

## CHAPTER 27.

## PUBLIC PARKS AND PLACES OF RECREATION.

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**Cross Reference:** See definitions in 24.01.

**27.01 State parks.** (1) **PURPOSE.** It is hereby declared to be the policy of the legislature to acquire, improve, preserve and administer a system of areas to be known as the state parks of Wisconsin. The purpose of the state parks is to provide areas for public recreation and for public education in conservation and nature study. An area may qualify as a state park by reason of its scenery, its plants and wildlife, or its historical, archaeological or geological interest. The conservation commission shall be responsible for the selection of a balanced system of state park areas and for the acquisition, development and administration of the state parks. No admission charge shall be made to any state park.

(2) **POWERS OF THE CONSERVATION COMMISSION.** In order to carry out the purposes of this section, the conservation commission shall have charge and supervision of the state park system. The commission shall also have authority to:

(a) Acquire by purchase, condemnation, lease or agreement lands or waters suitable for state park purposes.

(b) Classify state park areas as to their most logical employment and greatest usefulness as, for example, scenic, recreational or historical, and establish boundaries for each state park.

(c) Make, and as rapidly as possible carry out, plans for the development of the state parks, including the layout and construction of roads, trails, camping and picnic areas, buildings, water and sewer and other sanitary installations, and the development of all other facilities considered necessary for the preservation of special features or the overall usefulness of any state park.

(d) Enter into agreements with the federal government, the government of neighboring states, state departments, counties, towns, scientific societies, organizations, individuals or others on any subject considered of concern and benefit to the state parks. Operation of historic buildings, restorations, museums or remains within the boundaries of a state park or parks may be vested by such agreements in the state historical society, which may, in accordance with section 44.02 (5) of the statutes, charge an admission fee to such buildings, restorations, museums or remains in order to defray in whole or in part the costs of operation of such sites.

(e) Accept, in the name of the state, grants of land and bequests or donations of money for the state park system.

(f) Grant concessions or franchises for the furnishing of supplies or facilities and services on the state parks considered necessary for the proper comfort of the public.

(g) Lease parts or parcels of state park land or grant easements thereto.

(h) Designate by appropriate name any state park not expressly named by the legislature.

(i) Establish and operate in state parks such services and conveniences and install such facilities as will render such parks more attractive for public use and make reasonable charges for the use thereof.

(j) Make such rules and regulations as may be necessary to govern the conduct of state park visitors, and for the protection of state park property, or the use of facilities, including the use of boats and other watercraft on lakes or rivers within the limits of a state park, and the use of roads, trails or bridle paths.

(k) Designate parking areas and regulate the use and movement of automobiles or other vehicles in the state parks.

(1) Make surveys and investigations of sites considered potentially valuable for state parks.

(m) Take such other action as may be deemed advisable for the administration, development, maintenance or protection of the state park system or any part or parts thereof.

(3) **LEGAL COUNSEL.** The attorney-general shall act as counsel and attorney for said commission, both in proceedings and litigation, and in giving advice and counsel. The respective district attorneys of the county or counties where said park is or shall be located shall prosecute all violations of the terms of this section occurring within their respective counties as provided in section 26.18.

(4) **PARK MANAGERS.** Park managers employed by said commission shall have all the powers of state fire wardens as provided in chapter 26 of the statutes, and such powers shall apply to state parks.

(5) **PENALTIES.** The penalties for the destruction of any notices, posted by the said commission, or for the breaking, tearing up or marring of trees, vines, shrubs or flowers, the dislocation of stones or the disfigurement of natural conditions within the boundaries of any state or county parks or state fish hatchery grounds shall be the same as those provided in section 26.19.

(6) **ROADSIDE PARKS.** All areas designated as roadside parks shall be a part of the state park system. Roadside parks will consist of naturally attractive parcels of land (5 acres or more in size) immediately contiguous to a state trunk highway. Each such area shall carry a distinctive name and shall be managed and developed as a part of the state park system.

(7) **NAMES.** The state parks shall be designated as follows:

(a) The state park in the town of St. Croix Falls, Polk county, as "Interstate Park;"

(b) The state park in the town of Gibraltar, Door county, as "Peninsula State Park;"

(c) The state park in the town of Nasewaupsee, Door county, as "Potawatomi State Park;"

(d) The state park in the town of Wyalusing, Grant county, as "Wyalusing State Park;"

(e) The state park in the town of Baraboo, Sauk county, as "Devil's Lake State Park;"

(f) The state park in the town of Delafield, Waukesha county, as "Cushing Memorial State Park;"

(g) The state park in the town of Morse, Ashland county, as "Copper Falls State Park;"

(h) The state park in the town of Cassville, Grant county, as "Nelson Dewey State Park;"

(i) The state park in the town of Rib Mountain, Marathon county, as "Rib Mountain State Park;"

(j) The state park in the town of Trempealeau, Trempealeau county, as "Perrot State Park;"

(k) The state park in the town of Wilson, Sheboygan county, as "Terry Andrae State Park;"

(l) The state park in the town of Wyoming, Iowa county, as "Tower Hill State Park;"

(m) The state park in the town of Belmont, Lafayette county, as "First Capitol State Park;"

(n) The state park in the town of Superior, Douglas county, as "Pattison State Park;"

(o) The state park in Jefferson county, as "Aztalan State Park."

(8) **POLICE SUPERVISION.** The conservation commission shall have police supervision over all state parks, and its duly appointed agents or representatives in charge of any state park are hereby authorized and empowered to arrest, with or without warrant, any person within such park area, committing an offense against the laws of the state or in violation of any rule or regulation of the state conservation commission in force in such state park, and to deliver such person to the proper court of the county wherein such offense has been committed and to make and execute a complaint charging such person with the offense committed. The district attorney of the county wherein such offense has been committed shall appear and prosecute all actions arising under the provisions of this subsection.

**History:** 1951 c. 457.

**27.012 Indian antiquities on the public lands.** (1) **DESTRUCTION OF INDIAN MOUNDS.** It is unlawful except as provided in sub. (2) to destroy, deface, mutilate, injure, or remove any Indian burial, linear or effigy mounds, enclosures, cemeteries, graves, plots of corn hills, garden beds, boulder circles, pictograph rocks, caches, shell or refuse heaps, spirit stones or manitou rocks, boulder mortars, grindstone rocks or other prehistoric or

historic Indian remains located upon the public lands, state parks, forestry reserves, lands of state educational or other state institutions, or upon other lands or properties belonging to the state. Whoever violates this subsection shall be fined not less than \$10 nor more than \$100 or imprisoned not more than 90 days or both.

(2) PERMITS BY THE COMMISSION. The conservation commission is authorized to grant permission to remove or destroy any of the prehistoric or historic remains enumerated in sub. (1) whenever it deems such removal or destruction necessary; and the commission or other state officer or officers having control under the laws of the state of the lands or properties upon which they, or any of them, are situated may grant to state, county, municipal or national educational institutions, or regularly organized archaeological or historical societies, permission to explore or investigate for educational or scientific purposes. The use of lands or properties belonging to the state for the purposes for which they were acquired shall not be restricted by the provisions of this section.

**History:** 1955 c. 10, 696.

27.015 Rural planning. (2) "Rural planning" as used in this section means planning for the health, general welfare, and amenity of the settler; planning for the establishment of the best possible transportation facilities; planning for the creation and development of the most logical community centers where country people can come together for social and business relations; planning for the setting aside of country parks, recreation fields, county fairgrounds, community woodlands, places of local and historic interest, and for the reservation of land for public uses along river fronts, lake shores, fine outlooks from hilltops, and for the preservation of our native landscape.

(3) The state department of agriculture shall stimulate interest and disseminate information along lines of rural planning and shall co-operate with county rural planning committees in carrying out their duties as provided by subsection (7).

(4) In each county there shall be a county rural planning committee. Such committee shall consist of the chairman of the county board, the chairman of the county state road and bridge committee, and the county superintendent of schools, ex officio members, and two others, either men or women, to be appointed by such ex officio members. The chairman of the county board shall be chairman of such committee, and in counties having more than one superintendent of schools, the superintendent to serve on such committee shall be designated by the chairman of the county board.

(5) Within 60 days after August 3, 1919, the ex officio members of the committee shall meet and appoint the balance of the committee, one for a term of 2 years, and one for a term of 4 years, and thereafter one shall be appointed every 4 years for a term of 4 years and until his successor is elected and qualified. Terms of appointed members expire on July 1.

(6) Elected members shall be freeholders of the county and have a general interest in and knowledge of rural planning. All members shall be reimbursed by the county for their actual and necessary expenses incurred while acting as members of such committee. The county board may set a per diem for such members for days attended at committee meetings or spent in the interests of rural planning and, in counties where the rural planning committee operates a county park or parks which bring a financial return to the county, the county board may provide a salary for the secretary of the rural planning committee.

(7) It shall be the duty of the rural county planning committee:

(a) To keep itself informed of the progress of rural planning in this and other counties.

(b) To report to the county, town or village boards upon the architectural design of any public building or bridge, the geographical location of community centers, the location or design of any statue or memorial, works of art and mural decorations in public buildings when such are proposed, to the end that such matters may be made in the highest degree effective, permanent, dignified and fitting through proper design, form and situation.

(c) To advise regarding the planting and protection of trees, shrubs and flowers along all highways within the county to the end that they shall be so located as not to interfere with the maintenance of said highway, and that only trees, shrubs and flowers native to Wisconsin be used for this purpose.

(d) To consider and provide for the establishment of community parks and woodlands, proportioned and situated so as to provide ample and equal facilities for the establishment of community parks and residents of the county.

(e) To propose to the county board the setting aside of places of historic interest and the protection and preservation of unique and picturesque scenery along rivers, lakes and streams, or other scenery or features remarkable, to the end that they may be continued and preserved.

(f) It may under the direction of the county board, operate a county park or parks for tourist camping and general public amusement, and may establish fees, concession privileges and grants and employ such help as is needed to operate the park or parks for the best county interests. The county board shall establish rules and regulations governing the conduct and behavior of patrons in and on any such park and shall provide for penalties for infractions of these rules and regulations. When such parks have bathing beaches in connection with them, the county board shall make rules and regulations governing the operation of motor boats in or near such beaches, and provide penalties for infraction of such rules and regulations. The board shall also establish rules, regulations and penalties for infractions thereof, for all roads in county parks and all such roads shall be part of the county highway system.

(8) The county board may call upon such committee to report with recommendations upon any matter relating to rural planning, and such committee shall make its report within thirty days after such request is made unless a longer or shorter period is specified. But such committee may at any time, on its own motion, make recommendations on any phase of rural planning to the county board.

(9) Such committee with the consent of the county board may appoint as secretary a person of skill and experience in rural development and may with the consent of such board employ consulting rural planning experts for the making of plans or maps of the county or any portion thereof showing location, design or treatment of proposed projects referred to in this section, as occasion may require.

(10) Any county in which there does not exist a county park commission acting through its rural planning committee may acquire by gift, grant, devise, donation, or purchase, condemnation or otherwise, with the consent of the county board, a sufficient tract or tracts of land for the reservation for public use of river fronts, lake shores, picnic groves, outlook points from hilltops, places of special historic interest, memorial grounds, parks, playgrounds, sites for public buildings, and reservations in and about and along and leading to any or all of the same, and to develop and maintain the same for public use.

(11) Such committee shall work out plans to enforce the state law prohibiting dumping of tin cans and rubbish along highways.

(12) The state department of agriculture, the bureau of engineering, the state conservation commission and the agricultural extension division of the university of Wisconsin shall co-operate with the several county rural planning committees in carrying out the provisions of this section.

(13) Any county wherein there exists a county park board and any county which shall create a park commission under section 27.02, shall not create a county rural planning committee but in such county the county park board or commission shall exercise and be possessed of all the powers and duties imposed upon the county rural planning committee by this section.

**27.02 County park commission, appointment.** (1) In every county having a population of at least 150,000, and in any other county wherein the county board has by resolution provided for a county park commission subject to the provisions of ss. 27.02 to 27.06, which any county board is empowered to do, the chairman of the county board shall appoint a county park commission consisting of 7 members, one of which may be a member of the county board. Such appointments shall be made in writing and filed in the office of the county clerk. The term of each member shall be the 7 years next following July 1 of the year in which his appointment is made and until the appointment and qualification of his successor, except that the first 7 members shall be appointed respectively for such terms that on July 1 in each of the 7 years next following the year in which they are appointed the term of one member will expire. After such original appointment one commissioner shall be appointed annually in the month of June to succeed the member whose term will expire on July 1 then next following, except that in counties having a population of 150,000 or more, after August 1, 1939, such members shall be elected by the county board of supervisors.

(3) Each of said commissioners shall take and file the official oath.

**History:** 1953 c. 547.

**27.03 Organization.** (1) Within thirty days after their appointment and qualification the said commissioners shall convene at the courthouse and perfect an organization; and thereupon such park commission shall have the usual powers of such bodies in addition to those hereinafter enumerated, shall use a common seal, make by-laws and choose annually from its members all necessary officers.

(2) It may also appoint such other agents and employes as may be necessary to carry out its functions, and may remove them at pleasure, and make all rules and regulations concerning its work.

(3) The county board shall provide suitable offices where the maps, plans, documents, and records of the commission shall be kept, subject to public inspection at all reasonable hours and under such reasonable regulations as it may prescribe.

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

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

**27.05 Powers of commission.** The said commission shall have charge and supervision of all county parks, and all lands heretofore or hereafter acquired by the county for park or reservation purposes; and shall have power subject to the general supervision of the county board and to such regulations as it may prescribe:

(1) To lay out, improve, maintain and govern all such parks and open spaces; provide by contract with sanitary districts, counties, or towns, cities or villages, subject to the approval of the county board of supervisors, or in any other manner, for the disposal of sewage arising from the use of such parks and take all action necessary to prevent the pollution of park or parkway areas or any portion thereof by sewage emanating from upland areas; to lay out, grade, construct, improve and maintain roads, parkways, boulevards and bridges therein or connecting the same with any other parks or open spaces or with any municipality in the county, using such methods and materials as it may deem expedient; to determine and prescribe building lines along the same; and to make rules for the regulation of the use and enjoyment thereof by the public;

(2) To accept, in the name of the county, grants, conveyances and devises of land and bequests and donations of money to be used for park purposes;

(3) To acquire, in the name of the county, by purchase, land contract, lease, condemnation, or otherwise, with the approval and consent of the county board, such tracts of land or public ways as it may deem suitable for park purposes; including lands in any other county not more than three-fourths of a mile from the county line; but no land so acquired shall be disposed of by the county without the consent of said commission, and all moneys received for any such lands, or any materials, so disposed of, shall be paid into the county park fund hereinafter established.

(4) To acquire in the name of the county by purchase, land contract, lease, condemnation or otherwise, with the approval and consent of the county board, such tract or tracts of land as it may deem necessary for the purpose of providing a suitable and convenient place and station upon which aeroplane and aircraft generally may land, be cared for, and make flight from; and to improve and provide such place with the necessary hangars, and equipment for same; and said park commission is further authorized and empowered to let, lease or have such lands or station, and make such charge therefor, as they may deem proper and advisable; provided, however, that any such lands so acquired, leased or used for such purpose shall not be leased or let, exclusively, to any person, firm or corporation, but proper provision in any such use, lease or letting, shall be made for use, by others who may desire to use same; and for the purpose herein specified said county park commission is authorized and empowered to appropriate and use from and out of the county park funds, and the county board of supervisors is authorized and empowered to appropriate and use from and out of the funds of the county, such sum or sums as may be severally or jointly sufficient to pay for such lands and improvements; and all rents, charges and income received from said lands and the use thereof, shall belong to and be paid into the county park fund herein established.

(5) To plant, transplant, remove, trim, spray and otherwise care for and protect all trees and shrubs on or in that part of every road, parkway and boulevard which it has laid out pursuant to this section, lying between the lot line and the curb, or in the center or side plots in all boulevards and parkways.

(6) To let, lease or grant the use of such part or portion of the park lands now owned or hereafter acquired and located within five miles of the corporate limits of any city as to it shall seem reasonably necessary, convenient or proper to agricultural and other societies of similar nature for agricultural and industrial fairs and exhibitions and such other purposes as tend to promote the public welfare. All fences and buildings constructed and other improvements made on such lands by societies using the same shall be constructed and made according to plans submitted to, and approved by the commission, and shall be the property of the county. The county board may appropriate money for and construct buildings and make improvements on any such lands so used in the same manner and to the same extent as provided by s. 59.69 (1) of the statutes.

(7) In the counties having a population of 500,000, investigate the pollution of streams flowing through county parks and parkways or immediately adjacent thereto by sewage, industrial waste or other cause of pollution. In connection with the exercise of such powers and duties the commission shall have authority to conduct investigations, by authorized agents to enter upon any lands and industrial buildings in the county at reasonable hours, to subpoena witnesses, to administer oaths, to take testimony, to make findings, and to report such findings to the county board of supervisors of such county.

(8) To have complete and exclusive jurisdiction and control over the improvement and maintenance of that portion of any public alley, street or highway which has heretofore been, or hereafter may be, by consent of the governing body of the town, city or village wherein such alley, street or highway is located, made a part of the county park or parkway system. The installation of privately owned utilities in such portion of said public alley, street or highway shall be made subject to the approval of said park commission; sewers, water mains or other municipally owned utilities or facilities may be installed and maintained by the governing body of the municipality in which such portion of said alley, street or highway is located, upon 5 days' notice in writing to said park commission, which notice shall specify the type of utility to be installed and have plans thereof attached, and provided that the town, city or village shall restore as nearly as practicable to its prior condition any surface, subsurface or structures located above or below the ground that may be disturbed by said installation or maintenance.

On airport regulation see notes to 114.11 and 133.01, citing *Milwaukee County v. Lake*, 259 W 208, 47 NW (2d) 87.

**27.06 Mill-tax appropriation.** The county board may annually, at the same time that other county taxes are levied, levy a tax upon the taxable property of such county not exceeding two-tenths of a mill upon each dollar of the equalized valuation of the taxable property upon which other county taxes are levied and collected; provided, that a larger levy may be made for this purpose in counties having a population of 250,000 or more. The entire amount of such special tax shall be collected as other taxes are collected and paid into the county treasury as a separate and distinct fund, to be paid out only upon the order of the county park commission for the purchase of land and the payment of expenses incurred in carrying on the work of the commission. Any part of said fund, except \$5,000 annually, may be transferred to the general fund of the county treasury whenever county bonds for the purchase of land have been issued by the county and placed at the disposal of the county park commission, or whenever the county has assumed an indebtedness on its behalf, equal to the amount of money to be transferred. In every county having a population of 300,000 or more, the county park commission shall be subject to s. 59.84.

**History:** 1953 c. 73.

**27.065 County parks and parkways.** (1) (a) The county board of any county which shall have adopted a county system of parks or a county system of streets and parkways, pursuant to section 27.04, may acquire the lands necessary for carrying out all or part of such plan by gift, purchase, condemnation or otherwise; provided, however, that no lands situated within the limits of a city or village shall be acquired by condemnation unless and until the common council of the city or the board of trustees of the village wherein such land is situate shall consent thereto. The cost of acquiring such lands by purchase or condemnation may be paid in whole or in part by the county or by the property to be benefited thereby, as the county board shall direct, but in no case shall the amount assessed to any parcel of real estate exceed the benefits accruing thereto; provided, that no assessment for paying the cost of acquiring lands may be levied or collected against the property to be benefited, excepting where the lands to be so acquired and the lands against which benefits are to be assessed, are included within the corporate limits of

a city or village or within one and one-half miles thereof, and until the governing body of the city, village or town where such lands are located has by resolution determined that the public welfare will be promoted thereby. Title to all lands acquired hereunder shall be an estate in fee simple.

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

(2) (a) Whenever lands for a county system of parks or parkways are being condemned in accordance with this section, the provisions of chapter 32 of the statutes, relating to eminent domain with relation to the acquisition of lands for streets, shall apply to the acquisition of lands for streets and parkways by the county board, excepting that in cases where the whole or any part of the cost of acquiring such lands is to be paid by special assessments the county board by resolution may determine that such assessments may be paid in one or more equal annual instalments, together with a rate of interest upon the unpaid principal, which interest shall not exceed six per cent. Any person whose lands are taken or against whose lands assessments for benefits or damages shall have been made, may appeal from the award of the commissioners to the circuit court of the county in the manner prescribed by section 32.11 of the statutes. If it shall appear 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 county board may be so altered, changed or amended by resolution of the county board. Notice may be given and new parties brought in as provided in section 32.17 of the statutes.

(b) When any assessment of benefits and damages is made in condemnation proceedings the commissioners shall file a copy of their final report in the office of the clerk of the circuit court of the county and also with the county clerk. The county clerk shall thereupon prepare a list of special taxes to be entered in the tax roll on account thereof, which list shall have set opposite each description against which benefits not offset by damages or an excess of benefits over damages shall have been assessed, the amount of such benefits or excess, which amount shall be levied upon the land described as a special tax and be collected the same as other taxes for county purposes. The amount thereof shall be certified by the county clerk with other state and county taxes and charges, to the clerks of the cities, towns or villages within which the property is located, and it shall be the duty of the clerks of the respective cities, towns or villages, at the time of making out the next tax roll, to levy the same on the land described as a special tax to be collected the same as other taxes. The first instalment shall include a proportionate part of the principal of the special assessment, together with interest on the whole assessment at the rate fixed by the county board, from the date when the county shall have obtained the right to possession of the land condemned. Payment of the amount of damages awarded to any owner by the commissioners shall be made to such owner regardless of benefits assessed against other lands of the same owner.

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

(d) For the purpose of anticipating the collection of special assessments on account of such acquisition and after the assessments have been determined the county board may provide that the amount thereof may be paid with certificates against the parcels of real estate so benefited, or in special improvement bonds, or from the proceeds of the sale of such bonds, or that payments may be made part in certificates, part in cash and part in special improvement bonds, and the manner of issuing, the form and content of such certificates and bonds shall be governed by the provisions of subsections (7), (8), (9), (10), (11) and (12) of this section so far as applicable. The special assessment bonds issued hereunder may contain a general description of the lands against which assessments have been made to pay the cost of acquisition.

(e) The county board may provide for the payment out of the county treasury of all or any portion of the special assessments theretofore levied pursuant to the provisions of this section and not yet due, and in such event, shall upon verified application, refund to the persons who have made prepayment of such assessments the proportionate amounts of such prepayments.

(3) The county board shall have the power to improve all or any portion of the county's system of streets and parkways by causing the same to be leveled, graded, paved or improved in any other manner, and sidewalks, curbs or gutters or either installed, to cause water and sewer mains and laterals, and lighting mains and fixtures, fences, bridges, culverts, viaducts and flood control dams erected and constructed therein, and to cause the parkway portions thereof to be planted, seeded or sodded. The county board shall have the authority to establish the grade of all streets and parkways in areas not already established and to change and reestablish the same as it may deem expedient. Whenever it shall change or alter the permanently established grade of any street or parkway, any person thereby sustaining damages to his property on such street, shall have a right to recover such damages in the manner set forth in this section. The grade of all streets and parkways shall be established and described and the adoption of such grades and all alterations thereof shall be recorded by the county clerk. No street or parkway shall be worked until the grade thereof is established and recorded in the office of the county clerk.

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

(b) Where sidewalks have been installed adjacent to private property, section 62.17 shall govern in respect to keeping said sidewalks in repair and free from snow, ice and obstructions; provided that the county board shall have the powers in said section vested in the common council, and the county highway committee shall have such powers as are in said section vested in the board of public works, and the word "city" shall mean the county. Where private homes are built upon lands abutting on any portion of a parkway and such houses face the parkway drive and said drive is the means of entrance to said lands, similar to any city street, then the responsibility for maintaining the area between the parkway drive and the private property lot line shall be that of the abutting property owner.

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

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

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



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

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

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

(f) At the time specified for hearing objections to said report, said county highway commissioner or said committee shall hear all parties interested, who may appear for that purpose, reduce to writing all objections that may be made and all evidence that may be offered to sustain the same, and may review, modify and correct said report as they deem just, and thereupon a complete final report shall be made and filed by said county highway commissioner or said committee with the county clerk, together with all objections and evidence taken to sustain the same, and the proof of publication of said notice and the posting thereof, as above specified, which shall be received in all cases as presumptive evidence of the facts therein stated.

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

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

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

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

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

(l) The appeal given by the last section from the report of the county highway commissioner or committee of the county board, as confirmed by the county board, shall be the

only remedy of the owner of any parcel of land or any person interested therein, for the redress of any grievance he may have by the making of such improvement, or of the change of any established grade covered by said report, or of any assessment or tax levied on account thereof.

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

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

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

(9) (a) As soon as the amount chargeable to the real estate under the provisions of this section is finally determined, the county board may cause a notice to be published in the official paper, or if there be none, in at least one newspaper published in the county or having a general circulation therein, substantially in the following form:

*County Improvement Notice.*

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

(b) After the expiration of said thirty days the county board may issue special improvement bonds covering all of the assessments except such as the owners have filed notices of election to pay as provided in this section. Said bonds shall be signed by the chairman of the county board and the county clerk, be sealed with the corporate seal of the county, and contain such recitals as may be necessary to show that they are chargeable to the particular property, specifying the same against which assessments have been made to pay the cost of improvement. Such recitals need not set forth the particular description of said lands at length but shall be sufficient if they contain a reference to the record of such description in the office of the register of deeds of the county, and such particular description of all lands covered by said assessments shall be recorded in the office of the register of deeds of the county wherein said lands are situated in addition to being filed in the office of the county clerk.

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

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

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

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

(g) The county may advance or pay any funds required under this section or may purchase any such bonds and shall in such case be entitled to all the rights of any third person in connection therewith, including the right to sell or otherwise dispose of such bonds.

(h) Except as otherwise provided herein or inconsistent herewith, the provisions of sections 62.20 and 62.21 of the statutes shall be applicable to certificates and bonds issued hereunder.

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

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

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

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

(e) Upon the commencement of any such action the plaintiff shall cause a notice thereof to be filed in the office of the county clerk and county treasurer, designating the particular

property affected by such foreclosure; and thereafter no redemption of any such property from such assessments shall be had without payment of all costs theretofore accrued in such action except as hereinbefore provided.

(11) Every action or proceeding to avoid any of the special assessments or taxes levied pursuant to the same, or to restrain the levy of such taxes, or the sale of lands for the non-payment of such taxes, shall be brought within nine months from the end of the period of thirty days limited by the county improvement notice provided for in this section and not thereafter. This limitation shall cure all defects in the proceedings, and defects of power on the part of the officers making the assessment, except in cases where the lands are not liable to the assessment, or the county has no power to make any such assessment, or the amount of the assessment has been paid or a redemption made.

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

(b) Where, in any action mentioned in the preceding paragraph, a new assessment has been made which is valid so far as the regularity of the proceedings is concerned, but wherein the plaintiff may feel aggrieved by reason of the amount assessed for benefits and damages, such court shall upon the verified petition of the plaintiff, after notice of not less than ten days, proceed with the hearing of said cause. It shall not be necessary for the plaintiff in any such action to appeal from such assessment of benefits and damages, but the court shall have full power to proceed with the hearing and determination of the proper amount thereof, and render final judgment between the parties.

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

(13) (a) Whenever in any proceeding under this section, whether for acquisition of land or improvement thereof, any tract of land which at the time of filing of the final assessment of benefits and damages is in one ownership and such tract or any portion thereof shall thereafter be divided or subdivided into two or more lots or parcels, either by recorded plat or by conveyance duly recorded, and the special assessment of benefits against the original tract shall be outstanding, in instalments or otherwise, it shall be the duty of the county highway committee, after notice and hearing as hereinafter provided, on verified written request of the owner of such original tract or the owner of any portion thereof to apportion said assessment of benefits among the several lots or parcels into which the original tract or any portion thereof is divided or subdivided.

(b) Upon receipt of any such verified written request the county highway committee forthwith shall set a time and place for hearing such request for an apportionment of said original assessment. Notice in writing of the time, place and nature of such hearing shall be sent by such committee, by registered mail, to the last known address of each of the owners of any lot or parcel of land affected or to be affected by the requested appor-

tionment, at least ten days prior to the time set for such hearing. Such apportionment shall be made in an equitable manner so as to be consistent in method with the intent and purpose of the original assessment. The highway committee may engage the services of a disinterested and qualified real estate appraiser to assist the committee in making said apportionment and the owner making such written request shall pay a reasonable fee for the services of the appraiser in the amount fixed by the highway committee. The sum of the assessments apportioned to the several lots or parcels created from the original tract or any portion thereof shall not exceed the unpaid amount of the original assessment. The determination of said highway committee shall be final, unless, within twenty days after the filing of a certified copy of such determination with the clerk of the municipality wherein such land is situated, as hereinafter provided, the owner or owners of any lot or parcel of land affected by such determination shall commence an action in the circuit court of the county wherein such land is situated to set aside such determination. In any such action the owner or owners of any land affected by such determination and the county highway committee shall be named as parties defendant and the court shall have power to adjudicate an apportionment of the original assessment of benefits among the several lots or parcels into which said original tract or any portion thereof is divided or subdivided.

(c) Upon the making of any determination apportioning any such assessment, as herein provided, the county highway committee forthwith shall file a certified copy thereof with the county clerk of the county in which the land affected by such determination is situated. A copy of the county highway committee's determination apportioning any such assessment, duly certified by the chairman of such committee or by the county clerk, may be filed for record in the office of the register of deeds of such county, and, when so filed, shall be entitled to be recorded and be recorded in the same manner as conveyances of land. Within ten days after the making of any such apportionment by the county highway committee, the county clerk shall file a certified copy thereof with the clerk of the municipality wherein such land is situated. Thereafter, the assessment as so apportioned shall be levied against each such lot or parcel created by division of the original parcel or any portion thereof until the full amount of the apportioned assessment and interest thereon has been paid with the same force and effect as though the apportioned assessment had been levied against such lot or parcel when the original assessment was made. Such lot or parcel shall be deemed to be relieved from the lien of the original assessment except as to the amount of such assessment apportioned to said lot or parcel as hereinabove provided.

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

(15) Whenever any regulation, declared by law to be for public health, safety and welfare, shall have been or shall be made affecting the use of any lot or parcel of land against which a special assessment, or apportionment thereof, shall have been or shall be made under this section, any amendment, change or repeal of any such regulation to permit a less restricted use of any such lot or parcel of land shall require a three-fourths vote of the body authorized by law to make such amendment, change or repeal. No such amendment, change or repeal shall be effective unless, prior to the adoption thereof, notice by registered mail of the time and place of hearing on any such proposal shall have been given to the county park commission by the body authorized by law to make such amendment, change or repeal at least ten days before the time set for any such hearing.

**27.07 Milwaukee option.** Any city of the first class may, at its option, act under the provisions of sections 27.08, 27.09, 27.10, 27.11, 27.12 and 27.14 or any part thereof, or under any other law applicable to any such city of the first class.

**27.08 City park board, powers.** (1) Every city may by ordinance create a board of park commissioners subject to this section, or otherwise as provided by ordinance. Such board shall be organized as the common council shall provide.

(2) The board of park commissioners is empowered and directed:

(a) To govern, manage, control, improve and care for all public parks, parkways, boulevards and pleasure drives located within, or partly within and partly without, the corporate limits of the city, and secure the quiet, orderly and suitable use and enjoyment thereof by the people; also to adopt rules and regulations to promote those purposes.

(b) To acquire in the name of the city for park, parkway, boulevard or pleasure drive purposes by gift, devise, bequest or condemnation, either absolutely or in trust, money, real or personal property, or any incorporeal right or privilege. Gifts to any city of money or other property, real or personal, either absolutely or in trust, for park, parkway, boulevard or pleasure drive purposes shall be accepted only after they shall have

been recommended by the board to the common council and approved by said council by resolution. Subject to the approval of the common council the board may execute every trust imposed upon the use of property or property rights by the deed, testament or other conveyance transferring the title of such property to the city for park, parkway, boulevard or pleasure drive purposes.

(c) Subject to the approval of the common council to buy or lease lands in the name of the city for park, parkway, boulevard or pleasure drive purposes within or without the city and, with the approval of the common council, to sell or exchange property no longer required for its purposes. Every city is authorized, upon recommendation of its officers, board or body having the control and management of its public parks, to acquire by condemnation in the name of the city such lands within or without its corporate boundaries as it may need for public parks, parkways, boulevards and pleasure drives.

(d) To change or improve all parks, parkways, boulevards or pleasure drives within the city limits, controlled by the board, at the expense of the real estate to be benefited thereby, as provided in s. 27.10 (4).

(3) In any city having no board of park commissioners its public parks, parkways, boulevards and pleasure drives shall be under the charge of its board of public works, if it has such last named board; otherwise under the charge of its common council. When so in charge, the board of public works or the common council may exercise all the powers of a board of park commissioners.

(4) In every city having no city plan commission under section 62.23 (1), the common council may provide that the board of park commissioners, if there be such board in such city, shall be vested with the powers enumerated in section 62.23 (2), (12) and (17). The territory over which the city is given platting jurisdiction by section 236.06 shall for street, park, parkway, boulevard, pleasure drive and platting purposes be extended to 3 miles beyond the city limits. For the purpose of carrying out the provisions of section 62.23 (2) in said extended zone the common council may appropriate out of any available fund a sufficient sum to be used by said board for hiring engineers, surveyors and draftsmen, and other necessary help and assistants in making a comprehensive map of the said city and zone so as to put in concrete form the ideas of the said board as to how future dedications, openings and platting of streets, highways, boulevards, pleasure ways and parks, or other public improvements or thoroughfares, shall be made; which said map, when adopted by the common council, shall serve as an advisory guide to the said board of park commissioners in making recommendations to the common council in the future as to approving plats, and shall not be departed from except in cases of necessity or discovered error therein.

(5) Whenever the common council of any city determines to improve any street, avenue or boulevard, the board of public works, or if there be no such board, the officer or officers authorized to make such improvement, may, as a part thereof set aside a portion of such street, avenue or boulevard for park purposes, and determine, subject to the approval of the board of park commissioners, if there be such a board, in what manner the portion so set aside shall be improved. The damages and benefits resulting from such entire improvement, including the cost of the improvement of the part of such street, avenue or boulevard so set aside shall be assessed to the several parcels of land affected thereby as provided by law in such city for such assessments. Any report required to be made and filed respecting such improvement shall include a detailed statement of said determination and the approval thereof by said board.

(6) (a) The board of park commissioners of any city may conduct public concerts within its public parks and pay the expenses thereof out of the park fund. A fee for admission may be charged for the purpose of defraying such expenses in whole or in part.

(b) The board of park commissioners of any city of the first class where there has been hitherto established a driving club or similar organization in connection with any park under the direction of said board of park commissioners, may conduct horse races and driving exhibitions within its public parks and pay the expenses and cost of trophies therefor out of the park fund. A fee for admission may be charged for the purpose of defraying such expenses in whole or in part.

Where historical property known as the Villa Louis, along with certain other real estate, was conveyed to a city for maintenance as a "public park, playground, and historical museum," on condition that the grantor and certain others be life members of a "Dousman municipal park board" to be created by the city council and the council created such a board, to assist the council in managing the Villa Louis as a museum, this section did not preclude the council itself from making a contract to convey the Villa Louis to the State Historical Society for maintenance as an historical site, since the board created by the council pursuant to the terms of the grant to the city was not the statutory board. State ex rel. State Historical Society v. Carroll, 261 W 6, 51 NW (2d) 723.

**27.09 City forester, duties; tree planting.** (1) The board of park commissioners of every city may employ a city forester to take charge of and direct, subject to its super-

vision and control, all of the work authorized to be done under this section. It may also designate a municipal employe to perform the duties of city forester.

(2) The common council shall include in its annual budget such sum as it may deem necessary, if any, to meet all expenses of doing said work during the following fiscal year, including the salary of the city forester and the compensation of employes assisting him, but not including amounts assessable to abutting property; and the taxes levied to provide for such expense shall be in addition to all other taxes for park and boulevard purposes.

(3) The board is empowered to plant, transplant, remove, trim, spray and otherwise care for and protect all trees and shrubs on or in that part of every street, the grade of which has been established, lying between the lot line and the curb, or in the center or side plots in all boulevards and parkways, and in all public parks or grounds belonging to the city and to control all such planting and transporting by others. The board may guard all trees within the city so as to prevent the spread of disease or pests and to eliminate dangerous conditions, and may proceed pursuant to subsections (4), (5), (6) and (7) of this section.

(4) Whenever the board proposes the setting out, planting or removing of any such living shade tree, it shall give two weeks' written notice to the owner of the lot or parcel of land on which such tree stands or will stand, or his agent, or, if neither is known and there be a tenant occupying said property, then to such tenant, of a time and place at which said contemplated work will be considered by the city forester, specifying in detail the street, avenue or boulevard and portion thereof, upon or from which trees are proposed to be planted or removed, and the general nature and character of the changes and improvements contemplated. After such hearing, the city forester, subject to the direction of the board shall abandon said work or proceed with it as he believes the best interest of the public requires.

(5) The entire or any part of the cost of protecting, trimming, spraying, planting, renewing and removal of trees and shrubs between the lot line and the curb in front of any lot or parcel of land abutting on a street, avenue or boulevard may be chargeable to and assessed upon such lot or parcels of land. The governing body shall hold a public hearing on the proposed assessment, and shall give advance notice thereof by publication in a newspaper published in such city or village, or by posting such notice in at least 4 conspicuous places.

(6) The board shall keep a strict account of the cost of planting, protecting, renewing, removing, trimming, spraying and caring for trees and shrubs in front of each lot or parcel of land abutting on any street, avenue, or boulevard, and prior to the tenth day of November in each year, shall make a report to the comptroller in cities having such an officer, and in other cities to the common council, of all work done for which assessments have been made as hereinbefore provided stating and certifying the description of land, lots, parts of lots or parcels of land abutting on a street, avenue or boulevard in which any such work shall have been done, and the amount chargeable to each such piece of property; and the comptroller at the time of making his annual report to the common council of the lots or parcels of land subject to special assessments shall include therein the lots or parcels of land so reported to him by the board of park commissioners with the amount chargeable thereto for work done during the preceding year.

(7) The amounts so reported directly or through a comptroller to the council shall be levied on said lots or parcels of land, respectively, to which they are chargeable and shall constitute a lien thereon and shall be collected as other special taxes are levied and collected in the city. The board shall advance out of the park or other proper fund sufficient money for doing said work and said special assessments shall be credited to said fund of said city and shall not be diverted or used for any other purpose.

**27.10 Taxation and finance.** (1) IN CITIES UNDER 150,000. (a) The board of park commissioners in every city under 150,000 population shall, prior to October 1 in each year, make an estimate of the expenditures by said board during the ensuing calendar year including all necessary incidental expenses, and also an estimate of the amount necessary for the purchase of land for parks, parkways, boulevards and pleasure drives, and transmit the same to the common council. Such part of said estimates as the council shall approve shall be included in the city budget. Said board shall transmit to the common council prior to March 1 of each year a full detailed report of all its transactions for the preceding year, together with an itemized account of all receipts and expenditures, a list of employes, and an inventory of property in charge of the board.

(b) All moneys appropriated for park purposes, or received by subscription, gift, fees or otherwise for parks, parkways, boulevards or pleasure drives, shall be paid over to the city treasurer and be disbursed by orders of the city clerk drawn upon the city treasurer to pay accounts or bills that have been audited and allowed by said board and

presented to the city clerk. Such orders shall be paid by the clerk and treasurer in the manner provided by section 66.042. The board shall not contract any liability on the part of the city in excess of the budget authorized by the common council.

(3) TAX FOR PARKS; COLLECTION AND EXPENDITURE OF PROCEEDS. The common councils of all cities of the first class are hereby authorized and directed to include in the tax levy of each year, upon all taxable property of any such city, at the same time and in the same manner as other city taxes are levied and collected by law, a tax not exceeding eighty-five hundredths (.85) of a mill upon each dollar of the assessed value of said taxable property, the amount of which tax shall be determined by the board of park commissioners of such city, and certified to the common council and the city comptroller on or before such day in each year designated by law for making and filing with the city comptroller reports and estimates for the purpose of making up the budget for the ensuing fiscal year. The entire amount of such tax shall be collected, paid into and held in the city treasury as a separate and distinct fund to be known as the park and boulevard fund, and shall not be used or appropriated directly or indirectly for any other purpose than for the improvement, maintenance and control of the public parks and boulevards of such city, and for the payment of the salaries of the employes and other proper expenses of such board of park commissioners; provided, that of the said tax levied and collected in any such city, two-tenths of a mill upon each dollar of the assessed value of its taxable property shall be used each year by its board of park commissioners solely for the purpose of filling in and improving and maintaining as a public park or boulevard any strip of submerged land granted or which may be granted to said city to be managed, controlled, improved and maintained by its board of park commissioners; and provided further, that of said tax levied and collected in any such city one-tenth of a mill upon each dollar of the assessed value of its taxable property shall be used each year by its board of park commissioners solely for the purpose of improving and maintaining any zoological garden which may be managed, controlled, improved and maintained by its board of park commissioners.

(4) SPECIAL ASSESSMENTS FOR PARKS IN ALL CITIES. (a) Whenever any change of grade or improvement of parks, parkways, boulevards or pleasure drives within the limits of any city is proposed by its board of park commissioners at the expense of the real estate to be benefited thereby, it shall view the premises and determine the damages and benefits which will accrue to each parcel of real estate by such proposed change or improvement, and the entire cost thereof. Said board shall make and file in its office a preliminary report showing its said determinations.

(b) Notice shall be given by the board that such report is open for review at its office, and will be so continued for the space of ten days after the date of such notice and that on a day and hour named therein, which shall be not more than three days after the expiration of said ten days, said board will hear all objections that may be made to such report. Such notice shall be published in the official newspaper of the city at least once, and copies of such notice shall be posted at convenient places at intervals of not more than five hundred feet along any highway through or adjacent to the real estate so determined to be affected by such proposed change or improvement. Such posted notices shall be printed in type not smaller than pica. Such publication and posting shall be made at least five days prior to the date of hearing objections.

(c) At the time specified for hearing objections to said report, said board shall hear all parties interested, who appear for that purpose, reduce to writing all objections made and all evidence offered to sustain the same, and may review, modify and correct said report as it deems just. At such hearing any member of the board may administer oaths.

(d) Thereupon a complete and final report and determination shall be made and filed by said board in its office, together with all of said objections and evidence and proof by affidavit of said publication and posting, which affidavit shall be presumptive evidence of the facts therein stated. No irregularity in the form of any of said proceedings shall affect the legality thereof, unless it shall appear that the owners of the property affected were misled by such irregularity and have not had an opportunity to be fairly heard.

(e) When such final determination shall have been reached the board shall, within the next following fifteen days, publish notice thereof in the official paper of the city once in each week for two successive weeks, that a final determination has been made and is on file in its office as to the benefits and damages that will accrue to the real estate affected by the proposed change or improvement.

(f) The owner of any parcel of land mentioned in said notice feeling aggrieved by such final determination may, within thirty days after the date thereof commence an action in the circuit court to correct or redress such grievance. Any contract already entered into for making the proposed change or improvement, shall not be affected by said action, but a certificate against the parcel of real estate in question for the amount of benefits as-



essed to such parcel shall be issued notwithstanding such action; and in case the plaintiff shall succeed, the difference between the amount charged in the certificate so issued and the amount adjudged to be paid as benefits accruing to the parcel of real estate described in such certificate shall be paid from the funds of the park district. Said action shall be the only remedy of the owner of any parcel of land or of any person interested therein affected by such change or improvement for the redress of any such grievance.

(g) If in any such action the court shall determine that any such special assessment is invalid for any cause, the board shall proceed forthwith to make a new assessment against the property of the plaintiff as such original assessment should have been made, in accordance with the provisions of section 75.57, so far as applicable.

**27.11 Board of public land commissioners.** (1) **CREATED BY ORDINANCE.** Every city is empowered to create by ordinance a board of public land commissioners consisting of the commissioner of public works, the city engineer, and three resident citizens, with power to convert streets and highways designated by the common council into parkways or boulevards.

(2) **APPOINTMENT AND ORGANIZATION.** (a) Such resident commissioners shall be appointed by the mayor, subject to the approval of the common council, within sixty days after such creation of the board.

(b) The terms of the appointive members of the first board shall terminate as follows: Of one member on the next ensuing first day of January; of one member on the second ensuing first day of January; and of one member on the third ensuing first day of January. The commissioner of public works and the city engineer shall serve on said board during their respective terms of office. Each commissioner shall hold his office until his successor is appointed and qualified. In December immediately preceding the expiration of the term of any appointive member, the mayor shall appoint his successor to serve for a term of three years.

(3) **SALARIES OF MEMBERS.** The common council may fix and provide for the payment of a salary or salaries for one or more of the members of said board, when it is satisfied that such payment is necessary in order to carry out the purposes of this section, which salaries shall be paid solely out of the fund named in subsection (8), unless other provision shall be made in said ordinance for the payment of the same.

(4) **FUNCTIONS OF BOARD; EMPLOYES.** (a) Said commissioners shall have power to appoint such clerks, assistants and workmen as they may deem necessary and proper for the proper discharge of their duties, subject, however, to such regulations in respect to the number of such employes to be appointed and their compensation as the common council may by ordinance prescribe.

(b) Said board is empowered to acquire, in the name of the city, lands and improvements thereon, within a distance of five hundred feet on either side of and abutting on any public street or highway in the city for the purpose of converting the same into a parkway or boulevard. Said lands may be acquired by purchase, gift, or condemnation, but only after such acquisition shall have been recommended to the common council by said board and ordered by resolution of said common council. Any gift of land for the purposes specified in this section, shall first be accepted by the common council upon the recommendation of said board before the same shall become the property of such city.

(c) Said board may, however, either prior or subsequent to such approval obtain from any or all of the respective owners contracts or options, in the name of said city, for the acquisition of said lands, or any part thereof, or any leasehold or other interest or claim therein or thereto; and said board may in such case pay out of the public land fund created by subsection (8) any charges or expenses by it incurred in procuring such contracts or options. But any such contract or option shall not be binding upon, nor shall it create any liability against, the city until it shall have been reported and recommended by said board to the common council and approved by resolution of the common council recorded in its minutes.

(d) Said board is empowered to manage, control, govern, improve, subdivide, resubdivide and plat, any land so acquired; and also to mortgage and sell the same, or parcels thereof, on such terms and with such restrictions and reservations as it may deem necessary in order to convert such street or highway into a parkway or boulevard, and to protect the same and its environs, and preserve the view, appearance, light, air, health, and usefulness thereof.

(5) **MAINTENANCE.** (a) Whenever said board shall deem it necessary to grade, pave, curb, repair, or repave any parkway or boulevard laid out and established under this section, or any part thereof, including the sidewalks thereof, said board shall recommend its proposed improvement to the common council, describing its plan, and submitting a plat for the same. The common council shall, if it deems such improvement necessary, direct

the officer, board, or body having charge of the improvement of streets therein, to make an estimate of the cost of such improvement, which shall be placed on file in the office of said officer, board, or body, and be open to the inspection of the public.

(7) LIABILITIES PAYABLE FROM PROCEEDS OF OPERATIONS. No corporate liability whatever shall in any event be created under this section against any city, except to pay for lands condemned. All securities issued by said board and the damages for lands condemned shall be payable solely out of the proceeds of the operation of such board and the public land fund named in subsection (8). Such securities shall not be issued in an amount in excess of the cost to such city of such lands and ten per cent of such cost in addition thereto.

(8) PUBLIC LAND FUND. (a) All appropriations to the board of public land commissioners and all receipts from the sale of real estate pursuant to subsection (4) of this section, shall constitute a fund denominated the public land fund. Said fund shall be drawn upon only by orders signed by the president and secretary of such board and countersigned by the city comptroller in cities having such officer, and by the city clerk in other cities. Moneys from the resale of land in the public land fund shall either be appropriated by the common council to the board of public land commissioners, the proceeds thereof to be used for any of its legal purposes, or shall be placed by the common council in any sinking fund to retire bonds issued for the purposes specified in this section; provided, that no appropriation to the board of public land commissioners shall revert to the general fund, but shall continue, except as otherwise provided in this section, as a continuing appropriation of the public land fund.

(b) Said board shall report to the common council in such city on or before the first meeting in September in each year the amount of money required for carrying out the purposes of this section, and the common council may provide such funds as it may deem reasonably sufficient for such purposes and may cause to be levied and collected for such purpose an annual tax not exceeding five-tenths of a mill upon the dollar upon all the property subject to taxation in said city at the same time and in the same manner as other taxes are levied and collected by law. Said tax shall be independent of the eight mills general purposes tax to be levied by said common council. Any unexpended surplus remaining in said public land fund at the close of the fiscal year shall become a part of the revenue of said board of land commissioners for the purposes aforesaid. The five-tenths of a mill tax as herein provided shall not become effective or apply in any city until the question shall be submitted to a vote of the electors thereof by resolution or ordinance adopted by the common council, which shall provide for the time of holding such election. If approved by the majority of the votes cast upon that question in any city it shall go into effect in such city, otherwise it shall not take effect. Upon the ballot provided for such election shall be printed the following: "Shall the common council annually cause to be levied and collected at the same time and in the same manner as other taxes are levied and collected such sum or sums as they shall deem sufficient for the purpose of providing a public land fund. Such sum, however, shall not exceed in any one year a tax equal to the sum of five-tenths of a mill upon the dollar upon all the property subject to taxation in the city." Such election shall be held and the votes cast, counted, canvassed and returned in the same manner as at general city elections.

(c) The receipts from rentals of property under the management of the board of public land commissioners shall constitute a revolving fund from which said board may expend such sums as may be necessary for the maintenance, operation, or repair of such property. From said fund sums not to exceed five hundred dollars may be drawn upon for such purpose without special order of the common council. Within ten days after the close of each fiscal year, however, the net proceeds from rentals during such year shall be transferred from the revolving fund herein created to the general city fund.

(9) AUDIT OF ACCOUNTS. Every claim or account arising under this section shall be audited and allowed by said board before an order is issued therefor. Immediately after such allowance said board shall furnish the city comptroller, in cities having such officer, and in other cities, the city clerk, with a copy of such claim or account or a statement of the character thereof, materials furnished, or services rendered, and said comptroller or clerk shall then audit the same before countersigning said order. Said board shall transmit to the common council at its first regular meeting in January of each year a full and detailed report of all transactions of said board for the preceding year together with their itemized account of all expenditures, a list of employes, an inventory of property, the purchase price thereof, and a description of all mortgages and securities issued and outstanding.

(9a) REAL ESTATE DEPARTMENT, CITY OF THE FIRST CLASS. In any city of the first class, however incorporated, which has come under the provisions of this section, the

board of public land commissioners shall be and hereby is constituted a real estate department of such city, and is empowered with the consent of the common council to act as its agent in the appraisal, acquisition, purchase, transfer and sale of all real estate, other than which must by law be acquired by condemnation, which such city may acquire, purchase, dispose of, transfer or sell.

(10) **SUSPENSION OR ABOLITION OF BOARD.** The common council may by a three-fourths vote of the aldermen-elect either suspend the operation of or abolish such board. In case of such suspension or abolition the common council may exercise the powers of such board so far as may be necessary to carry out the terms of any contract or complete any proceeding already entered into by such board.

(11) **POWERS DELEGATED TO OTHER BOARDS.** Every city is authorized and empowered to vest the powers, duties, and restrictions specified in this section, upon its board of park commissioners or any other existing board or commission, by an ordinance of its common council, in lieu of creating a board of public land commissioners under this section.

(12) **SEVEN-MEMBER BOARD, CITIES OF THE FIRST CLASS.** (a) In cities of the first class the common council is empowered to create by ordinance a board of public land commissioners, consisting of 7 citizen members, the commissioner of public works and the city engineer not to be members, with the same purposes, powers, functions, conditions and terms as boards of public land commissioners created otherwise under this section.

(b) Commissioners under this subsection shall be appointed by the mayor, subject to the approval of the common council, within 60 days after the creation of the board, and such commissioners are to be persons of general qualifications rather than specialists or technicians in any particular phase of city planning.

(c) Terms of the members of the first board shall terminate as follows: Of 2 members on the next ensuing January 1; of 2 members on the second ensuing January 1; and of 3 members on the third ensuing January 1. Each commissioner shall hold his office until his successor is appointed and qualified. In December immediately preceding the expiration of the terms of any members, the mayor shall appoint their successors for a term of 3 years.

(13) **MAY EXERCISE POWERS OF CITY PLAN COMMISSION.** In cities of the first class, said board of public land commissioners shall exercise all the powers conferred on city plan commissions by section 62.23.

**History:** 1951 c. 734; 1953 c. 61.

**27.115 Lands may be granted or exchanged to promote boating.** (1) Any city, however incorporated, or any county, which has heretofore acquired, or which may hereafter acquire, title to any submerged land, constituting the bed of any lake, with or without authority to fill in the same, for public park and boulevard purposes, is hereby given the right and authority to grant and convey to any incorporated yacht club of this state, organized without capital stock, and whose principal purposes and objects are development and encouragement of boating, sailing, yacht building, naval architecture and science, and nautical knowledge, customs and beliefs, or kindred purposes, for its exclusive occupancy, use and enjoyment, such part of such land as the common council of such city, or the county board of such county, shall by resolution designate, or to grant such part of such land to any such yacht club corporation in exchange for any lands such yacht club corporation may own or occupy, as may be agreed upon, and as the common council of such city, or the county board of such county, shall by resolution provide.

(2) The common council of such city, or the county board of such county, by a majority vote of its members, at any regular meeting, may adopt a resolution containing a description of the piece or parcel of such land, the corporate name of the yacht club to whom the same is granted, and directing the proper city or county officers to execute and deliver such grant and conveyance.

(3) If jurisdiction or control over such lands acquired by any such city or such county for its parks and boulevards has been given to a board of park commissioners, then such board shall approve the said grant and conveyance before the same shall be delivered or become effective.

(4) Any such grant or conveyance, when adopted, approved of and executed as herein provided, shall vest in the grantee therein named the title to the lands therein described to its proper benefit and behoof, exclusively, so long as said grantee shall use and occupy the same for the purposes and objects expressed in its charter; all buildings or structures which such grantee may place or erect thereon shall be of such design and construction as the proper city, or county, authorities, or its park board may prescribe or approve.

(5) Upon dissolution of such yacht club corporation, or whenever such lands shall be used or occupied for other purposes than above provided, the circuit court of the county

wherein such lands are situated shall adjudge the title thereto forfeited, and the title thereto shall revert in said city, or county, as of its former estate and for the exclusive use for park and boulevard purposes.

**27.12 Nonliability.** (1) **FOR COST OF CONSTRUCTION AND MAINTENANCE.** The common council may, by resolution make it a condition of the acceptance of any gift of lands for parks, parkways, boulevards or pleasure drives that the same shall be constructed and maintained solely at the expense of private parties until, by like resolution, the council shall vote to maintain them at the expense of the city.

(2) **FOR DAMAGES CAUSED BY WANT OF REPAIR.** Neither the city nor any such private parties shall be liable for any damage resulting from insufficiency in such construction, maintenance or repair of any parks, parkways, boulevards or pleasure drives owned by the city and located outside of its limits; but the city may cause any of them or any part of either of them which is not in good repair, to be closed to the use of the public until the same shall be put in good repair. At conspicuous points along any such boulevard or pleasure drive a notice shall be placed at intervals not exceeding one mile, painted in large, plain letters, as follows: "Any person using this drive does so at his own risk as to defects therein."

**27.13 Town and village parks.** Every town and village may provide and maintain parks, parkways, boulevards or pleasure drives pursuant to the provisions of this chapter which are applicable to cities.

**27.14 Police protection.** (1) Every city may exercise police supervision over all parks, parkways, boulevards and pleasure drives managed and controlled by its common council or by its board of park commissioners.

(2) The board of park commissioners shall recommend to the common council the enactment of such ordinances as it deems necessary to protect and preserve the parks, parkways, boulevards and pleasure drives under its charge, or to secure the free and reasonable use and enjoyment thereof by the public; and the common council shall enact such proposed ordinances or such other ordinances as will be suitable for the purposes stated.

(3) The city attorney shall prosecute in a court or courts of competent jurisdiction all violations of said ordinances.

(4) Each member of a board of park commissioners and its superintendent are vested with the powers of police officers for the enforcement of all rules and regulations of the board and the ordinances aforesaid.

**27.15 Moneys for cities of the first class, how disbursed.** All moneys received or raised in any city of the first class, however incorporated, for parks and boulevards, under the control of a board of park commissioners, shall be paid over to the city treasurer and shall be disbursed according to resolutions of the board of park commissioners authorizing the payment of bills and accounts after same have been audited and orders directed to be issued therefor, which shall be signed by the president and secretary of the board, except that said funds may by resolution of said board of park commissioners be disbursed upon orders signed by the president and secretary of the board of park commissioners, and countersigned by the comptroller after bills or accounts have been presented to and audited by him. All bills or accounts thus paid shall be reported by said secretary to the next regular meeting of the board of park commissioners. Such orders shall be made payable to the order of the persons in whose favor they shall have been issued, and shall be the only vouchers of the said treasurer for his payment from the park fund. It shall not be lawful for the board of park commissioners to expend or contract a liability for any sum in excess of the amount levied in any one year for the park fund on account of such fund.