, by resolution of its common council *or county board*, create a board of harbor commissioners composed of not less than 3 nor more than 9 persons.

(2) (a) Such resolution shall state the number of persons to compose said board and the length of term of each member of the first board to be appointed, so that the term of one or more members of said first board shall expire in one year, one or more in 2 years and one or more in 3 years, and thereafter at the expiration of the term of any member a successor shall be appointed for a 3-year term.

(b) As soon as possible after the passage of the resolution creating such board, the mayor of such city *or chairman of such county board* shall, subject to confirmation by the common council \* \* \* *or county board*, appoint the members of said board and designate the length of term of each member thereof in compliance with said resolution. No person shall be appointed to said board unless he be a qualified elector and a resident for at least 3 years of such city *or county*. Any vacancy occurring in said board shall be filled for the unexpired term in the same manner as the original appointment. The members shall serve without compensation and until their successors are appointed.

(c) At the first meeting of \* \* \* *the board* the members thereof shall elect from among their number a president, who shall preside over the meetings of \* \* \* *the board*, and a vice president, to preside in the absence of the president.

(3) Said board shall, subject to the civil service law applicable to such city *or county*, appoint a secretary, not a member of said board, and fix his salary at a sum not exceeding \$3,000 per year, and may also employ such engineers, draftsmen, surveyors, experts, clerks and other help as they may deem necessary for the proper performance of their duties, and fix their compensation.

(4) Said board shall have authority, whenever it shall deem it necessary, to act or proceed in any manner whatsoever relating to its powers and duties under this section or through any other department of such city *or county*. When said board shall make written requests of any such department for the performance of any such act or acts, it shall be the duty of such department thereupon to act as required, provided the act or acts required to be done have reference to the powers and duties of such department. If any differences shall arise between such board and any of the other departments of such city *or county* in the performance of any such act or acts requested by said board, as to whether said act or acts have reference to the powers and duties of such department, the ruling of the common council *or county board* in the matter shall be final.

(5) (a) Said board shall have power to make plans for the improvement of all waterways of the \* \* \* *harbors* of such city *or county*, providing for the construction of such docks, wharves, warehouses, piers, slips, basins or other structures to care for the needs of commerce and shipping, as it may deem necessary, and also to make plans for railway tracks and belt railways connecting such docks, wharves, warehouses, piers, slips, basins or other structures and the harbor facilities with all railway lines in such city *or county*, and also to make plans for such cranes, dock apparatus and other wharf and harbor machinery and equipment as may be necessary for the efficient handling of all freight and passenger traffic between the said waterways and railways or between said railways and waterways. The said board may also plan airports, airfields and other facilities needed for the proper operation of airplanes, hydroplanes, amphibian planes, airships and all other forms of aircraft.

The said board may also plan for the acquisition and operation of harbor towing tugs and other incidental floating equipment necessary and required for the operation of the harbor.

(b) Before any of said plans shall be carried out by said board, they shall be submitted to the common council of such city *or county board of such county* for approval or modification. If said common council *or county board* shall approve of any of said plans, said board shall have power to proceed to carry them out and for that purpose shall proceed in the manner hereinafter provided.

(6) (a) All work done or supplies or material purchased in carrying out the purposes of the statutes relating to the board of harbor commissioners when involving the expenditure by cities of the second or third class of \$500 or more, and by cities of the first class *or such counties* of \$1,000 or more, shall be by contract awarded to the lowest competent and reliable bidder, in accordance with the laws of this state and ordinances then applicable to any *such city or county* having such board, having reference to the letting of public work by and through the board or commissioner of public works or other officer or officers, or department of such city *or county*, except that said board of harbor commissioners shall discharge the duties imposed by such laws upon the board or commissioner of public works, or other officer or officers, or department of such city *or county*; but said board of harbor commissioners shall have power to purchase without public advertisement or first receiving competitive bids, or the intervention of a formal contract, any patented article, appliance, apparatus, material or process, or any article, appliance, apparatus, material or process made or manufactured by one party only, and without competitive bidding to contract for work or supplies or material in marine construction and repair work requiring the use of floating scows, pile drivers or other floating equipment at an expenditure by cities of the second or third class of less than \$500 and by cities of the first class *or such counties* of less than \$2,500.

(b) Whenever any bidder for any work to be let by the board of harbor commissioners shall be, in the judgment of said board, incompetent or otherwise unreliable for the performance of the work for which he bids, the said board may accept the bid of the person who, in its judgment, is the lowest competent and reliable bidder for said work, stating its reasons therefor, or relet the same anew. The board of harbor commissioners may permit a sum of money or a certified check payable to the order of the board to be filed with any bid or proposal in such an amount as in the judgment of the said board will save \* \* \* *such city or county* from any loss if the bidder shall fail to execute a contract pursuant to law, in case his bid is accepted and the contract awarded to him.

(c) Every contract made by the board of harbor commissioners shall contain an agreement on the part of the contractor and his sureties that in case such contractor shall fail to fully and completely perform his contract within the time therein limited for the performance thereof, such contractor shall pay to \* \* \* *such city or county* as liquidated damages for such default, a certain fixed sum to be named in the contract, which shall be such a sum as in the judgment of said board will save \* \* \* *such city or county* from any loss on account of such default and insure the prompt completion of the contract, or in lieu of such an agreement contain an agreement on the part of the contractor and his sureties that in case such contractor shall fail to fully and completely perform his part of the contract within the time therein limited for the performance thereof, such contractor shall pay to \* \* \* *such city or county* as liquidated damages for such default a definite sum, to be named in the contract for each days delay in completing said contract after the time therein limited for its

completion, which daily sum shall be such an amount as in the judgment of said board will save \* \* \* *such city or county* from loss in case of such default and insure the prompt completion of the contract.

(d) Every contract shall also be executed by at least 2 sufficient sureties, or a surety company, to be approved by the board of harbor commissioners, who shall guarantee the full performance of the contract by the contractor to the satisfaction of the said board, according to the plans and specifications of the said board, and be liable for such performance of the contract, as sureties, in an amount equal to the said board's estimate of the aggregate cost of the work. When a contractor shall proceed properly and with due diligence to perform and complete a contract, the said board may, in its discretion, from time to time as the work progresses, grant to said contractor, an estimate of the amount already earned for the work done, withholding in all cases until final completion and acceptance of the contract 15 per cent of said estimate when said estimate is less than \$100,000, and 10 per cent of said estimate when said estimate is \$100,000 or over, which shall entitle the contractor to receive said estimate less the amount withheld.

(e) Said board shall be empowered, if it see fit, to insert in the specifications of any such work reasonable and lawful conditions as to hours of labor, wages and the residence and character of workmen to be employed by the contractor, and especially so far as may be practicable in the judgment of said board, such reasonable and lawful conditions as will tend to confine employment on such work, in whole or in part, to permanent and bona fide residents of \* \* \* *this state*; and provided \* \* \* also that said board may do any part or parts of any such work such conditions in every respect as it may prescribe by day labor. Any and all bids or parts of bids for any such work or supplies or materials may be rejected by said board. The said board shall have the power to demand of such bidders and contractors that all contracts shall be let subject to \* \* \* chs. 101, 102 and 105 \* \* \*, and all acts amendatory thereof and supplemental thereto, to the end that said board and such city *or county* shall be held harmless.

(f) Whenever repairs shall become necessary in or to any crane machinery, apparatus, appliance, track, bridge or other part of any harbor facility operated, controlled or owned by the board of harbor commissioners, which in the judgment of the chief engineer, terminal director, general manager or other official having executive charge of such facility constitutes an emergency in that it interrupts the ordinary use and operation of such facility such official may order such repairs to be made by some competent party without public advertisement or \* \* \* receiving competitive bids or the intervention of a formal contract. Such official shall, in all cases of such emergency repairs, report the circumstances thereof, including the agreed price or estimated costs of such emergency repairs to the board of harbor commissioners at its first meeting ensuing; and he shall also forthwith send a copy of such report to the *county clerk of such county or the city controller or other chief auditing officer of \* \* \* such city*. Whenever any party is liable, under a lease or otherwise, to reimburse \* \* \* *such city or county* for repairs or cost of maintenance of such harbor facility, the official in executive charge shall also send a copy of such report to the party so liable.

(7) Said board shall have exclusive charge and control over such docks, wharves, warehouses, piers, slips, basins or other structures and harbor facilities and waterways adjacent thereto and all railway tracks and belt railways connecting with them, belonging to such city *or county*, and also of the building, alteration, repair, operation and maintenance of the same and all the cleaning, grading, dredging and deepening in and

about the same. Whenever, in any city *or county* having a board of harbor commissioners in accordance with this chapter, a public airport, airfield, or other facility for the accommodation of any kind of aircraft shall be established upon any lands abutting on land under the control of said board of harbor commissioners, or adjacent to land so controlled, such airport or other facility shall be under the control of such board in the same manner that other harbor facilities are under its control. Said board may, with the approval of the common council of such city *or county board of such county*, acquire, own, operate and maintain harbor towing tugs and other incidental floating equipment necessary and required for the operation of the harbor.

(8) Said board shall have power to fix and regulate the tolls, dockage, wharfage, craneage, shedage, storage, rates and rental or other charges which it shall deem necessary to make for the use of all publicly owned docks, wharves, warehouses, piers, slips, basins and other harbor and airport facilities and railway tracks and belt railways, subject, however, to the prior approval of the same by the common council of such city *or county board of such county*. Said board may also, with the approval of the common council *or county board*, lease, either for exclusive or common use, such particular parcel or parcels of harbor lands or harbor facilities as it may deem expedient to any party or parties for any purpose or use requiring, involving or connected with the construction, maintenance, operation or use of any harbor facilities, but, for periods not in excess of 10 years, said board may temporarily lease, for revenue purposes, any of the harbor lands under its jurisdiction, not actually in use for harbor purposes, to be used for any purpose deemed satisfactory to the said board, and subject to the approval of the common council *or county board*. Said board shall also have power to fix and regulate tolls and charges for harbor towage and other tug and floating equipment service.

(9) (a) Such city *or county* shall have the power, upon the recommendation of said board, to acquire by gift, purchase, lease or other methods of acquisition, or by condemnation, any lands or interests therein deemed necessary to carry out any harbor plans adopted as aforesaid.

(b) Such purchase may be made by land contract, with the privilege of paying the purchase price in not more than 10 years and at not more than 6 per cent interest per annum on all deferred payments, with the privilege of creating a lien on said lands or interests for the purchase price and interest thereon, but without creating any liability against such city *or county* therefor.

(c) In the condemnation of any lands and interests therein, such city *or county* may follow any procedure by which it may be authorized to condemn lands for public grounds or streets.

(10) For the repair, maintenance, operation and administration of all the aforesaid harbor and airport facilities and for the redredging of any of said waterways, said board may use any funds provided by \* \* \* *such city or county* under any authority to raise a fund for harbor maintenance, repairing docks and airport facilities and necessary redredging. In addition to the aforesaid funds, such city *or county* may provide for a sufficient fund for the construction of said harbor and airport improvements, except the aforesaid repair, maintenance, operation and administration and redredging, out of any taxes or bonds which \* \* \* *such city or county* may be authorized to levy or issue for permanent harbor improvements.

(11) (a) Nothing in this section shall prevent the appointment and definition of the duties of a harbor master in such city *or county* as provided by any other law applicable to such city *or county*, nor prevent the common council of such city *or county board of such county* from enacting any ordinance to preserve the harbor and the peace and good order

therein and on all property under the control of said harbor board; to prevent any use of said harbor or harbor property, or any act in relation thereto, inconsistent or detrimental to the public health, or calculated to render the waters of the same, or any part thereof, impure or offensive or tending in any degree to fill up or obstruct the same; to prevent and punish the casting or depositing therein of any earth, dead animals, ashes, or other substance or filth, logs or floating matter; to prevent and remove all obstructions therein, and punish the authors thereof; to regulate and prescribe the mode and speed of entering and leaving the harbor, of passing the bridges, and of coming to and departing from the wharves, docks and streets of such city or county by vessels or watercraft of any kind whatsoever; to regulate through a harbor master or other authorized official the location of any vessel or watercraft whatsoever, and such changes of station in and use of the harbor as may be necessary to promote order therein, and the safety and equal convenience, as near as may \* \* \* be, of all vessels and watercraft whatsoever; and to impose penalties for any violation of such ordinance.

(b) This section shall not amend or repeal any law applicable to such city or county regarding the construction and repair of docks abutting private property, but shall apply to all publicly owned docks and public lands abutting on public waterways. Said board shall have no jurisdiction over public bridges.

(c) Hereafter no dock line shall be established by the common council of such city or county board of such county until the proposed line shall have been submitted to and approved by said board.

(d) It shall not be mandatory upon such city to follow s. 30.04 \* \* \* after the establishment of a harbor board under this section.

(12) (a) Any city, county or other municipality, including harbor or port districts, which may now or hereafter own or operate a public port, or any landing pier, dock, wharf, key, transfer shed, warehouse, elevator, basin, slip, or other port facility, structure or waterway; or any airport, or facility connected with an airport, may provide for the extension or improvement of such port, or the addition of any facility or structure of any kind whatever thereto, by issuing bonds, mortgage certificates or other evidences of indebtedness payable only out of the revenues of the facility to be erected with the proceeds of the sale of such evidences of indebtedness.

(b) The said evidences of indebtedness shall be issued by the common council of any city or county board of any county having a board of harbor commissioners, only with the previous consent of such board.

(c) The moneys received from the sale of such evidences of indebtedness shall be used solely for the construction of the specific harbor or airport facility for which they are issued. The municipality or port district issuing these obligations shall not be deemed obligated or indebted thereon, and no funds or money of such municipality, or district, except the revenues of the facility erected therewith, shall ever be used for payment or redemption of the \* \* \* evidences of indebtedness.

(d) The provisions of s. 66.066 \* \* \*, except sub. (1) thereof, relative to a similar method of acquiring public utilities, shall apply to port facilities erected by funds provided under this subsection, so far as this may be practicable; provided \* \* \* that in case of sale by order of any court, under s. 66.066 (2), there shall be sold only the facility itself, without the land on which it is erected; and the purchaser at such sale may either remove such facility, or may continue to operate the same and collect the revenue thereof, in a fair and businesslike manner, under the supervision of the court, until the outstanding evidences of indebtedness,

together with interest until payment, have been paid, together with all costs and charges as determined by the court.

(e) The municipality or port district owning such facility may at any time, with the consent of its comptroller or other auditing officer *or finance or audit committee of the county board*, and by a vote of two-thirds of its common council, *county board* or other governing body, assume the obligation of paying the principal and interest of the outstanding evidences of indebtedness created under this subsection, and thereafter such evidences shall be held in every respect outstanding indebtedness of such municipality or district.

SECTION 2. 67.04 (1) (j) of the statutes is created to read:

67.04 (1) (j) In counties having a population of less than 500,000: for dredging, docking, and other permanent river or harbor improvements; to provide that part of the cost of any breakwater or protection pier which is authorized by s. 30.05 to be raised by a bond issue; or to acquire the necessary sites for, and to construct and maintain thereon, public docks, wharves and approaches.

Approved July 21, 1955.