

CHAPTER 486

AN ACT to repeal 32.08 (3); to renumber 32.08 (4); to amend 32.05 (intro. par.), (1), (2), (2a), (3) (d), (i), (4), (6), (7) (a), (9) (a), (c) and (11) (intro. par.), 32.06 (intro. par.), (2), (6), (7), (8), (9) (b), (c), (10) (intro. par.) and (a), 32.08 (5) and (6) (a), 32.09 (intro. par.), (3) and (6), 32.10, 32.12 (1), 32.18, 59.96 (6) (j) and 66.205 (8); to repeal and recreate 32.05 (3) (f) and 32.09 (5), (7) and (8); and to create 32.06 (2a), 32.08 (4), 32.09 (6) (a) to (g) and (9), 32.19, 32.20 and 32.21 of the statutes, relating to the clarification of the provisions relating to eminent domain.

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

SECTION 1. 32.05 (intro. par.), (1), (2), (2a) and (3) (d) of the statutes are amended to read:

32.05 CONDEMNATION FOR STREETS, HIGHWAYS, STORM OR SANITARY SEWERS, WATERCOURSES, ALLEYS AND AIRPORTS. 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 * * *, airports or storm sewers and sanitary sewers or watercourses undertaken by sewerage commissions governing metropolitan sewerage districts created by s. 59.56 or 66.20 shall proceed as follows:

(1) The state highway commission, turnpike commission, county board of supervisors, county expressway commission, city council, village board, sewerage commission governing metropolitan sewerage district created by s. 59.96 or s. 66.20 or state aeronautics commission shall make an order providing for the laying out, relocation and improvement of the public highway, street, alley, storm and sanitary sewers, watercourses or airport which shall be known as the relocation order. This order shall include a map or plat showing the old and new locations and the lands and interests required. A copy of the order shall, within * * * 20 days after its issue, be filed with the county clerk of the county wherein the lands are located.

(2) The condemnor shall cause * * * at least one, or more in his discretion, appraisal to be made of all property * * * proposed to be acquired. In making * * * any such appraisal the appraiser shall confer with the owner or one of the owners, or his * * * personal representative, if reasonably possible.

(2a) Before making the jurisdictional offer provided in sub. (3), the condemnor shall attempt to negotiate personally with the owner or one of the owners or his personal representative of the property sought to be taken for the purchase of the same. In such negotiation the condemnor is authorized to contract to pay the items of compensation enumerated in ss. 32.09 and 32.19 as may be applicable to the property in one or more instalments on such conditions as the condemnor and property owners may agree.

(3) (d) Stating the amount of compensation offered, itemized as to the items of damage as set forth in * * * ss. 32.09 * * * and 32.19 if shown to exist.

SECTION 2. 32.05 (3) (f) of the statutes is repealed and recreated to read:

32.05 (3) (f) Stating, if the condemnor is a municipal corporation, that if the offer is not accepted by the owner within 20 days after the date of service, condemnor will apply to the circuit court for a determination of the necessity of the taking.

SECTION 3. 32.05 (3) (i), (4), (6), (7) (a), (9) (a), (c) and (11) (intro. par.) of the statutes are amended to read:

32.05 (3) (i) Stating that the owner, *subject to subs. (9) (a) and (11)*, will have 2 years from the date of taking his property by award in which to appeal for greater compensation without prejudice to his right to use the compensation given him * * * *by the award.*

(4) The giving of such notice is a jurisdictional requisite to a taking by condemnation. Such notice may be given by personal service in the manner of service of a circuit court summons, or it may be transmitted by certified mail. *If service is by mail, service of the papers shall be deemed completed on the date of mailing and the use of mail service shall not increase the time allowed to act in answer to or in consequence of such service.* If such owner or mortgagee is unknown or cannot be found such notice shall be published once in a newspaper of general circulation in the county wherein the property is located. If such owner is a minor, or an incompetent person, the condemnor shall serve such notice upon the legal guardian of such minor or incompetent, and if there is no such guardian the condemnor shall proceed under s. 32.15 to have a special guardian appointed to represent such minor or incompetent in such proceeding. The reasonable fees of such special guardian as approved by the court shall be paid by the condemnor. Such notice shall be called the "jurisdictional offer." The condemnor shall file a lis pendens on or * * * *within 14 days of the date of * * * service or mailing of the jurisdictional offer or within 14 days of the date of publication if publication is necessary.* The lis pendens shall include a copy of the jurisdictional offer. From the time of such filing every purchaser or encumbrancer whose conveyance or encumbrance is not recorded or filed shall be deemed a subsequent purchaser or encumbrancer and shall be bound by the terms of the jurisdictional offer and it shall not be necessary to serve other jurisdictional offers on such subsequent purchaser or encumbrancer. *In the award the condemnor may name and make payment to parties who were owners or mortgagees at the time of the filing of the lis pendens unless subsequent purchasers or encumbrancers give written notice to the condemnor of their subsequently acquired interests in which event such parties shall be named in the award as their interests may appear.*

(6) The owner has 20 days from the date of personal service of the jurisdictional offer or 20 days from the date of postmark of the certified mail letter transmitting such offer, or if publication of the jurisdictional offer was necessary and was made, 20 days after the date of such publication, in which to accept the jurisdictional offer unless such time is extended by mutual written consent of the condemnor and condemnee. If such offer is accepted, the transfer of title shall be accomplished within 60 days after acceptance including payment of the consideration stipulated in such offer. *If the jurisdictional offer is rejected in writing by all of the owners of record the condemnor may proceed to make an award forthwith.* At any time prior to acceptance of the jurisdictional offer by the condemnee the same may be withdrawn by the condemnor.

(7) (a) The award shall be in writing. It shall state that it is made pursuant to relocation order of (name of commission, board or council having jurisdiction to make the * * * improvement) No. ----- dated ----- filed in the office of the County Clerk, County of -----.

It shall name all persons having an interest of record in the property taken and may name other persons. It shall describe such property by legal description and state the interest therein sought to be condemned and the date when actual occupancy of the property condemned will be taken by condemnor. The award shall also state the compensation for the taking which shall be an amount at least equal to the amount of the jurisdictional offer. The award shall state that the condemnor has complied with all jurisdictional requirements. An amended award for the purpose of correcting error wherein the award as recorded differs from the jurisdictional offer may be made, served and recorded as provided by this section.

(9) (a) Any party having an interest in the property condemned may within 2 years after the date of taking, * * * *appeal from the award, except as hereinafter limited by applying to the judge of the circuit or county court of the county wherein the property is located for assignment to a commission of county condemnation commissioners as provided in s. 32.08. Such application shall contain a description of the property condemned and the names and last known addresses of all parties in interest but shall not disclose the amount of the jurisdictional offer nor the amount of the basic award. Violation of this prohibition shall nullify such application. Notice of such application shall be given to the clerk of the * * * court and to all other persons other than the applicant who were parties to the award. Such notice may be given by certified mail or personal service. Upon proof of such service the judge shall forthwith make such assignment. Where one party in interest has appealed from the award, no other party in interest who has been served with notice of such appeal may take a separate appeal, but may join in the appeal by serving notice upon the condemnor and the appellant of his election to do so. Such notice shall be given by certified mail or personal service within 10 days after receipt of notice of the appeal and shall be filed with the clerk of the court. Upon failure to give and file such notice all other parties of interest shall be deemed not to have appealed. The result of such appeal shall not affect parties who have not joined in the appeal as hereinabove provided. In cases involving more than one party in interest with a right to appeal, the first of such parties filing an appeal under this subsection or under sub. (11) shall determine whether such appeal shall be under this subsection or under sub. (11). No party in interest may file an appeal under this subsection if another party in interest in the same lands has filed a prior appeal complying with the requirements of sub. (11). Thereafter the procedure shall be as prescribed in s. 32.08. In cases involving multiple ownership or interests in lands taken the following rules shall also apply:*

1. *Where all parties having an interest in the property taken do not join in an appeal, such fact shall not change the requirement that a finding of fair market value of the entire property taken and damages, if any, to the entire property taken, shall be made in determining compensation. Determination of the separate interests of parties having an interest in property taken shall, in cases of dispute, be resolved by a separate partition action as set forth herein.*

2. *In cases where the amount of the award appealed from is increased on appeal, such amount shall be paid by the condemnor making tender of the amount to one of the appellant owners or appellant parties of interest in the same manner governing the tender of a basic award. In event a determination on appeal reduces the amount of the appealed award those parties who joined in the appeal shall be liable, jointly and severally, to the condemning authority.*

3. *When the owners or parties having an interest in land taken cannot agree on the division of an award, any of such owners or parties of interest may petition the circuit court for the county wherein the property is located for partition of the award moneys as provided in s. 277.01. When the tender of an award is refused, the condemning authority may pay the*

award to the clerk of the circuit court for the county wherein the property is located and no interest shall accrue against the condemning authority for moneys so paid.

(c) All sums due under this subsection shall be paid within * * * 70 days after date of filing of the commissioner's award unless within such time an appeal is taken to the circuit court. In the event such appeal is later dismissed before trial such payment shall be made within 60 days after the dismissal date.

(11) (intro. par.) The owner of any interest in the property condemned named in the basic award may elect to waive the appeal procedure specified in sub. (9) and instead, within 2 years after the date of taking, appeal to the circuit court of the county wherein the property is located. The notice of appeal shall be served as provided in sub. (9) (a). Filing of the notice of appeal shall constitute such waiver. The clerk shall thereupon enter the appeal as an action pending in said court with the condemnee as plaintiff and the condemnor as defendant. It shall proceed as an action in said court subject to all the provisions of law relating to actions originally brought therein and shall have precedence over all other actions not then on trial. The sole issues to be tried shall be questions of title, if any, under ss. 32.11 and 32.12 and the amount of just compensation to be paid by condemnor. It shall be tried by jury unless waived by both plaintiff and defendant. The amount of the jurisdictional offer or basic award shall not be disclosed to the jury during such trial. *Where one party in interest has appealed from the award, no other party in interest who has been served with notice of such appeal may take a separate appeal but may join in the appeal by serving notice upon the condemnor and the appellant of his election to do so. Such notice shall be given by certified mail or personal service within 10 days after receipt of notice of the appeal and shall be filed with the clerk of court. Upon failure to give such notice such parties shall be deemed not to have appealed. The appeal shall not affect parties who have not joined in the appeal as herein provided. In cases involving more than one party in interest with a right to appeal, the first of such parties filing an appeal under sub. (9) or under this subsection shall determine whether such appeal shall be under sub. (9) or directly to the circuit court as here provided. No party in interest may file an appeal under this subsection if another party in interest in the same lands has filed a prior appeal complying with the requirements of sub. (9). In cases involving multiple ownership or interests in lands taken the provisions of s. 32.05 (9) (a) 1, 2 and 3 shall govern.*

SECTION 4. 32.06 (intro. par.) and (2) of the statutes are amended to read:

32.06 (intro. par.) The procedure in condemnation in all matters except * * * *streets, highways, storm or sanitary sewers, watercourses, alleys 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:*

(2) The condemnor shall * * * *cause at least one (or more in his discretion) appraisal to be made of the property proposed to be * * * acquired. In making any such appraisal the appraiser shall confer with the owner or one of the owners, or his * * * personal representative, if reasonably possible.*

SECTION 5. 32.06 (2a) of the statutes is created to read:

32.06 (2a) **AGREED PRICE.** Before making the jurisdictional offer provided in sub. (3) the condemnor shall attempt to negotiate personally with the owner or one of the owners or his personal representative of the property sought to be taken for the purchase of the same. In such negotiation the condemnor is authorized to contract to pay the items of compensation enumerated in ss. 32.09 and 32.19 where shown to exist.

SECTION 6. 32.06 (6), (7), (8), (9) (b) and (c) and (10) (intro. par.) and (a) of the statutes are amended to read:

32.06 (6) The owner has 20 days from the date of personal service of the jurisdictional offer or 20 days from the date of postmark of the certified mail letter transmitting such offer or 20 days from the date of filing the final judgment order or remittitur in the circuit court of the county in an action commenced * * * *under* sub. (5), if the judgment permits the taking of the land, in which to accept the jurisdictional offer. If the offer is accepted, the transfer of title shall be accomplished within 60 days after acceptance including payment of the consideration stipulated in such offer unless such time is extended by mutual written consent of the condemnor and condemnee. *If the jurisdictional offer is rejected in writing by all of the owners of record the condemnor may proceed to petition in condemnation forthwith.* If the owner fails to convey the condemnor may proceed as hereinafter set forth.

(7) If the jurisdictional offer is not accepted within the periods limited in sub. (6) or the owner fails to consummate an acceptance as provided in sub. (6), the condemnor may present a verified petition to the judge of the circuit or county court of the county in which the property to be taken is located, for proceedings to determine the necessity of taking, where such determination is required, and the amount of just compensation. Such petition shall state that the jurisdictional offer required by sub. (3) has been made and rejected; that it is the intention of the condemnor in good faith to use the property or right therein for the specified purpose. It shall name the parties having an interest of record in such property as near as may be and shall name such parties who are minors or persons of unsound mind or unknown. Such petition shall not disclose the amount of the jurisdictional offer, and if it does so it shall be a nullity. Such petition shall be filed with the clerk of such court. Notice of such petition shall be given *as provided in s. 32.05 (4)* to all persons having an interest of record in such property, including the special guardian appointed for minors or incompetent persons. A lis pendens shall be filed on the date of filing the petition. The date of filing the lis pendens shall be the "date of evaluation" of the property for purpose of fixing just compensation. The hearing on the petition shall not be earlier than 20 days after the date of its filing *unless the petitioner has acquired possession of such land pursuant to s. 32.12 (1) in which event this hearing shall not be necessary.* If the petitioner is entitled to condemn the property or any portion thereof the judge shall forthwith assign the matter to the chairman of the county condemnation commissioners for hearing pursuant to s. 32.08. An order by the judge determining that the petitioner does not have the right to condemn or refusing to assign the matter to the chairman of the county condemnation commissioners may be appealed directly to the supreme court.

(8) Thereafter the commission shall proceed in the manner and with the rights and duties as specified in s. 32.08 to hear the matter and make and file its award with the clerk of the circuit court, specifying therein the property or interests therein taken and the compensation allowed the owner, and the clerk shall give certified mail notice with return receipt requested of such filing, with a copy of the award to condemnor and owner.
* * *

(9) (b) If condemnor does not elect to abandon the condemnation proceeding as provided in par. (a), it shall within * * * 70 days after the date of * * * *filing of the commission's award*, pay the amount of the award, plus legal interest from date of taking but less delinquent tax liens, proportionately allocated as in division in redemption under ss. 74.06, 74.32 and 75.01 when necessary and less prorated taxes of the year of taking, if any, likewise proportionately allocated when necessary, to the owner and take and file his receipt therefor with the clerk of the circuit court,

or at the option of the condemnor pay the same into the office of the clerk of the circuit court for the benefit of the parties having an interest of record on the date of evaluation in the property taken and give notice thereof by certified mail to such parties. If the condemnor pays the amount of said award within 14 days after the date of * * * *filing of the commission's award*, no interest shall accrue. *Title to the property taken shall vest in the condemnor upon the filing of such receipt or the making of such payment.*

(c) Condemnor shall have the right to possession on the date of payment of the award as hereinabove provided, or as provided by an order of the court entered under s. 32.12, or on such later date as he has specified in the jurisdictional offer. If the condemnor is denied such right of possession he may upon 48 hours' notice to the occupant apply to the circuit court for a writ of assistance to put him in possession, and if the condemnor has complied with all jurisdictional requirements the court shall grant such writ. Any person occupying the property after title has vested in the condemnor shall be liable to the condemnor for all waste committed or allowed on the lands condemned after the date of * * * *such vesting of title*. An occupant of said lands after said date of * * * *vesting of title* or the date of occupancy indicated in the jurisdictional offer, whichever is later, if said lands are improved by buildings, shall be liable to condemnor at his option for the reasonable rental of * * * said lands.

(10) (intro. par.) Within * * * 60 days after the date of * * * *filing of the commission's award* either condemnor or owner may appeal to the circuit court by giving notice of appeal to the opposite party and to the clerk of the circuit court as provided in s. 32.05 (10). The clerk shall thereupon enter the appeal as an action pending in said court with the condemnnee as plaintiff and *the* condemnor as defendant. It shall thereupon proceed as an action in said court subject to all the provisions of law relating to actions * * * brought therein, but the only issues to be tried shall be * * * *questions* of title, if any, as provided by ss. 32.11 and 32.12 and the amount of just compensation to be paid by condemnor, and it shall have precedence over all other actions not then on trial. It shall be tried by jury unless waived by both plaintiff and defendant. The amount of the jurisdictional offer or of the commission's award shall not be disclosed to the jury during such trial.

(a) If the jury verdict as approved by the court exceeds the commission's award the owner shall have judgment increased by the amount of his statutory taxable costs and disbursements, together with legal interest from the date * * * *title vests in condemnor* to date of entry of judgment on the excess of the verdict over the compensation awarded by the commission.

SECTION 7. 32.08 (3) of the statutes is repealed.

SECTION 8. 32.08 (4) of the statutes is renumbered 32.08 (3).

SECTION 9. 32.08 (4) of the statutes is created to read:

32.08 (4) Commissioners shall receive no salary but shall be compensated for actual service at an hourly rate to be fixed by the county board of such county. Commissioners shall also receive mileage at 7 cents per mile for necessary and direct round trip travel from their homes to the place where the condemnation commission conducts its hearings. The chairman of the county commission shall receive such reasonable sum, computed at the hourly rate as fixed by the county board, as shall be allowed by the circuit or county judge having jurisdiction over the hearing, for his administrative work in selecting and notifying the commissioners to serve in such condemnation hearing and his necessary out-of-pocket ex-

penses in connection therewith. All such compensation and expenses shall be paid by the condemnor on order approved by the circuit or county judge as the case may be.

SECTION 10. 32.08 (5) and (6) (a) of the statutes are amended to read:

32.08 (5) If the petitioner under s. 32.06 is entitled to condemn the property or any portion thereof or interest therein, the circuit or county judge having jurisdiction of such petition, or to whom an application for county commissioner of condemnation review is taken from a highway taking award, shall assign the matter to the chairman of the county condemnation commissioners who shall within 7 days select 3 of said commissioners to serve as a commission to ascertain the compensation to be made for the taking of the property or rights in property sought to be condemned, fix the time and place of the hearing before the commission, which time shall not be less than 20 nor more than 30 days from such assignment date, and notify the parties in interest thereof. *The judge's order of assignment shall be accompanied by a copy of the petition for condemnation.* Notice shall be given to each interested person or, where such persons have appeared in the proceeding by an attorney then to such attorney, by certified mail with return receipt requested, postmarked at least 10 days prior to the date of hearing. If any party cannot be found and has not appeared in the proceedings notice shall be given by publication once a week for 2 successive weeks in the newspaper in the community which the chairman of the condemnation commission directs. Costs of notification shall be paid by the petitioner upon certification by the commission chairman.

(6) (a) At the hearing the commissioners shall first view the property sought to be condemned and then hear all evidence desired to be produced. The condemnee shall present his testimony first and have the right to close. In conducting said hearing the commission shall not be bound by common law or statutory rules of evidence. It shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant and unduly repetitious testimony. *The amount of a prior jurisdictional offer or award shall not be disclosed to the commission.* It shall give effect to the rules of privilege recognized by law. Basic principles of relevancy, materiality and probative force, as recognized in equitable proceedings shall govern the proof of all questions of fact. The commission may on its own motion adjourn such hearing once for not more than 7 days, but may by stipulation of all parties grant other adjournments * * *. A majority of the commissioners, being present, may determine all matters.

SECTION 11. 32.09 (intro. par.) and (3) of the statutes are amended to read:

32.09 (intro. par.) In all matters involving the determination of just compensation * * * *in eminent domain proceedings*, the following rules shall be followed:

(3) Special benefits accruing to the property and affecting its market value because of the planned public improvement shall be considered and used * * * *to offset * * * the value of property taken or damages under sub. (6)*, but in no event shall such benefits be allowed in excess of damages described under sub. (6).

SECTION 12. 32.09 (5) of the statutes is repealed and recreated to read:

32.09 (5) In the case of a total taking the condemnor shall pay the fair market value of the property taken and shall be liable for the items in s. 32.19 if shown to exist.

SECTION 13. 32.09 (6) of the statutes is amended to read:

32.09 (6) In the case of a partial taking, the compensation *to be paid by the condemnor* shall be determined by deducting from the *fair market value of the whole property immediately before the * * * date of evaluation, * * * the fair market value of the remainder immediately after the date of evaluation, assuming the completion of the public improvement and * * * giving effect, without allowance of offset for general benefits, and without restriction because of enumeration but without duplication, to the following items of * * * loss or damage to the property where shown to exist * * **:

SECTION 14. 32.09 (6) (a) to (g) of the statutes are created to read:

32.09 (6) (a) Loss of land including improvements and fixtures actually taken.

(b) Deprivation or restriction of existing right of access to highway from abutting land, provided that nothing herein shall operate to restrict the power of the state or any of its subdivisions or any municipality to deprive or restrict such access without compensation under any duly authorized exercise of the police power.

(c) Loss of air rights.

(d) Loss of a legal nonconforming use.

(e) Damages resulting from actual severance of land including damages resulting from severance of improvements or fixtures and proximity damage to improvements remaining on condemnee's land.

(f) Damages to property abutting on a highway right of way due to change of grade where accompanied by a taking of land.

(g) Cost of fencing reasonably necessary to separate land taken from remainder of condemnee's land, less the amount allowed for fencing taken under par. (a), but no such damage shall be allowed where the public improvement includes fencing of right of way without cost to abutting lands.

SECTION 15. 32.09 (7) and (8) of the statutes are repealed and re-created to read:

32.09 (7) In addition to the amount of compensation paid pursuant to sub. (6), the owner shall be paid for the items provided for in s. 32.19, if shown to exist, and in the manner described in s. 32.20.

(8) A commission in condemnation or a court may in their respective discretion require that both condemnor and owner submit to the commission or court at a specified time in advance of the commission hearing or court trial, a statement covering the respective contentions of the parties on the following points:

(a) Highest and best use of the property.

(b) Applicable zoning.

(c) Designation of claimed comparable lands, sale of which will be used in appraisal opinion evidence.

(d) Severance damage, if any.

(e) Maps and pictures to be used.

(f) Costs of reproduction less depreciation and rate of depreciation used.

(g) Statements of capitalization of income where used as a factor in valuation, with supporting data.

(h) Separate opinion as to fair market value, including before and after value where applicable by not to exceed 3 appraisers.

(i) A recitation of all damages claimed by owner.

(j) Qualifications and experience of witnesses offered as experts.

SECTION 15a. 32.09 (9) of the statutes is created to read:

32.09 (9) A condemnation commission or a court may make regulations for the exchange of the statements referred to in sub. (8) by the parties,

but only where both owner and condemnor furnish same, and for the holding of prehearing or pretrial conference between parties for the purpose of simplifying the issues at the commission hearing or court trial.

SECTION 15m. 32.10 of the statutes is amended to read :

32.10 Whenever any property has been occupied by a body possessing the power of condemnation but where such body has not exercised said power, the owner, if he desires to institute condemnation proceedings, shall present a verified petition to the circuit judge of the county wherein the land is situated asking that such proceedings be commenced. Such petition shall describe the land, state the board, commission or corporation against which the condemnation proceedings are instituted and the use to which it has been put or is designed to have been put by the board, commission or corporation against which the proceedings are instituted. A copy of said petition shall be served upon the board, commission or corporation which has occupied petitioner's land, or interest in land. The petition shall be filed in the office of the clerk of the circuit court and thereupon the matter shall be deemed an action at law and at issue, with petitioner as plaintiff and the board, commission or corporation as defendant. * * * *The court shall thereupon make a finding of whether the defendant is occupying property of the plaintiff without having the right to do so. If the court determines that the defendant is occupying such property of the plaintiff without having the right to do so, it shall treat the matter in accordance with the provisions contained in this chapter assuming the plaintiff has received from the defendant a jurisdictional offer and has failed to accept the same and assuming the plaintiff is not questioning the right of the defendant to condemn the property so occupied.*

SECTION 16. 32.12 (1) of the statutes is amended to read :

32.12 (1) If any person having the power to acquire property by condemnation has entered into the possession of any property and is using the same for a purpose for which condemnation proceedings might be instituted but has not acquired title thereto, or if such title is defective, or if not in possession, has petitioned the judge of the circuit *or county* court as provided by s. 32.06 (7) and for an order as herein authorized either at the time of filing the petition for condemnation or thereafter, and the necessity for taking has been determined as authorized by law, such person may proceed to acquire or perfect such title as provided in this chapter or be authorized to enter into possession as provided in this section. At any stage of such proceedings the court in which they are pending or the judge thereof may authorize such person, if in possession, to continue in possession, and if not in possession to take possession and have and use such lands during the pendency of such proceedings and may stay all actions or proceedings against such person on account thereof on the paying in court of a sufficient sum or the giving of such securities as such court or judge may direct to pay the compensation therefor when finally ascertained. The "date of taking" in proceedings under this section shall be the date on which the security required by the order for such security is approved and evidence thereof is filed with the clerk of court. In every such case the party interested in such property may institute and conduct, at the expense of such person, the proceedings to a conclusion if such person delays or omits to prosecute the same.

SECTION 17. 32.18 of the statutes is amended to read :

32.18 Where a street or highway improvement project undertaken by the state highway commission, a county, city, town or village, causes a change of the grade of such street or highway in cases where such grade was not previously fixed by city, village or town ordinance, but does not

require a taking of any abutting lands, the owner of such lands at the date of such change of grade may file with the state highway commission in the case of state trunk highways, a county in the case of county highways or the city, town or village, causing such change of grade to be effected, whichever has jurisdiction over the street or highway, a claim for any damages to said lands occasioned by such change of grade. *Special benefits may be offset against any claims for damages under this section.* Such claim shall be filed within 90 days following the completion of said project; if allowed, it shall be paid in the case of the state highway commission, out of the state highway funds, otherwise, out of the funds of the respective county, city, village or town against which the claim is made as the case may be. If it is not allowed within * * * 90 days after such date of filing it shall be deemed denied. Thereupon such owner may within 90 days following such denial commence an action against the state highway commission, the city, county, village or town as the case may be, to recover any damages to his said lands shown to have resulted from such change of grade. Any judgment recovered against the state highway commission shall be paid out of state highway funds, otherwise out of the funds of city, county, village or town against which the judgment is recovered. *Where a grade has been established by ordinance, the property owner's remedy shall be as provided by municipal law.* This section shall in no way contravene, limit or restrict the provisions of s. 88.38.

SECTION 18. 32.19, 32.20 and 32.21 of the statutes are created to read:

32.19 ADDITIONAL ITEMS PAYABLE. The following items shall be compensable in eminent domain proceedings where shown to exist:

(1) REALIGNMENT OF PERSONAL PROPERTY. The cost of realigning personal property on the same site in partial takings or where realignment is required by reason of elimination or restriction of existing used rights of access.

(2) REMOVAL OF PERSONAL PROPERTY TO ANOTHER SITE. The cost of removal from the property taken to another site of personal property of land owners, or tenants under an existing unexpired written lease, the full term of which is at least 3 years. Such costs shall not exceed \$150 for removals from each family residential unit or \$2,000 from each farm or non-residential site.

(3) REFINANCING COSTS. All costs incurred by the owner to finance the purchase of another property substantially similar to the property taken provided that: 1) At the time of the taking the land condemned was subject to a bona fide mortgage or was held under a vendees interest in a bona fide land contract, and 2) such mortgage or land contract had been executed in good faith prior to the date of the relocation order in condemnation under s. 32.05 or determination of necessity of taking in condemnation under s. 32.06. Such costs shall include:

(a) Reasonable fees, commissions, discounts, surveying costs and title evidence costs necessary to refinance the balance of the debt at the time of taking if actually incurred.

(b) Increased interest cost, if any, above that provided in the former financing. The computation of the increased interest costs, if any, shall be based upon and limited to:

1. A principal amount of indebtedness not to exceed the unpaid debt at the date of taking.

2. A term not to exceed the remaining term of the original mortgage or land contract at the date of taking.

3. An interest rate not to exceed the prevailing rate charged by mortgage lending institutions doing business in the vicinity.

4. The present worth of the future payments of increased interest computed at the same rate of interest as in subd. 3.

(4) **NET RENTAL LOSS.** Net rental losses resulting from vacancies during the year preceding the taking of the property, provided that: 1) such loss is limited to the amount that exceeds the average annual rental losses caused by vacancies during the first 4 years of the 5-year period immediately preceding the taking; and 2) such rental loss was caused by the proposed public land acquisition.

(5) **EXPENSE OF PLANS RENDERED UNUSABLE.** Expenses incurred for plans and specifications specifically designed for the property taken and which are of no value elsewhere because of the taking.

32.20 PROCEDURE FOR COLLECTION OF ITEMIZED ITEMS OF COMPENSATION. Claims for damages itemized in s. 32.19 shall be filed with the state highway commission or other public body, board, commission or utility, which is carrying on the project through which condemnee's or claimant's claims arise. All such claims must be filed after the damages upon which they are based have fully materialized but in no event later than 2 years after the condemnor takes physical possession of the entire property acquired. If such claim is not allowed within 90 days after the filing thereof, the claimant shall have a right of action against the condemnor, or in case no condemnation is involved, against the highway commission or public body, board, commission or utility, which is carrying on the project through which the claim arises. Such action shall be commenced in a court of record in the county wherein the damages occurred. In causes of action, involving any state commission, board or other agency, excluding counties, the sum recovered by the claimant shall be paid out of any funds appropriated to such condemning agency. Any judgment shall be appealable by either party and any amount recovered by the body against which the claim was filed, arising from costs, counterclaims, punitive damages or otherwise may be used as an offset to any amount owed by it to the claimant, or may be collected in the same manner and form as any other judgment.

32.21 EMERGENCY CONDEMNATION. Whenever any lands or interest therein are urgently needed by any state board, or commission, or other agency of the state, and a contract for the purchase or use of the property cannot be made for a reasonable price, or for any other reason, including the unavailability of the owner or owners, the board, commission or agency may, with the approval of the governor, issue an award of damages and upon tender of the award to the owner or owners, or deposit in a court of record in the county where the lands are situated in cases where an owner is not available or tender is refused, take immediate possession of said property. Deposit in a court of record may be made by registered mail addressed to the clerk of the court. The governor shall determine whether or not such an award shall issue. Appeal from said award of damages will lie as in other similar cases and all provisions of the chapter shall govern, except as to the provision herein concerning the immediate issuance of the award tender and immediate possession.

SECTION 19. 59.96 (6) (j) of the statutes is amended to read:

59.96 (6) (j) The commission may acquire by gift, purchase, lease or other like methods of acquisition or by condemnation, any land or property situated in said county outside of said city of the first class, and all tenements, hereditaments and appurtenances belonging or in any way appertaining, or in any interest, franchise, easement, right or privilege therein, which may be required for the purpose of projecting, planning, constructing and maintaining said main sewers, or any part or parts thereof, or that may be needed for the workings of said sewers when established, and when so often as resort shall be had to condemnation proceeding the procedure shall be that provided for by ch. 32, and speci-

fically the provisions of s. 32.05, except that the powers therein granted shall be exercised by and in the name of said commission in the place and stead of the county board. Notwithstanding any other provision of law to the contrary, all property, real or personal, acquired by the metropolitan sewerage commission or by the sewerage commission of the city of the first class shall be taken in the name of either of such commissions for the benefit of and belong to the metropolitan sewerage district. Whenever the sewerage commission of the city of the first class acquires property by condemnation proceedings, the procedure shall be that provided for by ch. 32, *and specifically the provisions of s. 32.05*, and all property so acquired shall be taken in the name of said commission for the benefit of and belong to the metropolitan sewerage district, and the sewerage commission of the city of the first class when exercising the power of eminent domain hereby delegated, shall determine the necessity for such taking. Such property, or any part or interest therein, when acquired, may be sold, leased or otherwise disposed of by such district by action of the metropolitan sewerage commission and the sewerage commission of the city of the first class acting jointly, whenever in the discretion of such commissions such property or any part or portion thereof or interest therein is not needed to carry out the requirements and powers of either of such commissions. This power shall also extend to personal property and to improvements on such real estate or any tenements, hereditaments or appurtenances belonging to or in any way appertaining, or any interest, franchise, easement, right or privilege therein.

SECTION 20. 66.205 (8) of the statutes is amended to read:

66.205 (8) The district may acquire by gift, purchase, lease or other like methods of acquisition or by condemnation, any land or property situated in said district, and all tenements, hereditaments and appurtenances thereunto belonging or in any way appertaining, or in any interest, franchise, easement, right or privilege therein, which may be required for the purpose of projecting, planning, constructing and maintaining said main sewers, or any part or parts thereof, or that may be needed for the workings of said sewers when established, and so often as resort shall be had to condemnation proceeding, the procedure shall be that provided for by ch. 32, *and specifically the provisions of s. 32.05*, except that the powers therein granted shall be exercised by and in the name of said district in the place and * * * *stead* of the county board. Furthermore, land or property may be acquired outside of said district for the purposes of ss. 66.20 to 66.209.

SECTION 21. This act shall take effect 30 days after publication.

Approved September 15, 1961.
