

No. 526, A.]

[Published August 17, 1955.

**CHAPTER 574**

AN ACT to renumber 59.965 (5) (f) ; to amend 20.49 (8) and (11) (b) 4, 59.965 (5) (a) and (c) ; to repeal and recreate 59.965 (1) (a) and (c), (5) (d), as amended by chapter 10, laws of 1955, (10) (a), and 67.04 (1) (v) ; and to create 59.965 (5) (f), (g), (h), (i), (j), (k) and (L) and (11) and 84.09 (7) of the statutes, relating to the planning, financing, construction, operation, maintenance and administration of expressways in counties having a population of 500,000 or more, and making an appropriation; the annual appropriation for the next biennium will not be appreciable in amount.

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

SECTION 1. 20.49 (8) and (11) (b) 4 of the statutes are amended to read:

20.49 (8) A sum sufficient for highway aids as provided by ss. 59.965 (11), 83.10, 86.31, 86.32, 86.33, 86.34 and 86.35.

(11) (b) 4. To all cities with a population of more than 10,000 to supplement the appropriation made by s. 86.31 and to counties to supplement the appropriation made by s. 59.965 (11) a sum equal to 25 per cent of such revenues, to be allocated to each such city and county in proportion to the \* \* \* allotments under \* \* \* ss. 59.965 (11) and 86.31.

SECTION 2. 59.965 (1) (a) and (c) of the statutes are repealed and recreated to read:

59.965 (1) (a) "Expressway" is a divided arterial highway for through traffic with full or partial control of access and generally with grade separations at intersections. "Full" control of access means that the authority to control access is exercised to give preference to through traffic by providing access connections with selected public roads only and by prohibiting crossings at grade or direct private driveway connections. "Partial" control of access means that the authority to control access is exercised to give preference to through traffic to a degree that, in addition to access connections with selected public roads, there may be some crossings at grade and some private driveway connections. The commission shall have power to determine whether full or partial control of access shall be exercised.

(c) "Expressway project" is an integral portion of the expressway that may be put to public use independently of other expressway projects.

SECTION 3. 59.965 (5) (a) and (c) of the statutes are amended to read:

59.965 (5) (a) As soon as possible after its organization, consider and devise a general plan of expressways to serve the entire county. Such plan shall be presented to the governing body of each municipality through which a part of the expressway system is routed for its consideration and approval. *The commission may in its discretion, prior to its presentation of such general plan to the county board as hereinafter provided, by formal action modify such general plan to meet objections raised by the governing body of any municipality through which a route of such expressway passes.* If \* \* \* the approval of such governing body is not granted within 60 days from the date of submission, the commission shall present the general plan to the state highway commission, which shall hold a public hearing on that part of the plan which is located in such municipality. After such hearing, the state highway commission shall make recommendations to the commission with reference to the matters objected to by the municipal governing body. Thereafter the commission shall incorporate such recommendations in its general plan. When the approval of the necessary local governing bodies has been obtained or the recommendation of the state highway commission has been obtained in lieu thereof, the general plan shall be presented to the county board of such county. The county board upon receipt of such general plan shall promptly consider the same and approve or reject such plan. If the plan be rejected, the commission shall \* \* \* *devise a revised plan with such modifications or changes as to it seem proper, secure the approval thereof by the governing bodies of the municipalities affected or the recommendations of the highway commission as hereinbefore provided and submit such revised plan to the county board,* and thereupon the county board shall again consider and approve or reject such plan. This procedure shall continue until some general plan has been approved by the county board. Thereafter, upon request of the commission, such general plan may be amended by the county board in conformity with such request.

(c) To accept, in the name of the county, grants, conveyances and devises of land, *improvements thereon and any and all interests whatsoever therein* and bequests and donations of money to be used for expressway purposes.

SECTION 4. 59.965 (5) (d) of the statutes, as amended by ch. 10, laws of 1955, is repealed and recreated to read:

59.965 (5) (d) *Acquisition of lands and interests therein.* 1. To acquire in the name of the county or in the name of the state when so

directed by the state highway commission, after the county board has adopted an expressways project budget, or in advance thereof with the general approval of the county board as hereinafter provided, by donation, purchase, condemnation or otherwise, such lands, including any improvements thereon, and any interests, easements, franchises, rights and privileges in or pertaining to lands, of whatever nature and by whomsoever owned, as the commission deems are necessary and required for expressway purposes, and to dispose of the same. The commission may purchase or accept donation of remnants of tracts or parcels of land remaining at the time or after it has acquired by condemnation or after or coincident with its acquisition by purchase or donation portions of such tracts or parcels by purchase or condemnation for expressway purposes where in the judgment of the commission such action would assist in rendering just compensation to a land owner, a part of whose lands are required for expressway purposes, and would serve to minimize the over-all cost of such necessary taking by the public. The county may dispose of such remnants. No lands or interest of any kind therein acquired as hereinabove provided shall be disposed of by the county without the consent of the commission, and all moneys received for any such lands, improvements thereon or interests of any kind therein, so disposed of, shall be credited to the land acquisition account as an abatement of expense. No lands acquired by the commission, as provided in this subsection, in the name of or in trust for the state, shall be disposed of by the county without prior approval of the state, and the proceeds of such sale shall be remitted to the state or retained and used for expressway purposes when so directed by the state highway commission.

2. The commission may also, for specific approved highway projects or otherwise, with the general approval of the county board once given and after the general plan of expressways has been adopted by the county board, as the same may be amended, acquire lands and interests therein of the nature and in the manner specified in this paragraph for the right of way of such expressways in advance of the time of the adoption of an expressway project budget including such lands and interests. Such power may be exercised when in the judgment of the commission the public interest will be served and economy effected by forestalling development of such lands which will entail greater acquisition costs at a later date. Upon such acquisition the commission may improve, use, maintain or lease such lands until the same are required for expressway construction. It is recognized that there may necessarily be a period of time between the acquisition of needed lands for right of way and the commencement of actual site clearance and construction, but such fact shall not minimize the public purpose of such acquisition. The owners of such lands at the time of such acquisition shall have the first right to enter into lease thereof with the county acting by the commission until such lands are needed for expressway construction. Any lands so leased shall be subject to general property taxation during the term of the lease. All rentals shall be credited to the project or to the expressway land acquisition account. On request of the commission, the county board shall provide out of funds acquired by bond issue or otherwise a land acquisition fund in an amount specified by the commission from time to time, but not in excess of \$5,000,000 of expendable funds at any one time, to be used primarily for the acquisition of lands, improvements thereon and interests therein as specified in this subsection prior to the approval of the specific expressway project for which such lands or interests will be required. Such fund shall be adjusted to reflect acquisition costs for lands and interests therein thereafter incorporated in specific approved expressway projects by transferring both the appropriations and the acquisition costs therefor to the proper expressway improvement expenditures account.

3. When an expressways project for which lands, improvements thereon and any or all interests therein have been paid for from any expressway land acquisition fund or account becomes activated, upon request of the commission and subject to the approval of the county board, the state highway commission is authorized to reimburse the expressway land acquisition fund by allocation of funds which may be made available under any state or federal statute to reimburse prior disbursements from such land acquisition fund to acquire said lands, improvements thereon or interests therein or appurtenant thereto. All state or federal funds thus received shall be used for expressway purposes.

4. The commission, in acquiring lands, improvements thereon and interests therein and appurtenant thereto as hereinabove specified in this subsection, may acquire the same in fee simple or by easement for highway purposes as it may by order determine. In any such acquisition, the commission is authorized to and shall when requested by the state highway commission, act in the name of the state as the agent of the state highway commission and in other cases shall act in the name of the county. The commission in making such acquisition may proceed under ch. 32 or ss. 83.07, 83.08 and 84.09, and when so proceeding shall have the same powers and duties as are vested by said statutes in the state highway commission or the county highway committee and the expressway commission or the land owner shall have the same right of appeal as is granted by said sections.

SECTION 5. 59.965 (5) (f) of the statutes is renumbered 59.965 (5) (m).

SECTION 6. 59.965 (5) (f), (g), (h), (i), (j), (k) and (L) of the statutes are created to read:

59.965 (5) (f) *Vacation; relocation, reconstruction of streets, alleys, etc.* Whenever the commission shall determine that it is necessary for the proper construction of an expressway project that streets or alleys shall be vacated in whole or in part, or be deadened at the expressway right of way line; that existing streets or alleys be relocated; that new streets or alleys be laid out and opened; that accessory streets or ramps to serve as approaches to the expressway be constructed; that the grade of existing streets be changed or that the traveled portion of existing streets be widened and improved so as to facilitate entrance to the expressway, it shall formulate a tentative order evidencing such requirement and file a certified copy thereof with the clerk of each town, city or village affected by such tentative order for consideration thereof by the governing body of such town, city or village. Said governing body shall hold a public hearing in considering such tentative order and shall give notice of such hearing by publication once a week for 2 successive weeks in such newspaper, published in the county, as such governing body may designate. If such tentative order is not approved within 90 days from the date of such filing, the commission shall present the tentative order to the state highway commission, which shall hold a public hearing thereon, of which hearing the municipality in question shall be given notice. The highway commission shall have jurisdiction to pass upon the necessity and reasonableness of the proposed tentative order, and it may approve, modify and approve or disapprove of the order, and its decision thereon shall be final, with no review allowed under ch. 227. If such tentative order is approved by the governing body of the municipality affected, or if it is approved or modified and approved by the state highway commission, the county expressway commission may thereafter issue a final order identical with the original tentative order as the same may be modified by the state highway commissioner's decision. A certified copy of such final order shall be filed with the clerk of the town, village or city affected. Notice

of the making of such order shall be published once a week for 2 successive weeks in such newspaper published in the county as the county board shall designate to publish official county notices. The governing body of such town, village or city shall within 30 days after such filing take the necessary action to comply with such order and in so doing shall not be limited by the objections of any abutting owner, and any such town, village or city may act upon the initiative of its governing body without the necessity of obtaining the consent of any abutting owners, notwithstanding any provisions of chs. 60, 61, 62 and 66 and any and all other provisions of law to the contrary. If the town, village or city does not comply with the order within a reasonable time, the commission may perform the work required by the order with its own forces or by contract and in so doing and for such purpose shall have the same powers and freedom from limitations as are vested by the above specified chapters and this paragraph in the governing body of the town, village or city. The plans, specifications, proposed contracts and the appraisal of damages, if any, caused to abutting owners by compliance with such order shall be subject to approval by the commission prior to the commencement of any work under such order but such requirement for approval of such order shall not affect the abutting property owners' rights of appeal from the determination of damages by the commissioner of public works of the city or by any other authorized person or body. The cost of performing such work as may be required by any order of the commission under this subsection, including damages granted for changes of legally established grade or necessary acquisition of lands, shall be paid by the county from expressway funds as an item of the particular expressway project budget upon presentation of vouchers which have been approved for payment by the governing body of such town, village or city and the commission. If the payment made by the county has been increased by reason of the town, city or village requesting an expenditure in excess of replacement or termination costs, the said town, village or city shall reimburse the county for such excess cost. Said reimbursement shall be credited by the county to abatement of the respective expense for which it was received.

(g) *Relocation of municipal utilities.* 1. The commission, subject to approval by the public service commission after public hearing to all interested parties in such cases in which the public service commission would have jurisdiction, may by order require any town, village or city through which an expressway project is to be constructed to remove, relocate and replace in kind or with equal facilities, or if the town, village or city shall so request by enlarged facilities, any sewer, street lighting or other like utility service the location of which interferes with construction of an expressway project, provided that in the event of such request the town, village or city shall bear that part of the cost of such improvement which exceeds the cost of the replacement of the existing facility in kind or with equal materials or facilities, provided further that the commission shall bear such excess cost where the installation of such enlarged facility is caused by designed construction and use of the expressway. A certified copy of such order shall be filed with the clerk of each town, village or city affected and upon such filing each such town, village or city shall within 30 days thereafter take the necessary action to comply with such order, provided that all plans, specifications and contracts for any of such work shall be subject to approval by the commission. In any event, when the work under specific contracts has been completed and approved by the governing body of such town, village or city and the commission, the same shall be paid by the county from expressway funds as an item of the particular expressway project budget. If the payments made by the county exceed the replacement costs and such additional cost was incurred at the specific request of the town, village or city, the said town, village or city shall reimburse the county therefor. Said reimbursement

shall be credited by the county as an abatement of the respective expenses for which it is received. If deemed feasible and desirable by the commission any work provided for in this paragraph may be performed by commission forces or directly by contract, in which event the town, village or city in which such work is performed shall afford the co-operation necessary and required by the commission.

2. With respect to any water utility of any city, town or village which utility in addition to providing water for human consumption, performs governmental functions in the way of providing water for fire protection, sewerage operation, street sanitation, park bathing pools and the like, the commission shall have the same powers and be subject to the same obligations as are provided in subd. 1, provided that water storage tanks, water pumping stations and water reservoirs shall not be included in any order of the commission and may be removed, relocated and replaced only with the consent and approval of the city, town or village owning and operating such facilities.

(h) *Private occupancy of streets; relocation.* 1. All persons other than those mentioned in par. (g) lawfully having buildings, structures, works, conduits, mains, pipes, wires, poles, tracks or any other physical facilities in, over or under the public lands, streets, highways, alleys, parks or parkways of the county, or of any town, village or city therein, which in the opinion of the commission in any manner interfere with the construction of any expressway project or the relocation or maintenance thereof, shall upon order by the commission promptly so accommodate, relocate or remove the same as may be ordered by the commission so as to remove such interference.

2. Whenever the commission proposes to submit an expressway project to the county board for its approval it shall give notice thereof to each privately owned public utility or other person affected by such project indicating in such notice the action which it desires such utility or person to take, and such utility or person shall within 90 days after receipt of such notice furnish to the commission its plan to comply with such request and a reasonable estimate of the cost thereof.

3. When the utility pursuant to the commission's order proceeds with the work in a manner satisfactory to the commission, the county by the commission shall pay the utility from expressway funds upon monthly estimates of work performed and submitted for payment by the utility, two-thirds of the net cost incurred by the utility in performing such work, after deducting reasonable and fair credits for items salvaged, for any betterments made at the option of the company and for the value as carried on the utility's books, of the used life of a facility retired from use if the service life of the new facility will extend beyond the expectancy of the one removed.

4. The commission and any utility required to accommodate, relocate or remove a utility facility described in subd. 1, may by agreement provide for the respective amounts of the cost to be borne by each so as to resolve any dispute as to the allowance of charges and credits as hereinabove set forth. When such agreement has been concluded, the county by the commission shall pay out of expressway funds its share of such cost upon monthly estimates of work performed and submitted for payment by the utility.

5. If the commission and any privately owned public utility are unable to agree as to the division of such costs, either may appeal to the public service commission, which body shall determine the proper amounts of reimbursement according to the provisions expressed in this paragraph, either party may have a review of the public service commission's decision in the manner provided in ch. 227. If it be determined upon such review that the county has paid more than two-thirds of the net cost of com-

pliance by a utility with the commission's order, any overage shall be reimbursed to the county by the utility.

6. No such appeal shall delay construction of the expressway project nor compliance by the privately owned public utilities with the orders of the expressway commission, provided that such compliance shall not prejudice the rights of either the commission or the utilities in any pending appeal.

7. If any person refuses to comply with an order of the commission as promulgated in accordance with this paragraph, the commission may have a writ of assistance from the circuit court to compel compliance, and such person shall be liable for all damages caused to the commission by such delay.

8. Whenever any steam or electric railroad tracks shall cross or be crossed by an expressway project ss. 195.28 to 195.291 shall be applicable.

9. The reimbursement to private utilities provided in this paragraph shall be limited to expressway projects as provided in this section.

(i) *Entry on private lands.* The commission, its agents or servants, may enter upon the land in any town, village or city in said county for the purpose of making surveys or examinations in the performance of its duties.

(j) *Traffic types and speed limits.* After an expressway project has been certified as completed, the public body having jurisdiction over the maintenance thereof shall have the power to regulate the type of vehicular use of such portion of the expressway except as limited by federal and state laws and regulations, and the power to fix speed limits thereon not in excess of the maximum speed limits for state trunk highways, and to provide and enforce reasonable penalties for infraction of such vehicular use regulation or speed limits.

(k) *Building permits on lands in expressway routes.* Each town, village or city through which a route of the approved expressway plan, as amended from time to time, shall pass, shall be given a formal notice of such route and a map thereof. Thereafter, when an owner of land within the right of way of an expressway indicated on such map shall make application for a building permit affecting such lands, final action on such application shall be deferred for a reasonable time not exceeding 60 days and the municipality shall within 5 days after receipt of such application notify the commission thereof.

(L) The commission may in its discretion use its own forces to construct expressway projects in whole or in part or may with the approval of the county board use county highway forces for such purposes.

SECTION 7. 59.965 (10) (a) of the statutes is repealed and recreated to read:

59.965 (10) (a) *Same.* Whenever any expressway project has been completed the commission shall file a certification of such fact with the county clerk, the clerk of the municipality in which such project is located and with the state highway commission. Thereafter the portion of the expressway system included in such project shall be operated and maintained by the county, provided that where any such expressway project shall be selected and designated by the state highway commission as a state trunk highway that portion of the expressway shall be maintained by the state. Connecting ramps constructed as a part of the expressway system shall be included in such maintenance to the curb lines of the streets with which they connect. When such project is completed, the municipality in which such expressway is located shall maintain the pavement and all municipal utilities on any street passing over or under such expressway and the approaches to such bridges.

SECTION 8. 59.965 (11) of the statutes is created to read:

59.965 (11) MAINTENANCE ALLOTMENT. From the appropriation made by s. 20.49 (8), the state highway commission shall allot annually on March 10 to each county for the maintenance and operation of expressways within its limits constructed pursuant to this section, which are opened, maintained and used for public travel, and which are not state or county trunk highways or connecting streets, the sum of \$520 per mile of such expressways; provided that the length of connecting ramps to be maintained by the county as part of the expressway shall be included in the total mileage.

SECTION 9. 67.04 (1) (v) of the statutes is repealed and recreated to read:

67.04 (1) (v) In counties having a population of 500,000 or more to acquire lands and improvements thereon and any and all interests of whatever nature and by whomsoever owned therein, by purchase, condemnation or otherwise for the necessary right of way for expressways, and to provide for the construction or reconstruction of a comprehensive expressway system. For the purposes of this paragraph the term "expressway" is as defined in s. 59.965 (1) (a) and also includes the cost of acquisition and construction of the land, roadways and structures necessary to permit access to, over and under such expressway and further includes such part of the cost of the necessary work of relocating and reconstructing of utility and railroad services disrupted in the construction of such expressway as the county may be required to pay. Section 67.10 (4) shall not apply to any bond issue authorized and sold under this paragraph. Such bond issues shall be exempt from the requirements in s. 67.11 (1) (Fifth), that not less than 5 per cent of the original indebtedness shall be annually deposited in the sinking fund. Such bonds may be issued without a referendum. All outstanding bonds for expressway purposes, together with other outstanding indebtedness of such county, shall not exceed 5 per cent of the assessed value of taxable property therein.

SECTION 10. 84.09 (7) of the statutes is created to read:

84.09 (7) When state highway funds or federal aid are involved in financing an expressway project pursuant to s. 59.965, the state highway commission, proceeding under the general authority in this section, may order that all or certain parts of the required land or interests therein shall be acquired by the county expressway commission. When so ordered, the expressway commission and the highway commission shall appraise and agree on the maximum price, including damages, considered reasonable for the lands or interests to be so acquired. The expressway commission shall endeavor to obtain easements or title in fee simple by conveyance of the lands or interests required, to the county or the state as grantee, all as directed in the highway commission's order. The instrument of conveyance shall be subject to approval by the highway commission, and shall be recorded in the office of the register of deeds and filed with the highway commission. If the needed lands or interests therein cannot be purchased expeditiously within the appraised price, the expressway commission may acquire them by condemnation under ch. 32, or in the manner provided in s. 83.07 or, subject to approval by the highway commission, in the manner provided in sub. (2). For the purposes and in the manner provided in s. 59.965 (5) (d) 1, when so directed in the highway commission's order the expressway commission may acquire remnants, and with the approval of the highway commission the expressway commission may dispose of remnants and may improve, use, maintain or lease lands and interests acquired and held in trust for the state until they are actually needed for expressway construction. The

net proceeds of such sales or rentals shall be remitted to the state or retained and used for expressway purposes when so directed by the highway commission.

SECTION 11. If any section, subsection, paragraph, or other provision of this act, or its application to any person or circumstance shall be held unconstitutional or invalid, such decision shall not affect the constitutionality or validity of any other section, subsection, paragraph, or other provision, or its application to other persons or circumstances.

Approved August 4, 1955.

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