

No. 538, A.]

[Published July 3, 1925.]

CHAPTER 442.

AN ACT to amend section 27.04 and to create section 27.065 of the statutes, relating to studies and surveys of comprehensive county park and parkway systems and providing for the cost of acquiring and constructing parks, parkways, streets and boulevards by counties.

The people of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:

SECTION 1. Section 27.04 of the statutes is amended to read: 27.04 (a) The commission shall make a thorough study of the county with reference to making reservations *and acquisitions* of lands therein for public uses, * * * *the improvement of such lands for parks, playgrounds, forest reservations, parkways and boulevards; make surveys, lay out maps, other plans and maps of a comprehensive county park system and a county system of streets and parkways, including contiguous land of whatever shape or area designed to be ultimately used, in whole or in part, for highways, or, in whole or in part, for parkways; gather such further information in relation thereto as it may deem * * * useful and report the same to the county board * * *.* It shall make such other *or further* reports, from time to time, as may be requested by the county board. *In making such studies, surveys, and obtaining such information, and in making such reports, the commission shall give consideration, among other matters, to the health, comfort, enjoyment and general welfare of the people of the county, to the protection of streams, lakes and pools from pollution, to the use by the public of lakes, pools and the banks thereof, to the reforestation for public use and enjoyment of tracts of land, to the conservation of flooded areas, and to the preservation of places of natural beauty and of historic or scientific interest.*

(b) *The county board thereafter may by ordinance adopt the plans proposed by the commission for such comprehensive county park system, or for such a county system of streets and parkways, in whole or in part, and with such changes or modifications as it deems necessary, and may subsequently alter, change, enlarge, extend or modify the same in any respect deemed necessary.*

SECTION 2. A new section is added to the statutes to read: 27.065 (1) (a) The county board of any county which shall have adopted a county system of parks or a county system of streets and parkways, pursuant to section 27.04, may acquire the lands necessary for carrying out all or part of such plan by gift, purchase, condemnation or otherwise. The cost of acquiring such lands by purchase or condemnation may be paid in whole or in part by the county or by the property to be benefited thereby, as the county board shall direct, but in no case shall the amount assessed to any parcel of real estate exceed the benefits accruing thereto; provided, that no assessment for paying the cost of acquiring lands may be levied or collected against the property to be benefited, excepting where the lands to be so acquired and the lands against which benefits are to be assessed, are included within the corporate limits of a city or village or within one and one-half miles thereof, and until the governing body of the city, village or town where such lands are located has by resolution determined that the public welfare will be promoted thereby. Title to all lands acquired hereunder shall be an estate in fee simple.

(b) Before instituting condemnation proceedings or purchasing lands to be paid for in whole or part by assessment of benefits, the county board shall specify in general terms the land to be so acquired and shall refer the same to the county park commission, which shall thereafter make a report to the county board, giving a particular description of each lot, parcel or subdivision of land to be thus acquired, together with the opinion and recommendations of such commission upon the matter of acquiring such lands. Thereafter the county board may, by resolution, determine whether or not such lands shall be acquired by condemnation proceedings or otherwise.

(2) (a) The provisions of chapter 32 of the statutes relating to eminent domain in relation to the acquisition of lands for streets, shall apply to the acquisition of lands for streets and parkways by the county board, excepting that in cases where the whole or any part of the cost of acquiring such lands is to be paid by special assessment the county board by resolution may determine that such assessments may be paid in one or more equal annual instalments, together with a rate of interest upon the unpaid principal which interest shall not exceed six per cent. Any person whose lands are taken or against whose lands assessments

for benefits or damages shall have been made, may appeal from the award of the commissioners to the circuit court of the county in the manner prescribed by section 32.11 of the statutes.

(b) When any assessment of benefits and damages is made in condemnation proceedings the commissioners shall file a copy of their final report in the office of the clerk of the circuit court of the county and also with the county clerk. The county clerk shall thereupon prepare a list of special taxes to be entered in the tax roll on account thereof, which list shall have set opposite each description against which benefits not offset by damages or an excess of benefits over damages shall have been assessed, the amount of such benefits or excess, which amount shall be levied upon the land described as a special tax and be collected the same as other taxes for county purposes. The amount thereof shall be certified by the county clerk with other state and county taxes and charges, to the clerks of the cities, towns or villages within which the property is located, and it shall be the duty of the clerks of the respective cities, towns or villages, at the time of making out the next tax roll, to levy the same on the land described as a special tax to be collected the same as other taxes.

(c) The cost of condemnation shall be paid out of the general or contingent county fund, except where a special fund therefor shall have been provided.

(3) The county board shall have the power to improve all or any portion of the county's system of streets and parkways by causing the same to be leveled, graded, paved or improved in any other manner, and curbs or gutters or both installed, to cause water and sewer mains and laterals, and lighting mains and fixtures, fences, bridges, culverts, viaducts and flood control dams erected and constructed therein, and to cause the parkway portions thereof to be planted, seeded or sodded. The county board shall have the authority to establish the grade of all streets and parkways in areas not already established and to change and re-establish the same as it may deem expedient. Whenever it shall change or alter the permanently established grade of any street or parkway, any person thereby sustaining damages to his property on such street, shall have a right to recover such damages in the manner set forth in this section. The grade of all streets and parkways shall be established and described and the adoption of such grades and all alterations thereof shall be recorded by the

county clerk. No street or parkway shall be worked until the grade thereof is established and recorded by the county clerk.

(4) The expense of such work or improvement may be paid in whole or in part by the county or by the property to be benefited thereby, as the county board shall direct, but in no case shall the amount assessed to any parcel of real estate exceed the benefits accruing thereto by such improvement, and in no case shall any benefits be assessed except for grading, paving, curb, gutter, sewer or water mains or laterals, and in no case shall any assessment be made upon the real estate for any such work or improvement upon any established and existing road, street or highway until the governing board of the city, village or town in which said road, street or highway is located has by resolution determined that the public welfare will be promoted by such work and improvement.

(5) No such work or improvement shall be commenced by the county board until the county park commission shall have made a preliminary estimate of the cost thereof and submitted the same, together with a proposed plan of such improvement showing the character and extent of the same to the county board. The county board may thereafter determine the character and extent of the improvements to be made. Such improvements may be made by contract or noncontract work as the county board shall determine. All contracts awarded pursuant hereto shall be let by contract to the lowest responsible and reliable bidder. When the work required or directed to be let to the lowest responsible and reliable bidder, plans and specifications for the same containing a description of the work, materials to be used and such other matters as will give an intelligent idea of the work required, shall be prepared and filed with the county clerk for the inspection of bidders, together with a form of contract and bond, with sureties required, and the same shall be furnished to all persons desiring to bid on the work. All contracts shall be entered into in the name of the county and shall be executed and performed under the direction of the county board, except that the board may vest its county highway committee or the county park commission with authority to enter into such contracts and to have charge of the performance thereof. It shall be the duty of the county highway commissioner, under the direction of said board, or said committee or park commission, to superintend such work.

(6) (a) Before the county board shall change or alter any established grade or order any work to be done in any county system of streets or parkways at the expense in whole or in part of the real estate to be benefited thereby it shall order the county highway commissioner to view the premises and determine the damages and benefits which will accrue to each parcel of real estate affected by such change or alteration of grade, the entire cost of the contemplated work or the improvement upon the street or parkway, the benefits and damages that will accrue to the several parcels of real estate thereby, and the amount that should be assessed to each parcel of real estate as benefits accruing thereto by such contemplated work or improvement.

(b) Said county highway commissioner shall make and file in the office of the county clerk as well as in his own office duplicate reports showing his determination in the questions required by him to be considered under the provisions of paragraph (a) of subsection (6).

(c) Notice shall be given by the county clerk that such report is on file and open for review at his office and will be so continued for the space of ten days after the date of such notice, and that on a day named therein, which shall not be more than three days after the expiration of said ten days, the county highway commissioner of such committee of the county board as may be appointed by resolution therefor will be present and will hear all objections that may be made to such report.

(d) Such notice shall be published in the official newspaper of the county at least twice, and one copy of such notice shall be posted every three hundred feet along the part of the street or parkway proposed to be improved. Such notices shall be printed in type not smaller than pica, and such publications and posting shall be made at least five days prior to the date of hearing objections as aforesaid.

(e) No irregularity in the form of such report nor of said notice shall affect its validity if it fairly contains the information required to be conveyed thereby.

(f) At the time specified for hearing objections to said report, said county highway commissioner or said committee shall hear all parties interested, who may appear for that purpose, reduce to writing all objections that may be made and all evidence that may be offered to sustain the same, and may review, modify and

correct said report as they deem just, and thereupon a complete final report shall be made and filed by said county highway commissioner or said committee with the county clerk, together with all objections and evidence taken to sustain the same, and the proof of publication of said notice and the posting thereof, as above specified, which shall be received in all cases as presumptive evidence of the facts therein stated.

(g) No irregularity in the form of said report or manner of conducting the proceedings or in the proof of publication or posting shall affect the legality of said report unless it shall appear that the owners of the property affected by the proceedings were clearly misled by such irregularity and have not had an opportunity to be heard. At such hearing the county highway commissioner or any member of such committee may administer oaths as may be necessary when conducting such hearing.

(h) The county clerk shall publish a notice in the official newspaper at least twice, that said report is on file in his office and that the county board will, at a meeting to be held at the time stated in the notice, consider said report and hear all objections that may be made thereto, and determine what proportion of the cost of the improvement, if any, shall be paid by the county. At least two weeks shall intervene between the first publication of such notice and the said meeting. The county board may at such meeting confirm or correct such report or refer it back to the county highway commissioner or to its committee for further consideration.

(i) Subject to the limitations hereinbefore mentioned the county board may determine the amount to be paid by the real estate as benefits on account of improvements of a street or parkway and the amount that should be paid by the county.

(j) When the final determination shall have been reached by the county board, the county clerk shall publish a notice in the official paper of the county once in each week for two successive weeks that a final determination has been made as to the damages that will accrue to the real estate because of the change of an established grade or the benefits and damages to be assessed to the real estate in case of the proposed improvement.

(k) If the owner of any parcel of land affected by such determination feels himself aggrieved thereby, he may within twenty days after the date of such final determination appeal

therefrom to the circuit court of the county in which such property is located, by causing a written notice of appeal to be served upon the county clerk, and by executing a bond to the county in the sum of fifty dollars, with two sureties, to be approved by the county clerk, and conditioned for the faithful prosecution of such appeal, and the payment of all costs that may be adjudged against him. The county clerk, in case such appeal is taken, shall file a brief statement of the proceedings had in the matter before the county board with its decision thereon, and shall transmit the same with all the papers in the matter to the clerk of the circuit court. Such appeal shall be tried and determined in the same manner as cases originally commenced in said court; if the claimant recovers a greater sum than he was allowed by the county board he shall recover costs, otherwise the county shall recover costs. No appeal shall affect or delay the proceedings for making said improvement or any contract which may be entered into therefor, but a certificate or improvement bond, as the case may be, against the lot or parcel of real estate in question, for the amount of benefits assessed to such lot, shall be issued notwithstanding such appeal, and in case the appellant shall succeed, the difference between the amount charged in the certificate or bond so issued and the amount adjudged to be paid as benefits accruing to the parcel of real estate described in such certificate or bond shall be paid by the county.

(1) The appeal given by the last section from the report of the county highway commissioner or committee of the county board, as confirmed by the county board, shall be the only remedy of the owner of any parcel of land or any person interested therein, for the redress of any grievance he may have by the making of such improvement or of the change of any established grade covered by said report, or of any assessment or tax levied on account thereof.

(7) (a) When under a plan for a county system of streets and parkways adopted by the county board pursuant to section 27.04 any improvement is made and the cost is in whole or in part chargeable to the real estate to be benefited thereby, the county board may provide that the amount so charged may be paid with certificates against the parcels of real estate so benefited or in special improvement bonds or from the proceeds of the sale of such bonds, or that payments may be made part in certificates, part in cash, and part in special improvement bonds.

(b) Such certificates or bonds shall be in such form and bear such interest not exceeding six per cent per annum as the county board may prescribe. They may be made payable to the bearer with interest coupons attached, and the county board may bind the county to make good deficiencies in the collection up to but not exceeding the principal and interest, at the rate fixed, and for the time specified, upon such terms and conditions as the county board may prescribe. In cases where the county board makes good any such deficiencies the county shall thereupon become the owner of the certificate or bond and shall succeed to all the rights of such owner hereunder in addition to all other rights of the county provided by law in cases of delinquent taxes on lands.

(8) Whenever any work or improvement chargeable in whole or in part to the property specially benefited has been completed and the same approved by the county board, the contractor or the county shall be entitled to the certificate therefor as to each parcel of land against which benefits shall have been assessed for the amount chargeable thereto. After the expiration of nine months from the date of said certificate the same shall be conclusive evidence of the legality of all proceedings up to and inclusive of the issue thereof and it may be transferred by indorsement, provided, however, that this provision shall not affect any appeal from the final determination by the county board. If said certificates are not paid before the fifteenth of October in the year in which they are issued, the same may on or before the first day of November in each year, be filed with the county clerk, whose statement of special assessments which shall be paid in the next tax shall include an amount sufficient to pay said certificate with interest thereon at the rate provided in said certificate to the time when the county clerk is required to make return of delinquent taxes, and thereafter the same proceedings shall be had as in case of other taxes, except that the moneys collected on account of such taxes and all the tax certificates issued to the county on the sale of the property for such tax, if the same is returned delinquent, shall be delivered to the owner of the same on demand.

(9) (a) As soon as the amount chargeable to the real estate under the provisions of this section is finally determined, the county board may cause a notice to be published in the official

paper, or if there be none, in at least one newspaper published in the county or having a general circulation therein, substantially in the following form:

County Improvement Notice.

Notice is hereby given that under the plan for the county parkway system adopted by the county board, a contract has been (or is about to be) let (or noncontract work be done) for.....
(describe the work and location) and that the expense of said improvement chargeable to the real estate has been determined as to each parcel of said real estate and a statement of the same is on file with the county clerk. It is proposed to issue bonds chargeable only to the real estate to pay the special assessments, and such bonds will be issued covering all of said assessments except in cases where the owners of the property file with the county clerk, within thirty days after the date hereof, a written notice that they elect to pay the special assessments or a part thereof on their property, describing the same, on presentation of the certificates.

(b) After the expiration of said thirty days the county board may issue special improvement bonds covering all of the assessments except such as the owners have filed notices of election to pay as provided in this section. Said bonds shall be signed by the chairman of the county board and the county clerk, be sealed with the corporate seal of the county, and contain such recitals as may be necessary to show that they are chargeable to the particular property, specifying the same, and the number and amount of said bonds, and such other provisions as the county board shall think proper or necessary.

(c) Said bonds may be annual or semiannual interest coupon bonds or registered bonds without interest coupons as the county board may direct, the total issue in each case shall be payable in annual installments for a period not exceeding five years from the date of issue, and shall draw interest at a rate not exceeding six per cent per annum, interest payable annually or semiannually as the county board may direct; such bonds may be of such denomination as the county board shall determine and shall be sold at not less than par. The proceeds of the sale of such bonds shall be credited by the county treasurer to the special fund for the improvement of such streets or parkways, and may

be paid to the contractor for such work when payment is due him and the county board shall so direct, or the contractor may take such bonds as payment for work done with the permission of the county board.

(d) The county clerk shall carefully prepare a statement of the special assessments on which the bonds were issued, and record the same, together with a copy of said bonds, in his office.

(e) The county treasurer shall, out of the special fund hereby created for that purpose, pay the interest on and the principal of said bonds, as the same become due and charge the same to said fund.

(f) In each year after the issuing of said bonds, until all of them are paid, the county clerk, in his certification of the state and county tax and charges to the clerks of the cities, towns or villages wherein the land covered by said bonds is located, shall include sufficient of the special assessment on each such parcel of land to pay the annual installment of the principal and interest of said special assessment, and this amount shall be extended on the tax roll for the year as a special tax on such property. Thereafter this tax shall be treated in all respects as any other county tax, and when collected the same shall be a special fund for the payment of such bonds and interest, and shall be used for no other purpose. The county treasurer shall, out of this special fund, pay the interest on and the principal of said bonds. Any bondholder or bondholders may redeem from any tax sale, as fully as if owners of the land, under section 75.01.

(10) (a) The special improvement bonds herein mentioned shall be equal liens against all lots, parts of lots or parcels of land against which special assessments have been made, without priority one over another, which liens shall take precedence of all other claims or liens thereon, and when issued shall transfer to the holders thereof all the right, title and interest of such county in and to the assessment made on account of the improvement mentioned therein and the liens thereby created, with full power to enforce the collection thereof by foreclosure in the manner mortgages on real estate are foreclosed. The time of redemption therefrom shall be fixed by the court, and a copy of the bond foreclosed may be filed as a part of the judgment roll in said action in lieu of the original thereof.

(b) If within ninety days after the commencement of the annual sale of lands for taxes, the amount to pay any installment of principal or interest shall not have been collected, the owner or owners of at least one-third in par value of the bonds issued on any single improvement may proceed in his or their own names to collect the same by foreclosure thereof, and shall recover, in addition to the amount of said bonds and interest, all costs against the property of the party or parties in default.

(c) The owner of any property covered by such bonds, or the holder of a lien thereon or other person interested in the property, may redeem the same at any time before judgment by paying to the county clerk the amount due against such property, together with ten per cent additional thereon, which shall be in full for all costs chargeable to such property in such action.

(d) Any number of the holders of such bonds for any single improvement may join as plaintiffs in any such action, and any number of the owners of or other persons interested in the property covered by the assessments upon which such bonds are issued and on which they are a lien may be joined as defendants in any such action, and in case more than one action of foreclosure shall be commenced upon the bonds issued on account of a single improvement such actions may be consolidated. Any holders of bonds for the same improvement who do not join as plaintiffs may be made defendants and their rights adjudicated in the action.

(e) Upon the commencement of any such action the plaintiff shall cause a notice thereof to be filed in the office of the county clerk and county treasurer, designating the particular property affected by such foreclosure; and thereafter no redemption of any such property from such assessments shall be had without payment of all costs theretofore accrued in such action except as hereinbefore provided.

(11) Every action or proceeding to avoid any of the special assessments or taxes levied pursuant to the same, or to restrain the levy of such taxes, or the sale of lands for the nonpayment of such taxes shall be brought within nine months from the end of the period of thirty days limited by the county improvement notice provided for in this section and not thereafter. This limitation shall cure all defects in the proceedings, and defects of power on the part of the officers making the assessment, except

in cases where the lands are not liable to the assessment, or the county has no power to make any such assessment, or the amount of the assessment has been paid or a redemption made.

(12) (a) If in any action at law for the recovery of damages arising from a failure to make a proper assessment of benefits and damages, or failure to observe any provisions of law, or because of any act or defect in any proceeding in which benefits and damages are assessed, and in any action to set aside any special assessment against property for any of the purposes mentioned in section 75.56, or to set aside any special assessment certificate, special improvement bond, tax sale or tax-sale certificate based upon such special assessment, the court determines that such assessment is invalid by reason of a defective assessment of benefits and damages, or for any cause, it shall stay all proceedings in such action until a new assessment thereof be had in the manner hereinafter mentioned; thereupon the proper county authorities shall proceed forthwith to make a new assessment of benefits and damages against the property of the plaintiff as required by law in the case of such original assessment, and such plaintiff shall have the same right to appeal from such new assessment as he or his grantors would have had from such original assessment. If the validity of such new assessment is contested by the plaintiff, the court shall summarily try the matter and file an order sustaining or overruling the objection of the plaintiff. If such new assessments be held invalid, subsequent assessments may be made in like manner and similar proceedings resorted to to determine the validity of such assessments. When the amount to be assessed against the plaintiff's property has been finally determined by an assessment of benefits and damages, which the court shall hold to be valid, or when an appeal is taken, the court shall make an order, requiring the plaintiff to pay into the court for the benefit of the parties entitled thereto, the amount which should be justly assessed against the property in question; upon compliance with said order, judgment shall be entered for the plaintiff with costs. If the plaintiff fails to comply with such order the action shall be dismissed with costs.

(b) Where, in any action mentioned in the preceding paragraph, a new assessment has been made which is valid so far as the regularity of the proceedings is concerned, but wherein the plaintiff may feel aggrieved by reason of the amount assessed

for benefits and damages, such court shall upon the verified petition of the plaintiff, after notice of not less than ten days, proceed with the hearing of said cause. It shall not be necessary for the plaintiff in any such action to appeal from such assessment of benefits and damages but the court shall have full power to proceed with the hearing and determination of the proper amount thereof, and render final judgment between the parties.

(c) If any special improvement bonds issued pursuant to this section are held invalid, the county board may, as soon as the amount chargeable to the property benefited is finally determined by a new assessment, issue new special improvement bonds in lieu of such original bonds, to the holder thereof upon surrender of the same, for the amount of such new assessment remaining unpaid. Such new special improvement bonds shall be issued, enforced and collected in the manner prescribed in subsection (9) of this section. The excess in amount of such invalid special improvement bonds, if any, over such new bonds shall be paid by the county.

(13) The system of streets and parkways acquired or improved hereunder shall thereafter be under the charge and supervision of and shall be maintained by the county park commission.

SECTION 3. This act shall take effect upon passage and publication.

Approved June 29, 1925.

No. 13, S.]

[Published July 6, 1925.

CHAPTER 443.

AN ACT to amend section 20.74 of the statutes, relating to the general deficiency appropriation.

The people of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:

SECTION 1. Section 20.74 of the statutes is amended to read:
20.74 (1) There is annually appropriated such sums as may be necessary, payable from any moneys in the general fund or other available funds not otherwise appropriated, as an emergency appropriation. * * * No moneys shall be paid out under this