



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-5443/1
AJM:amn

2017 SENATE BILL 794

February 12, 2018 - Introduced by Senator ROTH, cosponsored by Representative ROHRKASTE. Referred to Committee on Transportation and Veterans Affairs.

1 **AN ACT to amend** 27.01 (2) (a), 27.019 (10), 27.05 (3), 27.065 (1) (a), 27.08 (2) (b),
2 27.08 (2) (c), 32.015, 59.52 (6) (a), 60.782 (2) (d), 61.34 (3) (b), 62.22 (1) (b), 62.23
3 (17) (am) and 85.09 (2) (a) of the statutes; **relating to:** condemnation power for
4 bicycle lanes and pedestrian ways.

Analysis by the Legislative Reference Bureau

This bill eliminates the prohibition against certain entities, such as a county board, a village board, or the Department of Transportation, using the power of condemnation to acquire land or interests in land for the purpose of establishing or extending bicycle lanes or certain pedestrian ways. Current law prohibits exercising condemnation power to acquire land or interests in land for the purpose of establishing or extending recreational trails, bicycle lanes, bicycle ways, or pedestrian ways.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

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

5 **SECTION 1.** 27.01 (2) (a) of the statutes, as affected by 2017 Wisconsin Act 59,
6 is amended to read:

SENATE BILL 794**SECTION 1**

1 27.01 (2) (a) Acquire by purchase, lease or agreement lands or waters suitable
2 for state park purposes and may acquire such lands and waters by condemnation
3 after obtaining approval of the senate and assembly committees on natural
4 resources. The power of condemnation may not be used for the purpose of
5 establishing or extending a recreational trail; a bicycle way, as defined in s. 340.01
6 (5s); ~~a bicycle lane, as defined in s. 340.01 (5e);~~ or a pedestrian way, as defined in s.
7 346.02 (8) (a), that is not a sidewalk, as defined in s. 340.01 (58).

8 **SECTION 2.** 27.019 (10) of the statutes, as affected by 2017 Wisconsin Act 59,
9 is amended to read:

10 27.019 (10) ACQUISITION OF LAND. Any county in which there does not exist a
11 county park commission acting through its rural planning committee may acquire
12 by gift, grant, devise, donation, purchase, condemnation or otherwise, with the
13 consent of the county board, a sufficient tract or tracts of land for the reservation for
14 public use of river fronts, lake shores, picnic groves, outlook points from hilltops,
15 places of special historic interest, memorial grounds, parks, playgrounds, sites for
16 public buildings, and reservations in and about and along and leading to any or all
17 of the same, and to develop and maintain the same for public use. The power of
18 condemnation may not be used for the purpose of establishing or extending a
19 recreational trail; a bicycle way, as defined in s. 340.01 (5s); ~~a bicycle lane, as defined~~
20 ~~in s. 340.01 (5e);~~ or a pedestrian way, as defined in s. 346.02 (8) (a), that is not a
21 sidewalk, as defined in s. 340.01 (58).

22 **SECTION 3.** 27.05 (3) of the statutes, as affected by 2017 Wisconsin Act 59, is
23 amended to read:

24 27.05 (3) Acquire, in the name of the county, by purchase, land contract, lease,
25 condemnation, or otherwise, with the approval and consent of the county board, such

SENATE BILL 794

1 tracts of land or public ways as it deems suitable for park purposes; including lands
2 in any other county not more than three-fourths of a mile from the county line; but
3 no land so acquired shall be disposed of by the county without the consent of said
4 commission, and all moneys received for any such lands, or any materials, so
5 disposed of, shall be paid into the county park fund hereinafter established. The
6 power of condemnation may not be used for the purpose of establishing or extending
7 a recreational trail; a bicycle way, as defined in s. 340.01 (5s); ~~a bicycle lane, as~~
8 ~~defined in s. 340.01 (5e);~~ or a pedestrian way, as defined in s. 346.02 (8) (a), that is
9 not a sidewalk, as defined in s. 340.01 (58).

10 **SECTION 4.** 27.065 (1) (a) of the statutes, as affected by 2017 Wisconsin Act 59,
11 is amended to read:

12 27.065 (1) (a) The county board of any county which shall have adopted a
13 county system of parks or a county system of streets and parkways, pursuant to s.
14 27.04, may acquire the lands necessary for carrying out all or part of such plan by
15 gift, purchase, condemnation or otherwise; provided, however, that no lands shall be
16 acquired by condemnation unless and until the common council of the city or the
17 board of trustees of the village or the board of supervisors of the town wherein such
18 land is situated shall consent thereto. The power of condemnation may not be used
19 for the purpose of establishing or extending a recreational trail; a bicycle way, as
20 defined in s. 340.01 (5s); ~~a bicycle lane, as defined in s. 340.01 (5e);~~ or a pedestrian
21 way, as defined in s. 346.02 (8) (a), that is not a sidewalk, as defined in s. 340.01 (58).

22 The cost of acquiring such lands by purchase or condemnation may be paid in whole
23 or in part by the county or by the property to be benefited thereby, as the county board
24 shall direct but in no case shall the amount assessed to any parcel of real estate
25 exceed the benefits accruing thereto; provided, that no assessment for paying the cost

SENATE BILL 794**SECTION 4**

1 of acquiring lands may be levied or collected against the property to be benefited until
2 the governing body of the city, village or town where such lands are located has by
3 resolution determined that the public welfare will be promoted thereby. Title to all
4 lands acquired hereunder shall be an estate in fee simple.

5 **SECTION 5.** 27.08 (2) (b) of the statutes, as affected by 2017 Wisconsin Act 59,
6 is amended to read:

7 27.08 (2) (b) To acquire in the name of the city for park, parkway, boulevard or
8 pleasure drive purposes by gift, devise, bequest or condemnation, either absolutely
9 or in trust, money, real or personal property, or any incorporeal right or privilege;
10 except that no lands may be acquired by condemnation for the purpose of
11 establishing or extending a recreational trail; a bicycle way, as defined in s. 340.01
12 (5s); ~~a bicycle lane, as defined in s. 340.01 (5e);~~ or a pedestrian way, as defined in s.
13 346.02 (8) (a), that is not a sidewalk, as defined in s. 340.01 (58). Gifts to any city of
14 money or other property, real or personal, either absolutely or in trust, for park,
15 parkway, boulevard or pleasure drive purposes shall be accepted only after they shall
16 have been recommended by the board to the common council and approved by said
17 council by resolution. Subject to the approval of the common council the board may
18 execute every trust imposed upon the use of property or property rights by the deed,
19 testament or other conveyance transferring the title of such property to the city for
20 park, parkway, boulevard or pleasure drive purposes.

21 **SECTION 6.** 27.08 (2) (c) of the statutes, as affected by 2017 Wisconsin Act 59,
22 is amended to read:

23 27.08 (2) (c) Subject to the approval of the common council to buy or lease lands
24 in the name of the city for park, parkway, boulevard or pleasure drive purposes
25 within or without the city and, with the approval of the common council, to sell or

SENATE BILL 794

1 exchange property no longer required for its purposes. Every city is authorized, upon
2 recommendation of its officers, board or body having the control and management
3 of its public parks, to acquire by condemnation in the name of the city such lands
4 within or without its corporate boundaries as it may need for public parks, parkways,
5 boulevards and pleasure drives. The power of condemnation may not be used for the
6 purpose of establishing or extending a recreational trail; a bicycle way, as defined in
7 s. 340.01 (5s); ~~a bicycle lane, as defined in s. 340.01 (5e);~~ or a pedestrian way, as
8 defined in s. 346.02 (8) (a), that is not a sidewalk, as defined in s. 340.01 (58).

9 **SECTION 7.** 32.015 of the statutes, as created by 2017 Wisconsin Act 59, is
10 amended to read:

11 **32.015 Limitations.** Property may not be acquired by condemnation to
12 establish or extend a recreational trail; a bicycle way, as defined in s. 340.01 (5s);
13 ~~bicycle lane, as defined in s. 340.01 (5e);~~ or a pedestrian way, as defined in s. 346.02
14 (8) (a), that is not a sidewalk, as defined in s. 340.01 (58).

15 **SECTION 8.** 59.52 (6) (a) of the statutes, as affected by 2017 Wisconsin Act 59,
16 is amended to read:

17 59.52 (6) (a) *How acquired; purposes.* Take and hold land acquired under ch.
18 75 and acquire, lease or rent property, real and personal, for public uses or purposes
19 of any nature, including without limitation acquisitions for county buildings,
20 airports, parks, recreation, highways, dam sites in parks, parkways and
21 playgrounds, flowages, sewage and waste disposal for county institutions, lime pits
22 for operation under s. 59.70 (24), equipment for clearing and draining land and
23 controlling weeds for operation under s. 59.70 (18), ambulances, acquisition and
24 transfer of real property to the state for new collegiate institutions or research
25 facilities, and for transfer to the state for state parks and for the uses and purposes

SENATE BILL 794**SECTION 8**

1 specified in s. 23.09 (2) (d). The power of condemnation may not be used to acquire
2 property for the purpose of establishing or extending a recreational trail; a bicycle
3 way, as defined in s. 340.01 (5s); ~~a bicycle lane, as defined in s. 340.01 (5e);~~ or a
4 pedestrian way, as defined in s. 346.02 (8) (a), that is not a sidewalk, as defined in
5 s. 340.01 (58).

6 **SECTION 9.** 60.782 (2) (d) of the statutes, as affected by 2017 Wisconsin Act 59,
7 is amended to read:

8 60.782 (2) (d) Lease or acquire, including by condemnation, any real property
9 situated in this state that may be needed for the purposes of s. 23.09 (19), 23.094 (3g)
10 or 30.275 (4). The power of condemnation may not be used to acquire property for the
11 purpose of establishing or extending a recreational trail; a bicycle way, as defined in
12 s. 340.01 (5s); ~~a bicycle lane, as defined in s. 340.01 (5e);~~ or a pedestrian way, as
13 defined in s. 346.02 (8) (a), that is not a sidewalk, as defined in s. 340.01 (58).

14 **SECTION 10.** 61.34 (3) (b) of the statutes, as created by 2017 Wisconsin Act 59,
15 is amended to read:

16 61.34 (3) (b) The village board may not use the power of condemnation to
17 acquire property for the purpose of establishing or extending a recreational trail; a
18 bicycle way, as defined in s. 340.01 (5s); ~~a bicycle lane, as defined in s. 340.01 (5e);~~
19 or a pedestrian way, as defined in s. 346.02 (8) (a), that is not a sidewalk, as defined
20 in s. 340.01 (58).

21 **SECTION 11.** 62.22 (1) (b) of the statutes, as created by 2017 Wisconsin Act 59,
22 is amended to read:

23 62.22 (1) (b) The governing body of any city may not use the power of
24 condemnation to acquire property for the purpose of establishing or extending a
25 recreational trail; a bicycle way, as defined in s. 340.01 (5s); ~~a bicycle lane, as defined~~

SENATE BILL 794

1 ~~in s. 340.01 (5e); or a pedestrian way, as defined in s. 346.02 (8) (a), that is not a~~
2 ~~sidewalk, as defined in s. 340.01 (58).~~

3 **SECTION 12.** 62.23 (17) (am) of the statutes, as created by 2017 Wisconsin Act
4 59, is amended to read:

5 62.23 (17) (am) Cities may not use the power of condemnation to acquire
6 property for the purpose of establishing or extending a recreational trail; a bicycle
7 way, as defined in s. 340.01 (5s); ~~a bicycle lane, as defined in s. 340.01 (5e); or a~~
8 ~~pedestrian way, as defined in s. 346.02 (8) (a), that is not a sidewalk, as defined in~~
9 ~~s. 340.01 (58).~~

10 **SECTION 13.** 85.09 (2) (a) of the statutes, as affected by 2017 Wisconsin Act 59,
11 is amended to read:

12 85.09 (2) (a) The department of transportation shall have the first right to
13 acquire, for present or future transportational or recreational purposes, any
14 property used in operating a railroad or railway, including land and rails, ties,
15 switches, trestles, bridges, and the like located on that property, that has been
16 abandoned. The department of transportation may, in connection with abandoned
17 rail property, assign this right to a state agency, the board of regents of the University
18 of Wisconsin System, any county or municipality, or any transit commission.
19 Acquisition by the department of transportation may be by gift, purchase, or
20 condemnation in accordance with the procedure under s. 32.05, except that the power
21 of condemnation may not be used to acquire property for the purpose of establishing
22 or extending a recreational trail; a bicycle way, as defined in s. 340.01 (5s); ~~a bicycle~~
23 ~~lane, as defined in s. 340.01 (5e); or a pedestrian way, as defined in s. 346.02 (8) (a),~~
24 ~~that is not a sidewalk, as defined in s. 340.01 (58).~~ In addition to its property
25 management authority under s. 85.15, the department of transportation may,

SENATE BILL 794**SECTION 13**

1 subject to any prior action under s. 13.48 (14) (am) or 16.848 (1), lease and collect
2 rents and fees for any use of rail property pending discharge of the department's duty
3 to convey property that is not necessary for a public purpose. No person owning
4 abandoned rail property, including any person to whom ownership reverts upon
5 abandonment, may convey or dispose of any abandoned rail property without first
6 obtaining a written release from the department of transportation indicating that
7 the first right of acquisition under this subsection will not be exercised or assigned.
8 No railroad or railway may convey any rail property prior to abandonment if the rail
9 property is part of a rail line shown on the railroad's system map as in the process
10 of abandonment, expected to be abandoned, or under study for possible
11 abandonment unless the conveyance or disposal is for the purpose of providing
12 continued rail service under another company or agency. Any conveyance made
13 without obtaining such release is void. The first right of acquisition of the
14 department of transportation under this subsection does not apply to any rail
15 property declared by the department to be abandoned before January 1, 1977. The
16 department of transportation may acquire any abandoned rail property under this
17 section regardless of the date of its abandonment.

SECTION 14. Initial applicability.

18
19 (1) This act first applies to condemnation proceedings in which title to the
20 subject property has not vested in the condemnor on the effective date of this
21 subsection.

22 (END)