

TECHNICAL MEMORANDUM

Date: November 15, 2007
To: Bruce Woodruff, City of Dover
From: Chris Luz, Lansing Melbourne Group, LLC
Bob Duval, TFMoran Inc.
Re: **Downtown Dover Parking Facility & Management Study
Parking Specific - Special Assessment District Information**

Examples of New Hampshire Parking Assessment Districts or Other States

The LMG Team reviewed information available on-line to determine whether or not other municipalities in the State of New Hampshire had enacted Parking Special Assessment Districts. Although other municipalities have established Special Assessment Districts, we found no examples where any city had enacted such a measure specifically for parking purposes.

The State of Wisconsin has enacted enabling legislation for the purpose of creating Parking Assessment Districts dating back to the 1980s. I have attached the specific statute as an appendix to this paper. Relevant excerpts are attached below.

More significantly, New Hampshire does have an enabling statute to fund construction of parking structures by Special Assessment.

Existing New Hampshire Statutes - Levying Assessments for Public Parking Facilities

In the State of New Hampshire Title XX, Chapter 31, Cities, Towns and Village District Highways, Section 231:120 is a section entitled:

231:120: Levying Assessments for Public Parking Facilities. This section reads:

I. The assessors of any municipality which has constructed public parking facilities, upon direction from the legislative body and in accordance with the plan adopted, shall assess in the manner provided in paragraph II of this section upon the owners or lessees of leasehold interests, whose lands receive special benefits wherefrom, their just share of the cost of construction of the same. All assessments thus made shall be valid and binding upon the owners or lessees of such land. The funds collected from assessments shall be used solely for the construction of public parking facilities or for the redemption of bonds or notes issued by the municipality to obtain funds for the construction of public parking facilities, including funds paid to a housing authority for the construction of public parking facilities.

II. The plan may provide that assessments shall be made:

(a) At one time and assessments so made may be prorated over a period not exceeding the number of years which the plan shall provide to defray the construction costs of the public parking facilities; or

(b) From year to year upon the owners or lessees of leasehold interests at the time such assessment is made, their just proportion of the construction costs which shall become due in that year, including the amount of principal and interest due during the year on any bonds or notes issued to provide funds to pay such construction costs.

231:121 Basis of Assessment. This section reads:

Assessments shall be levied according to a formula which shall be set forth in the plan and which shall be reasonable and proportional to the benefits conferred upon the land or leasehold interest upon which such assessment is laid. Such formula may, but need not necessarily, be based on the number of off-street parking spaces required to be furnished by owners of land under any lawful zoning ordinances or bylaw in effect or which may be adopted by the municipality. If the formula based on a zoning ordinance requirement of off-street parking is used, the plan may provide for credit to those owners or lessees who have erected or constructed private parking structures, but need not provide credit for private parking lots.

Further detail is included in Sections 231:121 through 125. This legislation may also be an appropriate approach to allocate the capital cost of a new parking structure, or the costs to provide parking services for a defined central business district of downtown Dover. This is another of the options the City's legal staff will need to evaluate.

Existing New Hampshire Statutes - Central Business Service Districts

Many cities in NH, in cooperation downtown business community, have established "Central Business Service Districts" that are, in part or wholly, supported by funds derived from "special assessments". The special assessments are for services and/or improvements, beyond what a municipality provides, that benefit the property owners within the service district. Enabling legislation is included in NH Statutes, under Title III, Towns, Cities, Village Districts and Unincorporated Places, Chapter 31, Powers and Duties of Towns, Central Business Service Districts, Section 31: 121 through 31:125.

An example of this type of special assessment is the Central Business Service District created in the City of Manchester, NH entitled "InTown Manchester". Intown Manchester¹ is a non profit 501(C)(3) management company contracted by the City of Manchester to operate a Business Improvement District (BID). InTown is funded through a special assessment on downtown commercial properties. The following list identifies the types of services InTown Manchester provides:

- *Manchester Magnifique* - Intown Manchester's new beautification contest, Manchester Magnifique, is designed to recognize properties within downtown Manchester that have made a special effort to look attractive using flowers and landscape enhancements.
- *Maintenance and Beautification* - Intown Manchester provides periodic mechanized sweeping and litter removal service for sidewalks and alleys, graffiti, flowers, trees, millyard revitalization.
- *Building Improvement Program* - Since 1997 the Building Improvement Program, sometimes known as the Facade Program, has served as an effective catalyst for commercial redevelopment in downtown Manchester. Funded by the City of Manchester CDBG funds, and administered by Intown Manchester, the Building Improvement Program provides matching grants for building improvements.
- *Retail Development & Business Support* - The Downtown Retail Development Committee (DRDC) represents storefront business owners in downtown Manchester. The group, coordinated by Intown, has been meeting periodically for several years, and it has a singular purpose: to increase business activity and profitability in the downtown.

¹ <http://www.intownmanchester.com/index.php>

- *Residential Development* - In 2004, construction for 200 apartment units at Manchester Place began. This is the first major residential development to be constructed in downtown Manchester in over 30 years, and it indicates a return to vibrancy in the Central Business District. 200 condominiums near the river are scheduled by 2006, with more residential opportunities on the horizon.
- *Promotional Activities* - Intown Manchester designs and implements marketing plans that include the design and production of: The Taste of Downtown Manchester, street banners, quarterly newsletters, bi-weekly e-newsletters, Downtown Maps & Guides, Downtown Dining Guides, and a website dedicated to promoting business and activities happening downtown.
- *Summer Music Festival* - A series designed to provide free entertainment for the residents of Manchester. The festival consists of 3 months of daily noontime performances in varied locations downtown and 5 Thursday night performances in Veterans Park.
- *Festival and Street Event Support* - Intown Manchester supports and encourages outdoor venues that are free to the public. We provide technical assistance, promotional expertise, and limited underwriting to community groups wishing to host downtown festivals and street events.

According to Section 31:124, the cost for these programs are allocated back to the commercial properties through a formula shall be based upon the relative linear foot frontage of the owner's property as a percentage of the total linear foot frontage of the applicable property in the district or another formula determined by the municipality to be in relative proportion to benefits received by each property owner in the central business service district.

This may be an appropriate approach to allocate the capital cost of a new parking structure, or the costs to provide parking services for a defined central business district of downtown Dover. This is one of the options the City's legal staff will need to evaluate.

Chapter 66, subchapter VII, Special Assessments

66.0701 Special assessments by local ordinance.

(1) Except as provided in s. 66.0721, in addition to other methods provided by law, the governing body of a town, village or 2nd, 3rd or 4th class city may, by ordinance, provide that the cost of installing or constructing any public work or improvement shall be charged in whole or in part to the property benefited, and make an assessment against the property benefited in the manner that the governing body determines. The special assessment is a lien against the property from the date of the levy.

(2) Every ordinance under this section shall contain provisions for reasonable notice and hearing. Any person against whose land a special assessment is levied under the ordinance may appeal in the manner prescribed in s. 66.0703 (12) within 40 days of the date of the final determination of the governing body.

66.0703 Special assessments, generally.

(1) (a) Except as provided in s. 66.0721, as a complete alternative to all other methods provided by law, any city, town or village may, by resolution of its governing body, levy and collect special assessments upon property in a limited and determinable area for special benefits conferred upon the property by any municipal work or improvement; and may provide for the payment of all or any part of the cost of the work or improvement out of the proceeds of the special assessments.

Some cities in Wisconsin (such as the City of Green Bay) provide parking services as a “public utility” subject to the same restrictions and authority to assess fees, generate revenue and issue bonds secured by said revenue.

Special Assessments – (State of New Hampshire)

There are numerous examples of cities that have implemented Special Assessment Districts under the authority of enabling legislature contained in the State of New Hampshire statutes. These special assessment districts typically have little to do with parking improvements and usually include a variety of costs for improvements that benefit a limited group of property owners.

Recommendation/Implementation

Should the City and business community decide to create a special assessment district to allocate the fair share cost of a new parking structure, there may be ways to incentive the use of the parking garage.

- Create an offset, or credit, against the special assessment for a commercial business (OWNER) that documents the cost of EMPLOYEE parking permits.

This incentive could potentially accomplish several goals for operation of the City’s parking system:

1. This approach provides an incentive for OWNERS to facilitate EMPLOYEE purchase of monthly parking permits. The OWNER may also be encouraged to share, or subsidize, the cost of parking permits purchased by EMPLOYEES. This is because the OWNER may be eligible for a credit against their year-end parking assessment relative to documenting the annual cost of permits purchased by EMPLOYEES;
2. The increased use of off-street parking facilities by EMPLOYEES will increase permit revenue for the City and potentially reducing the district assessment for OWNERS; and
3. As a result of both items 1 and 2, a reduction of on-street “shuffling” is anticipated, thereby increasing the availability of parking for visitors and customers.

The allocation of cost should include all cost related to planning, design and construction of the new garage, financing costs, operating costs, repair and maintenance costs and any and all costs to provide parking in the new garage. In round numbers, the cost could approach \$800k to \$900k per year depending on the term of the financing. Credits could be applied to this cost relative to parking system revenue less non-garage costs and credits relative to OWNER offsets for EMPLOYEE purchased permits and credits due OWNERS for provision of on-site parking. Ultimately the methodology should represent the investment needed by the downtown district to provide parking for their employees, customers and visitors. There may be several ways that are acceptable to get to an acceptable, fair-share allocation of costs.

Memo to: Bruce Woodruff
Date: November 15, 2007

Appendix 1 – Wisconsin Enabling Legislation – Special Assessments

floating indebtedness, the bonds are subject to the prior lien and claim of all bonds issued to refund revenue bonds issued prior to the refunding.

History: 1999 a. 150 s. 231; Stats. 1999 s. 66.0623; 2001 a. 30.

66.0625 Joint issuance of mass transit bonding. (1) In this section:

(a) “Political subdivision” means a county, city, village or town.

(b) “Public transit body” means any transit or transportation commission or authority and public corporation established by law or by interstate compact to provide mass transportation services and facilities.

(2) In addition to the provisions of any other statutes specifically authorizing cooperation between political subdivisions or public transit bodies, unless those statutes specifically exclude action under this section, any political subdivision or public transit body may, for mass transit purposes, issue bonds or, with any other political subdivision or public transit body, jointly issue bonds.

History: 1991 a. 282; 1999 a. 150 s. 604; Stats. 1999 s. 66.0625.

66.0627 Special charges for current services. (1) In this section, “service” includes snow and ice removal, weed elimination, street sprinkling, oiling and tarring, repair of sidewalks or curb and gutter, garbage and refuse disposal, recycling, storm water management, including construction of storm water management facilities, tree care, removal and disposition of dead animals under s. 60.23 (20), loan repayment under s. 70.57 (4) (b), soil conservation work under s. 92.115, and snow removal under s. 86.105.

(2) Except as provided in sub. (5), the governing body of a city, village or town may impose a special charge against real property for current services rendered by allocating all or part of the cost of the service to the property served. The authority under this section is in addition to any other method provided by law.

(3) (a) Except as provided in par. (b), the governing body of the city, village or town may determine the manner of providing notice of a special charge.

(b) Before a special charge for street tarring or the repair of sidewalks, curbs or gutters may be imposed, a public hearing shall be held by the governing body on whether the service in question will be funded in whole or in part by a special charge. Any interested person may testify at the hearing. Notice of the hearing shall be by class 1 notice under ch. 985, published at least 20 days before the hearing. A copy of the notice shall be mailed at least 10 days before the hearing to each interested person whose address is known or can be ascertained with reasonable diligence. The notice under this paragraph shall state the date, time and location of the hearing, the subject matter of the hearing and that any interested person may testify.

(4) A special charge is not payable in installments. If a special charge is not paid within the time determined by the governing body, the special charge is delinquent. A delinquent special charge becomes a lien on the property against which it is imposed as of the date of delinquency. The delinquent special charge shall be included in the current or next tax roll for collection and settlement under ch. 74.

(5) Except with respect to storm water management, including construction of storm water management facilities, no special charge may be imposed under this section to collect arrearages owed a municipal public utility.

(6) If a special charge imposed under this section is held invalid because this section is found unconstitutional, the governing body may reassess the special charge under any applicable law.

History: 1999 a. 150; 2007 a. 4.

A special assessment against a church was not barred by s. 70.11 (4). *Grace Episcopal v. Madison*, 129 Wis. 2d 331, 385 N.W.2d 200 (Ct. App. 1986).

A city may impose special charges for delinquent electric bills due a municipal utility. *Laskaris v. City of Wisconsin Dells*, 131 Wis. 2d 525, 389 N.W.2d 67 (Ct. App. 1986).

The cost of service to a property under this section does not include the cost of legal services incurred by the municipality in defending against challenges to the removal of materials from a ditch under s. 88.90. *Robinson v. Town of Bristol*, 2003 WI App 97, 264 Wis. 2d 318, 667 N.W.2d 14, 02–1247.

The examples given in sub. (1) are not meant to limit its application in any way, but merely to highlight possible uses. The special charge need only provide a service, not a benefit, to the property owner. Under s. 74.01 (4) a special charge is a charge against real property to compensate for all or part of the costs to a public body of providing services to the property. *Rusk v. City of Milwaukee*, 2007 WI App 7, 298 Wis. 2d 407, 727 N.W.2d 358, 05–2630.

State property is not subject to assessment of special charges under former s. 66.60 (16) [now s. 66.0627]. 69 Atty. Gen. 269.

66.0628 Fees imposed by a political subdivision. (1) In this section, “political subdivision” means a city, village, town, or county.

(2) Any fee that is imposed by a political subdivision shall bear a reasonable relationship to the service for which the fee is imposed.

History: 2003 a. 134.

SUBCHAPTER VII

SPECIAL ASSESSMENTS

66.0701 Special assessments by local ordinance.

(1) Except as provided in s. 66.0721, in addition to other methods provided by law, the governing body of a town, village or 2nd, 3rd or 4th class city may, by ordinance, provide that the cost of installing or constructing any public work or improvement shall be charged in whole or in part to the property benefited, and make an assessment against the property benefited in the manner that the governing body determines. The special assessment is a lien against the property from the date of the levy.

(2) Every ordinance under this section shall contain provisions for reasonable notice and hearing. Any person against whose land a special assessment is levied under the ordinance may appeal in the manner prescribed in s. 66.0703 (12) within 40 days of the date of the final determination of the governing body.

History: 1983 a. 532; 1989 a. 322; 1999 a. 150 s. 544; Stats. 1999 s. 66.0701.

An ordinance under this section may use police power as the basis for a special assessment. *Mowers v. City of St. Francis*, 108 Wis. 2d 630, 323 N.W.2d 157 (Ct. App. 1982).

66.0703 Special assessments, generally. (1) (a)

Except as provided in s. 66.0721, as a complete alternative to all other methods provided by law, any city, town or village may, by resolution of its governing body, levy and collect special assessments upon property in a limited and determinable area for special benefits conferred upon the property by any municipal work or improvement; and may provide for the payment of all or any part of the cost of the work or improvement out of the proceeds of the special assessments.

(b) The amount assessed against any property for any work or improvement which does not represent an exercise of the police power may not exceed the value of the benefits accruing to the property. If an assessment represents an exercise of the police power, the assessment shall be upon a reasonable basis as determined by the governing body of the city, town or village.

(c) If any property that is benefited is by law exempt from assessment, the assessment shall be computed and shall be paid by the city, town or village.

(2) The cost of any work or improvement to be paid in whole or in part by special assessment on property may include the direct and indirect cost, the resulting damages, the interest on bonds or notes issued in anticipation of the collection of the assessments, a reasonable charge for the services of the administrative staff of the city, town or village and the cost of any architectural, engineering and legal services, and any other item of direct or indirect cost that may reasonably be attributed to the proposed work or improvement. The amount to be assessed against all property for

66.0703 MUNICIPAL LAW

the proposed work or improvement shall be apportioned among the individual parcels in the manner designated by the governing body.

(3) A parcel of land against which a special assessment has been levied for the sanitary sewer or water main laid in one of the streets that the parcel abuts is entitled to a deduction or exemption that the governing body determines to be reasonable and just under the circumstances of each case, when a special assessment is levied for the sanitary sewer or water main laid in the other street that the corner lot abuts. The governing body may allow a similar deduction or exemption from special assessments levied for any other public improvement.

(4) Before the exercise of any powers conferred by this section, the governing body shall declare by preliminary resolution its intention to exercise the powers for a stated municipal purpose. The resolution shall describe generally the contemplated purpose, the limits of the proposed assessment district, the number of installments in which the special assessments may be paid, or that the number of installments will be determined at the hearing required under sub. (7), and direct the proper municipal officer or employee to make a report on the proposal. The resolution may limit the proportion of the cost to be assessed.

(5) The report required by sub. (4) shall consist of:

- (a) Preliminary or final plans and specifications.
- (b) An estimate of the entire cost of the proposed work or improvement.
- (c) Except as provided in par. (d), an estimate, as to each parcel of property affected, of:
 1. The assessment of benefits to be levied.
 2. The damages to be awarded for property taken or damaged.
 3. The net amount of the benefits over damages or the net amount of the damages over benefits.

(d) A statement that the property against which the assessments are proposed is benefited, if the work or improvement constitutes an exercise of the police power. If this paragraph applies, the estimates required under par. (c) shall be replaced by a schedule of the proposed assessments.

(6) A copy of the report when completed shall be filed with the municipal clerk for public inspection. If property of the state may be subject to assessment under s. 66.0705, the municipal clerk shall file a copy of the report with the state agency which manages the property. If the assessment to the property of the state for a project, as defined under s. 66.0705 (2), is \$50,000 or more, the state agency shall submit a request for approval of the assessment, with its recommendation, to the building commission. The building commission shall review the assessment and shall determine within 90 days of the date on which the commission receives the report if the assessment is just and legal and if the proposed improvement is compatible with state plans for the facility which is the subject of the proposed improvement. If the building commission so determines, it shall approve the assessment. No project in which the property of the state is assessed at \$50,000 or more may be commenced and no contract on the project may be let without approval of the assessment by the building commission under this subsection. The building commission shall submit a copy of its determination under this subsection to the state agency that manages the property which is the subject of the determination.

(7) (a) Upon the completion and filing of the report required by sub. (4), the city, town or village clerk shall prepare a notice stating the nature of the proposed work or improvement, the general boundary lines of the proposed assessment district including, in the discretion of the governing body, a small map, the place and time at which the report may be inspected, and the place and time at which all interested persons, or their agents or attorneys, may appear before the governing body, a committee of the governing body or the board of public works and be heard concerning the matters contained in the preliminary resolution and the report. The notice shall be published as a class 1 notice, under ch. 985, in the city, town or village and a copy of the notice shall be mailed,

at least 10 days before the hearing or proceeding, to every interested person whose post-office address is known, or can be ascertained with reasonable diligence. The hearing shall commence not less than 10 nor more than 40 days after publication.

(b) The notice and hearing requirements under par. (a) do not apply if they are waived, in writing, by all the owners of property affected by the special assessment.

(8) (a) After the hearing upon any proposed work or improvement, the governing body may approve, disapprove or modify, or it may refer the report prepared under subs. (4) and (5) to the designated officer or employee with directions to change the plans and specifications and to accomplish a fair and equitable assessment.

(b) If an assessment of benefits is made against any property and an award of compensation or damages is made in favor of the same property, the governing body shall assess against or award in favor of the property only the difference between the assessment of benefits and the award of damages or compensation.

(c) When the governing body finally determines to proceed with the work or improvement, it shall approve the plans and specifications and adopt a resolution directing that the work or improvement be carried out and paid for in accordance with the report as finally approved.

(d) The city, town or village clerk shall publish the final resolution as a class 1 notice, under ch. 985, in the assessment district and a copy of the resolution shall be mailed to every interested person whose post-office address is known, or can be ascertained with reasonable diligence.

(e) When the final resolution is published, all work or improvements described in the resolution and all awards, compensations and assessments arising from the resolution are then authorized and made, subject to the right of appeal under sub. (12).

(9) If more than a single type of project is undertaken as part of a general improvement affecting any property, the governing body may finally combine the assessments for all purposes as a single assessment on each property affected, if each property owner may object to the assessment for any single purpose or for more than one purpose.

(10) If the actual cost of any project, upon completion or after the receipt of bids, is found to vary materially from the estimates, if any assessment is void or invalid, or if the governing body decides to reconsider and reopen any assessment, it may, after giving notice as provided in sub. (7) (a) and after a public hearing, amend, cancel or confirm the prior assessment. A notice of the resolution amending, canceling or confirming the prior assessment shall be given by the clerk as provided in sub. (8) (d). If the assessments are amended to provide for the refunding of special assessment B bonds under s. 66.0713 (6), all direct and indirect costs reasonably attributable to the refunding of the bonds may be included in the cost of the public improvements being financed.

(11) If the cost of the project is less than the special assessments levied, the governing body, without notice or hearing, shall reduce each special assessment proportionately and if any assessments or installments have been paid the excess over cost shall be applied to reduce succeeding unpaid installments, if the property owner has elected to pay in installments, or refunded to the property owner.

(12) (a) A person having an interest in a parcel of land affected by a determination of the governing body, under sub. (8) (c), (10) or (11), may, within 90 days after the date of the notice or of the publication of the final resolution under sub. (8) (d), appeal the determination to the circuit court of the county in which the property is located. The person appealing shall serve a written notice of appeal upon the clerk of the city, town or village and execute a bond to the city, town or village in the sum of \$150 with 2 sureties or a bonding company to be approved by the city, town or village clerk, conditioned for the faithful prosecution of the appeal and the payment of all costs that may be adjudged against that person. The clerk, if an appeal is taken, shall prepare a brief statement

of the proceedings in the matter before the governing body, with its decision on the matter, and shall transmit the statement with the original or certified copies of all the papers in the matter to the clerk of the circuit court.

(b) The appeal shall be tried and determined in the same manner as cases originally commenced in circuit court, and costs awarded as provided in s. 893.80.

(c) If a contract has been made for making the improvement the appeal does not affect the contract, and certificates or bonds may be issued in anticipation of the collection of the entire assessment for the improvement, including the assessment on any property represented in the appeal as if the appeal had not been taken.

(d) Upon appeal under this subsection, the court may, based on the improvement as actually constructed, render a judgment affirming, annulling or modifying and affirming, as modified, the action or decision of the governing body. If the court finds that any assessment or any award of damages is excessive or insufficient, the assessment or award need not be annulled, but the court may reduce or increase the assessment or award of damages and affirm the assessment or award as so modified.

(e) An appeal under this subsection is the sole remedy of any person aggrieved by a determination of the governing body, whether or not the improvement was made according to the plans and specifications, and shall raise any question of law or fact, stated in the notice of appeal, involving the making of the improvement, the assessment of benefits or the award of damages or the levy of any special assessment. The limitation in par. (a) does not apply to appeals based on fraud or on latent defects in the construction of the improvement discovered after the period of limitation.

(f) It is a condition to the maintenance of an appeal that any assessment appealed from shall be paid when the assessment or any installments become due. If there is a default in making a payment, the appeal shall be dismissed.

(13) Every special assessment levied under this section is a lien on the property against which it is levied on behalf of the municipality levying the assessment or the owner of any certificate, bond or other document issued by public authority, evidencing ownership of or any interest in the special assessment, from the date of the determination of the assessment by the governing body. The governing body shall provide for the collection of the assessments and may establish penalties for payment after the due date. The governing body shall provide that all assessments or installments that are not paid by the date specified shall be extended upon the tax roll as a delinquent tax against the property and all proceedings in relation to the collection, return and sale of property for delinquent real estate taxes apply to the special assessment, except as otherwise provided by statute.

(14) If a special assessment levied under this section is held invalid because this section is found to be unconstitutional, the governing body may reassess the special assessment under any applicable law.

History: 1971 c. 313; 1973 c. 19; 1977 c. 29; 1977 c. 285 s. 12; 1977 c. 418; 1979 c. 323 s. 33; 1983 a. 207; 1987 a. 27, 403; 1989 a. 322; 1991 a. 39, 316; 1995 a. 378, 419; 1997 a. 213; 1999 a. 150 ss. 525 to 535; Stats. 1999 s. 66.0703.

Under sub. (15) [now sub. (13)] the assessment lien is effective from the date of the determination of the assessment, not from the date of the publication of the resolution. *Dittner v. Town of Spencer*, 55 Wis. 2d 707, 201 N.W.2d 450 (1972).

A presumption arises that an assessment was made on the basis of benefits actually accrued. In levying a special assessment for benefits to residential property from a public improvement, the benefit to the property as commercial property may be considered only if the assessing authority can prove there is a reasonable probability of rezoning the property in the near future. *Molbreak v. Village of Shorewood Hills*, 66 Wis. 2d 687, 225 N.W.2d 894 (1975).

The plaintiff's failure to comply strictly with the express terms of sub. (12) (a) and (f) deprived the court of subject matter jurisdiction. *Bialk v. City of Oak Creek*, 98 Wis. 2d 469, 297 N.W.2d 43 (Ct. App. 1980).

"Special benefits" under sub. (1) (a) is defined as an uncommon advantage accruing to the property owner in addition to the benefit enjoyed by other property owners. *Goodger v. City of Delavan*, 134 Wis. 2d 348, 396 N.W.2d 778 (Ct. App. 1986).

Confirmation under sub. (10) permits interest to be collected from the date of the original assessment. *Gelhaus & Brost v. City of Medford*, 143 Wis. 2d 193, 420 N.W.2d 775 (Ct. App. 1988).

Sub. (12) (d) does not permit a trial court to correct an assessment that was annulled due to lack of evidence. Because sub. (12) (d) evinces an intent that the municipality

will reassess, a trial court may modify an assessment only if there is an adequate record of evidence to make the determination. *VTAE District 4 v. Town of Burke*, 151 Wis. 2d 392, 444 N.W.2d 733 (Ct. App. 1989).

Property specially assessed under the police power must be benefitted to some extent, and the method of assessment must be reasonable, not arbitrarily or capriciously burdening any group of property owners. *CTI Group v. Village of Germantown*, 163 Wis. 2d 426, 471 N.W.2d 610 (Ct. App. 1991).

Imposition of interest on an assessment from the date of enactment of an ordinance is unreasonable. *Village of Egg Harbor v. Sarkis*, 166 Wis. 2d 5, 479 N.W.2d 536 (Ct. App. 1991).

A police power special assessment must benefit the property and be made on a reasonable basis. The degree, effect, and consequences of the benefit must be examined to measure reasonableness. Mere uniformity of treatment does not establish reasonableness; rather uniqueness of a property may be the cause for the assessment being unreasonable. *Lac La Belle Golf Club v. Lac La Belle*, 187 Wis. 2d 274, 522 N.W.2d 277 (Ct. App. 1994).

Sub. (12) (a), when read with s. 895.346, allows a cash deposit in lieu of a bond. *Aiello v. Village of Pleasant Prairie*, 206 Wis. 2d 68, 556 N.W.2d 67 (1996), 95–1352.

An assessment that cannot be legally made cannot be validated by reassessment under sub. (10). An assessment that is invalid by reason of a defect or omission, even if material, may be cured by reassessment. Reassessment is not limited to situations when construction has not yet commenced, and may be made after the project is completed. *Dittberner v. Windsor Sanitary District*, 209 Wis. 2d 478, 564 N.W.2d 341 (Ct. App. 1997), 98–0877.

Appeals brought under sub. (12) (a) are exempt from the notice provisions of s. 893.80 (1). *Gamroth v. Village of Jackson*, 215 Wis. 2d 251, 571 N.W.2d 917 (Ct. App. 1997), 96–3396.

An appellant's filing under sub. (12) (a) of a notice of appeal and bond with the municipal clerk within the 90-day limit, but not in the circuit court, was a reasonable interpretation of the statute and did not result in the appeal being untimely. *Outagamie County v. Town of Greenville*, 2000 WI App 65, 233 Wis. 2d 566, 608 N.W.2d 414, 99–1575.

A summons and complaint meets the requirement of "written notice of appeal" under sub. (12) (a). *Mayek v. Cloverleaf Lakes Sanitary District #1*, 2000 WI App 182, 238 Wis. 2d 261, 617 N.W.2d 235, 99–2895.

The filing of an appeal prior to publication of the final resolution required by sub. (8) (d) was not premature under sub. (12) (a). Section 808.04 (8), which provides that a notice of appeal filed prior to the entry of the order appealed from shall be treated as filed after the entry, is applicable to appeals under this section as the result of the application of s. 801.02 (2), which makes chs. 801 to 847 applicable in all special proceedings. *Mayek v. Cloverleaf Lakes Sanitary District #1*, 2000 WI App 182, 238 Wis. 2d 261, 617 N.W.2d 235, 99–2895.

Section 60.77 authorizes town sanitary districts to levy special assessments and makes the procedures under this section applicable to those districts. As such, service of a notice of appeal on the district clerk was proper under this section. *Mayek v. Cloverleaf Lakes Sanitary District #1*, 2000 WI App 182, 238 Wis. 2d 261, 617 N.W.2d 235, 99–2895.

Legal expenses associated with an appeal of a special assessment may not be added to the assessment under sub. (5). Such legal expenses are not reasonably attributed to the work or improvement as they do not aid in its creation or development. *Bender v. Town of Kronenwetter*, 2002 WI App 284, 258 Wis. 2d 321, 654 N.W.2d 57, 02–0403.

Because special assessments can only be levied for local improvements, before the propriety of the assessment can be addressed the circuit court must initially examine whether the improvement is local. The purpose for making the improvements is relevant to resolving the nature of the improvement, but not determinative because the court must also consider the benefits the property receives. The purpose for initiating improvements must be for reasons of accommodation and convenience, and the object of the purpose must be primarily for the people in a particular locality. *Genrich v. City of Rice Lake*, 2003 WI App 255, 268 Wis. 2d 233, 673 N.W.2d 361, 03–0597.

Uniformity requires the assessment to be fairly and equitably apportioned among property owners in comparable positions. The municipality must use a method of assessment that produces a uniform and equal value for all affected properties. It is unreasonable to use the same method to assess a group of property owners when it results in an entirely disproportionate result that could easily be remedied by using a different method or to assess one group of property owners by a different method from that used to assess others if the results are entirely disproportionate. There is no per se reasonable method. *Genrich v. City of Rice Lake*, 2003 WI App 255, 268 Wis. 2d 233, 673 N.W.2d 361, 03–0597.

An availability charge assessed against each condominium unit served by a sewer extension through a single connection from the condominium lot to the sewer was not levied uniformly and imposed an inequitable cost burden as compared with the benefit accruing to the petitioners and to all benefited properties. The availability charge lacked a reasonable basis because: 1) there was no nexus between the availability charge and the district's recovery of the capital cost to it to provide sanitary sewer service to individual lots; 2) other lots with multiple habitable units and were provided the same sewer service through one stub were assessed only one availability charge; and 3) there was no showing that the condominium owners received a greater benefit than was provided to other lots that were affected by the sewer extension. *Steinbach v. Green Lake Sanitary District*, 2006 WI 63, 291 Wis. 2d 11, 715 N.W.2d 195, 03–2245.

State property is not subject to assessment of special charges under sub. (16). 69 Atty. Gen. 269.

Landowners who were not treated in a discriminatory manner and did not avail themselves of the statutory right to appeal the merits of an assessment against land based on a report under sub. (2) were not deprived of due process or equal protection and could not maintain an action under the civil rights act for damages. *Kasper v. Larson*, 372 F. Supp. 881.

Wisconsin special assessments. *Klitzke and Edgar*. 62 MLR 171 (1978).

66.0705 Property of public and private entities subject to special assessments. (1) (a) The property of this state, except that held for highway right-of-way purposes or acquired

66.0705 MUNICIPAL LAW

and held for purposes under s. 85.09, and the property of every county, city, village, town, school district, sewerage district or commission, sanitary or water district or commission, or any public board or commission within this state, and of every corporation, company or individual operating any railroad, telegraph, telecommunications, electric light or power system, or doing any of the business mentioned in ch. 76, and of every other corporation or company is in all respects subject to all special assessments for local improvements.

(b) Certificates and improvement bonds for special assessments may be issued and the lien of the special assessments enforced against property described in par. (a), except property of the state, in the same manner and to the same extent as the property of individuals. Special assessments on property described in par. (a) may not extend to the right, easement or franchise to operate or maintain railroads, telegraph, telecommunications or electric light or power systems in streets, alleys, parks or highways. The amount represented by any certificate or improvement bond issued under this paragraph is a debt due personally from the corporation, company or individual, payable in the case of a certificate when the taxes for the year of its issue are payable, and in the case of a bond according to the terms of the bond.

(2) In this subsection, “assessment” means a special assessment on property of this state and “project” means any continuous improvement within overall project limits regardless of whether small exterior segments are left unimproved. If the assessment of a project is less than \$50,000, or if the assessment of a project is \$50,000 or more and the building commission approves the assessment under s. 66.0703 (6), the state agency which manages the property shall pay the assessment from the revenue source which supports the general operating costs of the agency or program against which the assessment is made.

History: 1977 c. 29; 1977 c. 418 ss. 431, 924 (48); 1983 a. 27; 1985 a. 187; 1985 a. 297 s. 76; 1987 a. 27; 1999 a. 150 s. 548; Stats. 1999 s. 66.0705.

66.0707 Assessment or special charge against property in adjacent city, village or town. (1) A city, village or town may levy special assessments for municipal work or improvement under s. 66.0703 on property in an adjacent city, village or town, if the property abuts and benefits from the work or improvement and if the governing body of the municipality where the property is located by resolution approves the levy by resolution. The owner of the property is entitled to the use of the work or improvement on which the assessment is based on the same conditions as the owner of property within the city, village or town.

(2) A city, village or town may impose a special charge under s. 66.0627 against real property in an adjacent city, village or town that is served by current services rendered by the municipality imposing the special charge if the municipality in which the property is located approves the imposition by resolution. The owner of the property is entitled to the use and enjoyment of the service for which the special charge is imposed on the same conditions as the owner of property within the city, village or town.

(3) A special assessment or special charge under this section is a lien against the benefited property and shall be collected by the treasurer in the same manner as the taxes of the municipality and paid over by the treasurer to the treasurer of the municipality levying the assessment.

History: 1991 a. 316; 1999 a. 150 ss. 192, 550, 551; Stats. 1999 s. 66.0707.

66.0709 Preliminary payment of improvements funded by special assessments. (1) In this section:

(a) “Local governmental unit” has the meaning given in s. 66.0713 (1) (c).

(b) “Public improvement” has the meaning given in s. 66.0713 (1) (d).

(2) If it is determined that the cost of a public improvement is to be paid, in whole or in part, by special assessments against the property to be benefited by the improvement, the resolution

authorizing the public improvement shall provide that the whole, or any stated proportion, or no part of the estimated aggregate cost of the public improvement, which is to be levied as special assessments, shall be paid into the treasury of the local governmental unit in cash. The public improvement may not be commenced nor any contract for the improvement let until the payment required by the resolution is paid into the treasury of the local governmental unit by the owner or persons having an interest in the property to be benefited. The payment shall be credited against the amount of the special assessments levied or to be levied against benefited property designated by the payer. If a preliminary payment is required by the resolution, the refusal of one or more owners or persons having an interest in the property to be benefited to pay any preliminary payments does not prevent the making of the improvement if the entire specified sum is obtained from the remaining owners or interested parties.

History: 1999 a. 150 ss. 193, 194, 506.

66.0711 Discount on cash payments for public improvements. (1) In this section:

(a) “Local governmental unit” has the meaning given in s. 66.0713 (1) (c).

(b) “Public improvement” has the meaning given in s. 66.0713 (1) (d).

(2) Every bid received for any public improvement which is not to be paid wholly in cash shall contain a provision that all payments made in cash by the local governmental unit as provided by contract or made on special assessments are subject to a specified rate of discount. The treasurer of the local governmental unit shall issue a receipt for every payment made on any special assessment, stating the date and amount of the cash payment, the discount and the total credit including the discount on a specified special assessment. The treasurer shall on the same day deliver a duplicate of the receipt to the clerk, who shall credit the specified assessments accordingly. All moneys so received shall be paid to the contractor as provided by the contract.

History: 1999 a. 150 ss. 202, 507, 508.

66.0713 Contractor’s certificates; general obligation-local improvement bonds; special assessment B bonds. (1) DEFINITIONS. In this section, unless a different meaning clearly appears from the context:

(a) “Contractor” means the person, firm or corporation performing the work or furnishing the materials, or both, for a public improvement.

(am) “Debt service fund” means the fund, however derived, set aside for the payment of principal and interest on contractor’s certificates or bonds issued under this section.

(b) “Governing body” means the body or board vested by statute with the power to levy special assessments for public improvements.

(c) “Local governmental unit” means county, city, village, town, farm drainage board, sanitary districts, utility districts, public inland lake protection and rehabilitation districts, and all other public boards, commissions or districts, except 1st class cities, authorized by law to levy special assessments for public improvements against the property benefited by the special improvements.

(d) “Public improvement” means the result of the performance of work or the furnishing of materials or both, for which special assessments are authorized to be levied against the property benefited by the work or materials.

(2) PAYMENT BY CONTRACTOR’S CERTIFICATE. (a) If a public improvement has been made and has been accepted by the governing body of the local governmental unit, it may issue to the contractor for the public improvement a contractor’s certificate as to each parcel of land against which special assessments have been levied for the unpaid balance of the amount chargeable to the parcel, describing each parcel. The certificate shall be substantially in the following form:

\$...

No.

(name of local governmental unit)
CONTRACTOR'S CERTIFICATE
FOR CONSTRUCTION OF
(name of local governmental unit)
ISSUED PURSUANT TO
SECTION 66.0713 (2), WIS. STATS.

We, the undersigned officers of the (name of local governmental unit), certify that (name and address of contractor) has performed the work of constructing in benefiting the following premises: (insert legal description) in the (name of local governmental unit) County, Wisconsin, pursuant to a contract entered into by (name of local governmental unit) with (name of contractor), dated, and that entitled to the sum of dollars, the unpaid balance due for the work chargeable to the property described above.

If the unpaid balance due is not paid to the treasurer of (name of local governmental unit) before the first day of the following December, that amount shall be extended upon the tax roll of the (name of local governmental unit) against the property above described as listed in the tax roll, and collected as provided by law.

This certificate is transferable by endorsement but an assignment or transfer by endorsement is invalid unless recorded in the office of the clerk of the (name of local governmental unit) and the fact of the recording is endorsed on this certificate. THE HOLDER OF THIS CERTIFICATE HAS NO CLAIM UPON THE (Name of local governmental unit), EXCEPT FROM THE PROCEEDS OF THE SPECIAL ASSESSMENTS LEVIED FOR THE WORK AGAINST THE ABOVE DESCRIBED LAND.

This certificate shall bear interest from its date to the following January 1.

Given under our hands at (name of local governmental unit), this day of, (year)

.....
(Mayor, President, Chairperson)

Countersigned:

.....

Clerk, (name of local governmental unit)

ASSIGNMENT RECORD

Assigned by (Original Contractor) to (Name of Assignee) of (Address of Assignee) (Date and signature of clerk)

(b) A contractor's certificate is not a liability of a local governmental unit and shall so state in boldface type printed on the face of the certificate. Upon issuance of a certificate, the clerk of the local governmental unit shall immediately deliver to the treasurer of the local governmental unit a schedule of each certificate showing the date, amount, number, date of maturity, person to whom issued and parcel of land against which the assessment is made. The treasurer shall notify, by mail, the owner of the parcel, as the owner appears on the last assessment roll, that payment is due on the certificate at the office of the treasurer, and if the owner pays the amount due, the clerk shall pay that amount to the registered holder of the certificate, and shall endorse the payment on the face of the certificate and on the clerk's record of the certificate. The clerk shall keep a record of the names of the persons, firms or corporations to whom contractor's certificates are issued and of the assignees of certificates when the assignment is known to the clerk. Assignments of contractor's certificates are invalid unless recorded in the office of the clerk of the local governmental unit and the fact of recording is endorsed on the certificate. Upon final payment of the certificate, the certificate shall be delivered to the treasurer of the local governmental unit and by the treasurer delivered to the clerk. On the first of each month, to and including December 1, the treasurer shall certify to the clerk a detailed statement of all payments made on certificates.

(c) If a contractor's certificate is not paid before December 1 in the year in which issued, the comptroller or clerk of the local governmental unit shall include in the statement of special assess-

ments to be placed in the next tax roll an amount sufficient to pay the certificate, with interest from the date of the certificate to the following January 1, and the proceedings for the collection of that amount shall be the same as the proceedings for the collection of general property taxes, except as otherwise provided in this section. The delinquent taxes shall be returned to the county treasurer in trust for collection and not for credit. All moneys collected by the treasurer of the local governmental unit or by the county treasurer and remitted to the treasurer of the local governmental unit on account of the special assessments shall be delivered to the owner of the contractor's certificate on demand.

(3) GENERAL OBLIGATION-LOCAL IMPROVEMENT BONDS. For the purpose of anticipating the collection of special assessments payable in installments as provided in s. 66.0715 (3) and after the installments have been determined, the governing body may issue general obligation-local improvement bonds under s. 67.16.

(4) SPECIAL ASSESSMENT B BONDS. (a) For the purpose of anticipating the collection of special assessments payable in installments, as provided in s. 66.0715 (3) and after the installments have been determined, the governing body may issue special assessment B bonds payable out of the proceeds of the special assessments as provided in this section. The bonds are not a general liability of the local governmental unit.

(b) The issue of special assessment B bonds shall be in an amount not exceeding the aggregate unpaid special assessments levied for the public improvement that the issue is to finance. A separate bond shall be issued for each separate assessment and the bond shall be secured by and be payable out of only the assessment against which it is issued. The bonds shall mature in the same number of installments as the underlying special assessments. The bonds shall carry coupons equal in number to the number of special assessments. The coupons shall be detachable and entitle the owner of the bond to the payment of principal and interest collected on the underlying special assessments. The bond shall be executed as provided in s. 67.08 (1) and may be registered under s. 67.09. Each bond shall include a statement that it is payable only out of the special assessment on the particular property against which it is issued and the purpose for which the assessment was levied and other provisions that the governing body inserts.

(ba) Payments of principal and interest shall conform as nearly as possible to the payments to be made on the installments of the assessment, and the principal and interest to be paid on the bonds shall not exceed the principal and interest to be received on the assessment. All collections of installments of the special assessments levied to pay for the public improvement, either before or after delinquency, shall be placed by the treasurer of the local governmental unit in a special debt service fund designated and identified for the bond issue and shall be used only for the payment of the bonds and interest of the issue. Any surplus in the debt service fund after all bonds and interest are fully paid shall be paid into the general fund.

(c) Special assessment B bonds shall be registered in the name of the owner on the records of the clerk of the local governmental unit that issued the bonds. Upon transfer of the ownership of the bonds the transfer shall be noted upon the bond and on the record of the clerk of the local governmental unit. Any transfer not so recorded is void and the clerk of the local governmental unit may make payments of principal and interest to the owner of the bond as registered on the books of the local governmental unit.

(d) Principal and interest collected on the underlying special assessments and interest collected on the delinquent special assessments and on delinquent tax certificates issued for the delinquent assessments shall be paid by the treasurer of the local governmental unit out of the debt service fund created for the issue of the bonds to the registered holder of the bonds upon the presentation and surrender of the coupons due attached to the bonds. If any installment of the special assessment entered in the tax roll is not paid to the treasurer of the local governmental unit with the other taxes, it shall be returned to the county treasurer as delinquent in trust for collection.

66.0713 MUNICIPAL LAW

(e) If the tax certificate resulting from the delinquent special assessment is redeemed by any person other than the county, the county treasurer shall pay to the local governmental unit the full amount received for the tax certificate, including interest, and the treasurer of the local governmental unit shall then pay the amount of the remittance into a special debt service fund created for the payment of the special assessment B bonds.

(5) AREA-GROUPED SPECIAL ASSESSMENT B BONDS. (a) If the governing body determines to issue special assessment B bonds under sub. (4), it may group the special assessments levied against benefited lands and issue of the bonds against the special assessments grouped as a whole. All of the bonds shall be equally secured by the assessments without priority one over the other.

(b) All of the following apply to area-grouped special assessment B bonds issued under this section:

1. For the purpose of anticipating the collection of special assessments payable in installments under this section and after the installments have been determined, the governing body may issue area-grouped special assessment B bonds payable out of the proceeds of the special assessments as provided under sub. (4). The bonds are not a general liability of the local governmental unit.

2. The issue of the bonds shall be in an amount not exceeding the aggregate unpaid special assessments levied for the public improvement or projects which the issue is to finance. The bonds shall mature over substantially the same period of time in which the special assessment installments are to be paid. The bonds shall be bearer bonds or may be registered bonds under s. 67.09. The bonds shall be executed as provided in s. 67.08 (1) and shall include a statement that they are payable only from the special debt service fund provided for in subd. 4. and a fund created under sub. (7) for the collection and payment of the special assessment and any other provisions that the governing body deems proper to insert.

4. All collections of principal and interest on the underlying special assessments and installments, either before or after delinquency and after issuance of a tax certificate under s. 74.57, shall be placed by the treasurer of the local governmental unit in a special debt service fund created, designated and identified for the issue of the bonds and used only for payment of the bonds and interest on the bonds to the holders of the bonds or coupons in accordance with the terms of the issue. Any surplus in the debt service fund, after all bonds and interest on the bonds are fully paid, shall be paid into the general fund.

5. If the tax certificate is redeemed by any person other than the county, the county treasurer shall pay to the local governmental unit the full amount received for the certificate, including interest, and the treasurer of the local governmental unit shall pay the amount of the remittance into the special debt service fund created for the payment of the bonds.

7. A holder of the bonds or of any coupons attached to the bonds has a lien against the special debt service fund created under subd. 4. for payment of the bonds and interest on the bonds and against any reserve fund created under sub. (7) and may either at law or in equity protect and enforce the lien and compel performance of all duties required by this section of the local governmental unit issuing the bonds.

(6) REFUNDING B BONDS. A local governmental unit may issue refunding B bonds to refund any outstanding special assessment B bonds issued under sub. (4) or (5). The refunding B bonds shall be secured by and payable only from the special assessments levied to pay for the public improvements financed by the bonds to be refunded, and are not a general liability of the local governmental unit. If bonds issued under sub. (4) are to be refunded, the provisions of sub. (4) (b) to (e) apply to the refunding B bonds; if bonds issued under sub. (5) are to be refunded, the provisions of sub. (5) (b) apply to the refunding B bonds. If the governing body determines that it is necessary to amend the prior assessments in connection with the issuance of refunding B bonds under this sec-

tion, it may reconsider and reopen the assessments under s. 66.0703 (10). The notice and hearing under s. 66.0703 (10) may be waived under s. 66.0703 (7) (b) by the owners of the property affected. If the assessments are amended, the refunding B bonds shall be secured by and payable from the special assessments as amended. If the assessments are amended, all direct and indirect costs reasonably attributable to the refunding of the bonds may be included in the cost of the public improvements being financed. If the governing body determines to issue refunding B bonds, it may create a reserve fund for the issue under sub. (7).

(7) RESERVE FUND FOR SPECIAL ASSESSMENT B BONDS AND REFUNDING B BONDS. If the governing body determines to issue special assessment B bonds under sub. (4) or refunding B bonds under sub. (6), it may establish in its treasury a fund to be designated as a reserve fund for the particular bond issue, to be maintained until the obligation is paid or otherwise extinguished. Any surplus in the reserve fund after all the bonds have been paid or canceled shall be carried into the general fund of the local governmental unit's treasury. The source of the fund shall be established either from proceeds of the bonds, the general fund of the local governmental unit's treasury or by the levy of an irrevocable and irrevocable general tax. The bonds are not a general liability of the local governmental unit.

(8) PAYMENT OF B BONDS FROM TAX LEVY. Any local governmental unit authorized to issue special assessment B bonds, in addition to the special assessments or bond proceeds or other sources, may appropriate funds out of its annual tax levy for the payment of the bonds. The payment of the bonds out of funds from a tax levy may not be construed as constituting an obligation of the local governmental unit to make any other such appropriation.

(9) PAYMENT BY LOCAL GOVERNMENTAL UNIT. If a public improvement has been paid for by the local governmental unit, contractor's certificates under sub. (2), general obligation-local improvement bonds under s. 67.16, or special assessment B bonds under sub. (4) may be issued to the local governmental unit as the owner of the certificates or bonds. All of the provisions of subs. (2) and (4) and s. 67.16 applicable to the contractor or to the owner of the contractor's certificates, the general obligation-local improvement bonds or the special assessment B bonds shall be deemed to include the local governmental unit which has paid for the improvement and to which the contractor's certificates, general obligation-local improvement bonds or special assessment B bonds have been issued, except as otherwise provided in this section.

(10) LEGALITY OF PROCEEDINGS; CONCLUSIVE EVIDENCE. After the expiration of 90 days from the date of a contractor's certificate or special assessment B bond, the certificate or bond is conclusive evidence of the legality of all proceedings up to and including the issue of the certificate or bond and prima facie evidence of the proper construction of the improvement.

History: 1973 c. 172; 1977 c. 29 s. 1646 (3); 1977 c. 391; 1979 c. 110 s. 60 (13); 1981 c. 390 s. 252; 1983 a. 24; 1983 a. 189 ss. 66, 329 (14); 1983 a. 192; 1983 a. 207 ss. 32, 33, 93 (8); 1987 a. 197, 378, 403; 1991 a. 237, 316; 1993 a. 184; 1997 a. 250; 1999 a. 150 ss. 203, 502, 503, 509 to 513, 516, 517, 519, 522, 523; Stats. 1999 s. 66.0713; 2005 a. 253.

66.0715 Deferral of special assessments; payment of special assessments in installments. (1) DEFINITIONS. In this section:

- (a) "Governing body" has the meaning given in s. 66.0713 (1) (b).
- (b) "Local governmental unit" has the meaning given in s. 66.0713 (1) (c).
- (c) "Public improvement" has the meaning given in s. 66.0713 (1) (d).

(2) DEFERRAL. (a) Notwithstanding any other statute, the due date of any special assessment levied against property abutting on or benefited by a public improvement may be deferred on the terms and in the manner prescribed by the governing body while

no use of the improvement is made in connection with the property. A deferred special assessment may be paid in installments within the time prescribed by the governing body. A deferred special assessment is a lien against the property from the date of the levy.

(b) If a tax certificate is issued under s. 74.57 for property which is subject to a special assessment that is deferred under this subsection, the governing body may provide that the amounts of any deferred special assessments are due on the date that the tax certificate is issued and are payable as are other delinquent special assessments from any moneys received under s. 75.05 or 75.36.

(c) The lien of any unpaid amounts of special assessments deferred under this subsection with respect to which a governing body has not taken action under par. (b) is not merged in the title to property taken by the county under ch. 75.

(3) ANNUAL INSTALLMENTS. (a) The governing body of a local governmental unit may provide that special assessments levied to defray the cost of a public improvement or a project constituting part of a general public improvement, except sprinkling or oiling streets, may be paid in annual installments.

(b) The first installment shall include a proportionate part of the principal of the special assessment, determined by the number of installments, together with interest on the whole assessment from a date, not before the date of the notice under par. (e), and to that date, not later than December 31, in the year in which the installment is to be collected as determined by the governing body. Each subsequent installment shall include the same proportion of the principal and one year's interest on the unpaid portion of the assessment.

(c) The first installment shall be entered in the first tax roll prepared after the installments have been determined as a special tax on the property upon which the special assessment was levied and shall be treated as any other tax of a local governmental unit, except as otherwise provided in this section. Each subsequent installment shall be entered in each of the subsequent annual tax rolls until all installments are levied.

(d) If any installment entered in the tax roll is not paid to the treasurer of the local governmental unit with the other taxes it shall be returned to the county as delinquent and accepted and collected by the county in the same manner as delinquent general taxes on real estate, except as otherwise provided in this section.

(e) If the governing body determines to permit special assessments for a local improvement to be paid in installments it shall publish a class 1 notice, under ch. 985. The notice shall be substantially in the following form:

INSTALLMENT ASSESSMENT NOTICE

Notice is hereby given that a contract has been (or is about to be) let for (describe the improvement) and that the amount of the special assessment for the improvement has been determined as to each parcel of real estate affected and a statement of the assessment is on file with the.... clerk; it is proposed to collect the special assessment in.... installments, as provided for by section 66.0715 of the Wisconsin Statutes, with interest at.... percent per year; that all assessments will be collected in installments as provided above except assessments on property where the owner files with the.... clerk within 30 days from date of this notice a written notice that the owner elects to pay the special assessment on the owner's property, describing the property, to the.... treasurer on or before the following November 1, unless the election is revoked. If, after making the election, the property owner fails to make the payment to the.... treasurer, the.... clerk shall place the entire assessment on the following tax roll.

Dated....

.... [Clerk of (name of local governmental unit)]

(f) After the time for making an initial election to pay the special assessment in full under par. (e) expires, the assessment may be paid in full before due upon payment of that portion of the interest to become due as the governing body determines.

(fm) 1. Between the time that a property owner elects to pay the special assessment in full under par. (e) and 30 days before the time that payment is due, the property owner may revoke his or her initial election and, subject to subds. 2. and 3., shall pay the special assessment in installments if the governing body that levied the special assessment adopts a resolution consenting to the revocation.

2. If the first installment has been paid by property owners under par. (c) before the date on which payment in full would have been due for a property owner who initially elected to pay the special assessment in one lump sum, the next property tax bill sent to a person who revoked his or her initial election to make a lump sum payment shall include all of the following amounts:

a. An amount equal to what the first installment would have been under par. (b) if the property owner's initial election had been to pay the special assessment in installments.

b. Interest on that amount at the rate used by the local governmental unit for installment payments under par. (b), covering the period between the date that the initial election was made under par. (e) and the date on which the installment is paid.

c. The amount of the 2nd installment, as calculated under par. (b).

3. If the first installment has not been paid by property owners under par. (c) before the date on which payment in full would have been due for a property owner who initially elected to pay the special assessment in one lump sum, the next property tax bill sent to a person who revoked his or her initial election to make a lump sum payment shall be an amount calculated under par. (b) plus interest on that amount at the rate used by the local governmental unit for installment payments under par. (b), covering the period between the date that the initial election was made under par. (e) and the date on which the installment is paid.

(g) A schedule of the assessments and assessment installments shall be recorded in the office of the clerk of the local governmental unit as soon as practicable.

(h) All special assessments and installments of special assessments which are returned to the county as delinquent by any municipal treasurer under this section shall be accepted by the county in accordance with this section and shall be set forth in a separate column of the delinquent return.

History: 1999 a. 150 ss. 204, 205, 514, 537.

66.0717 Lien of special assessment. A special assessment levied under any authority is a lien on the property against which it is levied on behalf of the municipality levying the assessment or the owner of any certificate, bond or other document issued by the municipality, evidencing ownership of any interest in the special assessment, from the date of the levy, to the same extent as a lien for a tax levied upon real property.

History: 1987 a. 378; 1999 a. 150 s. 536; Stats. 1999 s. 66.0717.

66.0719 Disposition of special assessment proceeds where improvement paid for out of general fund or municipal obligations. (1) In this section:

(a) "Local governmental unit" has the meaning given in s. 66.0713 (1) (c).

(b) "Public improvement" has the meaning given in s. 66.0713 (1) (d).

(2) If a special assessment is levied for any public improvement, any amount collected on that special assessment or received from the county shall be deposited in the general fund of the local governmental unit if the payment for the improvement was made out of its general fund, deposited in the funds and accounts of a public utility established under s. 66.0621 (4) (c) if the improvement was paid out of the proceeds of revenue obligations of the local governmental unit, or deposited in the debt service fund required for the payment of bonds or notes issued under ch. 67 if the improvement was paid out of the proceeds of the bonds or notes. That special assessment, when delinquent, shall be

66.0719 MUNICIPAL LAW

returned in trust for collection and the local governmental unit has the same rights as provided in s. 67.16 (2) (c).

History: 1999 a. 150 ss. 206, 520, 521; 2003 a. 321.

66.0721 Special assessments on certain farmland for construction of sewerage or water system. (1) In this section:

(a) “Agricultural use” has the meaning given in s. 91.01 (1) and includes any additional agricultural uses of land, as determined by the town sanitary district or town.

(b) “Eligible farmland” means a parcel of 35 or more acres of contiguous land which is devoted exclusively to agricultural use which during the year preceding the year in which the land is subject to a special assessment under this section produced gross farm profits, as defined in s. 71.58 (4), of not less than \$6,000 or which, during the 3 years preceding the year in which the land is subject to a special assessment under this section, produced gross farm profits, as defined in s. 71.58 (4), of not less than \$18,000.

(2) Except as provided in sub. (3), no town sanitary district or town may levy any special assessment on eligible farmland for the construction of a sewerage or water system.

(3) (a) If any eligible farmland contains a structure that is connected to a sanitary sewer or public water system at the time, or after the time, that a town sanitary district or town first levies a special assessment for the construction of a sewerage or water system in the service area in which the eligible farmland is located, the town sanitary district or town may levy a special assessment for the construction of a sewerage or water system on the eligible farmland that includes that structure. If that connection is made after the first assessment, the town sanitary district or town may also charge interest, from the date that the connection is made, on the special assessment at an annual rate that does not exceed the average interest rate paid by the district or town on its obligations between the time the district or town first levies a special assessment for the construction of a sewerage or water system in the service area in which the eligible farmland is located and the time it levies the special assessment on that eligible farmland. That assessment may not exceed the equivalent of an assessment for that purpose on a square acre or, if the governing body of a town sanitary district or town so specifies by ordinance, the maximum size of any lot that is in that service area and that is not devoted exclusively to agricultural use.

(b) If after an initial special assessment for the construction of a sewerage or water system is levied in a service area any eligible farmland subject to par. (a) or exempted from a special assessment under sub. (2) is divided into 2 or more parcels at least one of which is not devoted exclusively to agricultural use, the town sanitary district or town may levy on each parcel on which it has either levied a special assessment under par. (a) or has not levied a special assessment for the construction of a sewerage or water system a special assessment for that purpose that does not exceed the amount of the special assessment for that purpose that would have been levied on the parcel if the parcel had not been exempt under sub. (2) or that has already been levied under par. (a). The special assessment shall be apportioned among the parcels resulting from the division in proportion to their area. The town sanitary district or town may also charge interest, from the date the eligible farmland is divided into 2 or more parcels at least one of which is not devoted exclusively to agricultural use, on the special assessment at an annual rate that does not exceed the average interest rate paid by the district or town on its obligations between the time the district or town first levies a special assessment for the construction of a sewerage or water system in the service area in which the eligible farmland is located and the time it levies the special assessment on that eligible farmland under this paragraph. This paragraph does not apply to any eligible farmland unless the town sanitary district or town records a lien on that eligible farmland in the office of the register of deeds within 90 days after it first levies a special assessment for the construction of a sewerage or water system for the service area in which the eligible farmland is

located, describing either the applicability of par. (a) or the exemption under sub. (2) and the potential for a special assessment under this paragraph.

(c) If, after a town sanitary district or town first levies a special assessment for the construction of a sewerage or water system in a service area, the eligible farmland in that service area exempted from the special assessment under sub. (2) is not devoted exclusively to agricultural use for a period of one year or more, the town sanitary district or town may levy on that eligible farmland the special assessment for the construction of a sewerage or water system that it would have levied if the eligible farmland had not been exempt under sub. (2). The town sanitary district or town may also charge interest, from the date the eligible farmland has not been devoted exclusively to agricultural use for a period of at least one year, on the special assessment at an annual rate that does not exceed the average interest rate paid by the district or town on its obligations between the time the district or town first levies a special assessment for the construction of a sewerage or water system in the service area in which the eligible farmland is located and the time it levies the special assessment on that eligible farmland. This paragraph does not apply to any land unless the town or special purpose district records a lien on that eligible farmland in the office of the register of deeds within 90 days after it first levies a special assessment for the construction of a sewerage or water system in the service area in which the eligible farmland is located, describing the exemption under sub. (2) and the potential for a special assessment under this paragraph.

History: 1999 a. 150 ss. 208, 530; Stats. 1999 s. 66.0721.

A “parcel” under sub. (1) (b) is a contiguous portion of land greater than 35 acres regardless of the number of parcels into which it might be divided for tax purposes. *Bender v. Town of Kronenwetter*, 2002 WI App 284, 258 Wis. 2d 321, 654 N.W.2d 57, 02–0403.

66.0723 Utilities, special assessments. (1) If a city, village or town constructs, extends or acquires by gift, purchase or otherwise a distribution system or a production or generating plant for the furnishing of light, heat or power to any municipality or its inhabitants, the city, village or town may assess all or some of the cost to the property benefited, whether abutting or not, in the same manner as is provided for the assessment of benefits under s. 66.0703.

(2) Special assessments under this section may be made payable and certificates or bonds issued under s. 66.0713. In a city, village or town where no official paper is published, notice may be given by posting the notice in 3 public places in the city, village or town.

History: 1993 a. 246; 1999 a. 150 s. 233; Stats. 1999 s. 66.0723.

66.0725 Assessment of condemnation benefits. (1)

As a complete alternative to any other method provided by law, for the purpose of payment of the expenses, including the excess of damages and all other expenses and costs, incurred for the taking of private property for the purpose set forth in ss. 32.02 (1), 61.34 (3) and 62.22, the governing body of a town, city or village may, by resolution, levy and assess the whole or any part of the expenses, as a special assessment upon the property that the governing body determines is specially benefited by the taking. The governing body shall include in the levy the whole or any part of the excess of benefits over total damages, if any, and make a list of every lot or parcel of land assessed, the name of the owner, if known, and the amount levied on the property.

(2) The resolution under sub. (1) shall be published as a class 2 notice, under ch. 985, with a notice that at the time and place stated the governing body will meet and hear objections to the assessment. If the resolution levies an assessment against property outside the corporate limits, notice shall be given by mailing a copy of the resolution and the notice by registered mail to the last-known address of the owner of the property. A copy of the resolution shall be filed with the clerk of the town in which the property is located.

(3) At the time fixed the governing body shall meet and hear objections, and for that purpose may adjourn to a date set by the

governing body, until the hearing is completed, and shall by resolution confirm or modify the assessment in whole or in part. At any time before the first day of the next November any party liable may pay the assessment to the town, city or village treasurer. On November 1, if the assessment remains unpaid, the treasurer shall make a certified statement showing what assessments under this section remain unpaid, and file the statement with the clerk, who shall place the unpaid assessments on the tax roll for collection.

(4) The town clerk shall enter on the tax roll the benefits not offset by damages or an excess of benefits over damages which are levied as a special assessment under this section by a city or village on land in the town and shall collect the assessment in the same manner as other taxes. The assessments collected shall be paid over to the city or village treasurer to be applied in payment of any damages or excess of damages over benefits awarded by the assessment. If the amount of special assessments is insufficient to pay all damages or excess of damages over benefits awarded, the difference shall be paid by the city or village. Damages or excess of damages over benefits may be paid out of the fund before the collection of the special assessments and reimbursed when collected.

(5) Any person against whose land an assessment of benefits is made under this section may appeal as prescribed in s. 32.06 (10) within 30 days of the adoption of the resolution required under sub. (3).

History: 1999 a. 150 s. 546; Stats. 1999 s. 66.0725.

66.0727 Special assessments against railroad for street improvement. (1) (a) If a city, village or town improves a street, alley or public highway within its corporate limits, including by grading, curbing or paving, if the entire or partial cost of the improvement is assessed against abutting property, and if the street, alley or public highway is crossed by the track of a railroad engaged as a common carrier, the common council or board of public works of the city, or the village or town board, shall, at any time after the completion and acceptance of the improvement by the municipality, file with the local agent of the railroad corporation operating the railroad a statement showing the amount chargeable to the railroad corporation for the improvement.

(b) The amount chargeable to the railroad corporation is the amount equal to the cost of constructing the improvement along the street, alley or public highway immediately in front of and abutting its right-of-way on each side of the street, alley or public highway at the point where the track crosses the street, alley or public highway, based upon the price per square yard, lineal foot or other unit of value used in determining the total cost of the improvement.

(2) The amount charged against a railroad corporation for improving the street, alley or public highway, fronting or abutting its right-of-way, may not exceed the average amount per front foot assessed against the remainder of the property fronting or abutting on the improved street, alley or public highway. The amount calculated under sub. (1) and contained in the statement is due and payable by the railroad corporation to the municipality filing the statement within 30 days of the date when the statement is presented to the local representative of the railroad corporation.

(3) If a railroad corporation fails or refuses to pay a city, village or town the amount set forth in any statement or claim for street, alley or public highway improvements under this section within the time specified in the statement, the city, village or town has a claim for that amount against the railroad corporation and may maintain an action in any circuit court within this state to recover the amount in the statement.

(4) This section does not preclude a city, village or town from using any other lawful method to compel a railroad corporation to pay its proportionate share of a street, alley or public highway improvement.

History: 1977 c. 72; 1993 a. 246, 490; 1995 a. 225; 1999 a. 150 ss. 209, 552, 554; Stats. 1999 s. 66.0727.

66.0729 Improvement of streets by abutting railroad company. (1) If the track of a railroad is laid upon or along a street, alley or public highway within any city, village or town, the corporation operating the railroad shall maintain and improve the portion of the street, alley or public highway that is occupied by its tracks. The railroad corporation shall grade, pave or otherwise improve the portion of the street, alley or public highway in the manner and with the materials that the common council of the city or the village or town board determines. The railroad corporation is not required to pave or improve that portion of the street, alley or public highway occupied by it with different material or in a different manner from that in which the remainder of the street is paved or improved. The railroad corporation is liable to pay for paving, grading or otherwise improving a street, alley or public highway only to the extent that the actual cost of the improvement exceeds the estimated cost of the improvement were the street, alley or public highway not occupied by the tracks of the railroad.

(2) If a city, village or town orders a street, alley or public highway to be paved, graded, curbed or improved, as provided in sub. (1), the clerk of the city, village or town shall serve the local agent of the railroad corporation a notice setting forth the action taken by the city, village or town relative to the improvement of the street, alley or public highway.

(3) If the railroad corporation elects to construct the street, alley or public highway improvement, it shall within 10 days of the receipt of the notice from the clerk of the city, village or town, file with the clerk a notice of its intention to construct the street, alley or public highway improvement, and it shall be allowed until the following June 30 to complete the work, unless the work is ordered after May 20 of any year, and in that case the railroad corporation shall be allowed 40 days from the time the clerk of the municipality presents the notice to the railroad agent in which to complete the work.

(4) If a city, village or town orders a street, alley or public highway improved under sub. (1) and serves notice on the railroad corporation under sub. (2) and the railroad corporation elects not to construct the improvement or elects to construct the improvement but fails to construct the improvement within the time under sub. (3), the city, village or town shall let a contract for the construction of the improvement and improve the street, alley or public highway as determined under sub. (1). When the improvement is completed and accepted by the city, village or town, the clerk of the city, village or town shall present to the local agent of the railroad corporation a statement of the actual cost of the improvement and the railroad corporation shall, within 20 days of receipt of the statement, pay the treasurer of the city, village or town the amount shown by the statement.

(5) If a railroad corporation fails to pay the cost of constructing any pavement or other street improvement under sub. (1), the city, village or town responsible for the improvement may enforce collection of the amount by an action against the railroad corporation as provided in s. 66.0727 (3).

(6) This section does not preclude a city, village or town from using any other lawful method to compel a railroad corporation to pay its proportionate share of a street, alley or public highway improvement.

History: 1977 c. 72; 1993 a. 246; 1999 a. 150 ss. 210, 555, 556, 558, 560; Stats. 1999 s. 66.0729.

66.0731 Reassessment of invalid condemnation and public improvement assessments. (1) If in an action, other than an action under s. 66.0703 (12), involving a special assessment, special assessment certificate, bond or note or tax certificate based on the special assessment, the court determines that the assessment is invalid for any cause, it shall stay all proceedings, frame an issue and summarily try the issue and determine the amount that the plaintiff justly ought to pay or which should be justly assessed against the property in question. That amount shall be ordered to be paid into court for the benefit of the parties entitled to the amount within a fixed time. Upon compliance with

66.0731 MUNICIPAL LAW

the order judgment shall be entered for the plaintiff with costs. If the plaintiff fails to comply with the order the action shall be dismissed with costs.

(2) If the common council, village board or town board determines that any special assessment is invalid for any reason, it may reopen and reconsider the assessment as provided in s. 66.0703 (10).

History: 1983 a. 532; 1987 a. 378; 1999 a. 150 s. 547; Stats. 1999 s. 66.0731.

66.0733 Repayment of assessments in certain cases.

If a contract for improvements entered into by a governmental unit authorized to levy special assessments is declared void by a court of last resort, the governing body may provide that all persons who have paid all or any part of any assessment levied against the abutting property owners because of the improvement may be reimbursed the amount of the assessment, paid from the fund, that the governing body determines. This section applies to contracts for improvements that are void for any of the following reasons:

(1) There was insufficient authority to make the contract.

(2) The contract was made contrary to a prohibition against contracting in other than a specified way.

(3) The contract was prohibited by statute.

History: 1993 a. 246; 1999 a. 150 s. 501; Stats. 1999 s. 66.0733.

SUBCHAPTER VIII

PUBLIC UTILITIES

66.0801 Definitions; effect on other authority. (1) In this subchapter:

(a) “Municipal public utility” means a public utility owned or operated by a city, village or town.

(b) “Public utility” has the meaning given in s. 196.01 (5).

(2) Sections 66.0803 to 66.0825 do not deprive the office of the commissioner of railroads, department of transportation or public service commission of any power under ss. 195.05 and 197.01 to 197.10 and ch. 196.

History: 1999 a. 150.

66.0803 Acquisition of public utility or bus transportation system. (1)

(a) A town, village or city may construct, acquire or lease any plant and equipment located in or outside the municipality, including interest in or lease of land, for furnishing water, light, heat or power, to the municipality or its inhabitants; may acquire a controlling portion of the stock of any corporation owning private waterworks or lighting plant and equipment; and may purchase the equity of redemption in a mortgaged or bonded waterworks or lighting system, including cases where the municipality in the franchise has reserved right to purchase. The character or duration of the franchise, permit or grant under which any public utility is operated does not affect the power to acquire the public utility under this subsection. Two or more public utilities owned by the same person or corporation, or 2 or more public utilities subject to the same lien or charge, may be acquired as a single enterprise. The board or council may agree with the owner or owners of any public utility or utilities on the value of the utility or utilities and may contract to purchase or acquire at that value, upon those terms and conditions mutually agreed upon between the board or council and the owner or owners.

(b) A resolution, specifying the method of payment and submitting the question to a referendum, shall be adopted by a majority of all the members of the board or council at a regular meeting, after publication at least one week previous in the official paper.

(c) The notice of the referendum shall include a general statement of the plant and equipment proposed to be constructed, acquired or leased and of the manner of payment.

(d) Referenda under this section may not be held oftener than once a year, except that a referendum held for the acquisition, lease or construction of any of the types of property enumerated

in par. (a) does not bar the holding of one referendum in the same year for the acquisition and operation of a bus transportation system by the municipality.

(e) The provisions of pars. (b) to (d) do not apply to the acquisition of any plant, equipment or public utility for furnishing water service when the plant, equipment or utility is acquired by the municipality by dedication or without monetary or financial consideration. After a public utility is constructed, acquired or leased under this subsection, pars. (b) to (d) do not apply to any subsequent construction, acquisition or lease in connection with that public utility.

(2) (a) A city, village or town may by action of its governing body and with a referendum vote provide, acquire, own, operate or engage in a municipal bus transportation system where no existing bus, rail or other local transportation system exists in the municipality. A city, village or town in which there exists any local transportation system by similar action and referendum vote may acquire, own, operate or engage in the operation of a municipal bus transportation system upon acquiring the local transportation system by voluntary agreement with the owners of the system, or pursuant to law, or upon securing a certificate from the department of transportation under s. 194.23.

(b) A street motor bus transportation company operating pursuant to ch. 194 shall, by acceptance of authority under that chapter, be deemed to have consented to a purchase of its property actually used and useful for the convenience of the public by the municipality in which the major part of the property is situated or operated.

(c) A city, village or town providing or acquiring a motor bus transportation system under this section may finance the construction or purchase in any manner authorized for the construction or purchase of a public utility.

History: 1977 c. 29 s. 1654 (9) (f); 1981 c. 347 ss. 13, 80 (2); 1985 a. 187; 1993 a. 16, 246; 1999 a. 150 ss. 172 to 174; Stats. 1999 s. 66.0803.

This section is not a restriction upon the authority granted to the department of natural resources by s. 144.025 (2) (r) [now s. 281.19 (5)] to order the construction of a municipal water system, but constitutes merely an alternative by which a municipality may voluntarily construct or purchase a water utility. Village of Sussex v. DNR, 68 Wis. 2d 187, 228 N.W.2d 173 (1975).

Section 66.065 [now s. 66.0803], which requires a municipality to obtain voter approval through a referendum prior to the construction or acquisition of a waterworks, does not apply when a municipality is ordered to construct a public water supply system pursuant to s. 144.025 (2) (r) [now s. 281.19 (5)]. 60 Atty. Gen. 523.

66.0805 Management of municipal public utility by commission. (1)

Except as provided in sub. (6), the governing body of a city shall, and the governing body of a village or town may, provide for the nonpartisan management of a municipal public utility by creating a commission under this section. The board of commissioners, under the general control and supervision of the governing body, shall be responsible for the entire management of and shall supervise the operation of the utility. The governing body shall exercise general control and supervision of the commission by enacting ordinances governing the commission's operation. The board shall consist of 3, 5 or 7 commissioners.

(2) The commissioners shall be elected by the governing body for a term, beginning on the first day of October, of as many years as there are commissioners, except that the terms of the commissioners first elected shall expire successively one each year on each succeeding first day of October.

(3) The commission shall choose a president and a secretary from its membership. The commission may appoint and establish the compensation of a manager. The commission may command the services of the city, village or town engineer and may employ and fix the compensation of subordinates as necessary. The commission may make rules for its proceedings and for the government of the department. The commission shall keep books of account, in the manner and form prescribed by the department of transportation or public service commission, which shall be open to the public.

(4) (a) The governing body of the city, village or town may provide that departmental expenditures be audited by the commis-

TITLE XX

TRANSPORTATION

CHAPTER 231

CITIES, TOWNS AND VILLAGE DISTRICT HIGHWAYS

Laying Out Highways

Section 231:1

231:1 Class IV, V and VI. – All class IV highways not financed in whole or in part with federal aid highway funds, and class V and VI highways shall be laid out by the mayor and aldermen of the city, the selectmen of the town or the commissioners of a village district formed for the purpose of RSA 52:1, I (m) in which such highways are located, or by the superior court as hereinafter provided. In the case of a village district formed for the purpose of RSA 52:1, I(m), references in this title to ""town" and ""selectmen" shall be deemed to be references to ""village district" and ""village district commissioners", respectively.

Source. 1945, 188:1, part 3:2. RSA 232:2. 1967, 157:2. 1975, 455:3. 1981, 87:1, eff. April 20, 1981.

Section 231:2

231:2 Class IV Compact Section Highways. – All class IV highways shall be wholly constructed, reconstructed and maintained by the city or town in which they are located, and no state funds shall be expended thereon except as may be authorized by RSA 235.

Source. 1945, 188:1, part 2:7. 1949, 79:2. RSA 231:7. 1955, 333:1. 1981, 87:1, eff. April 20, 1981.

Section 231:3

231:3 Class V Town Roads. –

I. All class V highways shall be constructed, reconstructed, and maintained by the city or town in which they are located; provided, however, that town road aid may be used for such purposes, and town bridge aid may be used for the construction or reconstruction of any bridge thereon, as hereinafter provided.

II. If a city or town accepts from the state a class V highway established to provide a property owner or property owners with highway access to such property because of a taking under RSA 230:14, then notwithstanding RSA 229:5, VII, such a highway shall not lapse to class VI status due to failure of the city or town to maintain and repair it for 5 successive years, and the municipality's duty of maintenance shall not terminate, except with the written consent of the property owner or property owners.

Source. 1945, 188:1, part 2:8. RSA 231:8. 1981, 87:1. 1995, 77:2, eff. June 8, 1995.

Section 231:4

231:4 Village Districts Not Eligible for Road Funds. – Notwithstanding the provisions of RSA

Memo to: Bruce Woodruff
Date: November 15, 2007

**New Hampshire State Statute: Title XX, Chapter 31, Cities, Towns and Village District
Highways, Section 231:120 through 231:125**

231:119 Borrowing Power. – Municipalities may finance the construction of public parking facilities by issuing bonds or notes, which bonds or notes shall conform to and be issued in accordance with the provisions of RSA 33 insofar as the same may be applicable. All such bonds or notes shall be issued for public parking facilities pursuant to a plan as provided in this subdivision which provides that an amount equal to at least 50 percent of the principal of such bonds or notes are to be assessed as provided in this subdivision, raised by motor vehicle permit fees as provided in RSA 261:154, or funded from the revenues of the parking system, or any combination thereof, shall at no time be included in the net indebtedness of the municipality for the purpose of ascertaining its borrowing capacity.

Source. RSA 252-A:6. 1969, 493:1. 1981, 87:1, eff. April 20, 1981; 146:5, XIV, eff. Jan. 1, 1982; 146:7, V, eff. May 22, 1981.

Section 231:120

231:120 Levying Assessments for Public Parking Facilities. –

I. The assessors of any municipality which has constructed public parking facilities, upon direction from the legislative body and in accordance with the plan adopted, shall assess in the manner provided in paragraph II of this section upon the owners or lessees of leasehold interests, whose lands receive special benefits therefrom, their just share of the cost of construction of the same. All assessments thus made shall be valid and binding upon the owners or lessees of such land. The funds collected from assessments shall be used solely for the construction of public parking facilities or for the redemption of bonds or notes issued by the municipality to obtain funds for the construction of public parking facilities, including funds paid to a housing authority for the construction of public parking facilities.

II. The plan may provide that assessments shall be made:

(a) At one time and assessments so made may be prorated over a period not exceeding the number of years which the plan shall provide to defray the construction costs of the public parking facilities; or

(b) From year to year upon the owners or lessees of leasehold interests at the time such assessment is made, their just proportion of the construction costs which shall become due in that year, including the amount of principal and interest due during the year on any bonds or notes issued to provide funds to pay such construction costs.

Source. RSA 252-A:7. 1969, 493:1. 1981, 87:1, eff. April 20, 1981.

Section 231:121

231:121 Basis of Assessment. – Assessments shall be levied according to a formula which shall be set forth in the plan and which shall be reasonable and proportional to the benefits conferred upon the land or leasehold interest upon which such assessment is laid. Such formula may, but need not necessarily, be based on the number of off-street parking spaces required to be furnished by owners of land under any lawful zoning ordinances or bylaw in effect or which may be adopted by the municipality. If the formula based on a zoning ordinance requirement of off-street parking is used, the plan may provide for credit to those owners or lessees who have erected or constructed private parking structures, but need not provide credit for private parking lots.

Source. RSA 252-A:8. 1969, 493:1. 1981, 87:1, eff. April 20, 1981.

Section 231:122

231:122 Assessment for Operating Expenses. – In order to defray the costs of the operation and maintenance of such public facilities, the assessors may assess upon the owners and lessees whose land

is benefited by such public parking facilities their just share of the annual operating expenses of the same. The assessors may establish a scale of assessments and prescribe the manner in which and the time at which such assessments are to be paid and to change such scale from time to time as may be deemed advisable.

Source. RSA 252-A:9. 1969, 493:1. 1981, 87:1, eff. April 20, 1981.

Section 231:123

231:123 Special Account. – The funds received from the collection of assessments provided in RSA 231:122 shall be deposited by the treasurer of the municipality in a special account which in any fiscal year shall be used only to pay the operating expenses of the public parking facilities. Any surplus in such account at the end of the fiscal year may be used for the enlargement or replacement of the public parking facilities but shall not be used for any other purpose than those above specified.

Source. RSA 252-A:10. 1969, 493:1. 1981, 87:1, eff. April 20, 1981.

Section 231:124

231:124 Lien for Assessment or Rentals. – All assessments under the provisions of RSA 231:120 and 122 shall create a lien upon the lands on account of which they are made, which shall continue until one year from October 1 following the assessment, and, in case an appeal has been taken and the assessment has been sustained in whole or in part upon such appeal, until the expiration of one year from such decision, whichever is later. Such assessments shall be subject to the interest and such other charges as are applicable to delinquent taxes. In the event that the assessments are payable over a period of years, then the assessment shall be prorated on an annual basis and the lien on said lands shall attach annually.

Source. RSA 252-A:11. 1969, 493:1. 1981, 87:1, eff. April 20, 1981.

Section 231:125

231:125 Collection of Assessments. – Assessments provided in RSA 231:120 and 122 shall be committed to the collector of taxes, with a warrant under the hands and seal of the assessors requiring him to collect them; and he shall have the same rights and remedies and be subject to the same liabilities in relation thereto as in the collection of taxes.

Source. RSA 252-A:12. 1969, 493:1. 1981, 87:1, eff. April 20, 1981.

Section 231:126

231:126 Abatement of Assessments. – For good cause shown, the assessors may abate any such assessment made by them or by their predecessors.

Source. RSA 252-A:13. 1969, 493:1. 1981, 87:1, eff. April 20, 1981.

Section 231:127

231:127 Petition to Court. – If the assessors neglect or refuse to abate any such assessments, any

person aggrieved may apply by petition to the superior court for relief at any time within 90 days after notice of the assessment, and not afterwards; and the court shall make such order thereon as justice may require.

Source. RSA 252-A:14. 1969, 493:1. 1981, 87:1, eff. April 20, 1981.

Section 231:128

231:128 Correction of Assessments. – If any error is made in any such assessment it may be corrected by the assessors by making an abatement and a new assessment, or either, as the case may require; and the same lien, rights, liabilities and remedies shall attach to the new assessment as to the original.

Source. RSA 252-A:15. 1969, 493:1. 1981, 87:1, eff. April 20, 1981.

Section 231:129

231:129 Optional Referendum; Two-Thirds Vote of Legislative Body. –

I. Referendum. If the legislative body of a municipality affected by this subdivision desires to place the question of approving a plan formulated pursuant to this subdivision on a referendum, they may do so at any regular municipal election or at a special election called for the purpose. Should a referendum be held, the following question shall be submitted ""Shall the legislative body of the city of () be instructed to approve the plan submitted to it concerning the construction of parking facilities?" The legislative body shall be bound by the outcome of the referendum.

II. Two-Thirds Vote. If the legislative body should decide not to place the question of approving a plan formulated pursuant to this subdivision on a referendum, a 2/3 vote of the entire membership of the legislative body shall be necessary in order to approve such plan.

Source. RSA 252-A:16. 1969, 493:1. 1981, 87:1, eff. April 20, 1981.

Parking Meters

Section 231:130

231:130 Power to Install. – The city council of any city shall have the power to authorize the installation of parking meters on any street or public parking area and the power to establish reasonable charges for parking to be paid through such meters and the powers to make any incidental use of such meters for advertising as may be desirable, provided such use does not interfere with the regulation and control of traffic. Towns likewise may at any legal meeting vote to authorize the installation of parking meters and establish reasonable charges for parking to be paid through such meters and shall have the power to make any incidental use of such meters for advertising as may be desirable, provided such use does not interfere with the regulation and control of traffic.

Source. 1947, 74:1. 1951, 172:1. RSA 249:1. 1981, 87:1, eff. April 20, 1981.

Section 231:130-a

231:130-a Notification of Unpaid Fines. –

I. The legislative body of any municipality may adopt the provisions of this section. Each