2005 DRAFTING REQUEST

Bill

Received: **04/25/2005**

Received By: **pgrant**

Wanted: **As time permits**

Identical to LRB:

For: **Frank Boyle (608) 266-0640**

By/Representing: **Marylou Keleher**

This file may be shown to any legislator: **NO**

Drafter: **pgrant**

May Contact:

Addl. Drafters:

Subject: **Eminent Domain - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Boyle@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Eliminate condemnation by nongovernmental entities

Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	pgrant 04/25/2005	lkunkel 04/29/2005		_____ _____			S&L
/1			chaugen 04/29/2005	_____ _____	lnorthro 04/29/2005	lnorthro 05/02/2005	

FE Sent For:

<END>

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Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	pgrant	/1 lmk 4/26	Ch 4-28	ch 4-28			

FE Sent For:

<END>

Grant, Peter

From: Keleher, Marylou
Sent: Monday, April 25, 2005 10:05 AM
To: Grant, Peter
Subject: Drafting request - ASAP

Hi Peter,

Rep. Frank Boyle would like to have 1999 AB 744 redrafted for introduction in the current legislative session. We understand the language may be a little different due to enactment of other legislation in the interim. Due to events occurring within his district, Rep. Boyle would like to have the draft ASAP.

Thank you. If you have any questions, feel fee to contact me.

Mary Lou Keleher
Aide to Rep. Frank Boyle
6-0640

LRB–3348/1
PG:jld:rs

2001 ASSEMBLY BILL 455

July 2, 2001 – Introduced by Representatives PETROWSKI, REYNOLDS, BIES, RYBA, M. LEHMAN, J. LEHMAN, GRONEMUS, FREESE and SUDER. Referred to Committee on Urban and Local Affairs.

AN ACT ***to repeal*** 13.48 (12) (b) 1., 32.02 (3) to (10), 32.02 (12) and (13), 32.03 (2) to (5), 32.07 (4), 32.075, 182.35 (2) and 182.43; ***to renumber and amend*** 32.03 (1) and 182.35 (1); and ***to amend*** 32.02 (intro.), 32.185, 32.29, 66.0825 (6) (i), 84.093 (1), 87.12 (6), 114.135 (1), 114.135 (2), 182.37, 196.49 (3) (c) and 196.91 (2) of the statutes; **relating to:** eliminating the condemnation authority of nongovernmental entities.

Analysis by the Legislative Reference Bureau

Current law authorizes various entities to acquire property by condemnation. These entities include state agencies, counties, municipalities, school districts, and housing and redevelopment authorities. They also include nongovernmental entities such as railroad corporations and public utilities. This bill eliminates the condemnation authority of all nongovernmental entities.

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:

SECTION 1. 13.48 (12) (b) 1. of the statutes is repealed.

SECTION 2. 32.02 (intro.) of the statutes is amended to read:

32.02 Who may condemn; purposes. (intro.) The following departments, municipalities, boards, commissions, and public officers ~~and corporations~~ may acquire by condemnation any real estate and personal property appurtenant thereto or interest therein which they have power to acquire and hold or transfer to the state, for the purposes specified, in case such property cannot be acquired by gift or purchase at an agreed price:

SECTION 3. 32.02 (3) to (10) of the statutes are repealed.

SECTION 4. 32.02 (12) and (13) of the statutes are repealed.

SECTION 5. 32.03 (1) of the statutes is renumbered 32.03 and amended to read:

32.03 When condemnation not to be exercised. The general power of condemnation conferred in this subchapter does not extend to property owned by the state, a municipality, public board or commission~~, nor to the condemnation by a railroad, public utility or electric cooperative of the property of either a railroad, public utility or electric cooperative~~ unless such power is specifically conferred by law~~, provided that property not to exceed 100 feet in width owned by or otherwise under the control or jurisdiction of a public board or commission of any city, village or town may be condemned by a railroad corporation for right–of–way or other purposes, whenever a city, village or town by ordinance consents thereto~~. This subchapter does not apply to the acquisition by municipalities of the property of public utilities used and useful in their business, nor to any city of the 1st class, except that every such city may conduct any condemnation proceedings either under this subchapter or, at its option, under other laws applicable to such city.

SECTION 6. 32.03 (2) to (5) of the statutes are repealed.

SECTION 7. 32.07 (4) of the statutes is repealed.

SECTION 8. 32.075 of the statutes is repealed.

SECTION 9. 32.185 of the statutes is amended to read:

32.185 Condemnor. "Condemnor", for the purposes of ss. 32.19 to 32.27, means any municipality, board, commission, or public officer ~~or corporation~~ vested with the power of eminent domain which acquires property for public purposes either by negotiated purchase when authorized by statute to employ its powers of eminent domain or by the power of eminent domain. "Condemnor" also means a displacing agency. In this section, "displacing agency" means any state agency, political subdivision of the state or person carrying out a program or project with public financial assistance that causes a person to be a displaced person, as defined in s. 32.19 (2) (e).

SECTION 10. 32.29 of the statutes is amended to read:

32.29 False statements prohibited. Any officer, agent or employee of a governmental body ~~or corporation~~ granted condemnation power under s. 32.02 (1) ~~or (3) to~~, (11), (15), or (16) who intentionally makes or causes to be made a statement which he or she knows to be false to any owner of property concerning the condemnation of such property or to any displaced person concerning his or her relocation benefits under s. 32.19, 32.20, 32.25 or 32.26 or who fails to provide the information required under s. 32.26 (6) shall be fined not less than $50 nor more than $1,000, or imprisoned for not more than one year in the county jail or both.

SECTION 11. 66.0825 (6) (i) of the statutes is amended to read:

66.0825 **(6)** (i) Exercise the powers of eminent domain granted to ~~public utility corporations~~ municipalities under ch. 32.

SECTION 12. 84.093 (1) of the statutes is amended to read:

84.093 **(1)** The department, acting in the public interest, may contract with a public utility, as defined in s. 196.01 (5), or with a rural electric cooperative association, ~~as described in s. 32.02 (10)~~ that is organized under ch. 185 and that operates a rural electrification project, for the receipt or furnishing of services, or the joint exercise of any power or duty required or authorized by law, relating to the acquisition, development or maintenance of rights–of–way to be used jointly by the department and a public utility or rural electric cooperative association. If parties to a contract under this section have varying powers or duties under the law, each may act under the contract to the extent of its lawful powers and duties. This section shall be interpreted liberally in favor of cooperative action between the department and a public utility or rural electric cooperative association.

SECTION 13. 87.12 (6) of the statutes is amended to read:

87.12 **(6)** The board shall have the power to institute and prosecute in the manner provided in ch. 32 of the statutes such eminent domain proceedings as may be necessary in the construction of said improvement. When necessary for that purpose, this right of eminent domain shall be dominant over the rights of eminent domain of ~~public or private corporations or~~ governmental agencies. The board shall also have the power to acquire any lands or interest therein necessary for the aforesaid purpose, by gift, purchase or lease. Any title acquired by condemnation or gift, purchase or lease shall be held in the name of the flood control board in trust for the several towns, villages and cities and contributing, as provided in s. 87.10 (1) (c) and (d), in proportion to the amounts of their several contributions. The board shall have the power to employ engineers, attorneys, agents, assistants, clerks, employees, and laborers as it may deem advisable for the proper execution of its duties, and to fix their compensation.

SECTION 14. 114.135 (1) of the statutes is amended to read:

114.135 **(1)** PROCEDURE TO OBTAIN PROTECTION PRIVILEGES. The aerial approaches to any airport owned and operated by corporations organized to provide aeronautic facilities to the general public may be protected in the following manner: The owner of the airport shall prepare and record with the register of deeds plans and specifications showing the land affected, the owner of each parcel or interest therein, whether public or private, the regulations to be imposed on each parcel and the structures, buildings or other objects to be removed. The owner or managing body of the airport may negotiate and acquire from the owners of the various parcels or interest therein, whether public or private, by deeds the protection privileges shown by the plans and specifications. Referring in the deed to the plans and specifications, and briefly describing the plans and specifications, shall be considered sufficient legal description to convey the protection privileges set forth in the plans and specifications in the property of the grantor. ~~In case the owner of the airport is unable to obtain by negotiation the desired protection privileges, he or she may acquire the protection privileges by eminent domain in the manner set forth in ch. 32, except as to lands and buildings of railway companies that are necessary to, or are used in connection with the operation of the railway.~~ In case the protection privileges sought extend into more than one county the plans and specifications shall be recorded with the register of deeds of each county. ~~In case any parcel of land lies in more than one county, eminent domain proceedings may be instituted in the circuit court of any county in which the parcel is situated, provided a certified copy of the final judgment with a description of the property involved is recorded with the register of deeds of all counties in which the parcel of land or interest therein lies.~~

SECTION 15. 114.135 (2) of the statutes is amended to read:

114.135 **(2)** NOTICE; CLAIM FOR DAMAGES. In case of any airport landing field or landing and take–off strip owned by any city, village, town or county or any union of them, the commission or other body in charge of the operation and control of the airport, landing field or landing and take–off strip may prepare and record without charge with the register of deeds plans and specifications showing the protection privileges sought as described in sub. (1). The commission or other body in charge shall send by registered mail with return receipt to each owner at his or her last–known address a notice stating that the plans and specifications have been recorded with the register of deeds' office, stating the county, time of recording, the record number, and a brief description of the parcel of land or interest therein affected. If the address of the owner cannot be ascertained or the registered letter is returned unclaimed, notice shall be sent by registered mail to the person in possession of the premises. If no person is in possession, then the notice shall be posted in a conspicuous place on the land involved and published as a class 3 notice, under ch. 985, in the area affected. The right of the owner to claim for damages for the protection regulations imposed in the plans and specifications, or the removal of obstructions shall be forever barred, unless the owner files a claim for damages with the commission or other body in charge within 6 months from the receipt of the notice from the commission, or other body in charge, or the posting and last publication. The claim shall be verified and shall state the amount of damages claimed. The commission or other body in charge may pay the damages, if it has available funds, and the payment shall operate as a conveyance. If no claims for payment are filed or if payment is made, the commission or other body in charge shall file an affidavit for each parcel involved setting forth the rights acquired which shall be recorded by the register of deeds without charge and when so recorded has the same effect as any

recorded instrument. If any owner is a minor or incompetent, the notice may be sent by registered mail to the owner's guardian, if he or she has one, and if there is none the circuit court of the county in which the land, or a larger part, is located shall upon application of the commission or other body in charge appoint a guardian to receive the notice, and to protect the rights of the owner. Any funds payable to the owner shall be cared for in the manner provided in ch. 880. If the commission or other body in charge determines that the damages claimed are excessive, it shall so report to the governing body that established the airport, landing field or landing and take–off strip in question and with its consent may acquire in the name of the governmental body the protection privilege desired in the manner set forth in sub. (1) or by eminent domain in the manner set forth in ch. 32, except as to lands and buildings of railway companies that are necessary to or are used in connection with the operation of the railway, or it may deposit with the county clerk an award and notify the owner of the land involved in the method specified in this subsection. The landowner may accept the award without prejudice to his or her right to claim and contest for a greater sum. The landowner may, within a period of 6 months after notice of the award, proceed as provided in ch. 32 to have the damages appraised.

SECTION 16. 182.35 (1) of the statutes is renumbered 182.35 and amended to read:

182.35 Acquisition of lands and interests therein. Turnpike corporations may acquire by gift, devise, or purchase ~~or condemnation~~ any lands determined by them to be necessary for establishing, laying out, widening, enlarging, extending, constructing, reconstructing, improving and maintaining its project including lands which may be necessary for toll houses and appropriate concessions and for any other purpose authorized by ss. 182.30 to 182.48. Title may be acquired in fee simple and

any other interest in lands may be acquired as may be deemed expedient or necessary by the corporation. Any lands determined to be unneeded by the corporation may be sold by the corporation at public or private sale with or without restrictions or reservations concerning the future use and occupation of such lands so as to protect the project and improvements and their environs and to preserve the view, appearance, light, air and usefulness of the project.

SECTION 17. 182.35 (2) of the statutes is repealed.

SECTION 18. 182.37 of the statutes is amended to read:

182.37 Rights of public utilities. All public utilities shall have the right to cross the lands or easements of the corporation with any lines at such reasonable place and in such reasonable manner, either over or under the project, as the corporation may direct upon payment of damages to the corporation. ~~In cases of dispute, utilities shall have the right to condemn easements under ch. 32 but such easements shall not conflict with the planned operation, or operation of the project.~~

SECTION 19. 182.43 of the statutes is repealed.

SECTION 20. 196.49 (3) (c) of the statutes is amended to read:

196.49 **(3)** (c) The commission may issue a certificate for the project or for any part of the project which complies with the requirements of this section, or the commission may attach to the issuance of its certificate such terms and conditions as will ensure that the project meets the requirements of this section. ~~The issuance of a certificate under this section shall not be a condition precedent to the exercise of eminent domain under ch. 32.~~

SECTION 21. 196.91 (2) of the statutes is amended to read:

196.91 **(2)** No ~~award in any condemnation proceedings authorized by sub. (1) shall be effective, and no~~ corporation may purchase or otherwise acquire any

property under sub. (1) until it obtains from the commission a certificate that public convenience and necessity require the acquisition of the property, at the amount fixed by the award or agreed upon with the owner of the property.

SECTION 22. Initial applicability.

(1) This act first applies to condemnation proceedings commenced on the effective date of this subsection.

(END)

Northrop, Lori

From: Keleher, Marylou
Sent: Monday, May 02, 2005 10:23 AM
To: LRB.Legal
Subject: Draft review: LRB 05-2867/1 Topic: Eliminate condemnation by nongovernmental entities

It has been requested by <Keleher, Marylou> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 05-2867/1 Topic: Eliminate condemnation by nongovernmental entities