

CHAPTER 30.

NAVIGABLE WATERS AND NAVIGATION.

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30.01 Declarations of navigability. (1) **LAKES.** All lakes wholly or partly within this state which have been meandered and returned as navigable by the surveyors employed by the government of the United States, and all lakes which are navigable in fact, whether meandered or not meandered, are hereby declared to be navigable and public waters, and all persons shall have the same rights therein and thereto that they have in and to any other navigable or public waters.

(2) **STREAMS.** All rivers and streams which have been meandered and returned as navigable by the surveyors employed by the government of the United States, and all rivers, streams, sloughs, bayous and marsh outlets, whether meandered or nonmeandered which are navigable in fact for any purpose whatsoever are hereby declared navigable to the extent that no dam, bridge, or other obstruction shall be made in or over the same without the permission of the legislature.

(3) **ENLARGEMENTS OR CREATIONS BY IMPROVEMENTS.** All inner harbors, turning basins, waterways, slips, and canals created by any municipality to be used by the public for purposes of navigation, and all outer harbors connecting interior navigation with lake navigation, are declared navigable waters and shall be subject to the same control and regulation that navigable rivers are subjected to as regards improvement, use and bridging.

(4) **INTERPRETATIONS.** (a) This section does not impair the powers granted by law to towns, counties or cities to construct bridges over rivers and streams.

(b) The word "municipality" wherever used in this chapter means any town, village, city or county in the state.

(c) The boundaries of lands adjoining waters and the rights of the state and of individuals in respect to all such lands and waters shall be determined in conformity to the common law so far as applicable. Provided, however, where a lake or stream is erroneously meandered, it shall be conclusively presumed that the owner of title to lands adjoining the meandered lake or stream as shown on the original United States survey, owns to the actual shore line, unless it be first established in a suit in equity brought by the original grantor for that purpose that such original grantor was in fact defrauded by such survey; and if the proper claims of adjacent owners of riparian lots to lands between meander and actual shore lines conflict, then each shall have his proportion of such shore lands.

Since 1911, when the first water power act was enacted, and under (2), it is no longer necessary, in determining navigability of streams, to establish a past history of floating of logs, or other use of commercial transportation, because any stream is "navigable in fact" which is capable of floating any boat, skiff or canoe, of the shallowest draft used for recreational purposes. *Muench v. Public Service Comm.* 261 W 492, 53 NW (2d) 514.

Wisconsin early adopted the "saw-log" test of navigability of streams. The state

holds the beds underlying navigable waters in trust for all of its citizens, subject only to the qualification that a riparian owner on the bank of a navigable stream has a qualified title in the stream bed to the center thereof. The trust doctrine extends only to land underlying a navigable stream so long as such land constitutes part of the bed of the stream, and if the course of the stream is changed so that such land is no longer part of the river bed, it ceases to be impressed with the public trust. *Muench v. Public Service Comm.* 261 W 492, 53 NW (2d) 514.

30.02 Harbors, piers, docks; improvement and regulation. (1) (a) Every municipality, except counties and cities having a population of three hundred thousand or more, may, subject to the approval of the public service commission, by ordinance establish both a shore and a dock or pier line, or either of such lines, and from time to time re-establish the same along any section of the shore of any navigable waters within their

respective boundaries. Such lines shall be established in the interest of the public. Shore lines shall conform as nearly as practicable to existing shores.

(b) It shall be unlawful to deposit any material or to place any structures upon the bed of any navigable water where no shore line has been established or beyond such shore line where the same has been established, provided, however, that the public service commission may grant to any riparian owner the right to build a structure, or to maintain a structure already built and now existing, for his own use, if the same does not materially obstruct navigation, or reduce the effective flood flow capacity of the stream or is not detrimental to the public interest. Upon complaint by any person, the public service commission shall hold a hearing thereon to determine whether or not such present structure, or one proposed to be built, does materially obstruct navigation, or reduces the effective flood flow capacity of the stream or is detrimental to the public interest.

(ba) A riparian owner may place a layer of sand or other similar material on the bed of the lake adjacent to his property for the purpose of improving recreational use upon obtaining approval as herein stated. An application for approval to put sand or other similar material on the bed of a lake for such purpose shall be made to the public service commission. The commission shall thereupon notify the conservation director of such application, and the latter shall cause an inspection to be made of such proposal and location involved, and report in writing to the public service commission whether it will materially impair navigation or be inconsistent with the public interest. Thereafter the public service commission may disapprove such application in event it finds the proposed work will materially impair navigation or be detrimental to the public interest. If the commission does not disapprove within 10 days after receipt of the report of the conservation director, approval is deemed granted. Applicant shall be notified by mail as to the manner in which his application is disposed of.

(c) It shall be unlawful for any riparian proprietor to extend his wharf or pier into navigable water beyond the dock line as established, if such extension materially interferes with, or obstructs navigation. Upon any complaint made to the public service commission said commission shall proceed to hold a hearing thereon pursuant to the provisions of section 30.02 (1) (b).

(d) All piers or wharves extending beyond the natural shore or the established shore line shall be so constructed as to allow the free movement of water underneath and in such manner as will not cause the formation of land upon the bed of the water.

(e) Such shore and dock lines shall be indicated upon a map showing the existing shore on a scale of not less than one hundred feet to an inch or on such scale as may be required by the public service commission. Three copies of such map shall be submitted to the public service commission for its approval. The municipality shall file said approved maps as follows: One in the office of the public service commission, one in the office of the clerk of the municipality, and one in the office of the register of deeds of the county in which the waters lie. No such lines shall be legally established until the maps herein provided for have been approved and filed.

(f) The powers conferred upon municipalities by this subsection shall not abridge the riparian rights of riparian proprietors.

(g) It shall be the duty of the governing body of each municipality to promptly report to the public service commission every violation of this subsection which may occur within its municipal boundaries.

(2) TURNING BASINS, SLIPS, CANALS, ETC. Every municipality having navigable waters within or adjoining its boundaries may by proper filling or excavation or dredging and docking create or improve any inner or outer harbor and such turning basins, slips, canals and other waterways within its boundaries as it may determine are necessary, may keep the same in repair and may from time to time change, alter, extend, enlarge or discontinue any such improvement. Whenever any such dredging shall be subject to the direction of any officer of the United States government the same shall be done in a manner and to the depth conforming it to such direction.

(3) PROCEDURE, ACQUISITION OF LANDS, EXPENSE. In exercising the powers granted by this section, either in original construction or in repairs, changes, extensions, or discontinuance, every municipality may proceed and shall be governed by the law governing it in the location, laying out, improvement and repair of streets and bridges, so far as applicable, except that no petition of property owners for doing any such work shall be necessary. Any lands needed for any of the purposes specified in this chapter may be acquired by gift or purchase, or by condemnation in the manner provided by law for condemning lands for street purposes in such municipality. The expenses of any such work in a city may, in the discretion of the common council, be paid by the city in whole or in part out of any permanent harbor improvement fund of such city.

(4) REMOVAL OF OBSTRUCTIONS. The common council of every city, or board of trustees of every village, in this state, are hereby authorized to remove to a convenient and safe place any boat, water craft or float obstructing or interfering with the free navigation of any river, canal, water channel or slip within its harbor after having given reasonable notice to the master, the owner or his agent, if known and a resident of the state, or to the person in charge thereof, to so remove such boat, water craft or float; and may by ordinance or resolution authorize and empower the harbor master, or other public officer to remove such obstruction; may designate and prescribe his duties, and the mode of carrying into effect the powers hereby granted; and may prescribe penalties for violations of such ordinance or resolution.

(5) LIEN ON BOAT; OWNER PERSONALLY LIABLE. All costs, charges and expenses of such removal shall be a first lien on said boat, water craft or float, which may be enforced in the manner provided by law. The owner or owners of any such boat, water craft or float shall also be personally liable for such costs, charges and expenses, to be recovered by such city or village by a personal action.

(6) WORK IN CHARGE OF MUNICIPAL BOARD. The town or village or county board, or the city council, as the case may be, of any municipality exercising the powers granted to it by this section, shall have charge of the work of construction and maintenance, except that the board of public works shall have such charge in cities having such a board, unless such powers are vested by law in some other board, body or department.

(7) RIPARIAN OWNERS. Every city may require riparian owners to build and maintain docks for the protection of the banks of navigable waters within such city; and upon the failure of such owners to perform such work as directed may cause the same to be done and the expense thereof charged to the abutting lot or lots.

(8) MILWAUKEE HARBOR IMPROVEMENT. (a) The commissioner of public works of any city of the first class, and in every such city having a board of harbor commissioners such board of harbor commissioners, shall, subject to the approval of the common council of such city, have power to repair, construct and reconstruct docks along the banks of any navigable river or other waterway in such city, excluding privately owned slips, in the manner hereinafter provided, and any such city shall have the power to assess benefits therefor in the manner hereinafter provided.

(b) Whenever such commissioner of public works or such board of harbor commissioners, as the case may be, shall determine that it is necessary to repair, construct or reconstruct any such dock, an estimate of the cost of such work shall be forwarded to the common council of such city together with such recommendation with reference to the work as such commissioner or board shall deem proper. Such recommendation shall not be acted upon by the common council until it shall have been referred to a committee and the usual committee hearing had thereon. The common council may thereupon approve such recommendation, in whole or in part, or may modify the same and may authorize such commissioner or board to do such work and make such improvement with respect to such dock as the common council shall deem necessary or proper. A copy of the resolution of the common council authorizing the improvement together with the aforesaid estimate of cost and recommendation shall be placed and kept on file in the office of such commissioner or board, so empowered to do such work, and shall be open for inspection for a period of ninety days from the date of the service of the notice hereinafter provided or from the date of the first publication hereinafter provided, whichever is the earlier. Notice of the contemplated improvement shall be given by such commissioner or board either by serving written notice on the owner or agent of the property along which such improvement is to be made, or causing the same to be done, or by publishing such notice once a week for three successive weeks in the official paper of such city, or if there be no such official newspaper then in a newspaper of general circulation in such city. In the event that notice is given by publication an affidavit of printing complying with subsection (1) of section 328.19 of the statutes shall be conclusive evidence of the publication of such notice.

(c) At any time within the ninety day period before mentioned the owner or owners of the property along which such improvement is to be made may elect to make such improvement or cause the same to be made in accordance with the resolution of the common council authorizing such improvement and in accordance with the plans and specifications approved by such commissioner or board, or in a manner which shall conform to good engineering practice and provide for materials and design which, in respect to strength and permanence, shall be at least equal to the requirements of the plans and specifications approved by such commissioner or board, and in the event that such owner or owners shall make or cause to be made such improvement at their own expense no assessment of benefits therefor shall be made.

(d) If during said ninety day period said owner or owners shall not have commenced the work of repairing, constructing or reconstructing such dock as hereinbefore provided, or if such owner or owners shall during such period commence such work but shall thereafter fail to carry on and complete the same with due diligence, in either event the said commissioner or board shall have the power to complete such work in accordance with the laws applicable to such city having reference to the letting of contracts for public works except as herein otherwise provided.

(e) Before letting the contract the commissioner of public works or board of harbor commissioners shall make an estimate of the cost of the work to be done and shall view the premises upon which said work is to be done and consider the amount of benefits which in said authority's opinion will actually accrue to the lots or parts of lots or pieces of land in consequence of such improvements, and shall assess against the several lots, part of lots, or pieces of land which are deemed benefited by the proposed improvement, the amount of such benefit which it is deemed by said authority that said lots, or pieces of land will severally be benefited by such improvements when completed in the manner contemplated in the estimate of the cost of such work. In case such benefits shall be less than the cost of the work, the balance of the said cost shall be paid out of the funds hereinafter provided. Said assessment shall be indorsed on the aforesaid estimate of the cost of such work.

(f) As soon as any assessment of benefits shall be made, the said authority making the same shall give notice to all parties interested, by advertising for not less than four days in the official paper of such city, that such assessment has been made and is ready for inspection in the office of said authority, and that the same will be open for review and correction at said office for not less than four days after the first publication of such notice during certain hours, not less than two hours of each lay-day, and that all persons interested will be heard in objection to such assessment and generally in the matter of such review and correction. It shall be sufficient to state in such notice briefly that an assessment has been made for dock improvement and to state that the assessment for the same is made against the lands between two described points along the dock or shore line and no further notice of such assessment shall be necessary. During the time mentioned in such notice the said authority shall hear objections and evidence that may be offered and shall have power to review, modify and correct such assessment in such manner as said authority shall deem just at any time during such review and for three days thereafter, and thereupon said authority shall indorse such corrected and completed assessment upon or annex the same to the estimate of the cost of such improvement as previously made and filed and file a duplicate of such estimate and assessment in the office of the city clerk of such city, who shall lay the same before the common council at its next meeting; and thereupon the common council may confirm or correct said assessment, or may refer the same back to the authority who made the same for revision and correction, and the said common council and the said authority shall respectively have the like powers and perform the like duties in relation to such assessment and any subsequent assessment made pursuant to such references by the common council as are prescribed in relation to the first assessment. After the common council shall have confirmed such assessment, the said authority shall have power to enter into a contract for the doing of said work as herein provided.

(g) Such city shall pay in cash any contractor when he shall have completed and performed any contract for said work and the said work shall have been accepted by the proper city authority; but this provision shall not be construed to mean that the contractor shall be paid in full, but that all laws now in force in such city for the reservation of guarantee funds and reserve funds guaranteeing workmanship and material shall remain in full force and effect. Any laws now in force and effect, applicable to such city, authorizing the proper officers to make payments upon estimates, shall remain in full force and effect, but no contractor shall be paid during any year for any portion of the work assessable as benefits to abutting property unless the contract shall have been completed and the work accepted on or before the tenth day of November in said year. The assessable portion of such work performed under a contract which has been completed and accepted after said date, shall be paid for at any time subsequent to May first of the succeeding year.

(h) Such city is authorized to issue bonds known as "Dock Improvement Bonds" for the purpose of financing either the assessable or nonassessable portion, or both portions, of the cost of said work. Such bonds shall be issued and sold in the same manner as other bonds of such city are issued and sold, except that it shall not be necessary to include such bonds in the budget of such city, nor to submit the question of their issue to a referendum vote of the electors of such city. In case any such city, in the opinion of the city comptroller, shall have enough cash on hand in its general treasury, or in its permanent harbor improvement fund, to finance said improvement, it shall not be necessary for such city to issue any bonds mentioned herein; and if any such city, in the opinion of the city comp-

troller shall have enough cash in its general treasury, or in its permanent harbor improvement fund, to finance part of said improvement, it shall be necessary for the said city to issue only enough bonds, as provided for herein, to finance the remainder of the same. The bonds provided for herein shall be serial bonds, payable at any specified time within five years and shall bear interest at a rate not to exceed six per cent per annum, payable either annually or semiannually as the common council may deem best. The said bonds shall be a direct obligation of the city and the full faith and credit of the city shall be pledged for their payment, and no such bonds shall be issued unless at or before the time of issuing the same the council shall levy a direct annual tax sufficient to pay the principal and interest thereon as they fall due. The common council shall also have the power to levy annually a tax upon all the taxable property of the city for the purpose of financing the dock improvement herein provided for.

(i) When said special assessments have been finally confirmed, the authority making the same shall file the original assessment with the comptroller, if any, of such city, otherwise with the city clerk, who shall in due season furnish to the proper authority of such city, whose duty it is to make out the annual tax roll, a complete list of such assessments. Such special assessments shall at the time of making out the annual tax roll be assessed against the lots, or parts of lots, or pieces of land against which said benefits have been assessed and collected as other taxes on real estate are collected, and no informality or error in the proceedings not going to the groundwork of the tax shall invalidate such assessments, provided that said assessments when spread upon the tax roll shall be divided into six annual instalments, one due each year until paid in full; the first instalment, or the total of all instalments when paid in one payment at the first tax paying time shall bear no interest. Deferred instalments shall be charged interest at the rate of six per cent per annum. The owner of the property against which said assessment is levied shall have the privilege of electing, at the first tax paying time after the said assessment is spread and levied, to pay the whole of the said special assessment at the first tax paying time. Said election must be made to the city treasurer in such city before the last tax paying date in said year in which the work is completed. In case no such application is made to pay the total assessment in one payment, one-sixth only of the said assessment shall be considered due and the other instalment shall be due one each year thereafter, except that at any time the owner of the property may at his option pay all deferred instalments by payment of the face amount of said instalments together with accrued interest. In case application for payment in one payment is made as herein provided it shall be the duty of the city treasurer to report the same to the comptroller, the authority having charge of said work, and the city clerk or other officers who make up the tax roll, so that no instalments of the assessment shall be placed on any subsequent tax roll. Whenever any such property owner does not elect to pay the total assessment in one payment, but permits the payment to be made in the regular manner, then, in case of default in the payment of any of the said instalments in any year, the said property shall be sold for such instalment in the same manner as property is now sold in any such city for any unpaid special assessments.

(j) Upon the collection of any and all such assessments and interest as hereinbefore provided, the moneys collected shall go, first to repay any cash used out of the general city treasury, if such has been the case, and the remainder of the money so collected shall constitute a fund with which to pay the principal and interest on bonds issued, in the manner hereinbefore provided as they fall due. In any year in which there shall be on hand moneys derived from special assessments on account of work done during the preceding year or years sufficient to pay the whole or a part of the principal falling due on such bonds, it shall be unnecessary for the city to collect more taxes for the payment of the principal on said bonds than are necessary to make up the difference between the amount which will become due in the ensuing year and the amount so available for the payment of principal and interest on said bonds. Any such city shall have a first lien on the premises against which any such special assessment is levied or to be levied from the time the contractor is paid in cash for the work to the full extent of all unpaid instalments for doing said work and the interest thereon.

(k) The owner of any lot or part of lot or piece of land who feels himself aggrieved by such assessment, as confirmed by the common council, as to the amount of benefits thereby adjudged to accrue to him by reason of said improvement charged against his lot or part of lot or piece of land, may within twenty days after such confirmation by the common council appeal therefrom to the circuit court of the county in which such city is located, by filing with the clerk of said circuit court his notice of appeal setting forth therein his interest in the premises and the grounds of his appeal, together with a bond to such city in the penal sum of five hundred dollars, conditioned for the payment of all costs that shall be adjudged against him on such appeal, which bond shall be signed by at least two sufficient sureties, each of whom shall make affidavit indorsed upon such bond that he is

worth five hundred dollars over and above all of his debts in property not exempt from execution, or by a surety company authorized to do business in the state of Wisconsin, which said bond and sureties, if objected to by the city attorney, shall also be approved by the judge of said court. Such appeal shall be dismissed unless the appellant shall also within twenty days serve a copy of his notice of appeal and bond upon the city attorney. In case of any such appeal, the city clerk of such city shall send to the clerk of said circuit court a certified copy of the assessment of benefits as made by the proper authority of said city and as confirmed by the common council, and all proceedings of the common council in relation to said assessment of benefits. The appeal shall be tried as ordinary issues of fact are tried in circuit court. The form of the issue shall be subject to the direction of the said court and the said court shall permit any person or persons interested in such benefits to become parties to such appeal upon their petition setting forth the nature and extent of such interest. If, on such trial the benefits assessed by such city shall not be diminished, the city shall recover costs; but, if such benefits shall be diminished, the appellant shall recover costs on such appeal. When judgment shall have been entered after trial of said appeal, the city shall pay said judgment or make provision for the payment thereof within one year after the same shall have been rendered, except that in case of an appeal from such judgment to the supreme court the time of the pendency of such appeal shall not form any part of such year.

(1) Section 66.635 shall also apply so far as applicable, to all of the aforesaid special assessments made for benefits for said dock improvements, except that in case a new assessment of benefits is made it shall be made in the same manner in which the original was made.

History: 1951 c. 712; 1957 c. 132, 523.

A complaint against a city for the death of a boy who was playing on a snow pile and was drowned when an overhanging shelf of ice or snow gave way and dropped him into a river, alleging that snow was deposited by the city on city property and extended over the water, but not alleging that anything was deposited on the river bed, or that the river was navigable or that navigation was obstructed, or that the deposit was unlawful or without a permit granted by the state, did not state facts sufficient to show that the city had violated 30.02 (1) (b), 31.25, and thereby created and maintained a public nuisance. *Fleming v. Waukesha*, 262 W 219, 55 NW (2d) 24.

The public service commission's construction of this section and 31.25 referring to structures and obstructions within navigable waters, as referring to unlawful structures which actually interfere with navigation and the rights incident thereto, is concurred in by the supreme court, and under such construction, a pier built by a riparian owner out into a navigable river is not unlawful and a nuisance per se for hav-

ing been built without first obtaining a permit from the commission. *Bond v. Wojahn*, 269 W 235, 69 NW (2d) 258.

See note to sec. 1, art. IV, citing *State v. Public Service Comm.*, 275 W 112, 81 NW (2d) 71.

Application of 30.02 (1) (b) and 31.23 (1), to instance where an island rises in a lake due to pressure caused by weight of highway fill, discussed. 41 Atty. Gen. 107.

The term "shore line" as used in (1), means the ordinary high water line. The term "bed of any navigable water" for both rivers and lakes means the area bounded by an ordinary high water line. 39 Atty. Gen. 195.

Legislature cannot make a grant of the bed of a navigable lake for a private purpose in excess of the riparian rights of the owner of the uplands. Attempt of legislature to make a permanent grant of the right to occupy the bed of a navigable river for a private purpose not connected with riparian rights cannot safely be regarded as constitutional. 39 Atty. Gen. 230.

30.03 Regulations. (1) **SPECIAL ASSESSMENTS.** Special assessments for benefits to lands may be made on account of any harbor, dock, wharf or other improvement of navigable waters in the cases specified in section 30.05 and also where the owners of property to be benefited thereby consent in advance to such assessments, and in no other case. All such assessments shall be made and enforced in the manner provided by section 30.05.

(2) **WORK, WHEN AND WHEN NOT TO BE BY CONTRACT.** Whenever it shall be necessary for the construction or maintenance of a harbor that any lake, bay, slough, pond, river or creek shall be dredged or otherwise deepened the work may be done by contract with the lowest bidder as in the case of other public works, except as otherwise provided by law for cities of the first class, or the city may purchase and maintain for its use the necessary dredges and other apparatus for such work and provide funds for the purchase, use and maintenance of such apparatus by appropriations made from the general fund, to be charged to the harbor account, the money for that purpose to be raised by taxation or loan as other moneys in the general fund are raised.

30.04 Government aid to improve inner harbors. (1) **PLAT.** Whenever the United States government indicates its intention to aid in the improvement of any inner harbor, situated within the limits of any city, the common council thereof shall cause to be prepared a plat presenting a complete system of waterways, canals, slips, revetments, docks and bridges intended to be constructed or improved, showing the exact location of all docks and bridges then built and encroachments upon the harbor lines, if any, and plainly indicating the changes and improvements which it deems necessary or advantageous in the interest of navigation or the community at large.

(2) **EXISTING LINES AND STRUCTURES TO BE CONSIDERED.** In preparing such plat and adopting such system due regard shall be paid to harbor lines previously established and to the location of turning basins recommended by the government; also to existing docks of modern construction and to all valuable improvements bordering on the waterways, which are not a serious impediment in straightening, regulating and establishing the channel at an approximately uniform width. Such plat and such system shall contemplate and provide for adapting such inner harbor to modern demands, to dredging everywhere to a depth of not less than twenty-one feet and to the eventual substitution of lift bridges in place of the bridges now in use.

(3) **PLAT SUBMITTED TO UNITED STATES; FILING.** The plat thus prepared when favorably acted upon by the common council shall be forthwith submitted for approval or correction to the United States government and shall be open to changes and modifications as circumstances may require; but, when finally perfected and approved, the common council shall cause such plat to be filed in the office of the board of public works or other appropriate department and a duplicate shall also be recorded with the register of deeds of the county; and thereupon the common council shall promptly and permanently locate by ordinance all dock lines and revetments in conformity thereto.

(4) **TURNING BASINS, WATERWAYS, CANALS AND SLIPS.** After the establishment of such a system and the permanent location of dock lines as aforesaid, it shall be the duty of the city from time to time, and in the manner herein provided, to order the construction of the turning basins and the straightening, docking and dredging of the waterways, canals and slips as public interest may require.

(5) **WORK SAME AS STREET IMPROVEMENT.** All work shall be ordered and done in substantially the way now provided by law in case of streets, and all charter provisions whether general or special shall be applicable thereto, with the exception that a petition of property owners for doing any of such work is dispensed with, whenever the common council by resolution of two-thirds of its members declare that necessity requires the same to be done.

(6) **ACQUISITION OF LANDS.** Any land needed for any of the purposes contemplated by this section may be taken or acquired by gift, grant, purchase or condemnation. The title to any lands thus taken or acquired by any city may be donated or transferred by such city to the government of the United States for use in improving the inner harbor of such city.

(7) **SPECIAL PROVISIONS FOR FIRST CLASS CITIES.** The provisions of subsections (1), (2), (3), (4), (5) and (6) of this section shall not be mandatory upon cities of the first class, but such cities may also at all times exercise the powers specified in subsections (1), (2) and (3) of section 30.02.

(8) **GOVERNMENT DREDGING OF INNER HARBOR CHANNELS.** Whenever the United States government indicates its intention to aid in the improvement of any inner harbor, by dredging of inner harbor channels at federal expense, subject to the proviso that the local interests save the federal government harmless from all liability and claims for damages resulting from such dredging, the common council of such municipality may, by resolution, assume liability for and on behalf of both public and private ownership adjacent to, within, under and over the channels involved in such federal project. Such municipality may provide adequate insurance coverage, indemnifying such municipality for all damage done by reason of such dredging.

30.05 Breakwaters, protection piers and dams. (1) **IN ALL MUNICIPALITIES.** Every municipality, except cities of the first class, may authorize the construction, maintenance or repair of suitable breakwaters and protection piers along the shore of or, subject to the provisions of chapter 31, dams across any lake or stream adjoining or within the limits of such municipality, and may locate such structures within or without such limits.

(2) **PLANS AND SPECIFICATIONS.** When it is deemed necessary to construct or repair any such breakwater, protection piers or dam, a plan of such work with specifications and estimates of the costs of the work shall be prepared and presented to the county board of the county or the supervisors of the town, or trustees of the village or common council of the city, and when adopted shall, where required, be submitted to the proper officer of the United States or to the public service commission for approval or consent to construct such protection. No work shall be done upon any such breakwater, pier or dam except in pursuance of a plan and specifications prepared and approved as aforesaid.

(3) **ACQUISITION OF PROPERTY; CONDEMNATION.** For the purpose of this section each such municipality may purchase or condemn lands within, and when necessary without, its limits in order to protect any property situated within such limits.

(4) **SPECIAL ASSESSMENT DISTRICT.** Before letting the contract for such improvement the municipality shall, by ordinance create a special assessment district containing all such parts or parcels of land as will, in its judgment, be benefited by the proposed improvement.

(5) **SPECIAL ASSESSMENT.** After the adoption of such plans, specifications and assessment district, the board of public works in cities having such a board, and where no such board exists, the officers performing the duties of such board, the county board of the county, supervisors of the town or village trustees, shall in the same manner and with like effect proceed to assess benefits and damages upon property in the assessment district as provided in s. 66.60.

(6) **BALANCE OF BENEFITS AND DAMAGES.** If the excess of benefits over damages accruing to property within such assessment district shall not be sufficient to pay the cost of the improvement, the balance shall be paid by the municipality out of its general fund or out of any special fund created for that purpose; and such municipality may issue its negotiable bonds to pay for such improvement in the manner provided by chapter 67 of these statutes. The cost of protecting the ends of streets, roads and public highways or other public grounds or places shall be paid wholly out of the general or special funds of such municipality.

(7) **CO-OPERATION OF MUNICIPALITIES.** The erection, maintenance or repair of such breakwater, protection pier or dam may be done by any county, town, village or city, separately, or by two or more acting together. When two or more municipalities propose so to co-operate, their governing boards or bodies shall first meet and adopt a method of procedure and apportion to each its share or portion of the entire cost, which plan and apportionment shall be embodied in a resolution adopted by the joint board and later such resolution shall be adopted by each board separately.

History: 1957 c. 699.

A municipality has no power to erect a breakwater or protection pier extending any substantial distance into a navigable water. 42 Atty. Gen. 154.

A municipality cannot delegate to any other person its power to construct breakwaters and protection piers. 42 Atty. Gen. 154.

30.06 Safety regulations for boats. (1) **BOW AND STERN LIGHTS.** Every boat, launch, vessel or other water craft propelled in whole or in part by steam, gas, gasoline, petroleum, naphtha fluid, electricity, or by other engine power, and operated upon any waters under the exclusive jurisdiction of the state of Wisconsin, shall, from one hour after sunset to one hour before sunrise, carry and keep continuously lighted the following lights: On the bow or fore part of such boat a red and a green light, so placed and screened that they will both be visible from a head-on view and so that neither can be seen across the bow or from the rear; and on the rear or stern of such boat, a white light.

(2) **SEARCHLIGHTS.** All vessels described in subsection (1) that travel at a speed in excess of fifteen miles an hour shall, in addition to the lights above prescribed carry a searchlight of sufficient candle power to make visible an object the size of a rowboat or canoe at a distance of two hundred feet upon the water; and all boats may carry a searchlight on the bow thereof.

(3) **TURN TO THE RIGHT.** Each such vessel shall pass to the right of every other vessel whenever they are approaching; and in immediate danger of collision. Vessels leaving or departing from a dock, pier, or wharf shall have the right of way over all other vessels approaching such dock, pier or wharf.

(4) **LIFE PRESERVERS.** All such boats carrying passengers for hire, shall be equipped with one life preserver for each such passenger, and also provided with good and sufficient fire extinguishers.

(5) **LIGHTS PROHIBITED, NEGLIGENCE.** No light not authorized by this section, except cabin lights, shall be carried on any such boat. Nothing in this section shall excuse or exonerate any owner or pilot of any such boat from the consequences of any neglect or failure to give the proper signals, or to keep a proper lookout.

(5a) Whoever violates subs. (1) to (5) shall be fined not less than \$5 nor more than \$25 for the first offense, and not less than \$10 nor more than \$25 for each succeeding offense.

(6) **INSPECTION.** Every city, town and village is hereby empowered to inspect at least once in every year the hull, boiler and machinery of every vessel propelled by steam, gasoline, naphtha, electricity or any other power other than hand power, which is used within its boundaries upon inland waters of the state and is not subject to the laws of the United States.

(7) **MUNICIPAL ORDINANCES.** All cities, towns and villages of this state are hereby empowered to make reasonable safety regulations relating to such vessels and the equip-

ment thereof and to provide and enforce proper and reasonable penalties for the violation or neglect of any such provisions or regulations or ordinances.

(8) **MOTOR BOAT MUFFLERS.** (a) Every boat propelled by gasoline or other similar motive power shall be equipped and operated with a muffler, at all time in good working order sufficient to prevent excessive or unusual noise except when engaged in a race conducted or sanctioned by a boat club in this state, providing a permit is secured from the county or in the alternative from each of the municipalities in which the lake or river is situated upon which the race is to be held. It shall be unlawful to operate any such boat, so propelled by gasoline or other similar motive power, with the muffler off or cut-out open on outlying or inland waters in this state as defined in section 29.01, except on Lake Superior, Lake Michigan, Green Bay and Sturgeon Bay.

(b) Any person who violates this subsection shall be fined not less than ten nor more than fifty dollars, or imprisoned not exceeding thirty days, or both.

(9) **BRULE RIVER, SPEED LIMIT.** No person shall operate any boat propelled by gasoline or other similar motive power on the Brule river or any of its tributaries in Douglas county at a speed greater than eight miles per hour, and any person violating the provisions of this section shall be punished as provided in subsection (8) of this section.

(10) **RECKLESS MOTOR BOATING.** Any person who shall drive, operate or use a motor boat on the waters of the state in a careless, negligent, or reckless manner so as to endanger the life, property or persons of others, shall upon conviction be subject to the fine or imprisonment provided by paragraph (b) of subsection (8).

(11) **WAUPACA CHAIN O' LAKES, SPEED LIMIT.** No person shall operate any boat propelled by gasoline or other similar motive power, on the Waupaca Chain o' Lakes, located in the townships of Farmington and Dayton, in Waupaca county, at a speed greater than fifteen miles per hour, and any person violating the provisions of this section shall be punished as provided in subsection (8) of this section.

(12) **DUTIES AND POWERS OF CONSERVATION WARDENS.** Conservation wardens may assist in the enforcement of subs. (8) and (10) and are invested with the powers of sheriffs in the performance of such duties.

History: 1951 c. 693; 1955 c. 154; 1955 c. 696 s. 268.

The legislature has not delegated to cities, and villages power to pass reasonable towns, cities, and villages the power to charge a fee for the use of navigable waters within their boundaries, but it has validly and constitutionally delegated to towns, cities, and villages power to pass reasonable safety and traffic regulations for vessels operating upon the navigable waters within the boundaries of such units. 45 Atty. Gen. 23.

30.061 Sea planes. (1) REGULATIONS; LANDING STRIPS. Any city, town or village adjoining or surrounding any waters may, after public hearing, by ordinance enact reasonable safety regulations relating to the operation on the surface of such waters of sea planes or other aircraft capable of landing on water, to prescribe the areas which may be used as a landing and take-off strip or to prohibit such use altogether, and to provide proper and reasonable penalties for the violation of any such ordinance.

(2) **MARKING.** Such ordinance shall direct that such regulated or prohibited areas be designated by standard marking devices.

(3) **CONFLICT OF JURISDICTION.** Any conflict in such extraterritorial jurisdiction arising from the enactment of ordinances by 2 or more local governments shall be resolved in the manner provided by s. 66.32.

Failure of town board to hold public authority of (1), is jurisdictional, and ordinance is void. 38 Atty. Gen. 519.

30.065 Injury to buoy, beacon, etc. Any person who shall wilfully injure, destroy or remove any buoy or beacon placed in the waters of this state by authority of the United States or of this state, or who shall moor or attach in any way any vessel to any such buoy or beacon shall be punished by imprisonment in the county jail not more than 90 days or by fine not exceeding \$50.

History: 1955 c. 696 s. 120.

30.07 Logs and lumber. (1) LODGMENT. Whenever any logs, timber, boards, plank or other movable property which has been, or is being, floated upon navigable waters within or bordering the state, shall have drifted over and lodged upon any island within any waters of this state, or upon the shore or bank of any such waters, or upon any lands, adjacent to such shore or bank the removal and disposition thereof, if not effected by mutual agreement of the parties interested, may be effected as provided in this section.

(2) **NOTICE AND REMOVAL BY LANDOWNER.** The owner or occupant of the land upon which any such float shall have lodged, shall, within thirty days after he becomes aware of such lodgment, give to the owner of the float, if known, written notice of its location and contents, with a description of the marks thereon, if any; and if such owner is un-

known the notice shall be published once each week for six successive weeks in some newspaper published in the county. At any time after the expiration of six months immediately following the delivery or the full publication of said notice, the owner or occupant aforesaid may remove the float to some other safe locality in his possession or under his control, if he desires to make use of the land then occupied by it.

(3) **TEMPORARY HIGHWAY.** A temporary highway may be laid out for such removal in the manner provided by section 80.36 [Stats. 1941].

(4) **LIEN.** The owner or occupant of the land upon which any such float may be found shall have a first lien thereon to secure payment:

(a) Of all damages to the land caused by its lodgment thereon and all that have resulted or that will result from the removal thereof;

(b) Of the value of the use and occupation of land thereby until such float can be removed;

(c) Of the cost of all notices, advertising and other proceedings required by law;

(d) And of the cost of removal when the owner or occupant of the land effects such removal.

Whenever a temporary highway is laid out damages to land by the removal shall not be secured by such lien nor be recoverable by action, but shall be assessed by the supervisors laying out such highway.

(5) **ACTION.** Said lien may be enforced by an action at law to recover the damages aforesaid and to declare the lien, and by an execution sale of the property pursuant to the judgment. If the owner of the float be unknown, he may be proceeded against as the unknown owner of the property, describing it.

(6) **TENDER OF DAMAGES.** The owner of such float may at any time prior to the commencement of an action to enforce such lien tender to the owner or occupant of the land upon which it has become lodged such sum of lawful money as he believes will make full compensation and payment for all damages and demands secured by said lien; and, if the tender be not accepted, he may deposit the money tender with the clerk of the circuit court of the county in which such float is located, take duplicate receipts therefor stating the purposes of the deposit and the name of the person or party to whom the depositor desires the money to be paid, if such person or party will receive it, and deliver one of said duplicates to the person or party to whom the tender was made. Unless the party to whom such tender was made shall bring an action under this section to recover his damages and enforce his lien within twenty days after receiving such duplicate receipt he shall be deemed to have waived his lien and his right of action for damages and to have accepted the money deposited as aforesaid for his benefit.

(7) **BOND IN LIEU OF LIEN.** At any time after the commencement of such action the defendant may apply by motion to the court or to the judge thereof for leave to file a bond conditioned for the payment of any judgment that the plaintiff may recover in the action in lieu of said lien. Upon the hearing of such application the court or judge shall fix the amount or penal sum of the bond and determine the sufficiency of the sureties thereof. The filing of such a bond approved by the court or judge shall extinguish the lien, permit the immediate removal of the property affected thereby and entitle the defendant to withdraw any deposit he may have made under subsection (6).

(8) **COMMISSIONERS TO ASSESS DAMAGES.** The parties to any such action may stipulate in writing that in lieu of a trial and assessments of damages by a jury the court may by order appoint three commissioners to view the premises and property affected and appraise the damages recoverable in the action, and that judgment shall be entered for the recovery of the damages so assessed. Upon the filing of such a stipulation the court shall make a list of nine competent and disinterested men, residents of the county, from which each party shall strike three and the remaining three shall be appointed commissioners to make the appraisal. The order shall require the commissioners to appear before the judge at a specified time and place to be sworn and within ten days thereafter to appraise the damages specified in the stipulation. Said order may be served by the sheriff or any constable of the county by reading the same to each of the commissioners. The appraisal shall have the same force and effect as the verdict of a jury and judgment shall be entered thereon accordingly.

(9) **MISCELLANEOUS PROVISIONS.** The action given by this section must be commenced before and not after the expiration of two years immediately following the acquisition by the plaintiff of knowledge that the lodgment of a float has given him the right to bring such action. Every tender made and deposited which shall not have been accepted by the party to whom it was made prior to the expiration of two years immediately following notice to him of the deposit of such tender, shall be restored to the depositor upon his application therefor. Costs in such actions shall be affected by tenders and deposits

thereof as provided by section 331.17. The owner or occupant of the land upon which any float is lodged shall become the owner of the float also at the expiration of two years immediately following its lodgment if in the meantime no proceedings have been had to remove the same or to appraise damages as provided in this section and no mutual agreements have been had respecting such float.

30.08 Wrongful conversion, salvage. Whoever shall convert to his own use, without the consent of the owner thereof, the whole or any part of any float, shall be liable to such owner in treble the amount of damages caused thereby; and whoever shall rescue any float from danger of loss or destruction and restore or offer to restore the same to its owner shall be entitled to full compensation for his services in that behalf, not exceeding in amount the value of the float, and shall have a lien thereon enforceable in the manner provided in subsection (5) of section 30.07 to secure such compensation.

30.083 Conversion of logs; evidence; damages; right of search. (1) Whoever wilfully converts to his own use, without the consent of the owner, whether the owner is known or unknown, any log or cant suitable to be worked into lumber, lying in any river in or bordering on this state, or in any tributary thereof, or in or on any slough, ravine, island, bottoms or land adjoining any such river or tributary thereof, whether convicted thereof in a criminal prosecution or not, shall be liable to pay the owner of such log or cant double the value of the same, to be recovered in an action.

(2) In any action under this section if any such log or cant is found in the possession of the defendant with the mark wholly or partly cut out or destroyed or partly sawed or manufactured into lumber of any kind, such possession shall be presumptive evidence of his guilt.

(3) The owner of any such log or cant may, at any time, enter in a peaceable manner into or upon any mill or mill boom, or raft of logs, cant or other lumber in any river or its tributaries within this state or on or near the banks thereof in search of any such log or cant which he may have lost; and any person who wilfully prevents or obstructs such search shall forfeit for such offense not less than \$20 nor more than \$50.

History: 1955 c. 696.

30.085 Harbor improvement. (1) **CREATION OF BOARD.** Any county, except counties having a population of 500,000 or more, and any city, 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) **NUMBER AND TERM OF MEMBERS.** (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) **EMPLOYEES.** 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, and may also employ such engineers, draftsmen, surveyors, experts, clerks and other help as they deem necessary for the proper performance of their duties, and fix their compensation.

(4) **BOARD MAY ACT THROUGH ANY OTHER BOARD OR DEPARTMENT.** 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) IMPROVEMENT OF WATERWAYS; RAIL AND AIR FACILITIES. (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) CONTRACTS, LOWEST BIDDERS, PATENTED ARTICLES, LIQUIDATED DAMAGES. (a) All work done or supplies or materials purchased in carrying out the purposes of the statutes relating to the board of harbor commissioners when involving the expenditure by cities or such counties of \$2,500 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 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 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 or such counties of less than \$5,000.

(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 day's 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 may 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 is 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 under such conditions in every respect as it prescribes 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 may 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 constitute 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.

(g) The governing body of such city or county may create a contingent fund for the purpose of making payments upon the signature of the secretary for emergency repairs authorized under par. (f).

(7) EXCLUSIVE CONTROL OF ALL HARBOR FACILITIES; DISCRIMINATION PROHIBITED.
(a) 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.

(b) It is the public policy of this state to maintain the operation of its ports in a continuous, peaceful and efficient manner. Public ports, or harbor commissions or their lessees, constituted under ch. 30, shall maintain their services so as to observe this policy, and they shall handle, without discrimination, any valid and legitimate cargo. However, such public ports, harbor commissions, or their lessees, may adopt reasonable regulations regarding contraband cargo or explosives. Nothing in this policy shall prevent a public port, harbor commission, or their lessees, from charging equal rates and charges for equal services.

(7a) APPEARANCES BEFORE OFFICIAL BODIES. The board is authorized to make representations before official public bodies in the interest of preserving and promotion of port activities.

(8) MAY FIX CHARGES FOR HARBOR SERVICE. Said board shall have power to fix and regulate the tolls, dockage, wharfage, craneage, shedage, storage, rates and rental or other charges which it deems necessary 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 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 parcels of harbor lands or harbor facilities as it deems expedient to any party for any purpose or use requiring, involving or connected with the construction, maintenance, operation or use of any harbor facilities. Said board may 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) ACQUISITION OF NECESSARY LAND. (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) FUNDS FOR IMPROVEMENTS AND MAINTENANCE. For the repair, maintenance, operation and administration of all the aforesaid harbor and airport facilities and for the dredging 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 dredging. 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 dredging, out of any taxes or bonds which such city or county may be authorized to levy or issue for permanent harbor improvements.

(11) HARBOR MASTER NOT SUPERSEDED. (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) HARBORS AND AIRPORTS, FINANCING IMPROVEMENTS. (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 controller 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.

(f) 1. In addition to all other powers and notwithstanding any provisions to the contrary, whenever the board of harbor commissioners of a city of the first class shall determine to construct or acquire harbor facilities or to repair, remodel or alter existing facilities or to provide adequate improvements in connection with the St. Lawrence Seaway project or for other purposes in any manner related or incidental to harbor facilities, the board shall adopt a resolution setting forth the amount of money required for such purpose or purposes and shall transmit a certified copy of such resolution to the common council of such city. The common council shall thereupon, if it approves the recommendations of the board as set forth in the resolution, proceed by ordinance to authorize the issuance and sale of revenue bonds of the city, and the proceeds of such bonds shall be used specifically for the purposes enumerated in the resolution of the board. The common council in the ordinance shall set forth the purposes for which the revenue bonds are to be issued and shall state the amount or a sum not to exceed a stated amount of such issue. Such ordinance shall be offered and read at a regular meeting of the common council and a notice of the amount and purposes of such bonds shall be published in the official paper of the city not less than 10 days prior to the meeting at which such ordinance is to be considered for final passage. Such ordinance shall be deemed invalid and ineffectual for any purpose unless supported by the affirmative vote of at least three-fourths of all of the members of said council taken at a regular meeting held after such publication. No such issue of bonds shall be sold at an interest cost exceeding $4\frac{1}{2}$ per cent per annum. Such bonds shall not be the general obligation of the city and shall expressly so state on the face thereof. Any indebtedness created pursuant to this subsection shall be deemed to be incurred for a public utility, and shall not be included in indebtedness subject to any debt limitation. The common council may authorize the purchase of a part or all of such revenue bonds out of moneys accruing to or held in the debt amortization fund or any other city funds not immediately needed, and said funds may be invested in said bonds.

2. The city shall fix rates and charges for the use of the harbor facilities or improvements sufficient for the payment of the cost of operation and maintenance of such facilities or improvements, for the payment of principal of and interest on any indebted-

ness incurred for such harbor facilities or improvements and to provide revenues sufficient to comply with any covenants or agreements made by the city in any ordinance providing for the issuance of obligations to pay the cost of such harbor facilities or improvements. Any ordinance authorizing the issuance of obligations payable from such revenues shall constitute a contract with the holder of any bonds or other obligations issued pursuant to such ordinance and shall include such covenants and provisions for the security of the bondholders and the payment of the bonds, including but not limited to provisions for the establishment of adequate rates or charges, insurance against loss, covenants against the sale or alienation of the property, establishment of budgets relating to operation of harbor facilities or improvements and other provisions as are deemed necessary or desirable for the security of the bondholders. Any such ordinance shall contain provisions for:

a. Maintenance and operation of the harbor facilities or improvements, including any such facilities or improvements constructed out of the proceeds of the sale of bonds authorized by the ordinance.

b. The establishment of a debt amortization and interest fund sufficient to provide for the payment of interest on and principal of the bonds or other obligations authorized by the ordinance.

c. The establishment of a reserve fund or funds into which shall be paid annually such percentage of the amounts required to be paid into the debt amortization and interest fund as shall be determined by the ordinance, which shall be used for the purpose of making good depreciation of the harbor facilities or improvements, including those facilities or improvements for which bonds are authorized to be issued by the ordinance, the purchase or redemption of bonds authorized by the ordinance and, subject to any covenant made with the holders of bonds issued thereunder, any other lawful purpose.

3. The common council may also appropriate to the harbor commission such sums as may, in the discretion of the common council, be required to perform any governmental functions entrusted to the harbor commission.

4. Title to all of the facilities for which said revenue bonds are issued shall remain in the city; however, a statutory lien shall exist in favor of the bondholders against the facilities which have been constructed, altered or remodeled and the cost of which has been financed with funds obtained through the issuance of such revenue bonds.

5. No referendum shall be required before such revenue bonds are issued.

6. Such revenue bonds shall be in the form designated by the common council and shall be signed by the mayor, the city clerk and countersigned by the controller. The members of the public debt commission shall also sign such bonds. Any of such signatures may be in facsimile form, except that at least one shall be a manual signature.

7. In the event the city does not purchase such revenue bonds with its own funds as hereinbefore provided or determines to sell such bonds after their purchase by the city with its funds, then such bonds shall be offered at public sale after advertising as provided in ch. 67 and shall be sold under the direction of the public debt commission.

8. The common council may confer upon the board adequate powers to negotiate, approve and execute leases for any of the harbor facilities under the jurisdiction or supervision of said board, and may from time to time confer upon said board such additional powers as may to the common council seem appropriate.

9. The terms harbor facilities or improvements as used herein shall include transportation facilities, including railroads, steam or electric, motor truck or other street or highway vehicles, tunnels, bridges, boats, ferries, car floats, lighters, tugs, floating elevators, barges or harbor craft of any kind, aircraft suitable for harbor service and every kind of transportation facility now in use or hereafter designed for use for the transportation or carriage of persons or property, also terminal facilities, wharves, piers, slips, ferries, docks, dry docks, bulkheads, dock walls, basins, car floats, float bridges, grain or other storage elevators and warehouses, cold storage, tracks, yards, sheds, switches, connections, overhead appliances and every kind of terminal or storage facility now in use or hereafter designed for use for the handling, storage, loading or unloading of freight at steamship, railroad or freight terminals; also railroads, including railways, extensions thereof, tunnels, subways, bridges, elevated structures, tracks, poles, wires, conduits, power houses, substations, lines for the transmission of power, carbarns, shops, yards, sidings, turnouts, switches, stations and approaches thereto, cars and motive equipment; also all other facilities, including all works, buildings, structures, appliances, appurtenances necessary and convenient for the proper construction, equipment, maintenance and operation of such facilities or any one or more of them.

10. Bonds issued pursuant to this subsection are hereby made securities in which all state and municipal officers and bodies, all banks, bankers, trust companies, savings banks, building and loan associations, savings and loan associations, investment companies and other persons carrying on a banking business, all insurance companies, in-

insurance associations and other persons carrying on an insurance business and all administrators, executors, guardians, trustees and other fiduciaries and all other persons whatsoever who are now or may hereafter be authorized to invest in any bonds or other obligations of the state may properly and legally invest any funds including capital belonging to them or within their control, and said bonds are hereby made securities which may properly and legally be deposited with and shall be received by any state or municipal officer or agency for which the deposit of bonds or other obligations of this state is now or may hereafter be authorized.

History: 1955 c. 279, 471, 688; 1957 c. 97, 278, 286.

A board of harbor commissioners established under (1) is the exclusive agent of the county or city for maintaining charge and control over the harbor. The ultimate control of the harbor is vested in the common council of the city or county board of the county concerned. 46 Atty. Gen. 49.

30.086 Town dock and harbor board. (1) The town board of any town situated on a navigable waterway within or bordering on this state is constituted as the "Dock and Harbor Board" of such town; and as such board shall have within and for such town all the rights, liabilities, authority, powers and privileges of dock and harbor boards of incorporated villages and cities; and, especially, shall have the power and duty for and in behalf of such town conferred and imposed upon dock and harbor boards by the provisions of subsections 1 to 9 of section 959-78m of the statutes of 1913, created by chapter 762 of the laws of 1913.

(2) The provisions of this section shall not apply until and unless the annual or special town meeting of any town mentioned in subsection (1), shall have adopted a resolution favoring the creation of such dock and harbor board and shall have voted to raise such sums of money as shall be necessary to enable such board to carry out the provisions of this section.

(3) All moneys received by the board shall be paid to the town treasurer and by him kept in a separate fund to be known as the "Dock Fund" or "Harbor Fund." Disbursements from such fund shall be made and audited as other town disbursements are made and audited.

30.087 Great Lakes; use of beds, by public utilities. Upon compliance with such applicable regulations as may be imposed by the government of the United States, and subject to the provisions of chapters 196 and 197, any public utility may, pursuant to permit granted by the governing body of any city, village or town situated on any waters of Lake Michigan or Lake Superior, construct, maintain and operate, upon and under the bed thereof adjoining such city, village or town in such manner as to avoid material obstruction to existing navigation or the use of private property not owned by such utility, all cribs, intakes, basins, pipes and tunnels necessary or convenient for securing an adequate supply of water suitable for the purposes of such utility. Any such utility, pursuant to like authority and under like conditions may improve the navigability of any such waters and construct upon the shore and the adjoining bed of such waters harbor facilities adapted for the reception, docking, unloading and loading of vessels carrying supplies required for the operation of such utility. Under like authority and like conditions and by permit granted by resolution of the governing body of any such city, village or town, any such utility may place any public utility structure, including all or part of any plant for the generation of electricity and its appurtenances, upon the bed of such waters provided that such structures shall have been authorized before erection by order of the public service commission under its applicable general orders pursuant to section 196.49, and any payment in respect thereof to be made by the utility to the municipality approved before made by order of such public service commission.

30.09 Corporations to improve navigation, formation and functions. [Not printed; 1919 c. 247 s. 12; see 1917 Stats.]

30.10 Damage by foreign operator of watercraft; service of process. (1) In an action in any court of this state, arising out of injury to person or property caused by any watercraft while operating in the waters of this state, including the Wisconsin portion of boundary rivers, or moored in such waters or against shore land in this state, when the owner or operator is a nonresident of this state or a corporation not incorporated under the laws of this state, service of the original process may be made upon such nonresident owner or operator or upon such foreign corporation in the manner provided in sub. (2). The venue of such an action shall be the county in which the damage occurred and the presence of such watercraft and the doing of said damage within the territory comprising the state of Wisconsin, together with the subsequent removal of said watercraft from the jurisdiction of this state, shall constitute a waiver by the owner or operator thereof of any objection to the venue of such an action commenced in a proper court of this state.

(2) Service shall be made by mailing a copy of the original summons to the secretary of state, together with remittance of a fee of \$2 and such service shall be sufficient; provided that a copy of the service shall be forthwith sent by registered mail to the defendant and the defendant's return receipt and an affidavit of plaintiff or his attorney as to compliance herewith are filed in this action.

(3) The person in charge of such watercraft shall report within 24 hours to the sheriff of the county wherein the injury occurred the names and addresses of the owners and operators of the watercraft, and the names and addresses of all other persons on board the same at the time of the injury, together with a brief statement as to how the accident occurred. Failure to make the report required by this section will subject the owner of the watercraft to a fine of not less than \$25 and not more than \$500.

History: 1953 c. 175.

30.19 Harbor belt lines by cities. Whenever any city, under any law of this state, is authorized to construct, maintain or operate any railway tracks or harbor belt line connecting any wharves, docks, piers, slips, basins, warehouses, or other harbor facilities with each other or with any railways or railway terminals within such city or its vicinity, the harbor board of such city, or any other city department or municipal agency lawfully in charge of the constructing, maintaining or operating of such railway tracks or harbor belt line, shall have all the rights, powers and privileges conferred upon railway corporations by section 190.02 of the Wisconsin statutes, except subsection (9) of said section 190.02 relating to the financing of railroad corporations.

30.20 Harbor belt lines where built. Whenever a city shall construct, maintain or operate railroad tracks or a harbor belt line in accordance with section 30.19 of the Wisconsin statutes it may so construct, maintain or operate a part of such tracks or belt line within or without the corporate limits of such city, and in doing so shall have the powers and privileges of railroad corporations regarding the construction, maintenance and operation of their lines, and shall be subject to the same restrictions as railroad corporations, and to the supervision of the public service commission, except as to the system of accounting and the payment of wages to employes.

30.21 Harbor railways. (1) Any municipal corporation or other civil subdivision of the state, authorized under any law of this state to construct, maintain or operate a harbor belt railway or other railroad or railroad tracks to connect any harbor facilities with each other or with other railroads, shall be authorized to organize a railway corporation for the purpose of so constructing, maintaining and operating such harbor belt line or other railway; or to subscribe for stock in an existing railway corporation organized and existing for such purpose.

(2) The common council or other governing authority of such municipal corporation or other civil subdivision may, by resolution, authorize the chief executive officer of such corporation or subdivision, or if there be no chief executive, its presiding officer, to act, together with four citizens to be designated by him, as incorporators of such company.

(3) Said incorporators shall proceed to incorporate such railway corporation in the manner prescribed in the Wisconsin statutes; and so far as applicable the provisions of chapters 190, 191, 192 of said statutes and other laws regulating railroad companies shall apply to such corporation. The supervisory and regulative powers of the public service commission shall also apply to a harbor railroad incorporated under the provisions of this act, to the same extent that they apply to other railroads.

(4) Any municipal corporation or civil subdivision desiring to avail itself of the provisions of this act shall have power to subscribe to the stock of such harbor railroad corporation, and pay for such stock out of any funds it may lawfully have available for that purpose, including the proceeds of harbor improvement bonds.

30.22 Great Lakes compact commission. (1) **MEMBERS, APPOINTMENT, TERM.** There is created a Wisconsin Great Lakes compact commission consisting of 3 commissioners appointed by the governor. The commissioners shall be persons having knowledge of and interest in problems of the Great Lakes basin. One commissioner appointed for an indefinite term shall be a state officer or employe and shall serve as secretary of the Great Lakes compact commission. Of the 2 other commissioners, the term of one shall expire on June 30, 1957, and one on June 30, 1959. Thereafter they shall be appointed for terms of 4 years. The commissioners shall receive no salaries but shall be reimbursed for actual and necessary expenses.

(2) **DUTIES.** It shall be the duty of the Great Lakes compact commission:

(a) To represent this state on the Great Lakes commission created by the Great Lakes basin compact ratified and enacted by ch. 275, laws of 1955, when the compact has been enacted by the legislatures of the required number of states, and through such representa-

tion to perform the functions of the Great Lakes commission in conjunction with the commissioners of other party states.

(b) To maintain a continuing investigation of the project of connecting the Great Lakes with the Atlantic ocean by means of the Welland canal and the St. Lawrence river, to urge upon congress the enactment of additional appropriate legislation to enable the full development of such waterway, in conjunction with similar commissions in other states and with other interested groups and agencies.

(c) To report annually to the governor and biennially to the legislature, and to make such other reports as are requested by the governor or which it deems appropriate.

(d) To succeed to the functions of the former deep waterways commission, which is directed to transfer its files and materials to the commission created by this section upon its organization.

(e) To direct and execute a program of education in such form as the commission may determine, in support of the projects for development of the St. Lawrence seaway and the deepening of the Great Lakes connecting channels, using not to exceed the amount of funds appropriated for that purpose.

(3) FINANCIAL. The Great Lakes compact commission may annually contribute to the Great Lakes commission not to exceed the amount appropriated for that purpose, but no such contribution shall be made until the Great Lakes commission has been legally created by the enactment of the Great Lakes basin compact by the required number of states.

History: 1951 c. 319 s. 234; 1955 c. 275.

30.23 State officers to aid Great Lakes commission. All officers of this state are authorized and directed to do all things falling within their respective jurisdictions necessary to or incidental to the carrying out of said compact in every particular; it is declared to be the policy of this state to perform and carry out the said compact and to accomplish the purposes thereof. All officers, bureaus, departments and persons of and in the state government or administration of this state are authorized and directed at reasonable times and upon the request of the Great Lakes commission to furnish the said commission with information and data possessed by them and to aid said commission by loan of personnel and other means lying within their legal powers respectively.

History: 1955 c. 275.