Chapter 262

1991 EDITION

Joint Operating Agencies for Electric Power

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DEFINITIONS

262.005 Definitions. As used in ORS 262.015 to 262.105, unless the context requires otherwise:

(1) "Joint operating agency" means an agency organized by three or more cities or people's utility districts under the laws of this state for the purposes and according to ORS 262.005 to 262.105.

(2) "Privately owned electric utility company" means an electric utility operated for profit and subject to regulation by the Public Utility Commission of Oregon or the equivalent officer or commission of any other state.

(3) "Electric cooperative" means a cooperative corporation owning and operating an electric distribution system.

(4) "Utility properties" means plants, systems and facilities, and any enlargement or extension thereof, used for or incidental to the generation and transmission of electric power and energy; provided, however, that it shall not mean facilities for uranium refining, processing or reprocessing. [1973 c.722 §1]

262.010 [Repealed by 1969 c.12 §1]

GENERAL PROVISIONS

262.015 Authority for joint operating agency formation; powers. (1) Any three or more cities or people's utility districts or combinations thereof, organized under the laws of this state, may form a joint operating agency to plan, acquire, construct, own, operate and otherwise promote the development of utility properties in this state for the generation and transmission of electric power and energy.

(2) A joint operating agency may participate with other publicly owned utilities, including other joint operating agencies, or with electric cooperatives, or with privately owned electric utility companies, or with any combination thereof, for any purpose set forth in subsection (1) of this section, whether such agencies or utilities are organized or incorporated under the laws of this state or any other jurisdiction. However, no joint operating agency may act alone or as the managing participant to acquire, construct, own or operate utility properties, nor may a joint operating agency own more than 50 percent of any utility property, except combustion turbines.

(3) Joint operating agencies, cities, people's utility districts and privately owned utilities, or combinations thereof, may participate in joint ownership of thermal generation and transmission facilities in accordance with ORS 225.450 to 225.490 or 261.235 to 261.255. [1973 c.722 §2]

262.020 [Repealed by 1969 c.12 §1]

262.025 Procedure for joint operating agency formation. A joint operating agency shall be formed and come into existence by order of the Director of the Department of Energy in accordance with the following procedures:

(1) The legislative body of each city and people's utility district desiring to form and be a member of a joint operating agency shall adopt an ordinance declaring their intention and authorizing formation and membership. The ordinance shall be effective only if submitted to the electors of the city or people's utility district voting on the ordinance at any general election or at a special election called for that purpose. The ordinance shall include:

(a) A statement of the purpose or purposes for which the joint operating agency is to be formed.

(b) A finding by the legislative body that the formation of a joint operating agency is necessary or desirable in order to plan for and provide an adequate supply of electric energy to meet the needs of the customers of publicly owned utilities in Oregon.

(c) A statement of the projected energy loads and resources relied upon by the legislative body to support such finding.

(d) A general description of the means by which the joint operating agency proposes to accomplish its purposes, including a description of any specific utility properties then identified as a proposed activity of the joint operating agency.

(e) A statement of the financial contribution, if any, to be made by the city or district to the joint operating agency at the time of organization as a condition of membership.

(2) Upon such approval of such an ordinance or ordinances, each such city and district shall file with the director an application to form and be a member of a joint operating agency. The application shall:

(a) State the proposed name of the operating agency, the proposed address of its principal business office, and the purpose or purposes for which it is to be formed;

(b) Contain a certified copy of the ordinance of each applicant city and district as approved by the electors; and

(c) State generally how the joint operating agency proposes to accomplish its purposes.

(3) The director shall cause notice of an application to be published forthwith in the bulletin referred to in ORS 183.360. Such notice shall:

(a) Summarize fairly the contents of the application;

(b) Fix a date not less than 20 nor more than 30 days after the date of publication prior to which interested parties may submit in writing any data, views, or arguments with respect to the application; and

(c) Fix a date not less than 30 nor more than 60 days after the date of publication for the entry of an order approving or disapproving an application.

(4) In considering the application, the director shall give full and fair consideration to all data, views, and arguments submitted on behalf of the applicants or any other interested person.

(5) On or before the date fixed in paragraph (c) of subsection (3) of this section, the director shall enter an order establishing the joint operating agency in accordance with the application if the director finds (a) that the statements set forth in the application are substantially correct; (b) that formation of the proposed joint operating agency is necessary or desirable to plan for or provide an adequate supply of electric energy to meet the needs of the customers of publicly owned utilities in Oregon; and (c) that adequate provision has been or can be made for financing the activities of the joint operating agency. The joint operating agency shall be established as of the date of such order.

(6) If the director finds that the application is not in the required form or that additional data is required to support the application, the director shall enter an order so finding. Such an order shall not preclude the applicants from filing a revised application based upon the same approved ordinances.

(7) If the director does not enter an order as authorized under subsection (5) or (6) of this section within 60 days after the date of publication, the application shall be considered approved, and the joint operating agency shall be established as of such 60th day.

(8) A joint operating agency, organized as provided by this section shall have all of the powers and responsibilities contained in ORS 262.005 to 262.105.

(9) Any party who has joined in filing an application in accordance with this section, or who has filed timely objections to such application, and who feels aggrieved by any finding or order of the director shall have the right of judicial review pursuant to ORS 183.480. [1973 c.722 §3]

262.030 [Repealed by 1969 c.12 §1]

262.035 Power of agency to require financial contributions from members restricted; members contracting with agency for services. (1) A joint operating agency shall not have the right or power to levy taxes or to assess its members for financial contributions. Each member city and district shall have the power to contribute or advance to the joint operating agency, solely out of surplus funds derived from utility operations, such sums as may be duly authorized by the utility board of the city, if there is one and, if there is no utility board, by the legislative body of the city or the district.

(2) No member of a joint operating agency shall be required to obligate all or any portion of its revenues to a joint operating agency solely because of its membership.

(3) A member may, whenever authorized by its utility board if there is one and, if there is no utility board, by its legislative body, enter into contracts with the joint operating agency to purchase capacity, energy or services and, as a part of such contracts, may agree to pay to the joint operating agency such consideration and to provide such security as it may determine advisable. [1973 c.722 §4]

262.040 [Repealed by 1969 c.12 §1]

262.045 Procedure for modification of or withdrawal from agency membership. (1) After the formation of a joint operating agency, the legislative body of any city or district not a member of the joint operating agency may adopt an ordinance and apply to the joint operating agency for membership. Such an ordinance shall not be effective unless approved by electors of the city or people's utility district as provided by ORS 262.025.

(2) Upon the affirmative vote of a majority of the members of the joint operating agency, as evidenced by resolutions adopted by their respective legislative bodies and filed with the joint operating agency, an application for membership shall be accepted. As a condition of approving such an application, the members of a joint operating agency may require the applicant to make contributions or commitments to place the applicant in substantial parity with the existing members.

(3) A member may not withdraw from a joint operating agency, nor may a joint operating agency be dissolved, while the agency has outstanding revenue obligations for which repayment provision has not been

made. When a joint operating agency has no such outstanding revenue obligations:

(a) Any member may withdraw from the joint operating agency, but will thereby forfeit any and all rights and interests which it may have in the agency and the assets thereof unless the remaining members, by resolution of their respective legislative bodies and filed with the joint operating agency, unanimously consent otherwise; however, a member may not withdraw if, following its withdrawal, the joint operating agency would have less than three members. Any withdrawing member shall remain fully liable and responsible for all contractual obligations incurred by it to the joint operating agency during the period of its membership according to the terms of such obligations.

(b) The joint operating agency may be dissolved by the unanimous agreement of the members, as evidenced by resolutions adopted by their respective legislative bodies and filed with the joint operating agency. After provision has been made for the payment of all of the dissolved agency's debts and obligations, the members shall hold its remaining assets as tenants in common. [1973 c.722 §5]

262.055 Management of agency; directors; officers; meetings. (1) A joint operating agency shall be managed and controlled by a board of directors. The city's utility board, if there is one and if there is no such board, the legislative body of each member city and district shall appoint a representative to serve as a director on the board. However, if the joint operating agency has less than four members, each member shall appoint two representatives to serve as directors, each of whom shall cast one-half of the votes to which the member is entitled as provided by subsection (4) of this section. Each member may appoint one or more alternates to serve as a director in the absence or disability of a representative. Each representative and alternate shall serve at the pleasure of the legislative body of the appointing member, but no director shall serve following the withdrawal of the appointing member. Notwithstanding any other provision of law or city charter a member may appoint any of its officers and employees to serve as its representatives and alternates. A joint operating agency may provide reasonable compensation to its directors.

(2) Each director of a joint operating agency shall act as a representative of the appointing member and shall report to and be bound by the policy decisions of the utility board or legislative body thereof, as the case may be.

(3) The board of the joint operating agency shall adopt rules for calling and conducting its meetings and carrying out its business and shall adopt an official seal. All proceedings of the board shall be by motion or resolution, and shall be recorded in the minute book of the board which shall be a public record. A majority of the board shall constitute a quorum for the transaction of business; however, no motion or resolution shall be adopted unless the directors voting are entitled to cast a majority of the votes of all members of the joint operating agency.

(4) At all meetings of the board, each member city and district shall have one vote by virtue of its membership. The board of directors of a joint operating agency shall provide by resolution for voting procedures which shall take into account the relative population of the members, together with their contributions to and energy purchases from the joint operating agency, and which shall provide that the interests of smaller members will be effectively represented.

(5) The board of directors shall elect a president, vice president and secretary, who shall serve at the pleasure of the board. The officers shall perform the duties delegated to them by the board.

(6) The board of directors shall appoint a treasurer, and may appoint such other officers, agents and employees as it considers appropriate and necessary to accomplish the purposes of the joint operating agency, and may provide for their compensation, and for the duties of such other officers, agents and employees. The board may appoint trustees, paying agents, depositories and similar agents within or without the State of Oregon.

(7) All meetings of the board of directors, except meetings on matters involving the management of employees, and other labor matters, shall be open to the public. [1973 c.722 §6]

262.065 Duties of agency treasurer; disposition of funds; accounting system; reports; audit; appointment and duties of agency manager. (1) Except as permitted in ORS 262.085, the treasurer shall be custodian of all funds of the joint operating agency and shall pay them out only by order of the board, except as provided in subsection (2) of this section.

(2) The board may delegate to the treasurer standing authority to make payments of routine expenses as defined by the board.

(3) Before the treasurer enters upon the treasurer's duties, the treasurer shall give bond or an irrevocable letter of credit to the joint operating agency in an amount which the board finds by resolution will protect the agency against loss, conditioned for the faithful discharge of duties and further con-

ditioned that all funds which the treasurer receives as treasurer will be faithfully kept and accounted for. Any letter of credit shall be issued by a commercial bank as defined in ORS 706.005. The amount of the treasurer's bond may be increased or decreased from time to time as the board may by resolution direct. The surety on any such bond shall be a corporate surety authorized to do business in this state. The premiums on the bond or the fee for issuing the letter of credit of the treasurer shall be paid by the joint operating agency.

(4) All moneys of the joint operating agency shall be deposited by the treasurer in depositories designated by the board of directors, with such security as may be prescribed by the board. The treasurer shall establish a general fund and such special funds as may be created by the board, to which the treasurer shall credit all funds of the joint operating agency as the board by motion or resolution may direct.

(5)(a) The board shall adopt the uniform system of accounts prescribed from time to time by the Federal Power Commission and require that accounting for receipts and disbursements for the joint operating agency be accomplished in accordance with the uniform system of accounts.

(b) The board shall file with the Director of the Department of Energy an annual report in the form required by the Federal Power Commission.

(c) An annual audit shall be made in the manner provided in ORS 297.405 to 297.555. A copy of such audit shall be filed in the office of the Secretary of State and in the office of the Director of the Department of Energy.

(6)(a) The board of each joint operating agency may appoint a manager. The manager shall be appointed for such term and receive such salary as the board shall fix by resolution. Appointments and removals of the manager shall be by resolutions adopted by a majority vote.

(b) In case of absence or temporary disability of the manager, the board shall designate an acting manager.

(c) The manager shall be chief administrative officer of the joint operating agency, shall have control of the administrative functions of the joint operating agency and shall be responsible to the board for efficient administration of all affairs of the joint operating agency placed in the manager's charge. The manager may attend meetings of the board and its committees and take part in discussion of any matters pertaining to the manager's duties, but shall have no vote. The manager shall:

(A) Carry out orders of the board and see that all laws of this state pertaining to matters within the functions of the joint operating agency are duly enforced;

(B) Keep the board advised as to the financial condition and needs of the joint operating agency;

(C) Prepare an annual estimate for the ensuing fiscal year of the probable expenses of the joint operating agency, and recommend to the board what development work should be undertaken, and any extensions and additions which should be made during the ensuing fiscal year, with an estimate of the costs of such development work, extensions and additions;

(D) Certify to the board all bills, allowances and payrolls, including claims due contractors of public works;

(E) Recommend to the board appropriate salaries of the employees of the office, and scale of salaries or wages to be paid for different classes of service required by the joint operating agency;

(F) Hire and discharge clerks, laborers and other employees under the manager's direction; and

(G) Perform such other duties as may be imposed by the board. [1973 c.722 §7; 1977 c.774 §17; 1979 c.286 §4; 1991 c.331 §51]

262.075 Agency as state political subdivision; eminent domain powers; financial transaction powers. (1) Each joint operating agency shall be a political subdivision of the State of Oregon, and shall be a municipal corporation with the right to sue and be sued in its own name. Except as otherwise provided, a joint operating agency shall have all the powers, rights, privileges and exemptions conferred on people's utility districts.

(2) A joint operating agency shall have the power to acquire, hold, sell and dispose of real and other property, within or without this state, which the board of directors in its discretion finds reasonably necessary or incident to the generation and transmission of electric power and energy. However, such an agency shall not acquire or operate any facilities for the distribution of electric energy.

(3) A joint operating agency shall have the power of eminent domain which it may exercise for the purpose of acquiring property; however, a joint operating agency shall not condemn any properties owned by a publicly or privately owned utility which are being used for the generation or transmission of electric energy or power or are being developed for such purposes with due diligence, except to acquire a right of way to cross

such properties in a manner which will not interfere with the use thereof by the owner.

(4) A joint operating agency shall have the power to enter into contracts, leases and other undertakings considered necessary or proper by its board, including but not limited to contracts for any term relating to the purchase, sale, interchange, assignment, allocation, transfer or wheeling of power with the Government of the United States, or any agency thereof, and with any other municipal corporation or privately owned utility, or any combination thereof, within or without the state, and may purchase, deliver or receive power anywhere.

(5) A joint operating agency shall have the power to borrow money and incur indebtedness, to issue, sell and assume evidences of indebtedness, to refund and retire any indebtedness that may exist against the agency or its revenues, and to pledge any part of its revenues. A joint operating agency may borrow from banks or other financial institutions such sums on such terms as the board considers necessary or advisable. A joint operating agency may also issue, sell and assume bond anticipation notes, refunding bond anticipation notes, or their equivalent, which shall bear such date or dates, mature at such time or times, be in such denominations and in such form, be payable in such medium, at such place or places, and be subject to such terms of redemption, as the board considers necessary or advisable. The issuance and sale of revenue obligations by a joint operating agency shall be governed by ORS 262.085.

(6) The joint operating agency may apply for, accept, receive and expend appropriations, grants, loans, gifts, bequests and devises in carrying out its functions as provided by law. [1973 c.722 §8]

REVENUE OBLIGATIONS

262.085 Authority to issue revenue obligations; procedure; rights and duties created by revenue obligations; interest rate; exemption from state taxation; immunity from personal liability in connection with issuance. (1) To accomplish any of its corporate purposes, a joint operating agency shall have the power to issue revenue obligations payable from the revenues derived by it from its ownership of, or its participation in or contribution to the ownership or development of, any one or more utility properties. The issuance of such revenue obligations shall be governed by the provisions of subsections (2) to (13) of this section.

(2) The board of directors shall issue revenue obligations only by bond resolution. The bond resolution shall specify the corporate purposes for which the proceeds of the revenue obligations shall be expended, declare the cost of carrying out such purposes as nearly as possible, contain such covenants, and provide for the issuance and sale of revenue obligations in such form and amount as the directors determine. In declaring such cost, the directors may include the funds necessary for working capital, reserves, fuel and fuel assemblies, interest during construction and for a reasonable period thereafter, the payment of organizational and planning expenses, the repayment of advances and such other expenses as may be reasonably necessary to carry out the purposes of such resolution. The bond resolution may provide that utility properties subsequently acquired or constructed by the joint operating agency shall be considered betterments or additions to, or extensions of the specified utility property, whether or not physically connected.

(3) The bond resolution may provide for the establishment of one or more special funds, and such funds may be under the control of the board or one or more trustees. The bond resolution may obligate the joint operating agency to deposit and expend the proceeds of the revenue obligations only into and from such fund or funds, and to set aside and pay into such fund or funds any fixed proportion or fixed amount of the revenues derived by it from any or all of its utility properties or other corporate activities, as the board in its discretion considers in the best interest of the agency. The board may issue and sell revenue obligations payable as to interest and principal only out of such fund or funds. In creating any special fund for the payment of revenue obligations, the board shall have due regard to the cost of operation and maintenance of the joint operating agency's utility properties, and to any proportion or amount of the revenues previously pledged as a fund for the payment of revenue obligations, and shall not obligate the agency to set aside into such special fund or funds a greater amount or proportion of the revenues and proceeds than in its judgment will be available over and above such cost of maintenance and operation and the amount or proportion of the revenues previously pledged.

(4) Any revenue obligations and the interest thereon issued against any fund provided for in subsection (3) of this section shall be a valid claim of the holder thereof only as against such special fund and the proportion or amount of the revenues pledged to such fund, but shall constitute a prior charge over all other charges or claims whatsoever, against such fund and the pro-

portion or amount of the revenues pledged to the fund. Each revenue obligation shall state on its face that it is payable from a special fund, naming the fund and the resolution creating it, or shall describe the alternate method for the payment thereof as provided by the resolution authorizing the fund.

(5) Any pledge of revenues or other moneys or obligations made by a joint operating agency shall be valid and binding from the time that the pledge is made and recorded in the minute book of the joint operating agency. Revenues or other moneys or obligations so pledged and later received by a joint operating agency shall immediately be subject to the lien of the pledge without any physical delivery or further act. The lien of the pledge shall be valid and binding against any parties having claims of any kind in tort, contract or otherwise against a joint operating agency, irrespective of whether such parties have notice thereof. Neither the resolution nor other instrument by which a pledge is created need be recorded except in the minute book of the joint operating agency, nor shall the filing of any financing statement under the Uniform Commercial Code be required to perfect such pledge.

(6) The revenue obligations issued under the provisions of subsections (1) to (5) of this section shall bear such date or dates, mature in such amounts at such time or times, be in such denominations, be in such form, either coupon or registered or both, carry such registration privileges, be made transferable, exchangeable and interchangeable, be payable in such medium, at such place or places, and be subject to such terms of redemption as the board of directors shall declare in the bond resolution.

(7) Any resolution authorizing any revenue obligation, and any revenue obligation, may provide for and contain such covenants in favor of the purchaser or holder of such obligation as the board of directors shall determine to be necessary, desirable, or convenient in order to secure and protect the obligation and its purchaser or holder and to enhance the marketability of the obligation. Among other things, such covenants may define events of default, provide for the appointment of a trustee or receiver in the event of default, and provide that any such trustee or receiver may take possession and control of any portion or all of the business and property of the joint operating agency upon the occasion of any event of default.

(8) Notwithstanding any other provision of law, the revenue obligations issued by a joint operating agency may be sold by the board of directors upon such terms and conditions and at such rate or rates of interest and for such price or prices as it may consider most advantageous to the joint operating agency, with or without public bidding. The board of directors may make contracts for the future sale from time to time of revenue obligations by which the contract purchasers shall be committed to the prices, terms and conditions stated in such contract, and the board of directors may pay such consideration as it deems proper for such commitments.

(9) The board of directors may provide by resolution for the issuance of funding and refunding revenue obligations in order to take up and refund any one or more series, or portion of a series, of outstanding revenue obligations at such time or times at or prior to the maturity thereof as it may determine. Such refunding revenue obligations may be sold or exchanged at par or otherwise as the board of directors determines is in the best interest of the joint operating agency.

(10) The board of directors may provide in any contract for the construction, acquisition or improvement of utility properties that payment shall be made only in outstanding revenue obligations at their par value.

(11) All revenue obligations issued pursuant to this section shall be legal securities which may be used by any bank or trust company for deposit with the State Treasurer or a county treasurer or city treasurer, as security for deposits in lieu of a surety bond under any law relating to deposits of public moneys and shall constitute legal investments for trustees and other fiduciaries other than corporations doing a trust business in this state and for savings and loan associations, banks and insurance companies doing a trust business in the state. All such revenue obligations and all coupons appertaining thereto shall be negotiable instruments within the meaning of and for all purposes of the law of this state.

(12) All revenue obligations issued pursuant to this section, the interest thereon, and investment income therefrom shall be exempt from all taxes levied by the state, its agencies, instrumentalities, and political subdivisions.

(13) Neither the board of directors of the joint operating agency nor any person executing any revenue obligation or other evidence of indebtedness shall be liable personally thereon or shall be subject to personal liability or accountability by reason of the issuance thereof. [1973 c.722 §9]

RATES

262.095 Rates for energy furnished by agency. The board of directors shall establish rates and collect charges for electric

power and energy and related services sold, furnished or supplied by the joint operating agency. Such rates and charges shall be fair, nondiscriminatory and at least adequate to provide revenues sufficient for:

(1) Payment of the principal of and interest on those obligations of the joint operating agency for which payment has not otherwise been provided;

(2) All payments which the agency is obligated to set aside in any special fund for the repayment of obligations and to provide reserves therefor;

(3) Payment of taxes as provided by ORS 262.105; and

(4) Payments for the proper administration, operation, maintenance, repair, renewals and replacements of utility properties of the joint operating agency and to provide reserves therefor. [1973 c.722 §10]

MISCELLANEOUS

262.105 Taxation of agency property in same manner as private power corporations. All property, real and personal, owned, used, operated or controlled by a joint operating agency for the transmission, production or furnishing of electric power or energy shall be assessed and taxed in the same manner and for the same purposes as similar property owned, used, operated or controlled by private corporations, other than electric cooperatives, for the purpose of furnishing electric power or energy to the public. The joint operating agency and its directors and officers shall be subject to the same requirements as are provided by law in respect to such assessment and taxation. All taxes so levied shall be payable by the joint operating agency out of its revenues as an expense of its operation. [1973 c.722 §11]

262.110 [Repealed by 1969 c.12 §1]

262.115 ORS 262.005 to 262.115 and 308.505 to be liberally construed; severability. ORS 262.005 to 262.115 and 308.505 shall be liberally construed to effect its purposes. In the event that any portion of ORS 262.005 to 262.115 and 308.505 is declared invalid or otherwise unenforceable by a court of record, the remaining provisions of ORS 262.005 to 262.115 and 308.505 shall nevertheless remain in full force and effect. [1973 c.722 §13]

262.120 [Repealed by 1969 c.12 §1]
262.130 [Repealed by 1969 c.12 §1]
262.140 [Repealed by 1969 c.12 §1]
262.150 [Repealed by 1969 c.12 §1]
262.160 [Repealed by 1969 c.12 §1]
262.170 [Repealed by 1969 c.12 §1]
262.180 [Repealed by 1969 c.12 §1]
262.190 [Repealed by 1969 c.12 §1]
262.200 [Repealed by 1969 c.12 §1]
262.210 [Repealed by 1969 c.12 §1]
262.220 [Repealed by 1969 c.12 §1]
262.230 [Repealed by 1969 c.12 §1]
262.240 [Repealed by 1969 c.12 §1]
262.250 [Repealed by 1969 c.12 §1]
262.260 [Repealed by 1969 c.12 §1]
262.270 [Repealed by 1969 c.12 §1]
262.310 [Repealed by 1969 c.12 §1]
262.320 [Repealed by 1969 c.12 §1]
262.330 [Repealed by 1969 c.12 §1]
262.340 [Repealed by 1969 c.12 §1]
262.350 [Repealed by 1969 c.12 §1]
262.360 [Repealed by 1969 c.12 §1]
262.370 [Repealed by 1969 c.12 §1]
262.380 [Repealed by 1969 c.12 §1]
262.410 [Amended by 1967 c.293 §28; repealed by 1969 c.12 §1]
262.420 [Repealed by 1969 c.12 §1]
262.430 [Repealed by 1969 c.12 §1]
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262.450 [Repealed by 1969 c.12 §1]
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262.550 [Repealed by 1969 c.12 §1]
262.610 [Repealed by 1969 c.12 §1]
262.620 [Repealed by 1969 c.12 §1]
262.630 [Repealed by 1969 c.12 §1]