

No. 975, A.]

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CHAPTER 640

AN ACT to repeal 83.07 (5), 107.07, 107.08, 107.09 and 107.10; to amend 27.065 (2) (a), 32.05 (intro. par.) and 32.06 (intro. par.) as repealed and recreated by chapter 639, laws of 1959 (Bill No. 483, A.), 59.965 (5) (d) 4, 66.062 (2), 66.63 (5), 80.24, 80.25, 83.07 (1), 83.08 (2), 84.09 (3) (a), (3m) and (7), 84.135 (2), 86.18 (2), 107.06, 114.33 (7) and (8) (a), 157.05 (3) and 191.13 (4); to repeal and recreate 83.07 (4), 84.09 (2) and 182.35 (2); and to create 32.05 (9) (d) and 88.38 (1m) of the statutes, relating to uniformity in eminent domain proceedings and related matters and making corrections.

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

SECTION 1. 27.065 (2) (a) of the statutes is amended to read:

27.065 (2) (a) Whenever lands for a county system of parks or parkways are being condemned in accordance with this section, the provisions of ch. 32 * * *, relating to eminent domain with relation to the acquisition of lands for streets, * * * apply to the acquisition of lands for streets and parkways by the county board, excepting that in cases where the whole or any part of the cost of acquiring such lands is to be paid by special assessments the * * * board by resolution may determine that such assessments may be paid in one or more equal annual instalments, together with a rate of interest upon the unpaid principal, which interest shall not exceed 6 per cent. Any person whose lands are taken or against whose lands assessments for benefits or damage * * * are made, may appeal from the award of the commissioners to the circuit court of the county * * * as prescribed by * * * s. 32.05 (11). If it * * * appears to the condemnation commissioners or to the court that the public interest will be served by changing the boundaries or increasing or decreasing the amount of land to be acquired, the court or commissioners may so notify the county board, and the condemnation petition filed by the * * * board may be so altered, changed or amended by resolution of the * * * board. Notice may be given and new parties brought in as provided in * * * s. 32.14.

SECTION 2. 32.05 (intro. par.) of the statutes, as repealed and recreated by chapter 639, laws of 1959 (Bill No. 483, A.), is amended to read:

32.05 (intro. par.) This section does not apply to town highways created or altered under ch. 80 except as to jury trials on appeals provided for by * * * ss. 80.24 and 80.25, nor to proceedings in cities of the first class under chapter 275, laws of 1931, as amended (Kline Law). All other condemnation of property for public alleys, streets, highways or air ports shall proceed as follows:

SECTION 3. 32.05 (9) (d) of the statutes is created to read:

32.05 (9) (d) In the event the award of the county condemnation commissioners is lower than the basic award and tender of the basic award has been accepted by an owner, the condemnor shall have a lien against such owner for the amount of the difference. The lien shall give the name and address of the owner or owners, refer to the basic award and the award on appeal and state the difference in amounts. The lien may be filed in the office of the register of deeds and when so filed shall attach

to all property of the owner presently owned or subsequently acquired in any county where such lien is filed. Such lien shall remain in force with interest until satisfied or until it is set aside by a judgment of the circuit court in an action pursuant to sub. (10).

SECTION 4. 32.06 (intro. par.) of the statutes, as repealed and re-created by chapter 639, laws of 1959 (Bill No. 483, A.), is amended to read:

32.06 (intro. par.) The procedure in condemnation in all matters except highway and airport acquisitions, acquisitions under chapter 275, laws of 1931, as amended (Kline Law), *acquisitions under ch. 157*, and acquisitions under ch. 197, shall be as follows:

SECTION 5. 59.965 (5) (d) 4 of the statutes is amended to read:

59.965 (5) (d) 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 * * * *may* 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 * * *.

SECTION 6. 66.062 (2) of the statutes is amended to read:

66.062 (2) Either of such railway companies may acquire by condemnation a right to use the tracks of the other company for such purpose of providing one-way tracks, upon terms and conditions determined by agreement, or by the procedure in * * * s. 32.06, except that pending appeal to the circuit court the use may be had upon payment or deposit with the clerk of the court of the compensation awarded.

SECTION 7. 66.63 (5) of the statutes is amended to read:

66.63 (5) Any person against whose land an assessment of benefits is made pursuant to this section may appeal therefrom * * * *as* prescribed in s. * * * 32.06 (10) within 30 days of the adoption of the resolution required under sub. (3).

SECTION 8. 80.24 of the statutes is amended to read:

80.24 If the owner of lands through which a highway is laid out, widened, altered or discontinued is not satisfied with his award of damages, within 30 days after the filing of the award, (and if within said 30 days an appeal has been taken from the order laying out, widening, altering or discontinuing the highway, then within 30 days after the final order on such appeal affirming the same) he may appeal to the county or circuit judge for a jury to assess his damages * * *. His appeal shall be in writing, describing the premises, and any number of persons claiming damages on account of such highway may join in the appeal. The appellant shall serve on 2 of the supervisors of the town in which the highway is situated, or upon 2 or more of the supervisors or commissioners of the town, city or village * * * *who* have been assigned the duty of paying the damages for such land, at least 6 days before he makes his appeal, a notice in writing, specifying therein the name of the judge to whom and the time and place the appeal will be made. If more than one appeal * * * *is* taken from the award of damages on account of any highway, the appeals shall be consolidated by the county or circuit judge, and only one jury shall be impaneled to reassess the damages.

SECTION 9. 80.25 of the statutes is amended to read:

80.25 Any taxpayer of a town or other municipality in which a highway is laid out, altered or discontinued or any part thereof is situated, and which is required to pay damages resulting therefrom, may appeal within 30 days after the award or agreement determining such damages has been filed with the town, city or village clerk, to the county or circuit judge for a jury to assess the damages sustained by the persons to whom damages were awarded or are to be paid. Such appeal shall be in writing, describing the premises and naming the persons to whom damages are to be paid, and the amount awarded to each, and shall specify the particular award from which he appeals in case he does not appeal from all * * *. The appellant shall serve upon 2 of the supervisors of the town or upon 2 of the commissioners of the city or village to which has been assigned the duty of paying the damages and upon the persons whose awards are appealed from, at least 6 days before making application, a notice in writing specifying therein the name of the judge to whom and the time and place the appellant will apply for the selection of such jury.

SECTION 10. 83.07 (1) of the statutes is amended to read:

83.07 (1) The county highway committee or town board may acquire any lands or interest therein needed to carry out the provisions of this chapter. Whenever the county highway committee or town board is unable to acquire the same by purchase at a reasonable price such property may be acquired by condemnation under ch. 32 * * *.

SECTION 11. 83.07 (4) of the statutes is repealed and recreated to read:

83.07 (4) In case the county highway committee or the town board is unable to acquire needed lands or rights by contract, such committee or board may acquire the same in the name of the county or town by eminent domain, as provided in ch. 32.

SECTION 12. 83.07 (5) of the statutes is repealed.

SECTION 13. 83.08 (2) of the statutes is amended to read:

83.08 (2) If any of the needed lands or interests therein cannot be purchased expeditiously for a price deemed reasonable by the committee, the committee may acquire the same * * * by condemnation under ch. 32 * * *.

SECTION 14. 84.09 (2) of the statutes is repealed and recreated to read:

84.09 (2) If any of the needed lands or interests therein cannot be purchased expeditiously for a price deemed reasonable by the commission, the commission may acquire the same by condemnation under ch. 32.

SECTION 15. 84.09 (3) (a), (3m) and (7) of the statutes are amended to read:

84.09 (3) (a) The commission may order that all or certain parts of the required land or interests therein * * * be acquired by the county highway committee. When so ordered, the committee and the commission shall appraise and agree on the maximum price, including damages, considered reasonable for the lands or interests to be so acquired. The committee shall endeavor to obtain easements or title in fee simple by conveyance of the lands or interests required, as directed in the commission's order. The instrument of conveyance shall name the county as grantee,

shall be subject to approval by the commission, and shall be recorded in the office of the register of deeds and filed with the commission. If the needed lands or interests therein cannot be purchased expeditiously within the appraised price, the county highway committee may acquire them by condemnation under ch. 32 * * *.

(3m) The commission may order that all or certain parts of the required land or interest therein * * * be acquired for the commission by a board, commission or department of the city within whose limits said land is located. Said board, commission or department shall be created or selected by the common council of said city subject to the approval of the state highway commission. When so ordered, the board, commission or department created or selected and the state highway commission shall appraise and agree on the maximum price, including damages, considered reasonable for the lands or interests to be so acquired. The board, commission or department shall endeavor to obtain easements or title in fee simple by conveyance of the lands or interests required, as directed in the state highway commission's order. The instrument of conveyance shall name the state as grantee and shall be recorded in the office of the register of deeds. If the needed lands or interests therein cannot be purchased expeditiously within the appraised price, the board, commission or department may, subject to approval by the state highway commission, acquire them by condemnation in the name of the state under ch. 32 * * *. The city attorney may act as counsel in any proceedings brought under authority of this subsection. Special counsel may be employed but only with the consent of the governor and the state highway commission. The city, upon agreement with the commission, may pay for the land or interests acquired from city funds made available for such purpose or not otherwise appropriated, as an advance subject to reimbursement by the commission or as part of the city's contribution toward the cost of the improvement.

(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 all damages recoverable in condemnation proceedings, 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 agreed appraised price, the expressway commission may acquire them by condemnation under ch. 32 * * *, but any award by the expressway commission in excess of the agreed appraisal price shall be subject to review by the highway commission. 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 16. 84.135 (2) of the statutes is amended to read:

84.135 (2) The state highway commission, on its own initiative or upon petition adopted by a majority vote of the governing body of a county, town, city or village, may acquire such bridge by purchase or by exercising the right of eminent domain in such court as may have jurisdiction thereof and in accordance with the laws applicable thereto; or, with the consent and approval of the state highway commission, and on such terms and conditions as it may prescribe, such right of eminent domain may be exercised by the county, city or other political subdivision in which any part of such interstate toll bridge is located and revenue bonds for the acquisition of such bridge out of tolls may be issued in accordance with the statutes relating to municipal borrowing insofar as the same may be applicable. In acquiring such bridge the state highway commission * * *, county, town, city or village may proceed * * * as provided by * * * ch. 32.

SECTION 17. 86.18 (2) of the statutes is amended to read:

86.18 (2) In acquiring property for any purpose covered by sub. (1) the county board shall proceed under * * * ch. 32, except that the board shall determine the necessity of the taking, and the county highway commissioner shall perform all the duties of the commissioners in making awards and appraisals under * * * s. 32.05.

SECTION 17m. 88.38 (1m) of the statutes is created to read:

88.38 (1m) Whenever any county, town, city, village, railway company or the state highway commission has heretofore constructed and now maintains or hereafter constructs and maintains any public highway or grade through, over and across any marsh, lowland or other natural depression over or through which surface water naturally flows and percolates, and the method of design in construction of said highway is such as to cause water to be artificially collected together in a manner and in quantities and in locations so essentially different from conditions prevailing before such construction as to cause any of the lowland crop or land to be flooded, watersoaked or otherwise damaged under circumstances when such damage would not have occurred except for said manner of highway design and construction and maintenance, such county, town, city, village, railway company or the state highway commission shall construct, provide and at all times maintain a sufficient ditch or ditches, culverts or other outlets to allow the free and unobstructed flow and percolation of said water from said lands or onto the highway right of way itself in places designed to receive and absorb said water, and to prevent said lowlands from becoming flooded, watersoaked or otherwise damaged by said water as a result of said highway design, construction and maintenance.

SECTION 18. 107.06 of the statutes is amended to read:

107.06 Whenever such corporation, company or person cannot agree with such adjoining owner upon the damages for the right of so conducting or conveying the water across his land they may * * * *proceed as provided in s. 32.06 to acquire the rights provided by s. 107.05.*

SECTION 19. 107.07, 107.08, 107.09 and 107.10 of the statutes are repealed.

SECTION 20. 114.33 (7) and (8) (a) of the statutes are amended to read:

114.33 (7) If any of the needed lands or interests therein cannot be purchased expeditiously for a price deemed reasonable by the commission, the commission may acquire the same as provided in s. * * * 32.05.

(8) (a) The commission, upon the petition of the sponsoring municipality, may provide that all or certain parts of the required land or interests therein may be acquired by the municipality named by the commission. When so provided, the municipality and the commission shall appraise and set the maximum price, including damages, considered reasonable for the lands or interests to be so acquired. The municipality shall endeavor to obtain easements or title in fee simple by conveyance of the lands or interests required, as directed in the commission's order. The instrument of conveyance shall name the municipality or municipalities as grantee and shall be subject to approval by the commission, and shall be recorded in the office of the register of deeds and filed with the commission. If the needed lands or interests therein cannot be purchased expeditiously within the appraised price, the municipality may acquire them by condemnation * * *, as provided in s. * * * 32.05.

SECTION 21. 157.05 (3) of the statutes is amended to read:

157.05 (3) When it is necessary to enlarge a cemetery owned by a cemetery or religious association, and adjoining lands cannot be acquired or can be acquired only at an exorbitant price, application may be made in writing to the county judge by 12 or more resident freeholders of the municipality in which the cemetery is located describing the land and setting forth the facts and the price asked, whereupon the judge shall appoint 3 resident freeholders of the county, but not of such municipality, to appraise the damages of each owner, not to exceed the price asked, but, except in cities or incorporated villages, no lands shall be taken within 20 rods of a residence owned by the occupant without his written consent. The appraisers shall hear all parties upon 10 days' notice and file report in writing with the judge within 10 days after determination. Upon payment into court of the amount appraised, the lands shall be taken. Either party may appeal as provided in * * * s. 32.06 (10). The commissioners shall be paid by the party seeking to take the land \$3 for each day actually employed and 6 cents for each mile necessarily traveled.

SECTION 22. 182.35 (2) of the statutes is repealed and recreated to read:

182.35 (2) If the lands or interests therein cannot be purchased expeditiously for a reasonable price, the corporation may acquire the same by condemnation under ch. 32.

SECTION 23. 191.13 (4) of the statutes is amended to read:

191.13 (4) For such temporary railroad, the corporation may acquire any necessary lands or interests in lands. In appraising the damages sustained by any person by reason of the construction and operation of said railroad through and upon his land only the injury to the land and improvements thereon within the limits of the right of way of such railroad, and the fair annual value of the use of the land within such right of way and the fair amount of the annual damage sustained by the landowner to the land from which such right of way is severed, shall be considered, which items of damage and value shall be separately found and shall constitute the sole measure of the landowner's right to compensation. Payment of the damages on account of injury to the land and improvements thereon within such right of way shall be made as directed in * * * s. 32.06 (9) (b), and payment of the amount found to be the fair annual

value of the use of such land, together with the amount so found to be the annual damage to the land from which such right of way is taken, shall be made annually by the railroad company so long as such temporary railroad is maintained and operated.

SECTION 24. This act shall take effect 30 days after publication or on the day that chapter 639, laws of 1959 (Bill No. 483, A.), becomes effective, whichever is later.

Approved January 28, 1960.
