

SECTION 6. This act shall take effect upon passage and publication.

Approved July 3, 1931.

No. 869, A.]

[Published July 10, 1931.

CHAPTER 484.

AN ACT to create section 29.572 of the statutes, relating to the establishment of a wild life, fish and spawning refuge in Trempealeau county.

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

SECTION 1. A new section is added to the statutes to read: 29.572 Sections one, two, eleven, twelve and part of sections three, ten, thirteen, fourteen, fifteen and twenty-four of township eighteen north, range ten west and north of the Chicago, Burlington and Quincy railroad right of way, and sections seven, seventeen, eighteen and part of section nineteen and the west one-half of section twenty, of township eighteen north, range nine west, lying north of the Chicago, Burlington and Quincy railroad right of way, all located in Trempealeau county, are constituted a wild life, fish and spawning refuge. All provisions of subsection (4) of section 29.57 shall be applicable to such refuge and in addition no person shall take or catch any fish or spawn or fish for fish within the boundaries of such refuge; provided, however, that any person licensed to operate a muskrat farm in this area shall not be denied any of his rights pertaining to the operating of such farm and the catching and killing of muskrats.

SECTION 2. This act shall take effect upon passage and publication.

Approved July 3, 1931.

No. 939, A.]

[Published July 11, 1931.

CHAPTER 485.

AN ACT empowering any city of the first class to plan and make certain public improvements, to acquire or condemn property for public purposes and improvements, to make assessments of benefits and damages for such improvements and acquisitions

of property, to finance the same, and providing the procedure therefor.

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

SECTION 1. GRANT OF POWER. Any city of the first class in this state may exercise the power of acquiring any property by gift, purchase or the power of eminent domain for any of the purposes of establishing, laying out, widening, enlarging, extending, maintaining and improving parks and parkways, and the power of determining the damages caused by the exercise of the aforesaid power and by any public improvement herein authorized, and the power of making, levying and collecting special benefit assessments upon property benefited, and the power of financing improvements, and all powers conferred by this act, in the manner hereinafter provided.

SECTION 2. (1) PRELIMINARY RESOLUTION. Whenever the common council shall deem it necessary to make any public improvement involving the acquisition of any private property or the use of any public property for any of the purposes specified in the preceding section it shall pass by a majority vote of the members thereof a preliminary resolution declaring it necessary to take or use certain property for said purpose. It shall not be necessary in said resolution to describe in detail the purpose of the city or each piece or parcel of property deemed necessary to use or acquire, but it shall be sufficient to state in general terms the general nature of the proposed improvement. Said resolution shall provide that a plan of said proposed improvement be prepared for the approval of the common council.

(2) WHAT PLAN MAY CONTAIN. Said plan may combine any or all of the following improvements, to wit: The acquisition, extension and improvement of any park or parkway, and for the development or improvement thereof, the opening, widening, changing or extension of any walk, street, parkway or boulevard, and the grading, paving, repaving or improvement of the same. Such plan may contemplate and permit that buildings and other structures and improvements remain for a time upon any tract of land acquired by the city for park or parkway purposes, and that the same be devoted to private use, provided the portions of the tract so acquired not so occupied by or necessarily exclusively used in connection with said buildings and other structures and improve-

ments are designed and set apart by the city for use presently for park or parkway purposes, and all of said tract so acquired is declared in and by the plan adopted by the city, pursuant to which it is so acquired, to be intended for use for park or parkway purposes.

SECTION 3. PRIOR OWNED PROPERTY. The aforesaid plan of improvement may also include any property owned by the city prior to the adoption of the plan, whether such property was acquired by purchase, condemnation, or otherwise.

SECTION 4. (1) DUTIES OF CITY ENGINEER. After the passage of the resolution referred to in section two of this act the city engineer shall make or cause to be made and delivered to the commissioner of public works a detailed map and description of the property necessary to be acquired or used for said improvement, and of such adjoining or adjacent property as said commissioner may desire to have shown, and also such other surveys, maps and descriptions of property, and such estimates of cost, as said commissioner may deem necessary in the preparation of a plan for said improvement and the making of an estimate of the damages and costs of the same and of the benefits that may be assessed therefor.

(2) REPORT OF PLAN, ESTIMATES, MAP, BENEFIT DISTRICT. At any time and as often as he deems necessary the commissioner of public works may view the property proposed to be used or acquired to carry out the plan of improvement and property that may be benefited in order to aid him in planning said improvement and ascertaining the damages and benefits from the proposed improvement. Said commissioner shall prepare and report to the common council a tentative plan of the proposed improvement, a description of the property, if any, necessary to be acquired or used, an estimate of the total cost of carrying out said improvement, and an estimate of the total benefits that may be assessed against the property benefited by the proposed improvement, together with a map and description of the lots, parts of lots and parcels of land proposed to be taken or used and also that may be benefited, showing the extent and boundary of the benefited district, with an indicated maximum and minimum benefit assessment per front foot to any representative parcel or parcels of land he may select in any zone or zones he may make, or to any representative parcels of land he may select within such benefit district to indicate in

his judgment the estimated amount and extent of the benefits that may be assessed.

(3) **COMMON COUNCIL HEARING ON REPORT.** Upon receipt of said report the common council shall refer the same to a committee thereof for a public hearing thereon, for the purpose of discussing the plan and the relative costs and benefits, and necessity of said improvement. After such hearing the common council may approve said report and direct the city attorney to proceed with the condemnation of the property needed pursuant to the provisions of chapter 32 of the statutes and the other proper officers to do anything which is necessary to carry out said plan or the common council may remand said report to the commissioner of public works for reconsideration and revision, who shall thereafter make a revised report to the common council. The common council shall then refer said revised report to a committee thereof for a public hearing thereon, as in the case of the original report, and may thereafter approve said report, or itself revise the same, or approve it as revised by the common council, and thereafter direct that the improvement be made and that the city attorney proceed with the condemnation of the property needed and that the proper officers proceed to complete the improvement after the acquisition of all the necessary property. The common council may instead of approving the original or revised report, abandon the whole improvement.

The plan of improvement adopted in said report shall be considered the plan for the improvement and the adoption of the same shall constitute a declaration of the common council that the improvement is necessary.

(4) **ALTERATION OF PLAN.** When after the adoption of the plan of improvement as herein provided the city for any reason desires to alter said plan it may do so at any time before the beginning of an action to determine the necessity of the taking of the property, or if no such action is necessary, either because the city acquires all the necessary property prior to the beginning of such action or while said action is pending, such alteration may be made at any time prior to the confirmation of the assessment of benefits and damages.

The commissioner of public works shall present to the common council the proposed amendment of the plan together with an amended estimate of the cost and of the benefits, and an amended

map of the proposed improvement. The common council shall approve any such alteration by resolution before the same is effective.

When such alteration is made while the assessment of benefits and damages is being made or is pending as herein provided the commissioner of public works shall make a new assessment based on the amended plan in the same manner in which an original assessment is made and the original assessment made or pending shall be disregarded.

A certified copy of the resolution of the common council amending the plan together with a description of the change in the plan sufficient to describe the amendment shall be filed in the register of deeds' office of the county in which the land is located.

SECTION 5. PURCHASE OF PROPERTY OPTIONAL. After the adoption of the plan by the city, the city may purchase any property needed to carry out said plan and include the cost of such purchased property together with property acquired by condemnation in the assessment of benefits but it shall not be necessary for the city to purchase or attempt to purchase any property so needed before stating condemnation proceedings. If the city acquires or has acquired all the properties necessary to carry out its adopted plan prior to or during the pendency of condemnation proceedings and prior to the verdict of a jury on the necessity of taking of such property, no further condemnation proceeding shall be necessary, and the common council may authorize the commissioner of public works, as herein provided, to determine the damages and benefits in the same manner as after a verdict of necessity. Any property acquired during condemnation proceedings may be omitted from the verdict of the jury, but the verdict of the jury shall be obtained as to all remaining pieces of property not then acquired.

SECTION 6. (1) ACTION TO ESTABLISH NECESSITY. Pursuant to the resolution of the common council directing the city attorney to proceed with the condemnation of the necessary property the city attorney shall start an action in the circuit court under the code of civil procedure against all persons having an interest in any of said property for the purpose of establishing the necessity of taking said property by the verdict of a jury as required by the constitution of this state by the service of the usual summons under section 262.03 of the statutes except that in place of the words in

said summons "judgment will be rendered" the words " a verdict of necessity will be rendered" shall be substituted.

(2) COMPLAINT; CONTENTS. It shall be sufficient to state under subsections (2) and (3) of section 263.03 of the statutes that the city has decided to take the property, describing the same, and that the taking is necessary for the public improvement, which may be briefly described, and that the city demands that the necessity of such taking be established by the verdict of a jury. Within twenty days after the service of the complaint, any person owning or claiming an interest in any property proposed to be condemned, may serve and file an answer.

(3) HEARING; TRIAL; COSTS. After the expiration of the time for answer the action may be brought on for hearing on a three days' notice to all parties who have answered and shall have precedence over all other matters not on trial. The question of the necessity of such taking shall be determined by a jury impaneled and obtained in the same manner as in any civil action in such court. If no answer to the complaint is interposed the trial by jury shall proceed *ex parte*. The court may, in its discretion, submit to a single jury the determination of such necessity as to one or more than one or all of the parcels of property sought to be taken for the same purpose. Costs in such proceedings shall be paid by the city and if the jury find that the taking of such property is not necessary, the owner thereof shall recover from the city his taxable costs, not exceeding twenty-five dollars, and his necessary taxable disbursements, which shall be taxed by the clerk as in other actions and inserted at the foot of the verdict of the jury, and reported in writing to the common council by the city attorney and thereupon said common council shall by resolution direct the payment of said sum.

SECTION 7. VERDICT; FILING, REPORT TO COMMON COUNCIL. If the said jury shall return a verdict finding the taking of such property is necessary, said verdict shall be filed by the clerk of the circuit court the same as other verdicts in other civil actions, which shall thereby become a public record, but no judgment need be entered upon said verdict. The city attorney of said city shall thereupon notify in writing the common council of said city that the jury has rendered a verdict of necessity for the taking of the property needed as described in the report of the commissioner of public works as approved by the common council. If the verdict

of the jury shall be that it is not necessary to take said property, the city attorney shall notify in writing the common council of such verdict.

SECTION 8. (1) RESOLUTION TO MAKE ASSESSMENT. The common council may then by resolution direct the commissioner of public works to proceed to determine the damages to be paid for each piece of property taken or injured and the amount of benefits to be assessed against each piece of property benefited, within the benefit district heretofore adopted, by the proposed improvement and to make report thereof to the common council.

(2) NOTICES OF ASSESSMENT HEARING. The said commissioner shall then publish in the official newspaper of said city, or any other newspaper published or of general circulation in said city, for not less than six days, a notice that at a certain time, which shall not be less than twelve days after the first publication of said notice, and at a certain place, during certain hours of each lay day for not less than ten days or for such longer time as said commission may deem necessary, he will meet to hear such testimony as any party interested may desire to offer as to the damages or benefits, or both, resulting from the proposed improvement. Said notice shall also be posted in at least six public places in said benefit district, the number and location of said places to be determined by said commissioner, and said commissioner shall in his report to the common council certify the number of notices and dates and places of posting the same and such certification shall be sufficient evidence of such posting and no removal, defacement, or destruction of such notices without the actual consent or authority of said commissioner shall invalidate the proceedings. Said notices shall be served personally upon all persons who have appeared personally in the action described in section 6 or upon their attorneys, if any, at least twelve days prior to said hearing unless they are non-residents or cannot be found in the city, in which case the aforesaid publication of said notice shall be sufficient. It shall be sufficient to state in such notice in brief for what improvement said assessment of benefits and damages is to be made and the general boundary lines of the benefit district as heretofore adopted by the common council, and a small map of said district may in the discretion of said commissioner be published or posted.

(3) HEARING ON ASSESSMENT; ASSESSMENT. At the time and place stated in said notice and at any time and place to which

said commissioner may adjourn said hearing said commissioner shall hear such testimony on the damages and the benefits resulting from said proposed improvement as may be offered by any person interested, which testimony may, in the discretion of said commissioner, be taken down by a stenographer and written out. Said commissioner is also empowered to obtain information or testimony on the subject of such benefits and damages from such other persons or experts or sources as he may deem necessary to aid him in the performance of his duty. Thereafter said commissioner shall make his appraisal of the damages or compensation to be awarded for the property proposed to be taken for or that may be injured by the proposed improvement. Having ascertained the damages to the property taken or injured and the estimated expense of the proposed improvement and also the cost of the proceedings, the said commissioner shall proceed to apportion and assess the said damages or such portion thereof as he shall determine to be chargeable to the property benefited, together with the whole or any part of the expense of the proposed improvement or cost of the proceedings, upon the property by him deemed benefited, in proportion to the benefits resulting thereto from the proposed improvement, as nearly as may be, and shall describe the property upon which said assessment is made.

(4) STATEMENT OF DAMAGES AND BENEFITS. The amount of said damages for the taking of or injury to any property shall be the compensation to the owner or owners thereof, after making due allowance for and deduction therefrom of any benefit to the remaining property of such owner or owners. The benefits to each piece of property shall be separately stated in said assessment. If the damages to any property be greater than the benefits received, or if the benefits be greater than the damages, in either case the said commissioner shall strike a balance and carry the difference forward to another column so that the assessment will show what amount is to be received or paid by the owner or owners of the property and the difference only shall in any case be collected of them or payable to them except as herein otherwise provided.

(5) NOTICES OF REVIEW OF ASSESSMENT. After said assessment of benefits and damages shall have been made by said commissioner he shall publish notice for not less than six days in the official paper of said city, or in any other newspaper published or having a general circulation in said city, that such assessment has been

made and that the same will be open for review and correction at a certain time and place, which time shall not be less than twelve days after the last publication of such notice, for not less than ten days and such extension of such period as said commissioner may find necessary, during certain hours, and not less than two hours of each lay day, and that all who desire may view and inspect said assessment or be heard as to any objections they desire to make to such assessment or as to any request for a review and correction of the same and that after the close of said hearing said assessment, as made by said commissioner or as reviewed and corrected by him, will be submitted to the common council of said city for its consideration and confirmation, either as submitted to it or as afterward revised and corrected, in the manner provided herein. Said notices shall also be served personally upon all persons who have appeared personally in the action described in section 6 or upon their attorneys if any at least twelve days after the last publication of the notice, unless they are non-residents or cannot be found in the city in which case the aforesaid notice of publication of said notice shall be sufficient. Said notice shall also be posted, and the posting be certified to, in like manner as the previous notice given by said commissioner and with the same effect. It shall be sufficient to state in said notice in a brief and general way for what improvement said assessment has been made and describe the general boundary lines of the benefit district, and said commissioner may in his discretion post or publish a small map showing said benefit district.

(6) **REVIEW OF ASSESSMENT; REPORT.** At the place and during the time specified in said notice the said commissioner shall hear any and all persons interested in the property assessed who wish to view and inspect said assessment or object to the same or ask for a review and correction of the same and hear any testimony or evidence which may be offered by said persons on said subject. Thereafter the said commissioner may review, modify and correct his assessment in such manner as he shall deem just at any time during such hearing or thereafter before reporting the same to the common council. Thereupon it shall be the duty of said commissioner to report said assessment in writing, signed and certified to by him, to the common council.

(7) **HEARING BEFORE COMMON COUNCIL; REVISION; CONFIRMATION.** The report of said assessment shall be laid before

the common council when in session and the fact of its presentation shall be entered in its journal and mentioned in the proceedings with a statement in brief for what purpose and in what general locality such assessment has been made. The common council shall not have power to act upon or confirm such report until at least one week from the date of the session at which it was presented. At or after the expiration of the said period of one week last mentioned the common council may, in its discretion, upon the recommendation of its committee or otherwise, confirm said assessment or refer the same back to said commissioner for revision and correction. If the same shall be referred back the said commissioner shall proceed to review, correct and revise said assessment and report the same in like manner and upon like notices as herein required in relation to the first assessment and all parties interested shall have the like rights and the said commissioner and the common council respectively shall have like powers in relation to any subsequent assessments that they had in relation to the first assessment.

(8) ABANDONMENT. Instead of confirming the aforesaid assessment the common council may by resolution determine and declare that the cost of the property proposed to be taken is unreasonably great, or so large as to be burdensome and injurious to the owners of the property assessed for benefits thereto, or that it is inexpedient to take the property proposed to be taken for the public use, and direct that all proceedings for the taking of such property be abandoned, and thereafter the property proposed to be taken in such condemnation proceedings shall remain private property the same as if no condemnation proceedings had been instituted for the purpose of taking the same for public use, but no such abandonment of any such proceedings shall in any way hinder or prevent other and subsequent proceedings by the city to take the same property or any part thereof for the same or any other public use for which it may be taken by law.

(9) COPY TO COMPTROLLER; DUPLICATE RECORDS. After the confirmation of said assessment the city clerk shall forthwith deliver a certified copy of the same to the city comptroller, and the city comptroller shall make out duplicate records of the same in books kept for said purpose, and deliver one of said records to the city treasurer and keep the other in his office.

SECTION 9. (1) APPEAL TO CIRCUIT COURT. Any person or persons owning or having any interest in any property affected by said assessment, either by way of assessment of damages or assessment of benefits, may within twenty days after the confirmation of such assessment by the common council, appeal therefrom to the circuit court of the county in which the assessment is made by filing with the clerk of said court a notice of appeal setting forth therein his interest and the interest of any other person or party. The said appeal shall be ineffectual unless the appellant shall also, within said twenty days, serve a copy of the notice of appeal upon the city attorney.

(2) PROCEDURE ON APPEAL; PARTIES; COSTS. The appeals shall be tried as ordinary issues of fact are tried in said circuit court, the form of the issue being subject to the direction of the court. The court may permit any person or persons interested in the damages or benefits to the same piece of property to become parties to the appeal from the assessment of damages or benefits to said piece of property, upon their petition setting forth the nature and extent of such interest. If upon such trial the benefits assessed by the said city shall be diminished, or the damages assessed shall be increased, then and in either case the appellant shall recover his taxable costs on such appeal, otherwise the city shall recover taxable costs. Such appeal shall have preference over all other civil cases not on trial and may be brought on for trial by either party.

SECTION 10. APPEAL ONLY REMEDY. An appeal to the circuit court as provided in this act shall be the only remedy for damages sustained by the acts or proceedings of the city in the matter to which such assessment relates, and shall be the exclusive method of review of any assessment of benefits made therein; and no action at law or in equity shall be had or maintained for such injuries on account of such acts or proceedings.

SECTION 11. (1) TITLE, WHEN PASSES TO CITY. Whenever the damages awarded to any property, as confirmed by the common council, shall have been paid or tendered to the owner or owners thereof or his or their agent, or any sufficient money for that purpose shall be provided in the hands of the city treasurer, and is ready to be paid over to such owner or owners, and ten days' notice thereof shall have been given by said commissioner of public works in the official paper, or if said city shall pay said damages into the circuit of the county where said property is situated by deposit-

ing the same with the clerk of said court to be paid on the order of said court to the person or persons entitled thereto, the city may enter upon and appropriate the property to the use for which the same was condemned and the fee simple title thereto shall pass to said city.

(2) **PROOF OF TITLE; ABSTRACT; CERTIFICATE.** The claimant of said damages shall in all cases where the award of damages for any piece of property exceeds the sum of two hundred dollars furnish to said city for examination an abstract of title extended down to date showing himself entitled to the same before the city may pay the same to him, but in all cases where the damages awarded do not exceed two hundred dollars, the claimant may at his option furnish a certificate of title showing himself entitled to said damages in lieu of an abstract of title.

(3) **PAYMENT OF AWARD INTO COURT.** If there are two or more claimants to the award of damages to the same piece of property or to any part thereof and they cannot for any reason agree upon a division thereof, or if for any reason the city cannot safely determine who may be entitled to receive the award of damages or any part thereof, or if the city at its option desires, the city may pay the award of damages into the circuit court of the county where the property is situated by depositing the same with the clerk of the said circuit court and thereafter responsibility of said city for the payment of said damages shall cease and said city shall have the right to the possession of the property free of any claims or any liens. Thereafter the said circuit court shall have jurisdiction upon the application of any claimant or party interested in said award of damages and upon such notice as the court shall order to all interested parties or claimants and upon proof of claim or interest to determine the person or persons entitled to said award of damages and to order such distribution of the same as may be just.

(4) **FEE SIMPLE TITLE TO CITY.** Whenever such city shall acquire any property by gift, purchase or condemnation for any of the purposes specified in this act, the city shall be vested with the fee simple title to the same except that the city may in its discretion acquire only an easement for water or sewer mains or branches.

SECTION 12. HOW TO COMPLETE IMPROVEMENT. Whenever the common council of any such city shall adopt a plan of improvement as herein provided and direct the city attorney to condemn

the necessary property and the proper officers to complete the proposed improvement, the proper officer or officers of such city having charge of such public work or improvement may proceed, after the acquisition of the necessary property, to make plans and specifications and to let the contracts for the necessary work or improvements and cause such work to be done and improvements to be made to complete the improvement under the plan adopted, in accordance with any law governing such work or improvements in said city, excepting that no further estimate of the cost of the work or improvement or further recommendation to the common council need be made, and that no further assessment of benefits and damages on account of such work or improvement shall be made, except that which is authorized to be made for the whole plan of improvement in this act, and no limitation in any other law of the amount of benefits assessable shall be applicable to an assessment under this act. Payments due on any contracts for such work or improvements shall be payable at the times and in the amounts provided in the law governing such contracts in such city, except as herein otherwise provided, out of the funds provided therefor.

SECTION 13. (1) CONTRACTS ENDED; COMPENSATION. Whenever such city shall be entitled under this act to enter upon and appropriate any property to the use for which it was taken, all covenants, contracts or engagements between landlord and tenant or any contracting parties touching the same or any part thereof shall respectively cease and be absolutely discharged and such parties shall look to the award of damages for the payment of their claim, if any, against said property. When only a part of a lot or tract of land or any other premises under lease or other contract shall be taken for any public purpose by the city the city shall be entitled under this act to enter upon and appropriate the same to the purpose for which the same was taken and all the contracts, covenants or agreements respecting the part so taken shall be absolutely discharged as to the part thereof so taken.

(2) WHO SHALL PAY TAXES. Whenever the city shall be entitled under this act to enter upon and appropriate the property to the use for which it was taken after the lien of taxes general or special for the current year have become a lien upon the property taken, such taxes shall be paid by the owner or owners of said prop-

erty or deducted and paid from said award of damages, or shall be ordered paid by the court out of said award of damages when the same have been deposited with the clerk of the circuit court as provided in this act at the time of ordering the distribution of the award of damages among the persons entitled thereto.

SECTION 14. GUARDIAN. When any known owner of land or tenement affected by any proceeding under this act shall be an infant or labor under any legal disability the judge of the circuit court of the county in which the land or tenements are situated or in his absence the judge of any court of record in said county may upon the application of the city attorney or such party or his next friend, appoint a guardian for such party and all notices required by this act shall be served upon said guardian.

SECTION 15. WHEN TITLE IN TRUSTEE OR INCOMPETENT. In case the title or any interest in real estate proceeded against under this act shall be vested in any trustee not authorized to sell or convey the same, or in any infant, idiot or person of unsound mind, who shall have a general guardian already in existence, as distinguished from the provisions of section 14 herein, and if any such trustee or general guardian, or any guardian appointed under section 14 shall deny or contest the right of the city to condemn any such property or refuse or neglect to accept the damages awarded and provided in the hands of the city treasurer ready to be paid over to the person or persons entitled thereto as provided in this act, the city may by depositing said award of damages with the clerk of the circuit court of the county wherein such property is situated, convert such real estate to personal property by said condemnation proceedings by serving notice the same as a summons upon any such trustee, general guardian or guardian ad litem notifying them or any of them that said deposit has been made for the benefit of the said trustee, general guardian or special guardian and the beneficiary or ward in any such case; and the said circuit court shall then have jurisdiction upon the application of any such trustee, general guardian or guardian ad litem to make such order with respect to such award of damages and the disposition thereof as shall be required by law after a determination of the rights of the parties thereto; but the city's interest in the said controversy shall cease with the deposit of said money and the service of the notice provided for in this section.

SECTION 16. WRIT OF ASSISTANCE; TAKING AWARD, BOND. If the city is unable to obtain peaceable possession of the property after the payment of or providing for the payment of the award of damages or payment of the same into court as hereinbefore provided, a writ of assistance may be granted by the said circuit court or a judge thereof upon twenty-four hours' notice to put such city in possession of the property. If the city be thus in possession of any property pending an appeal the owner or parties entitled thereto may receive the money paid into court upon the order of the court as hereinbefore provided without prejudice to the appeal. If the city appeals from the award of damages the money thus paid into court shall only be withdrawn upon filing a bond to be approved by the court or judge to repay the amount by which such award may be decreased upon such appeal with costs.

SECTION 17. FILING NOTICES WITH REGISTER OF DEEDS. To comply with section 281.04 of the statutes it shall be sufficient to file a certified copy of the resolution of the common council approving the original or revised report of the commissioner of public works on the proposed plan with a description of the property proposed to be taken and a map showing the same and also the benefit district in the office of the register of deeds of the county in which the property is located prior to the beginning of proceedings in the circuit court for the condemnation of said property; and to file in the office of said register of deeds a certified copy of the resolution of the common council confirming the assessment of damages and benefits together with a description of the property taken and the map showing the location thereof, but it shall not be necessary to file therewith the assessment of benefits and damages. Provided that if all the property needed is acquired by purchase or otherwise and no condemnation proceedings are necessary, the aforesaid resolutions may be filed at any time after their passage.

SECTION 18. MAY GRANT DEFERRED BENEFIT PAYMENTS. Whenever the assessment of benefits and damages made under this act shall have been made by the common council, the common council may, in the resolution confirming the same or by a separate resolution after confirmation, determine that any owner or owners of lots, parts of lots or parcels of land, which may be assessed benefits in excess of fifty dollars on account of the improvement,

shall have the option, at any time within thirty days after the publication of the notice hereinafter provided, in writing to apply to the comptroller for an extension of the payment of such assessment of benefits to his or their property by paying therefor in equal annual installments, not exceeding twenty installments, for such a period and in such number as the common council may in such resolution determine, such installments to become due and payable as hereinafter provided.

SECTION 19. (1) APPLICATION; WAIVER. Such application shall contain an agreement that, in consideration of the privilege granted by such city of payment of the benefits assessed against the applicant's property in deferred installments, the applicant waives all right of any kind or nature to contest, either in law or equity, the power of such city to levy such an assessment of benefits against the applicant's property, and the legality and regularity of such assessment of benefits, and that the applicant will pay such assessment of benefits together with interest upon the unpaid balances, at the rate of six per cent per annum, in the manner and at the times herein provided, except that such agreement and waiver shall not deprive such applicant of the right of appeal provided in section 9 of this act from the amount only of the benefits assessed against the applicant's property. The sole question on such applicant's appeal shall be how much the applicant's property is benefited by the improvement as planned. Such application shall also contain a brief description of the property assessed and a statement that the applicant is the owner thereof or of the applicant's interest therein.

(2) RIGHT OF ELECTION TO OWNER OF REMAINDER. The privilege of electing to pay benefit assessments in installments as herein provided shall also belong to those owners of property a part only of whose property is taken for the improvement. If such owner elects as herein provided to pay the benefits assessed against the remainder of his property in installments, such benefits shall not then be offset against or deducted from the damages payable to the owner of the remainder of such property as hereinbefore provided, but the applicant shall sign the same kind of a written agreement and waiver and have the same right of appeal as that described in subsection (1) of this section. Such application shall also contain a brief description of the property assessed and a state-

ment that the applicant is the owner thereof or of the applicant's interest therein.

(3) **ASSESSMENT CHANGES ON APPEAL.** If on any appeals under sections 9 or 19 of this act the damages shall be increased or the benefits shall be reduced, the increase of damages to be paid or the difference in benefits to be received by such city shall be provided and made up out of any fund available to pay the city's share of the cost of the improvement and the common council shall have power to provide a sufficient fund, either by general tax or by issuing additional direct obligation bonds to cover any deficit arising from the result of such appeals.

When the benefits assessed against any piece of property are reduced or increased on an appeal the amount of the benefits assessed together with the proper amount of interest thereon as herein provided to be placed on the tax roll shall be reduced or increased proportionally and, if such assessment of benefits or any installments thereof shall already have been placed upon such tax roll, the same shall be corrected after the determination of such appeal.

If the whole or any installment of any benefits assessed shall have been paid and thereafter such benefits shall be reduced on appeal, such city shall refund to the person entitled thereto the excess with interest out of any fund herein provided.

If any property shall have been sold for any delinquent benefit assessment which is thereafter reduced on appeal, such city shall refund out of any fund herein provided any excess of such assessment together with interest thereon upon presentation of a receipt showing the redemption of such property from such tax sale.

If the whole or any installment of any benefits assessed against any property shall have been paid or any property shall have been sold for any delinquent benefit assessment and such benefit assessment shall be thereafter increased on appeal, such increase in such benefits over the benefits appealed from, together with interest at the rate of six per cent per annum on such increase of benefits from the date of the judgment entered on appeal, shall be placed on the following tax roll against such property in one sum, if the original benefit assessment was payable or paid in one sum, or divided proportionately between and added to any subsequent benefit assessment installments assessed against such property and

placed on the tax rolls and enforced and collected as provided in this act.

If assessment bonds shall have been issued payable out of such assessment of benefits any deficit resulting from such appeals shall be made up and paid by such city out of the fund herein provided.

If particular special improvement bonds as herein provided shall have been issued and the benefit assessment against any property shall have been reduced thereafter on appeal, any foreclosure of such bonds as herein provided shall be for the reduced amount only of such assessment of benefits and such city shall reimburse such bondholder for the difference due on such bond out of any fund herein provided.

SECTION 20. NOTICE OF PAYMENT AND OPTION. As soon as the benefits chargeable to the real estate under this act have been confirmed and a list thereof has been delivered to the city treasurer by the city comptroller as hereinbefore provided, and the common council has determined whether the same may be payable in installments and in what number of installments, the city comptroller shall cause a notice to be published in the official newspaper, or if there be none, in at least one newspaper published in the city or having a general circulation therein, substantially in the following form:

CITY IMPROVEMENT NOTICE

Notice is hereby given that under the plan for the (name of improvement) adopted by the city of, the benefits chargeable to the real estate benefited by the improvement proposed have been determined as to each parcel of real estate in the benefit district, and confirmed by the common council on the day of, 19....., and a list of said benefit assessments is on file with the city treasurer. All of said assessments may be paid at the office of the city treasurer without interest, within thirty days after the publication of this notice. If not so paid, said assessments will be placed on the tax roll as provided by law and collected at the time for the collection of taxes, together with interest thereon at the rate of six per cent per annum from the date of the confirmation of said assessments to the first day of February following the tax roll upon which the same may be placed.

Notice is also given that any owner of any lots, parts of lots or parcels of land, which may be assessed with benefits on account of such improvement, has the option, at any time within thirty days after the publication of this notice, to apply in writing to the city comptroller for payment of such assessment of benefits to his or their property exceeding fifty dollars in amount upon the terms provided by law, in equal annual installments, together with interest on all unpaid assessments at six per cent per annum, the first installment to be paid with interest on the entire assessment from the said date of confirmation of the assessment to the first day of February following the tax roll upon which said installment may be placed, as provided by law, and each succeeding installment to be paid, together with interest from each February first to February first on the unpaid balance of said assessment each year thereafter at the time of the collection of taxes as provided by law.

(2) POSTING NOTICES. The comptroller shall also cause said notice to be posted in six or more public places as he shall determine in the benefit district, and an affidavit of the date, the number and the places of posting of such notice by the person posting the same shall be made and filed and kept in the comptroller's office. Such affidavit shall be conclusive evidence of such posting of such notice.

SECTION 21. (1) ACCOUNT OF PAYMENT; REPORT. During the thirty-day period allowed for the payment of assessments without interest, the city treasurer shall furnish each day to the city comptroller, a statement of all payments of assessments made to him, and said officers shall credit said payments on the record of the list of assessments in their offices.

(2) TRIPPLICATE LISTS OF ASSESSMENTS BY COMPTROLLER. After the expiration of the aforesaid thirty-day period within which application may be made for the extension of payment in installments, the city comptroller shall make out an assessment list in triplicate, containing a description of each piece of property, the owner or owners of which have not paid such assessment in full, showing the total assessment against such property together with interest thereon, payable as herein provided, and also containing a description of each piece of property, the owner or owners of which have agreed to pay his or their assessment of benefits in

installments, showing the amounts chargeable to such property, together with necessary columns to which the installments shall be extended, the amount of each installment together with the interest to accrue on unpaid installments as herein provided, and when such payments are payable. One such assessment list shall be filed with the city treasurer, one with the officer who makes out the tax roll and one with the city comptroller.

SECTION 22. (1) SINGLE ASSESSMENTS, WHEN PAYABLE. All assessments which are not paid in full without interest and for which no election by the owner is filed to pay in installments, as herein provided, shall be paid in full together with interest at the rate of six per cent per annum from the time of the date of confirmation of said assessments by the common council to the first day of February following the tax collection period in which said assessments are payable as herein provided.

(2) INSTALLMENT ASSESSMENTS, INTEREST. All assessments upon which an election is filed to pay in installments shall be payable in the number of installments authorized at the times hereinafter provided, with interest on all unpaid balances at the rate of six per cent per annum, as herein provided. Interest payable with any first installment shall be paid on all unpaid installments and shall run from the date of the confirmation of the assessment to the first day of February following the tax collection period in which such installment is payable, as herein provided, and with each succeeding installment on all unpaid installments from the first day of February of each year to the first day of February of the following year.

(3) PAYMENTS FROM COMPTROLLER'S LIST. The installment payments and the single unpaid assessments, with interest, as herein provided, to be extended on the tax roll, shall be taken from the lists made by the comptroller.

(4) PLACING ASSESSMENTS ON TAX ROLL. The assessments payable in one payment and each first installment of any assessment, together with interest payable therewith, as herein provided, shall be extended on the tax roll opposite the description of the property against which the assessment has been made by the proper officer of said city in the same year in which such assessments are confirmed, if in the sole judgment of the comptroller there is sufficient time under the procedure herein to extend the same upon

said tax roll, but, if the comptroller considers that there is not sufficient time, he may direct that such payments be placed on the next succeeding tax roll. Each first installment of any assessment payable in installments, together with interest payable therewith, as herein provided, shall be in like manner extended upon the first tax roll prepared after the expiration of five years from the confirmation of any such assessment. The successive subsequent installments, with the interest accrued upon all unpaid installments, from the first day of February in each year following the tax collection of the prior year, to the first day of February of the following year, shall be extended on each succeeding yearly tax roll until all of said installments with interest shall be extended thereon. Assessments extended on the tax roll shall be collected and enforced as other taxes are collected and enforced except as herein otherwise provided in reference to those against which particular special improvement bonds are issued.

(5) ASSESSMENT ON REMAINDER; TAX ROLL; SALE. When a part only of any property is acquired by the city and benefits are assessed against the remainder thereof and the property is described on the tax roll in its entirety, the benefits assessed against the remainder may be placed opposite the description of the whole property on the tax roll, but there shall be a statement or indication of some kind on the tax roll showing that such assessment is against the remainder only of said property described on said tax roll, so that, if said assessment is unpaid, the remainder only of said property shall be sold for the non-payment of said assessment.

If said assessment is placed on the tax roll for collection purposes only as in the case of the issue of the bonds herein which may be foreclosed, the same statement or indication as above stated shall be made on the tax roll, and, in case of foreclosure for the non-payment of the assessment, the foreclosure shall be against the remainder only of said property assessed for said benefits.

SECTION 23. LIEN OF ASSESSMENTS. The lien of said assessments regardless of the time of the attaching thereof, shall be of equal rank with the lien of any other tax, city, county or state, general or special, levied in the same year on the same property, and shall not be impaired or defeated or cut off by the lien of any such other taxes, or by any tax sale certificate or tax deed, based upon such other taxes. Any special benefit assessment ex-

tended on the tax roll under this act shall be a lien on the property assessed as of the first day of December in the year in which any such assessment is extended on said tax roll for collection.

SECTION 24. NO EXTENSION OF PAYMENTS. No extension of the time of payment of any such benefit assessment due and payable shall be granted. Any owner or owners of any property desiring an extension of the payment of other taxes, general or special, as may be permitted by law, shall first pay any such assessment of benefits against the same property assessed under this act and then due and payable.

SECTION 25. PENALTY FOR NON-PAYMENT. Single payment assessments with the interest thereon, and installment payments together with interest payable with them on the unpaid installments, if not paid when due and payable as herein provided, shall bear interest at the rate of six per cent per annum from the time of default.

SECTION 26. PAYMENT IN FULL. The owner of the property or person having any interest in the same, charged with the payment of any such assessment or any installment thereof, shall have the privilege of paying such entire assessment in full at any time by paying all the interest thereon to a day six months after the date of said payment, except only as to any installment due within six months from the date of such payment, upon which installment interest shall be paid only to the date of maturity thereof.

SECTION 27. PURCHASE OF BOND BY CITY. After such payment in full, in order to protect the city from any further payment of interest on outstanding installment bonds issued against said assessment, the city is authorized, out of the fund in which said installment payments are placed, to purchase through the city comptroller without action of the common council, any outstanding installment bonds whenever in the judgment of the city comptroller there is a sufficient amount in said fund to do so. When any such bonds are purchased the city shall have the same rights as any other holder of such bonds and may cancel the same when paid. The city comptroller shall report to the common council on or about the first day of July of each year all such bonds purchased and cancelled.

SECTION 28. (1) POWER TO ISSUE BONDS. For the purpose of realizing the funds or a part thereof for making the proposed im-

provement, or of paying the compensation for the property taken or injured, or for both purposes, the common council may authorize the issuance of either of two kinds of bonds as hereinafter described, payable out of the collection of the assessments of benefits, and subject to the terms and conditions as herein provided. The first kind shall be known as general special improvement bonds, and the second kind as particular special improvement bonds.

(2) POWER TO CALL OR REGISTER BONDS. Either of said kind of bonds may in the discretion of the common council be made registerable as to principal and callable on such terms and at such times as such common council may determine.

SECTION 29. GENERAL SPECIAL IMPROVEMENT BONDS. General special improvement bonds shall be payable as to principal and interest at fixed dates as herein provided, out of the fund derived from the collection of assessments of benefits made for one, or more than one improvement as may be determined by the common council. The comptroller shall determine a convenient date for and also issue said bonds. The common council shall determine the amount and denominations in which said bonds shall be issued, and the interest rate they shall bear, not exceeding six per cent per annum. Such bonds may be issued in series, shall be made payable to bearer, have interest coupons attached, bear the seal of the city, and be signed by the mayor and city clerk, and countersigned by the city comptroller, but the mayor's signature thereon may be engraved.

SECTION 30. (1) PARTICULAR SPECIAL IMPROVEMENT BONDS. Particular special improvement bonds may be issued directly upon and against the several lots, parts of lots or parcels of land, the owner or owners of which have agreed, as hereinbefore provided, to avail themselves of the privilege of paying such assessments in equal installments, in an amount not exceeding the assessment of benefits against any such lots, parts of lots or parcels of land.

(2) ISSUING; TERMS. After the common council shall have authorized said bonds they shall be issued by the city comptroller as of such date as he shall deem convenient against the several lots, parts of lots or parcels of land for the amounts assessed and chargeable against the same. Such bonds shall be made payable as provided by the resolution of the common council authorizing them in equal annual installments, together with interest on the unpaid

part thereof to the date of payment, on the first day of April in each year following the period for the collection of taxes for the year in which such installment assessment is placed upon the tax roll as herein provided. Such bonds shall be designated "Particular Special Improvement Bonds" (naming the improvement), be made payable to bearer, state the amount of the assessment of benefits due thereon and the amount of each installment together with interest payable therewith and the times of payment, a description of the property upon which the same is assessed and chargeable, bear the seal of the city and be issued in its name, and be signed by the mayor and city clerk and countersigned by the comptroller, but the signature of the mayor may be engraved thereon. Such bonds shall bear interest at a rate not exceeding six per cent per annum and shall have attached thereto coupons, each in an amount equal to the installment payment due on each bond together with the accrued interest on the unpaid part of said bond, as herein provided.

(3) LIEN OF BONDS. Such bonds shall be liens as of the first day of December in the year of their issue on any lots, parts of lots or parcels of land against which they are issued, as herein provided, which lien shall take precedence over all other claims and liens except that they shall be of equal rank with the lien of other city, county or state taxes, general or special, of the same year, against the same property, and shall not be impaired, defeated or cut off in any manner by the said lien of such other taxes, or by any tax sale certificate or tax deed, based on such other taxes.

(4) DEFAULT; FORECLOSURE. In case of the failure to pay any installment of said bond together with accrued interest, as herein provided, when the same becomes due on the first day of April in any year, on account of the failure of the owners of the property to pay the assessment against the same, the whole amount of any such bond, together with the interest thereon, chargeable against any such lot, parts of lots or parcels of land, shall, at the election of the holder of such bond to be exercised within three years after said default on said bond, forthwith become due and payable and said bond may be foreclosed at any time within the aforesaid three years as tax certificates are foreclosed under section 75.19 of the statutes and in such action there may also be recovered a reasonable attorney fee and costs. The time for redemption therefrom may be shortened by order of the court, and a copy

of the bond foreclosed may be filed as a part of the judgment roll in the action in lieu of the original.

(5) **BONDS AGAINST SINGLE PAYMENT.** Bonds of this kind may be issued against lots, parts of lots or parcels of land, the owner of which must pay the benefits assessed against the same in a single payment with interest on the same and they shall be paid at the same time as the first installment of installment bonds are paid and foreclosed in case of default in the payment thereof in the same manner as installment bonds herein are foreclosed.

(6) **ASSESSMENTS; TAX ROLL; COLLECTION ONLY.** When bonds authorized by this section are issued, single payment assessments and the installments of benefit assessments together with the interest payable therewith out of which said bonds are payable, shall be extended on the tax roll as other such installments are extended thereon, but only for the purpose of the collection of the same by the city treasurer at the same time as other taxes are collected, and, in the event of default in the payment of any such single payments or installment and interest, the property against which the same is assessed shall not be sold for said taxes but the sole remedy for the enforcement of the payment of said bonds shall be the foreclosure action against the property as herein provided.

SECTION 31. FUND; USE; PAYMENT OF BONDS AND DEBT. The city treasurer shall keep a separate account of the fund or funds arising from the collection of such benefit assessments and, if either of said kind of special improvement bonds are issued, the same shall be used first for the payment of the principal and interest on said special improvement bonds when the same become due, except that if no such special improvement bonds are issued but general obligation bonds of such city are issued or a general tax is levied as provided in section 37 hereof to pay the whole cost and expense of such improvement the funds derived from such special benefit assessments shall be applied toward the payment of the principal and interest of such general obligation bonds or the reduction of general taxes as directed in said section 37.

SECTION 32. FUND PLEDGED TO BONDS. The whole of said fund or funds shall be pledged for the payment of the aforesaid bonds and interest, as herein provided, as they and the payments thereon severally become due, but neither the city nor any officer thereof shall be liable for the payment of any bond or any part

thereof, principal or interest, excepting for so much thereof as has been actually collected by the city treasurer by the payment of such benefit assessments against which such bonds have been issued.

SECTION 33. OPTION TO GUARANTEE DEFICIT. The common council may bind the city to make good any deficiencies in the collection of such assessment up to but not exceeding the principal and interest of any of said bonds as they become due. If the city because of any such guaranty makes good any such deficiency it may become the owner of any such bond or coupon thereof and be subrogated to the rights of an owner hereunder in addition to all other rights it may have in case of delinquent taxes on lands, and may apply any redemption payments on delinquent assessments to the payment of any such coupons or bonds held by it.

SECTION 34. TAX DELINQUENT FUND; DEFICITS. The city is authorized to provide a sufficient tax delinquent fund to cover any delinquencies in the collection of such assessments, and, if the common council desires, it may authorize the payment out of such delinquent fund of any deficit on any of said bonds on account of default in the payment of any said assessments.

SECTION 35. TIME OF BOND PAYMENTS. Such bonds or coupons, or both, as the case may be, shall be payable at the office of the city treasurer on April first, following the expiration of the tax collection period of each year in which said assessments may be placed on the tax roll for collection as herein provided, to the extent of the moneys received from the collection of the said assessments out of which said bonds and coupons are payable.

SECTION 36. SALE OF BONDS. Either of said kind of bonds which are issued may be sold under the superintendence of the officer or officers in said city who are authorized to sell general bonds of said city and the proceeds used as herein provided.

SECTION 37. GENERAL BONDS; TAX; SPECIAL BOND OR ASSESSMENT PROCEEDS. Any such city may pay the whole cost and expense of any improvement proposed under this act in cash out of the proceeds of general obligation bonds which the city may issue as provided by law or out of a tax levy for such purposes, and issue and hold either kind of the aforesaid special improvement bonds and apply the payments on said bonds derived from the collection of special assessments as herein provided to the payment of the

principal and interest on any such general obligation bonds which may be issued, or to the reduction of the general taxes if a tax levy is used instead of said general obligation bonds. Such city may in its discretion omit the issuance of any such special improvement bonds but in case of such omission shall apply the special benefit assessments when collected to the payment of the principal and interest on any of the aforesaid general obligation bonds issued or to the reduction of general taxes if a tax levy shall have been made to pay for the improvement.

SECTION 38. ISSUING GENERAL BONDS. Whenever the common council of such city shall declare its purpose to raise money by issuing general obligation bonds to pay the cost of carrying into effect any plan adopted under this act, the proposition for their issue for this special purpose need not be submitted to the electors of such city unless a petition is filed with the city clerk requesting such submission signed by electors numbering at least ten per cent of the votes cast for governor, in such city, at the last general election. If such petition is filed proceedings shall be had as provided by subsection (5) of section 67.05 of the statutes, but such proposition may, in the discretion of the common council, be submitted to a popular vote upon resolution of the common council, without waiting for the filing of said petition.

SECTION 39. ANTICIPATION NOTES. Such city may, by authorization of the common council, borrow from time to time, on notes of the city, signed by the mayor and city comptroller, such sums of money, in anticipation of the incoming revenue from the special benefits assessed under this act, as it shall deem necessary to pay for property taken or injured, or improvements made or to be made, as provided in this act. Such notes shall be paid out of the receipts from the payment of the said special benefits, at such time as may be agreed upon, provided that any deficit on account of delinquencies in the collection of such assessments, may be made up from and paid out of the tax delinquent fund authorized by this act.

SECTION 40. STATUTE OF LIMITATION. No action in law or equity shall be brought or maintained by any person to cancel, annul or set aside or declare void any assessment of special benefits made under this act or any tax sale certificate issued on the sale of property for the nonpayment of any such assessment or to enjoin the collection of such assessment or a sale of property for

the nonpayment of the same or to prevent the city from entering upon or appropriating the land condemned and paid for as herein provided or from completing the improvement or from issuing or selling or paying any bonds as herein provided or to declare void any such bonds unless said action shall be commenced within one year from the first day of January following the year in which such assessment of benefits or any installment thereof made for any improvement under this act is placed upon the tax roll for collection.

SECTION 41. (1) SUBSTANTIAL COMPLIANCE; VALIDITY. Substantial compliance with the requirements of this act shall be sufficient to give effect to any proceedings thereunder; and no error, irregularity or informality in any of the proceedings under the provisions of this act not affecting substantial justice shall in any way affect the validity of the proceedings.

(2) **LIBERAL CONSTRUCTION.** This act shall be liberally construed so that the city shall have the largest possible power and leeway of action under it.

(3) **INVALIDITY OF ONE PART NO EFFECT ON REST.** If any provision or any section of this law shall be held unconstitutional, it shall not affect the validity of the law as a whole or any other section or provision thereof.

SECTION 42. RELATION TO OTHER LAWS. This act shall not in any way be construed as a repeal of chapter 347 of the laws of 1923, or of subsections (13), (14), (15) and (16) of section 62.23 of the statutes. The procedure herein provided shall be an additional and alternative method which the city may in its discretion follow.

SECTION 43. This act shall take effect upon passage and publication.

Approved July 3, 1931.

No. 942, A.]

[Published July 10, 1931.

CHAPTER 486.

AN ACT to repeal sections 101.31 and 343.339, to amend section 20.565 and to recreate section 101.31 of the statutes, relating to architects and civil engineers and providing a penalty.

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