CHAPTER 452

MUNICIPAL OWNERSHIP OF UTILITIES

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452.01 DEFINITIONS.

Subdivision 1. **Words, terms, and phrases.** Unless the language or context clearly indicates that a different meaning is intended, the words, terms, and phrases defined in subdivision 3, for the purposes of sections 452.08 to 452.13, shall be given the meaning subjoined thereto.

Subd. 2. [Repealed, 1976 c 44 s 70]

Subd. 3. **Public utilities.** "Public utilities" shall include street railways, telephones, waterworks, gas works, electric light, heat or power works, public docks, union depots and terminal systems, ice plants, stone quarries, creosoting works, and public markets.

History: *(1311, 1484) 1907 c 452 s 1; 1913 c 310 s 1; 1976 c 44 s 47; 1987 c 384 art 2 s 1*

452.02 [Repealed, 1976 c 44 s 70]

452.03 [Repealed, 1976 c 44 s 70]

452.04 [Repealed, 1976 c 44 s 70]

452.05 [Repealed, 1976 c 44 s 70]

452.06 [Repealed, 1976 c 44 s 70]

452.07 [Repealed, 1976 c 44 s 70]

452.08 ACQUISITION AND OPERATION.

Every city of the first class in this state shall have the power to own, construct, acquire, purchase, maintain, and operate any public utility within its corporate limits, and to lease the same, or any part of the same, to any company incorporated under the laws of this state, for the purpose of operating such public utility for any period not longer than 20 years, on such terms and conditions as the council shall deem for the best interests of the public.

Any city of the first class now owning and operating its own waterworks, or other public utilities, may continue to own and operate the same in the same manner as if now authorized by law to own and operate the same, without submitting any proposition so to do to the electors thereof, and it may by a three-fifths vote of the council or other governing body and without submission to the electors thereof issue bonds and certificates of indebtedness in the manner and proportions provided in sections 452.08 to 452.13 for the purpose of refunding all bonds issued for the construction and creation of the utility, and the remainder of the proceeds thereof, if any, shall be covered into the treasury of the city as a sinking fund for the redemption of any existing bonds, or for the purchase and acquisition of any new bonds of the city offered by the city.

It shall be lawful for any city of the first class to incorporate in any grant of the right to construct or operate any public utility, a reservation of the right on the part of the city to take over all or part of the public utility, at or before the expiration of the grant upon such terms and conditions as may be provided in the grant; it shall also be lawful to provide in the grant, that in case the reserved right be not exercised by the city and it shall grant a right to another company to operate the public utility in the streets and parts of streets occupied by its grantee under the former grant, the new grantee shall purchase and take over the public utility of the former grantee, upon the terms that the city might have taken it over, and it shall be lawful for the council of the city to make the grant containing such a reservation for either the construction or operation or both the construction and operation of the public utility, in, upon, and along any of the public streets, alleys, or ways therein, or portions thereof, in which the public utility is already located at the time of making the grant, without the petition or consent of any of the owners of the land abutting or fronting upon any street, public alley, or way, or portion thereof, covered by the grant.

No ordinance authorizing the lease of any public utility for any period, nor any ordinance renewing any lease, shall go into effect until the expiration of 60 days from and after its passage. If, within these 60 days, there is filed with the clerk of the city a petition signed by ten percent of the voters voting at the last preceding election for mayor, in the city, asking that the ordinance be submitted to a popular vote, then the ordinance shall not go into effect unless the question of the adoption of the ordinance shall first be submitted to the electors of the city and are approved by a majority of those voting thereon.

The signatures of the petition need not all be appended to one paper, but after each signer's signature, which shall be in the signer's own handwriting, the signer shall add the place of residence, giving the street number. One of the signers of each paper shall make oath before an officer competent to administer oaths that each signature to the paper appended is the signature of the person whose name purports to be thereto subscribed. The council of any city which shall decide by vote of its electors to acquire or construct any public utility, shall have the power, unless otherwise provided by law, to make all needful rules and regulations respecting the operation of the same, including the power to fix and prescribe rates and charges. For the purpose of acquiring a public utility either by purchase or construction, as provided for in sections 452.08 to 452.13, or for the equipment of any such public utility, and in addition to the certificates of indebtedness provided for in section 452.09, any city may borrow money and issue its negotiable bonds to an amount not exceeding one-fifth the cost thereof, pledging the faith and credit of the city therefor; but no such bonds shall be issued until the question of the issuance of certificates of indebtedness shall have been approved by a majority of the electors voting thereon as provided for in section 452.09, and then only upon a three-fifths vote of the council or other governing body. In the exercise of any of the powers, granted by sections 452.08 to 452.13, any city shall have power to acquire, take, and hold any and all franchises and necessary property, real, personal, or mixed, for the purposes specified in sections 452.08 to 452.13, either by purchase or condemnation in the manner provided by law for the taking and condemning of private property for public use, but in no valuation of public utility property for the purpose of any such acquisition, except of public utilities now operating under existing franchises shall any sum be included as the value of any earning power of the utility, or of the unexpired portion of any franchise granted by the city.

In case of the leasing by any city of any public utility owned by it, the rental reserved shall be based on both the actual value of the tangible property and of the franchise contained in the lease, and the rental shall not be less than a sufficient sum to meet the annual interest upon all outstanding bonds or certificates issued by the city on account of any such public utility.

History: *(1485) 1913 c 310 s 2; 1986 c 444; 1987 c 384 art 2 s 1*

452.09 LIMIT OF BONDS AND CERTIFICATES.

In addition to the bonds pledging the faith and credit of the city, as provided for in section 452.08, any city of the first class may issue and dispose of interest-bearing certificates, which shall be a lien or charge against the public utility property for the acquisition or construction of which they were issued and shall be payable out of the specified portion of the revenues or income to be derived therefrom, but which shall under no circumstances be or become an obligation or liability of the city or payable out of the general funds thereof, nor shall the certificates be deemed a part of the indebtedness of the city for any purpose. The certificates, together with the bonds provided for in section 452.08, shall not be issued on the public utility property in an amount in excess of the cost to the city of the property as provided in section 452.08, and ten percent of the cost in addition thereto. In order to secure the payment of the public utility certificates and the interest thereon, the city may convey, by way of mortgage or deed of trust, any or all of the property thus acquired or to be acquired through the issue thereof; which mortgage or deed of trust shall be executed in such a manner as directed by the council and acknowledged and recorded in the manner provided by law for the acknowledgment and recording of mortgages of real estate, and may contain such conditions and provisions, not in conflict with the provisions of sections 452.08 to 452.13, as may be deemed necessary to fully secure the payment of the certificates described therein. The mortgage or deed of trust may carry the grant of a privilege or right to maintain and operate the property covered thereby, for a period not exceeding 20 years from and after the date the property may come in the possession of any person or corporation as a result of foreclosure proceedings; which privilege or right may fix the rates which the person or corporation securing the same as a result of the foreclosure proceedings shall be entitled to charge in the operation of the property, for a period not exceeding 20 years. When, and as often as default shall be made in the payment of the certificate issued or secured by mortgage or deed of trust, or in the payment of the interest thereon when due, and the default shall have continued for the space of 12 months after notice thereof has been given to the mayor and financial officer of the city issuing the certificates, it shall be lawful for the mortgagee or trustee, upon the request of the holder or holders of a majority in amount of the certificates issued and outstanding under the mortgage or deed of trust, to declare the whole of the principal of all the certificates outstanding to be at once due and payable, and to proceed to foreclose the mortgage or deed of trust in any court of competent jurisdiction. At a foreclosure sale, the mortgagee or the holders of the certificates may become the purchaser or purchasers and the rights and privileges sold, if the mortgagee or the holders be the highest bidders. Any public utility acquired under the foreclosure shall be subject to regulation by the corporate authorities of the city to the same extent as if the right to construct, maintain, and operate the property had been acquired through a direct grant without the intervention of foreclosure proceedings; provided, that no such public utility certificates or mortgage shall ever be issued by any city under the provisions of sections 452.08 to 452.13, unless and until the question of the adoption of the ordinance of the council making provision of the issue thereof shall have first been submitted to a popular vote and approved by a majority of the qualified voters of the city voting upon the question.

History: *(1486) 1913 c 310 s 3; 1986 c 444; 1987 c 384 art 2 s 1*

452.10 BOOKS; REPORT.

Every city of the first class owning and operating a public utility shall keep the books of account for the public utility distinct from other city accounts, and in such manner as to show the true and complete financial results of the city ownership, or ownership and operation, as the case may be. These accounts shall be so kept as to show the actual cost to the city of the public utilities owned; all cost of maintenance, depreciation, extension, and improvement; all operating expenses of every description, in case of city operation; the

amount set aside for sinking fund purposes. The council shall cause to be printed annually, for public distribution, a report showing the financial results of the city ownership, or ownership and operation.

History: *(1487) 1913 c 310 s 4*

452.11 SUBMISSION TO VOTERS.

No city of the first class shall acquire or construct any public utility under the terms of sections 452.08 to 452.13 unless the proposition to acquire or construct same has first been submitted to the qualified electors of the city at a general city election or at a special election called for that purpose, and been approved by a majority vote of all electors voting upon the proposition.

The question of issuing public utility certificates as provided in section 452.09 may, at the option of the council, be submitted at the same election as the question of the acquisition or construction of the public utility.

History: *(1488) 1913 c 310 s 5; 1987 c 384 art 2 s 1*

452.12 SUBMISSION; ELECTION.

In all cases provided in sections 452.08 to 452.13 for the submission of questions or propositions to popular vote the council shall pass an ordinance stating the substance of the proposition or question to be voted upon and designating the election at which the question or proposition is to be submitted, which may be at any general or city election or special election called for that purpose; provided, that the election shall not be held sooner than 30 days from and after the passage of the ordinance.

Notice of special election which shall be held in any city of the first class under sections 452.08 to 452.13 and all proceedings respecting the same shall conform as nearly as may be to the law governing other special elections therein.

All ballots, as to any proposition or question submitted pursuant to the terms of sections 452.08 to 452.13 shall be delivered to the election judges, shall be deposited in a separate box and shall be counted, canvassed, and returned, as is provided by law in case of other ballots, and the tally sheets and return blanks shall contain suitable columns and spaces therefor.

No defect or omission in the calling, giving notice, or holding of any election under sections 452.08 to 452.13 shall in any manner affect the validity of the election unless it shall affirmatively appear that the defect or omission changed the result of the election.

History: *(1489) 1913 c 310 s 6; 1987 c 384 art 2 s 1*

452.13 TERM OF GRANT OR LEASE.

Nothing in sections 452.08 to 452.13 contained shall be construed to authorize any city of the first class to make any grants or to lease any public utility for a period exceeding 20 years from the making of the grant or lease; provided, that when a right to maintain and operate a public utility for a period not exceeding 20 years is contained in a mortgage or deed of trust to secure any of the certificates (and no such right shall be implied), the period shall commence as provided in section 452.09.

History: *(1490) 1913 c 310 s 7; 1987 c 384 art 2 s 1*

452.14 [Repealed, 1980 c 460 s 32]

452.18 [Repealed, 1976 c 44 s 70]

452.19 [Repealed, 1976 c 44 s 70]

452.20 [Repealed, 1976 c 44 s 70]

JOINT VENTURES

452.25 JOINT VENTURES BY UTILITIES.

Subdivision 1. **Applicability.** This section applies to all home rule charter and statutory cities, except as provided in Laws 2001, chapter 212, article 2, section 2.

Subd. 2. **Definitions.** For purposes of this section:

(a) "City" means a statutory or home rule charter city, section 410.015 to the contrary notwithstanding.

(b) "Cooperative association" means a cooperative association organized under chapter 308A.

(c) "Governing body" means (1) the city council in a city that operates a municipal utility, or (2) a board, commission, or body empowered by law, city charter, or ordinance or resolution of the city council to control and operate the municipal utility.

(d) "Investor-owned utility" means an entity that provides utility services to the public under chapter 216B and that is owned by private persons.

(e) "Municipal power agency" means an organization created under sections 453.51 to 453.62.

(f) "Municipal utility" means a utility owned, operated, or controlled by a city to provide utility services.

(g) "Public utility" or "utility" means a provider of electric or water facilities or services or an entity engaged in other similar or related operations authorized by law or charter.

Subd. 3. **Authority.** (a) Upon the approval of its elected utilities commission or, if there be none, its city council, a municipal utility may enter into a joint venture with other municipal utilities, municipal power agencies, cooperative associations, or investor-owned utilities to provide utility services. Retail electric utility services provided by a joint venture must be within the boundaries of each utility's exclusive electric service territory as shown on the map of service territories maintained by the Department of Commerce. The terms and conditions of the joint venture are subject to ratification by the governing bodies of the respective utilities and may include the formation of a corporate or other separate legal entity with an administrative and governance structure independent of the respective utilities.

(b) A corporate or other separate legal entity, if formed:

(1) has the authority and legal capacity and, in the exercise of the joint venture, the powers, privileges, responsibilities, and duties authorized by this section;

(2) is subject to the laws and rules applicable to the organization, internal governance, and activities of the entity;

(3) in connection with its property and affairs and in connection with property within its control, may exercise any and all powers that may be exercised by a natural person or a private corporation or other private legal entity in connection with similar property and affairs;

(4) a joint venture that does not include an investor-owned utility may elect to be deemed a municipal utility or a cooperative association for purposes of chapter 216B or other federal or state law regulating utility operations; and

(5) for a joint venture that includes an investor-owned utility, the commission has authority over the activities, services, and rates of the joint venture, and may exercise that authority, to the same extent the commission has authority over the activities, services, and rates of the investor-owned utility itself.

(c) Any corporation, if formed, must comply with section 465.719, subdivisions 9, 10, 11, 12, 13, and 14. The term "political subdivision," as it is used in section 465.719, shall refer to the city council of a city.

Subd. 4. **Retail customers.** Unless the joint venture's retail electric rates, as defined in section 216B.02, subdivision 5, of a joint venture that does not include an investor-owned utility, are approved by the governing body of each municipal utility or municipal power agency and the board of directors of each cooperative association that is party to the joint venture, the retail electric customers of the joint venture, if their number be more than 25, may elect to become subject to electric rate regulation by the public utilities commission as provided in chapter 216B. The election is subject to and must be carried out according to the procedures in section 216B.026 and, for these purposes, each retail electric customer of the joint venture is deemed a member or stockholder as referred to in section 216B.026.

Subd. 5. **Powers.** (a) A joint venture under this section has the powers, privileges, responsibilities, and duties of the separate utilities entering into the joint venture as the joint venture agreement may provide, including the powers under paragraph (c), except that:

(1) with respect to retail electric utility services, a joint venture shall not enlarge or extend the service territory served by the joint venture by virtue of the authority granted in sections 216B.44, 216B.45, and 216B.47;

(2) a joint venture may extend service to an existing connected load of 2,000 kilowatts or more, pursuant to section 216B.42, when the load is outside of the assigned service area of the joint venture, or of the electric utilities party to the joint venture, only if the load is already being served by one of the electric utilities party to the joint venture; and

(3) a privately owned utility, as defined in section 216B.02, may extend service to an existing connected load of 2,000 kilowatts or more, pursuant to section 216B.42, when the load is located within the assigned service territory of the joint venture, or of the electric utilities party to the joint venture, only if the load is already being served by that privately owned utility.

(b) The limitations of paragraph (a), clauses (1) to (3), do not apply if written consent to the action is obtained from the electric utility assigned to and serving the affected service territory or connected load.

(c) Joint venture powers include, but are not limited to, the authority to:

(1) finance, own, acquire, construct, and operate facilities necessary to provide utility services to retail customers of the joint venture, including generation, transmission, and distribution facilities, and like facilities used in other utility services;

(2) combine assigned service territories, in whole or in part, upon notice to, hearing by, and approval of the public utilities commission;

(3) serve customers in the utilities' service territories or in the combined service territory;

(4) combine, share, or employ administrative, managerial, operational, or other staff if combining or sharing will not degrade safety, reliability, or customer service standards;

(5) provide for joint administrative functions, such as meter reading and billings;

(6) purchase or sell utility services at wholesale for resale to customers;

(7) provide conservation programs, other utility programs, and public interest programs, such as cold weather shutoff protection and conservation spending programs, as required by law and rule; and

(8) participate as the parties deem necessary in providing utility services with other municipal utilities, cooperative utilities, investor-owned utilities, or other entities, public or private.

(d) Notwithstanding any contrary provision within this section, a joint venture formed under this section may engage in wholesale utility services unless the municipal utility, municipal power agency, cooperative association, or investor-owned utility party to the joint venture is prohibited under current law from conducting that activity; but, in any case, the joint venture may provide wholesale services to a municipal utility, a cooperative association, or an investor-owned utility that is party to the joint venture.

(e) This subdivision does not limit the authority of a joint venture to exercise powers of eminent domain for other utility purposes to the same extent as is permitted of those utilities party to the joint venture.

Subd. 6. **Construction.** (a) The powers conferred by this section are in addition to the powers conferred by other law or charter. A joint venture under this section, and a municipal utility with respect to any joint venture under this section, have the powers necessary to effect the intent and purpose of this section, including, but not limited to, the expenditure of public funds and the transfer of real or personal property in accordance with the terms and conditions of the joint venture and the joint venture agreement. This section is complete in itself with respect to the formation and operation of a joint venture under this section and with respect to a municipal utility, a cooperative association, or an investor-owned utility party to a joint venture related to their creation of and dealings with the joint venture, without regard to other laws or city charter provisions that do not specifically address or refer to this section or a joint venture created under this section.

(b) This section must not be construed to supersede or modify:

(1) the power of a city council conferred by charter to overrule or override any action of a governing body other than the actions of the joint venture;

(2) chapter 216B;

(3) any referendum requirements applicable to the creation of a new electric utility by a municipality under section 216B.46 or 216B.465; or

(4) any powers, privileges, or authority or any duties or obligations of a municipal utility, municipal power agency, or cooperative association acting as a separate legal entity without reference to a joint venture created under this section.

History: *2001 c 212 art 2 s 1; 2006 c 214 s 20*

452.26 UTILITY JOINT VENTURE.

To provide reduced cost financing or to otherwise help in carrying out its functions, a municipal gas agency created under chapter 453A and any municipal utility authorized to provide gas facilities or services may enter into a joint venture that was incorporated before June 30, 2004, under section 452.25. The joint

venture, and any municipal gas agency which is a member of the joint venture, may provide gas utility service.

History: *2005 c 152 art 1 s 13*