

law relating to, a judgment in an action; and it may be enforced as if it had been rendered in an action in the court in which it is entered.

298.15 An appeal may be taken from an order confirming, modifying, correcting or vacating an award, or from a judgment entered upon an award, as from an order or judgment in an action.

298.16 If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the chapter and of the application of such provisions to other persons and circumstances shall not be affected thereby.

298.17 This chapter may be referred to as "The Wisconsin Arbitration Act".

298.18 The provisions of this chapter shall not apply to contracts made prior to the taking effect of this chapter.

SECTION 3. This act shall take effect upon passage and publication.

Approved June 16, 1931.

No. 123, S.]

[Published June 19, 1931.

CHAPTER 275.

AN ACT empowering any city to plan and make certain public improvements, to acquire or condemn property for public purposes and improvements, to make assessments of benefits and damages for such improvements and acquisitions of property, to finance the same, and providing the procedure therefor.

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

SECTION 1. GRANT OF POWER. Any city of the first class in this state may exercise the power of acquiring any property by gift, purchase or the power of eminent domain for any of the purposes stated in Section 3a of Article XI of the constitution of this state and also for public alleys, grounds, harbors, libraries, museums, school sites, airports, markets, hospitals, ward yards, bridges, viaducts, water works, water mains and distribution, projecting, constructing and maintaining sewers, and any other municipal purposes; and the power of determining the damages caused by the exercise of the aforesaid power and by any public improvement herein authorized, and the power of making, levying

and collecting special benefit assessments upon property benefited, and the power of financing improvements, and all powers conferred by this act, in the manner hereinafter provided.

SECTION 2. (1) BOARD OF ASSESSMENT. A board of assessment is hereby created, composed of three members to be appointed by the mayor and confirmed by the common council of said city. Within thirty days after the rejection of any appointment by the common council the mayor shall send to the common council a new appointment. The term of each member shall be three years next following the first day of January of the year in which his appointment is made and until the appointment and qualification of his successor, except that the first three members shall be appointed respectively for such terms that on the first day of January in each of the three years next following the year in which they are appointed the term of one member shall expire. After such original appointments one member shall be appointed annually in the month of December to succeed the member whose term will expire on January first then next following. One member shall have a general understanding of matters pertaining to real estate values in said city and shall be a licensed real estate broker under the laws of this state of at least five years' experience; one member shall be a civil engineer of at least five years' experience and have a general understanding of building and construction costs; and one member shall be an owner of property in said city. All of said board members shall be residents and electors of the city. Said board shall elect its own chairman who shall preside over all meetings of said board. Said board shall give its full time to such city and to the performance of the duties herein provided. The compensation of each member of said board shall be fixed by the common council. Said board shall perform the duties hereinafter stated.

(2) EMPLOYES OF BOARD. The common council of said city shall have power upon the recommendation of said board to authorize said board to appoint or employ such permanent technical advisors and experts and such clerks and employes, skilled or unskilled, as it deems requisite for the due and proper execution of the duties devolved upon it by this act, and the common council shall fix their compensation. Said board may employ such temporary help, technical advisors and experts on valuations of property and damages and benefits to property as it may deem neces-

sary to assist it in the performance of its duties and fix their compensation. The appointment of permanent or temporary technical advisors and experts shall not be subject to the civil service law applicable to said city, but the appointment of other clerks and employes, skilled or unskilled, shall be subject to the civil service law applicable to such city.

(3) ASSISTANCE OF CITY OFFICIALS. Said board shall have authority whenever it shall deem it necessary in the performance of its duties to request the advice and assistance of any official or department of said city whenever the advice or assistance requested has reference to the powers and duties of such official or department. The common council of such city may also direct any other department or official to assist said board in the performance of its duties.

(4) FUND TO SUPPORT BOARD. Said board shall report to the common council of said city on or before the first day of September in each year the amount of money required for its support and maintenance; and the common council shall provide such funds as it may deem reasonably sufficient for such purpose and cause to be levied and collected an annual tax therefor. Such fund shall be drawn upon only by order signed by any member of said board and the city comptroller.

SECTION 3. (1) PRELIMINARY RESOLUTION. Whenever the common council shall deem it necessary to make any public improvement involving the acquisition of any private property or the use of any public property for any lawful public purpose it shall pass by a three-fourths vote of the members thereof a preliminary resolution declaring it necessary to take or use certain property for said purpose. It shall not be necessary in said resolution to describe in detail the purpose of the city or each piece or parcel of property deemed necessary to use or acquire, but it shall be sufficient to state in general terms the general nature of the proposed improvement. Said resolution shall provide that a plan of said proposed improvement be prepared for the approval of the common council.

(2) WHAT PLAN MAY CONTAIN. Said plan may combine any or all of the following improvements, to wit, the erection of bridges or viaducts, the opening, widening and extension of any street or alley, arterial highway, parkway or boulevard, and the grading, paving or repaving of any street, arterial highway, park-

way or boulevard including the construction of gutters, curbs or sidewalks for the same, and the acquisition, extension and improvement of any memorial ground, public square, park or playground.

SECTION 4. (1) PRIOR OWNED PROPERTY. The aforesaid plan of improvement adopted under this act may also include any property owned by such city of the first class at the time of the adoption of such plan, whether such property was acquired by gift, purchase, condemnation or otherwise, and whether when such property was acquired such city was a city of the first class or of any other class.

(2) PRIOR IMPROVEMENTS. If, at any time since January 1, 1926, whether before or after the passage of this act, any city of the first class or of any other class shall have partially or wholly completed any one or more of the following particular public improvements, to wit: the laying out, the opening, the widening, the extending, the grading, the paving or the repaving of any street, alley, boulevard, parkway or other highway, or the making of any gutters, curbs or sidewalks along or on any such street, alley, boulevard, parkway or other highway, or the construction or reconstruction of any bridge or viaduct, any such city of the first class, or any such city of any other class after it shall have become a city of the first class, may include in any plan of improvement to be made and adopted under this act the whole or any part or parts of any one or more of the aforesaid particular public improvement or improvements.

(3) ASSESSMENT OF BENEFITS. The value of any property mentioned in subsection (1) of this section, and the cost of any improvement or improvements mentioned in subsection (2) of this section, when included in any plan of improvement adopted or to be adopted under this act by any city of the first class, shall be included in the estimate of the cost and considered a part of the total actual cost of the whole improvement included in any such plan. Special benefits resulting from the improvement included in any such plan of improvement so adopted, including any improvement or improvements mentioned in subsection (2) of this section and included in such plan, may be assessed against the property benefited thereby in the manner specified in this act; provided, however, that no grading, paving, repaving, curbs, gutters or sidewalks, for which benefits have been legally assessed

prior to the adoption of such plan of improvement under this act, shall be considered in making the estimate or the determination of benefits under this act, nor shall the cost thereof be included in such estimate of cost or be considered a part of such total actual cost.

SECTION 5. (1) DUTIES OF CITY ENGINEER. After the passage of the resolution referred to in section three of this act the city engineer shall make or cause to be made and delivered to the board of assessment a detailed map and description of the property necessary to acquire or use for said improvement, and of such adjoining or adjacent property as said board may desire to have shown, and also such other surveys, maps and descriptions of property, and such estimates of cost, as said board may deem it requires in the preparation of a plan for said improvement and the making of an estimate of the damages and costs of the same and of the benefits that may be assessed therefor.

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

(3) COMMON COUNCIL HEARING ON REPORT. Upon receipt of said report the common council shall refer the same to a committee thereof for a public hearing thereon, for the purpose

of discussing the plan and the relative costs and benefits, and necessity of said improvement. After such hearing the common council may approve said report and direct the city attorney to proceed with the condemnation of the property needed and the other proper officers to do anything which is necessary to carry out said plan or the common council may remand said report to the board of assessment for reconsideration and revision, which board shall thereafter make a revised report to the common council. The common council shall then refer said revised report to a committee thereof for a public hearing thereon, as in the case of the original report, and may thereafter approve said report, or itself revise the same, or approve it as revised by the common council, and thereafter direct that the improvement be made and that the city attorney proceed with the condemnation of the property needed and that the proper officers proceed to complete the improvement after the acquisition of all the necessary property. The common council may instead of approving the original or revised report, abandon the whole improvement. The plan of improvement adopted in said report shall be considered the plan for the improvement and the adoption of the same shall constitute a declaration of the common council that the improvement is necessary.

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

The board of assessment shall present to the common council the proposed amendment of the plan together with an amended estimate of the cost and of the benefits and an amended map of the proposed improvement. The common council shall approve any such alteration by resolution before the same is effective.

When such alteration is made while the assessment of benefits and damages is being made or is pending as herein provided the board of assessment shall make a new assessment based on the amended plan in the same manner in which an original assess-

ment is made and the original assessment made or pending shall be disregarded.

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

SECTION 6. PURCHASE OF PROPERTY OPTIONAL. After the adoption of the plan by the city, the city may purchase any property needed to carry out said plan and include the cost of such purchased property together with property acquired by condemnation in the assessment of benefits, but it shall not be necessary for the city to purchase or attempt to purchase any property so needed before starting condemnation proceedings. If the city acquires or has acquired all the properties necessary to carry out its adopted plan prior to or during the pendency of condemnation proceedings and prior to the verdict of a jury on the necessity of taking of such property, no further condemnation proceedings shall be necessary, and the common council may authorize the board of assessment, as herein provided, to determine the damages and benefits in the same manner as after a verdict of necessity. Any property acquired during condemnation proceedings may be omitted from the verdict of the jury, but the verdict of the jury shall be obtained as to all remaining pieces of property not then acquired.

SECTION 7. (1) ACTION TO ESTABLISH NECESSITY. Pursuant to the resolution of the common council directing the city attorney to proceed with the condemnation of the necessary property the city attorney shall start an action in circuit court under the code of civil procedure against all persons having an interest in any of said property for the purpose of establishing the necessity of taking said property by the verdict of a jury as required by the constitution of this state by the service of the usual summons under section 262.03 of the statutes except that in place of the words in said summons "judgment will be rendered" the words "a verdict of necessity will be rendered" shall be substituted.

(2) COMPLAINT; CONTENTS. It shall be sufficient to state under subsections (2) and (3) of section 263.03 of the statutes that the city has decided to take the property, describing the same, and that the taking is necessary for the public improve-

ment, which may be briefly described, and that the city demands that the necessity of such taking be established by the verdict of a jury. Within twenty days after the service of the complaint, any person owning or claiming an interest in any property proposed to be condemned, may serve and file an answer.

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

SECTION 8. VERDICT; FILING, REPORT TO COMMON COUNCIL. If the said jury shall return a verdict finding the taking of such property is necessary, said verdict shall be filed by the clerk of the circuit court the same as other verdicts in other civil actions, which shall thereby become a public record, but no judgment need be entered upon said verdict. The city attorney of said city shall thereupon notify in writing the common council of said city that the jury has rendered a verdict of necessity for the taking of the property needed as described in the report of the board of assessment as approved by the common council. If the verdict of the jury shall be that it is not necessary to take said property, the city attorney shall notify in writing the common council of such verdict.

SECTION 9. (1) RESOLUTION TO MAKE ASSESSMENT. The common council may then by resolution direct the board of

assessment to proceed to determine the damages to be paid for each piece of property taken or injured and the amount of benefits to be assessed against each piece of property benefited, within the benefit district heretofore adopted, by the proposed improvement and to make report thereof to the common council; provided, that no assessment of benefits shall be made under this act against any of the following real property, to wit:

(1) That owned exclusively by the United States or by this state except lands contracted to be sold by the state; but lands purchased by counties at tax sales shall be exempt only in the cases provided in section 75.32; real estate belonging to or held in trust for the state which is exempt from taxation.

(2) Lands owned or occupied free of rental exclusively by any county, city, village, town, school district or free public library of this state and lands in this state belonging to cities of any other state used for public parks.

(3) Any and all lands occupied or held exclusively for public parks, boulevards or pleasure drives by any city or village, and lands for public parks or monument grounds belonging to any military organization and not used for gain.

(4) The real property owned by any religious, charitable, scientific, literary, educational or benevolent association, or incorporated historical societies, or by fraternal societies, orders or associations operating under the lodge system, except university, college and high school fraternities and sororities, which is used exclusively for the purposes of such association and necessary for the location and convenience of the buildings of such association and embracing the same; provided, such real property is not leased or otherwise used for pecuniary profit; and the lands reserved for a chartered college or university; and parsonages, whether of local churches or districts, and whether occupied by the pastor permanently or rented for his benefit, and the real estate of incorporated historical societies; the occasional leasing of such buildings for schools, public lectures or concerts, or the leasing of such parsonages, shall not render them liable to assessment; the real property of any public library association, organized under the laws of this state, which shall be used for the purposes of such association; the real estate of any corporation formed solely to encourage the fine arts, organized under the laws of this state, without capital stock and paying no dividends or pecuniary

profits to its members; the real estate comprised under any endowment or trust, or said proportion of the true value of such real estate held under the terms of such endowment or trust specifically for the benefit of any state historical society.

(5) Property owned and used exclusively by any state or county agricultural society, or by any corporation or association formed under the laws of this state for the encouragement of industry by agricultural and industrial fairs and exhibitions, necessary for fairgrounds, or for exhibition and sale of agricultural and dairy stock, products and property, while used exclusively for that purpose, not exceeding eighty acres; provided, that such corporations or associations may permit such fairgrounds or other property to be used for celebrations or as places of amusement.

(6) Lands owned by any cemetery association or any religious or other organization, corporation, association, conducting a cemetery or cemeteries used exclusively as public burial grounds and tombs and monuments to the dead therein; including lands adjoining such burial grounds, and greenhouses and other buildings and outbuildings thereon, owned and occupied exclusively by such cemetery association for cemetery purposes; also all property held by donation, bequest or in trust for cemetery associations under the provisions of sections 157.05 and 157.11.

(7) All the real property of any orphan asylum or orphan home or homes conducted by corporations or associations for the care of dependent, neglected and/or delinquent children of either sex, whether they be so in fact or found to be so by judgment of a court of competent jurisdiction, and whether committed to such home by court commitment temporarily or permanently, or not, or of any home of the friendless in this state, while the same is actually used for such homes.

(8) The real property on which is located an armory owned by any regiment, battalion or company of the Wisconsin national guard and used for military purposes by such organization.

(9) All of the real property of turner societies which are or may be incorporated under the laws of this state, which is used exclusively for educational purposes.

(10) All real property of any public art gallery or of any corporation created without capital stock for the sole purpose of maintaining, regulating and managing a public art gallery in

this state, provided the public is given access to such art gallery free of charge not less than three days in each week.

(11) All real property, not exceeding three hundred and twenty acres, of any religious corporation, society, institute or body, which is actually used and occupied for a home for feeble-minded, so long as said property is actually so used.

(12) All memorial halls and the real estate upon which the same are located, owned and occupied by the Grand Army of the Republic, Women's Relief Corps, Sons of Veterans, Spanish War Veterans, American Legion, or Veterans of Foreign Wars of the United States, containing permanent memorial tablets with the names of the enlisted men of any given town, city or county, who died in service during the Civil, Spanish-American, or World War inscribed thereon, and all buildings erected or purchased by any county, city, town or village as memorials to the soldiers, sailors and marines of this state who served in the late World War. The renting of such halls or buildings for public purposes shall not render them taxable, provided that all income derived therefrom be used for the upkeep and maintenance thereof.

(13) All real property of any community house district organized under the provisions of section 43.51.

(14) All real property owned and used exclusively by any labor organization or by any corporation or association formed under the laws of this state, whose members consist of workmen associated according to crafts, trades or occupations, or their authorized representatives or associations composed of members of different crafts, trades or occupations; provided, no pecuniary profit results to any individual member.

(15) All real property owned and used exclusively for social and educational purposes and for meetings by any organization, corporation or association formed under the laws of this state, whose members consist wholly of farmers; provided, no pecuniary profit results to any individual member.

(16) All real property owned by the Boy Scouts of America and the Girl Scouts or by any person as trustee for the Boy Scouts of America and the Girl Scouts which is used for the purposes of these organizations.

(2) NOTICES OF ASSESSMENT HEARING. The said board shall then publish in the official newspaper of said city, or any other newspaper published or of general circulation in said

city, for not less than six days, a notice that at a certain time, which shall not be less than twelve days after the first publication of said notice, and at a certain place, during certain hours of each lay day for not less than ten days or for such longer time as said board may deem necessary, it will meet to hear such testimony as any party interested may desire to offer as to the damages or benefits, or both, resulting from the proposed improvement. Said notice shall also be posted in at least six public places in said benefit district, the number and location of said places to be determined by said board, and said board shall in its report to the common council certify the number of notices and dates and places of posting the same and such certification shall be sufficient evidence of such posting and no removal, defacement, or destruction of such notices without the actual consent or authority of said board shall invalidate the proceedings. Said notices shall be served personally upon all persons who have appeared personally in the action described in section 7 or upon their attorneys, if any, at least twelve days prior to said hearing unless they are non-residents or cannot be found in the city, in which case the aforesaid publication of said notice shall be sufficient. It shall be sufficient to state in such notice in brief for what improvement said assessment of benefits and damages is to be made and the general boundary lines of the benefit district as heretofore adopted by the common council, and a small map of said district may in the discretion of said board be published or posted.

(3) HEARING ON ASSESSMENT; ASSESSMENT. At the time and place stated in said notice and at any time and place to which said board may adjourn said hearing said board shall hear such testimony on the damages and the benefits resulting from said proposed improvement as may be offered by any person interested, which testimony may, in the discretion of said board, be taken down by a stenographer and written out. Said board is also empowered to obtain information or testimony on the subject of such benefits and damages from such other persons or experts or sources as it may deem necessary to aid it in the performance of its duty. Thereafter said board shall make its appraisal of the damages or compensation to be awarded for the property proposed to be taken for or that may be injured by the proposed improvement. Having ascertained the damages to the

property taken or injured and the estimated expense of the proposed improvement and also the cost of the proceedings, the said board shall proceed to apportion and assess the said damages or such portion thereof as it shall determine to be chargeable to the property benefited, together with the whole or any part of the expense of the proposed improvement or cost of the proceedings, upon the property by it deemed benefited, in proportion to the benefits resulting thereto from the proposed improvement, as nearly as may be, and shall describe the property upon which said assessment is made.

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

(5) NOTICES OF REVIEW OF ASSESSMENT. After said assessment of benefits and damages shall have been made by said board the said board shall publish notice for not less than six days in the official paper of said city, or in any other newspaper published or having a general circulation in said city, that such assessment has been made and that the same will be open for review and correction at a certain time and place, which time shall not be less than twelve days after the last publication of such notice, for not less than ten days and such extension of such period as said board may find necessary, during certain hours, and not less than two hours of each lay day, and that all who desire may view and inspect said assessment or be heard as to any objections they desire to make to such assessment or as to any request for a review and correction of the same and that after the close of said hearing said assessment, as made by said board, or as reviewed and corrected by them, will be submitted to the common council of said

city for its consideration and confirmation, either as submitted to it or as afterward revised and corrected, in the manner provided herein. Said notice shall also be posted, and the posting be certified to, in like manner as the previous notice given by said board and with the same effect. It shall be sufficient to state in said notice in a brief and general way for what improvement said assessment has been made and describe the general boundary lines of the benefit district, and the assessment board may in its discretion post or publish a small map showing said benefit district.

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

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

any subsequent assessments that they had in relation to the first assessment.

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

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

SECTION 10. (1) APPEAL TO CIRCUIT COURT. Any person or persons owning or having any interest in any property affected by said assessment, either by way of assessment of damages or assessment of benefits, may within twenty days after the confirmation of such assessment by the common council, appeal therefrom to the circuit court of the county in which the assessment is made by filing with the clerk of said circuit court a notice of appeal setting forth therein his interest and the interest of any other person or party in the property and all liens of any kind whatsoever thereon, and the grounds of the appeal, together with a bond to the city making the assessment in the penal sum of one hundred dollars, conditioned for the payment of all costs that shall be adjudged against him on such appeal, which bond shall be signed by at least two sufficient sureties, each of whom shall make affidavit endorsed upon such bond that he is worth one hundred dollars over and above all his debts and property not exempt from execution; and said bond and sureties, if objected to by

the city attorney, shall also be approved by the judge of said court. Any surety company authorized to act as surety in this state may sign bond as surety. The said appeal shall be ineffectual unless the appellant shall also, within said twenty days, serve a copy of the notice of appeal and bond upon the city attorney. In case of appeal under the provisions of this section, the city clerk shall send to the clerk of the said circuit court a certified copy of the assessment of damages and benefits made by said board and as confirmed by the common council, but if there shall be more than one appeal, said city clerk shall then send only one certified copy of said assessment for all appeals. Any person may pay any benefits assessed against his property without prejudice to his right of appeal under this section or section 20.

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

SECTION 11. APPEAL ONLY REMEDY. An appeal to the circuit court as provided in this act shall be the only remedy for damages sustained by the acts or proceedings of the city in the matter to which such assessment relates, and shall be the exclusive method of review of any assessment of benefits made therein; and no action at law or in equity shall be had or maintained for such injuries on account of such acts or proceedings.

SECTION 12. (1) TITLE, WHEN PASSES TO CITY. Whenever the damages awarded to any property, as confirmed by the common council, shall have been paid or tendered to the owner or owners thereof or his or their agent, or any sufficient money for that purpose shall be provided in the hands of the city treasurer, and is ready to be paid over to such owner or owners, and ten

days' notice thereof shall have been given by said board of assessment in the official paper, or if said city shall pay said damages into the circuit court of the county where said property is situated by depositing the same with the clerk of said court to be paid out on the order of said court to the person or persons entitled thereto, the city may enter upon and appropriate the property to the use for which the same was condemned and the fee simple title thereto shall pass to said city.

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

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

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

discretion acquire only an easement for water or sewer mains or branches, or bridges or viaducts.

SECTION 13. HOW TO COMPLETE IMPROVEMENT. Whenever the common council of any such city shall adopt a plan of improvement as herein provided and direct the city attorney to condemn the necessary property and the proper officers to complete the proposed improvement and said plan shall include in addition to the acquisition of property for laying out, opening or widening of any street or alley, arterial highway, boulevard or parkway or the establishment of any park, square, memorial ground or playground, also any or all of the following improvements, to wit, the grading, paving and repaving of, or the making of the gutters, curbs or sidewalks for such street or alleys, arterial highway, boulevard, or parkway, or the improving of any such park, square, memorial ground or playground, or the erection of any bridge or viaduct, the proper officer or officers of such city having charge of such public work or improvement may proceed, after the acquisition of the necessary property, to make plans and specifications and to let the contracts for the necessary work or improvements and cause such work to be done and improvements to be made to complete the improvement under the plan adopted, in accordance with any law governing such work or improvements in said city, excepting that no further estimate of the cost of the work or improvement or further recommendation to the common council need be made, and that no further assessment of benefits and damages on account of such work or improvement shall be made, except that which is authorized to be made for the whole plan of improvement in this act, and no limitation in any other law of the amount of benefits assessable shall be applicable to an assessment under this act. Payments due on any contracts for such work or improvements shall be payable at the times and in the amounts provided in the law governing such contracts in such city, except as herein otherwise provided, out of the funds provided therefor.

SECTION 14. (1) CONTRACTS ENDED; COMPENSATION. Whenever such city shall be entitled under this act to enter upon and appropriate any property to the use for which it was taken, all covenants, contracts or engagements between landlord and tenant or any contracting parties touching the same or any part thereof shall respectively cease and be absolutely dis-

charged and such parties shall look to the award of damages for the payment of their claim, if any, against said property. When only a part of a lot or tract of land or any other premises under lease or other contract shall be taken for any public purpose by the city the city shall be entitled under this act to enter upon and appropriate the same to the purpose for which the same was taken and all the contracts, covenants or agreements respecting the part so taken shall be absolutely discharged as to the part thereof so taken but shall remain valid as to the residue thereof, and the rents, considerations and payments reserved, payable and to be paid for and in respect to the same shall be so apportioned that that part thereof justly and equitably payable for such residue thereof and no more shall be paid or recoverable for or in respect to the same.

(2) WHO SHALL PAY TAXES. Whenever the city shall be entitled under this act to enter upon and appropriate the property to the use for which it was taken after the lien of taxes general or special for the current year have become a lien upon the property taken, such taxes shall be paid by the owner or owners of said property or deducted and paid from said award of damages, or shall be ordered paid by the court out of said award of damages when the same have been deposited with the clerk of the circuit court as provided in this act at the time of ordering the distribution of the award of damages among the persons entitled thereto.

SECTION 15. GUARDIAN. When any known owner of land or tenement affected by any proceeding under this act shall be an infant or labor under any legal disability the judge of the circuit court of the county in which the land or tenements are situated or in his absence the judge of any court of record in said county may upon the application of the city attorney or such party or his next friend, appoint a guardian for such party and all notices required by this act shall be served upon said guardian.

SECTION 16. WHEN TITLE IN TRUSTEE OR INCOMPETENT. In case the title or any interest in real estate proceeded against under this act shall be vested in any trustee not authorized to sell or convey the same; or in any infant, idiot or person of unsound mind, who shall have a general guardian already in existence, as distinguished from the provisions of section 15 herein, and if any such trustee or general guardian, or any guardian

appointed under section 15 shall deny or contest the right of the city to condemn any such property or refuse or neglect to accept the damages awarded and provided in the hands of the city treasurer ready to be paid over to the person or persons entitled thereto as provided in this act, the city may by depositing said award of damages with the clerk of the circuit court of the county wherein such property is situated, convert such real estate to personal property by said condemnation proceedings by serving notice the same as a summons upon any such trustee, general guardian or guardian ad litem notifying them or any of them that said deposit has been made for the benefit of the said trustee, general guardian or special guardian and the beneficiary or ward in any such case; and the said circuit court shall then have jurisdiction upon the application of any such trustee, general guardian or guardian ad litem to make such order with respect to such award of damages and the disposition thereof as shall be required by law after a determination of the rights of the parties thereto; but the city's interest in the said controversy shall cease with the deposit of said money and the service of the notice provided for in this section.

SECTION 17. WRIT OF ASSISTANCE; TAKING AWARD, BOND. If the city is unable to obtain peaceable possession of the property after the payment of or providing for the payment of the award of damages or payment of the same into court as hereinbefore provided, a writ of assistance may be granted by the said circuit court or a judge thereof upon twenty-four hours' notice to put such city in possession of the property. If the city be thus put in possession of any property pending an appeal the owner or parties entitled thereto may receive the money thus paid into court upon the order of the court as hereinbefore provided without prejudice to the appeal. If the city appeals from the award of damages the money thus paid into court shall only be withdrawn upon filing a bond to be approved by the court or judge to repay the amount by which such award may be decreased upon such appeal with costs.

SECTION 18. FILING NOTICES WITH REGISTER OF DEEDS. To comply with section 281.04 of the Wisconsin statutes it shall be sufficient to file a certified copy of the resolution of the common council approving the original or revised report of the board of assessment on the proposed plan with a description of the property proposed to be taken and a map showing the same

and also the benefit district in the office of the register of deeds of the county in which the property is located prior to the beginning of proceedings in the circuit court for the condemnation of said property; and to file in the office of said register of deeds a certified copy of the resolution of the common council confirming the assessment of damages and benefits together with a description of the property taken and the map showing the location thereof, but it shall not be necessary to file therewith the assessment of benefits and damages. Provided that if all the property needed is acquired by purchase or otherwise and no condemnation proceedings are necessary, the aforesaid resolutions may be filed at any time after their passage.

SECTION 19. MAY GRANT DEFERRED BENEFIT PAYMENTS. Whenever the assessment of benefits and damages made under this act shall have been made by the common council, the common council may, in the resolution confirming the same or by a separate resolution after confirmation, determine that any owner or owners of lots, parts of lots or parcels of land, which may be assessed benefits in excess of fifty dollars on account of the improvement, shall have the option, at any time within thirty days after the publication of the notice hereinafter provided, in writing to apply to the comptroller for an extension of the payment of such assessment of benefits to his or their property by paying therefor in equal annual installments, not exceeding ten installments, for such a period and in such number as the common council may in such resolution determine, such installments to become due and payable as hereinafter provided.

SECTION 20. (1) APPLICATION; WAIVER. Such application shall contain an agreement that, in consideration of the privilege granted by such city of payment of the benefits assessed against the applicant's property in deferred installments, the applicant waives all right of any kind or nature to contest, either in law or equity, the power of such city to levy such an assessment of benefits against the applicant's property, and the legality and regularity of such assessment of benefits, and that the applicant will pay such assessment of benefits together with interest upon the unpaid balances, at the rate of six per cent per annum, in the manner and at the times herein provided, except that such agreement and waiver shall not deprive such applicant of the right of appeal provided in section 10 of this act from the amount

only of the benefits assessed against the applicant's property. The sole question on such applicant's appeal shall be how much the applicant's property is benefited by the improvement as planned. Such application shall also contain a brief description of the property assessed and a statement that the applicant is the owner thereof or of the applicant's interest therein.

(2) RIGHT OF ELECTION TO OWNER OF REMAINDER.

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

(3) ASSESSMENT CHANGES ON APPEAL. If on any appeals under sections 10 or 20 of this act the damages shall be increased or the benefits shall be reduced, the increase of damages to be paid or the difference in benefits to be received by such city shall be provided and made up out of any fund available to pay the city's share of the cost of the improvement and the common council shall have power to provide a sufficient fund, either by general tax or by issuing additional direct obligation bonds to cover any deficit arising from the result of such appeals.

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

If the whole or any installment of any benefits assessed shall have been paid and thereafter such benefits shall be reduced on ap-

peal, such city shall refund to the person entitled thereto the excess with interest out of any fund herein provided.

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

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

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

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

SECTION 21. (1) NOTICE OF PAYMENT AND OPTION. As soon as the benefits chargeable to the real estate under this act have been confirmed and a list thereof has been delivered to the city treasurer by the city comptroller as hereinbefore provided, and the common council has determined whether the same may be payable in installments and in what number of installments, the city comptroller shall cause a notice to be published in the official newspaper, or if there be none, in at least one newspaper pub-

lished in the city or having a general circulation therein, substantially in the following form:

CITY IMPROVEMENT NOTICE

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

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

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

troller's office. Such affidavit shall be conclusive evidence of such posting of such notice.

SECTION 22. (1) ACCOUNT OF PAYMENT; REPORT. During the thirty day period allowed for the payment of assessments without interest, the city treasurer shall furnish each day to the city comptroller, a statement of all payments of assessments made to him, and said officers shall credit said payments on the record of the list of assessments in their offices.

(2) TRIPLICATE LISTS OF ASSESSMENTS BY COMPTROLLER. After the expiration of the aforesaid thirty day period within which application may be made for the extension of payment in installments, the city comptroller shall make out an assessment list in triplicate, containing a description of each piece of property, the owner or owners of which have not paid such assessment in full, showing the total assessment against such property together with interest thereon, payable as herein provided, and also containing a description of each piece of property, the owner or owners of which have agreed to pay his or their assessment of benefits in installments, showing the amounts chargeable to such property, together with necessary columns to which the installments shall be extended, the amount of each installment together with the interest to accrue on unpaid installments as herein provided, and when such payments are payable. One such assessment list shall be filed with the city treasurer, one with the officer who makes out the tax roll and one with the city comptroller.

SECTION 23. (1) SINGLE ASSESSMENTS, WHEN PAYABLE. All assessments which are not paid in full without interest and for which no election by the owner is filed to pay in installments, as herein provided, shall be paid in full together with interest at the rate of six per cent per annum from the time of the date of confirmation of said assessments by the common council to the first day of February following the tax collection period in which said assessments are payable as herein provided.

(2) INSTALLMENT ASSESSMENTS, INTEREST. All assessments upon which an election is filed to pay in installments shall be payable in the number of installments authorized at the times hereinafter provided, with interest on all unpaid balances at the rate of six per cent per annum, as herein provided. Interest payable with any first installment shall be paid on all un-

paid installments and shall run from the date of the confirmation of the assessment to the first day of February following the tax collection period in which such installment is payable, as herein provided, and with each succeeding installment on all unpaid installments from the first day of February of each year to the first day of February of the following year.

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

(4) PLACING ASSESSMENTS ON TAX ROLL. The assessments payable in one payment and each first installment of any assessment, together with interest payable therewith, as herein provided, shall be extended on the tax roll opposite the description of the property against which the assessment has been made by the proper officer of said city in the same year in which such assessments are confirmed, if in the sole judgment of the comptroller there is sufficient time under the procedure herein to extend the same upon said tax roll, but, if the comptroller considers that there is not sufficient time, he may direct that such payments be placed on the next succeeding tax roll. The successive subsequent installments, with the interest accrued upon all unpaid installments, from the first day of February in each year following the tax collection of the prior year, to the first day of February of the following year, shall be extended on each succeeding yearly tax roll until all of said installments with interest shall be extended thereon. Assessments extended on the tax roll shall be collected and enforced as other taxes are collected and enforced except as herein otherwise provided in reference to those against which particular special improvement bonds are issued.

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

paid, the remainder only of said property shall be sold for the non-payment of said assessment.

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

SECTION 24. LIEN OF ASSESSMENTS. The lien of said assessments regardless of the time of the attaching thereof, shall be of equal rank with the lien of any other tax, city, county or state, general or special, levied in the same year on the same property, and shall not be impaired or defeated or cut off by the lien of any such other taxes, or by any tax sale certificate or tax deed, based upon such other taxes. Any special benefit assessment extended on the tax roll under this act shall be a lien on the property assessed as of the first day of December in the year in which any such assessment is extended on said tax roll for collection.

SECTION 25. NO EXTENSION OF PAYMENTS. No extension of the time of payment of any such benefit assessment due and payable shall be granted. Any owner or owners of any property desiring an extension of the payment of other taxes, general or special, as may be permitted by law, shall first pay any such assessment of benefits against the same property assessed under this act and then due and payable.

SECTION 26. PENALTY FOR NON-PAYMENT. Single payment assessments with the interest thereon, and installment payments together with interest payable with them on the unpaid installments, if not paid when due and payable as herein provided, shall bear interest at the rate of twelve per cent per annum from the time of default.

SECTION 27. PAYMENT IN FULL. The owner of the property or person having any interest in the same, charged with the payment of any such assessment or any installment thereof, shall have the privilege of paying such entire assessment in full at any time by paying all the interest thereon to a day six months after the date of said payment, except only as to any installment due within six months from the date of such payment, upon which installment interest shall be paid only to the date of maturity thereof.

SECTION 28. PURCHASE OF BOND BY CITY. After such payment in full, in order to protect the city from any further payment of interest on outstanding installment bonds issued against said assessment, the city is authorized, out of the fund in which said installment payments are placed, to purchase through the city comptroller without action of the common council, any outstanding installment bonds whenever in the judgment of the city comptroller there is a sufficient amount in said fund to do so. When any such bonds are purchased the city shall have the same rights as any other holder of such bonds and may cancel the same when paid. The city comptroller shall report to the common council on or about the first day of July of each year all such bonds purchased and cancelled.

SECTION 29. (1) POWER TO ISSUE BONDS. For the purpose of realizing the funds or a part thereof for making the proposed improvement, or of paying the compensation for the property taken or injured, or for both purposes, the common council may authorize the issuance of either of two kinds of bonds as hereinafter described, payable out of the collection of the assessments of benefits, and subject to the terms and conditions as herein provided. The first kind shall be known as general special improvement bonds, and the second kind as particular special improvement bonds.

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

SECTION 30. GENERAL SPECIAL IMPROVEMENT BONDS. General special improvement bonds shall be payable as to principal and interest at fixed dates as herein provided, out of the fund derived from the collection of assessments of benefits made for one, or more than one improvement as may be determined by the common council. The comptroller shall determine a convenient date for and also issue said bonds. The common council shall determine the amount and denominations in which said bonds shall be issued, and the interest rate they shall bear, not exceeding eight per cent per annum. Such bonds may be issued in series, shall be made payable to bearer, have interest coupons attached, bear the seal of the city, and be signed by the mayor and one member of the board of assessment, and counter-

signed by the city comptroller, but the mayor's signature thereon may be engraved.

SECTION 31. (1) PARTICULAR SPECIAL IMPROVEMENT BONDS. Particular special improvement bonds may be issued directly upon and against the several lots, parts of lots or parcels of land, the owner or owners of which have agreed, as hereinbefore provided, to avail themselves of the privilege of paying such assessments in equal installments, in an amount not exceeding the assessment of benefits against any such lots, parts of lots or parcels of land.

(2) ISSUING ; TERMS. After the common council shall have authorized said bonds they shall be issued by the city comptroller as of such date as he shall deem convenient against the several lots, parts of lots or parcels of land for the amounts assessed and chargeable against the same. Such bonds shall be made payable as provided by the resolution of the common council authorizing them in equal annual installments, together with interest on the unpaid part thereof to the date of payment, on the first day of April in each year following the period for the collection of taxes for the year in which such installment assessment is placed upon the tax roll as herein provided. Such bonds shall be designated "Particular Special Improvement Bonds" (naming the improvement), be made payable to bearer, state the amount of the assessment of benefits due thereon and the amount of each installment together with interest payable therewith and the times of payment, a description of the property upon which the same is assessed and chargeable, bear the seal of the city and be issued in its name, and be signed by the mayor and one member of the board of assessment and countersigned by the comptroller, but the signature of the mayor may be engraved thereon. Such bonds shall bear interest at a rate not exceeding eight per cent per annum and shall have attached thereto coupons, each in an amount equal to the installment payment due on each bond together with the accrued interest on the unpaid part of said bond, as herein provided.

(3) LIEN OF BONDS. Such bonds shall be liens as of the first day of December in the year of their issue on any lots, parts of lots or parcels of land against which they are issued, as herein provided, which lien shall take precedence over all other claims and liens except that they shall be of equal rank with the lien of other city, county or state taxes, general or special, of the same

year, against the same property, and shall not be impaired, defeated or cut off in any manner by the said lien of such other taxes, or by any tax sale certificate or tax deed, based on such other taxes.

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

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

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

ment of said bonds shall be the foreclosure action against the property as herein provided.

SECTION 32. FUND; USE; PAYMENT OF BONDS AND DEBT. The city treasurer shall keep a separate account of the fund or funds arising from the collection of such benefit assessments and, if either of said kind of special improvement bonds are issued, the same shall be used first for the payment of the principal and interest on said special improvement bonds when the same become due, except that if no such special improvement bonds are issued but general obligation bonds of such city are issued or a general tax is levied as provided in section 38 hereof to pay the whole cost and expense of such improvement the funds derived from such special benefit assessments shall be applied toward the payment of the principal and interest of such general obligation bonds or the reduction of general taxes as directed in said section 38.

SECTION 33. FUND PLEDGED TO BONDS. The whole of said fund or funds shall be pledged for the payment of the aforesaid bonds and interest, as herein provided, as they and the payments thereon severally become due, but neither the city nor any officer thereof shall be liable for the payment of any bond or any part thereof, principal or interest, excepting for so much thereof as has been actually collected by the city treasurer by the payment of such benefit assessments against which such bonds have been issued.

SECTION 34. OPTION TO GUARANTEE DEFICIT. The common council may bind the city to make good any deficiencies in the collection of such assessment up to but not exceeding the principal and interest of any of said bonds as they become due. If the city because of any such guaranty makes good any such deficiency it may become the owner of any such bond or coupon thereof and be subrogated to the rights of an owner hereunder in addition to all rights it may have in case of delinquent taxes on lands, and may apply any redemption payments on delinquent assessments to the payment of any such coupons or bonds held by it.

SECTION 35. TAX DELINQUENT FUND; DEFICITS. The city is authorized to provide a sufficient tax delinquent fund to cover any delinquencies in the collection of such assessments, and, if the common council desires, it may authorize the payment out of

such delinquent fund of any deficit on any of said bonds on account of default in the payment of any of said assessments.

SECTION 36. TIME OF BOND PAYMENTS. Such bonds or coupons, or both, as the case may be, shall be payable at the office of the city treasurer on April first, following the expiration of the tax collection period of each year in which said assessments may be placed on the tax roll for collection as herein provided, to the extent of the moneys received from the collection of the said assessments out of which said bonds and coupons are payable.

SECTION 37. SALE OF BONDS. Either of said kind of bonds which are issued may be sold under the superintendence of the officer or officers in said city who are authorized to sell general bonds of said city and the proceeds used as herein provided.

SECTION 38. GENERAL BONDS; TAX; SPECIAL BOND OR ASSESSMENT PROCEEDS. Any such city may pay the whole cost and expense of any improvement proposed under this act in cash out of the proceeds of general obligation bonds which the city may issue as provided by law or out of a tax levy for such purposes, and issue and hold either kind of the aforesaid special improvement bonds and apply the payments on said bonds derived from the collection of special assessments as herein provided to the payment of the principal and interest on any such general obligation bonds which may be issued, or to the reduction of the general taxes if a tax levy is used instead of said general obligation bonds. Such city may in its discretion omit the issuance of any such special improvement bonds but in case of such omission shall apply the special benefit assessments when collected to the payment of the principal and interest on any of the aforesaid general obligation bonds issued or to the reduction of general taxes if a tax levy shall have been made to pay for the improvement.

SECTION 39. ISSUING GENERAL BONDS. Whenever the common council of such city shall declare its purpose to raise money by issuing general obligation bonds to pay the cost of laying out, opening or widening a street or streets, boulevards or parkways, or alleys, the proposition for their issue for this special purpose need not be submitted to the electors of such city unless a petition is filed with the city clerk requesting such submission signed by electors numbering at least ten per cent of the votes cast for governor, in such city, at the last general election. If such

petition is filed proceedings shall be had as provided by subsection five of section 67.05 of the statutes, but such proposition may, in the discretion of the common council, be submitted to a popular vote upon resolution of the common council, without waiting for the filing of said petition.

SECTION 40. ANTICIPATION NOTES. Such city may, by authorization of the common council, borrow from time to time, on notes of the city, signed by the mayor and city comptroller, such sums of money, in anticipation of the incoming revenue from the special benefits assessed under this act, as it shall deem necessary to pay for property taken or injured, or improvements made or to be made, as provided in this act. Such notes shall be paid out of the receipts from the payment of the said special benefits of the current year, at such time as may be agreed upon, not later than April first next following their date, provided that any deficit on account of delinquencies in the collection of such assessments may be made up from and paid out of the tax delinquent fund authorized by this act.

SECTION 41. STATUTE OF LIMITATION. No action in law or equity shall be brought or maintained by any person to cancel, annul or set aside or declare void any assessment of special benefits made under this act or any tax sale certificate issued on the sale of property for the nonpayment of any such assessment or to enjoin the collection of such assessment or a sale of property for the nonpayment of the same or to prevent the city from entering upon or appropriating the land condemned and paid for as herein provided or from completing the improvement or from issuing or selling or paying any bonds as herein provided or to declare void any such bonds unless said action shall be commenced within one year from the first day of January following the year in which such assessment of benefits or any installment thereof made for any improvement under this act is placed upon the tax roll for collection.

SECTION 42. (1) SUBSTANTIAL COMPLIANCE; VALIDITY. Substantial compliance with the requirements of this act shall be sufficient to give effect to any proceedings thereunder; and no error, irregularity or informality in any of the proceedings under the provisions of this act not affecting substantial justice shall in any way affect the validity of the proceedings.

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

(3) INVALIDITY OF ONE PART NO EFFECT ON REST. If any provision or any section of this law shall be held unconstitutional, it shall not affect the validity of the law as a whole or any other section or provision thereof. If at any time, and for any reason, the provisions of subsection (1) of section 9, exempting the real property therein enumerated from assessment of benefits hereunder shall finally be held to be invalid as to all or any of the said enumerated real property, then thereafter in determining under this act the amount of benefits, if any, to any such property enumerated in said proviso and thus declared by said court to be non-exempt, due consideration shall be given to the uses to which such property is devoted at the time of making any assessment as enumerated in said proviso and to the probable continuance of such use of such property.

SECTION 43. RELATION TO OTHER LAWS. This act shall not in any way be construed as a repeal of chapter 347 of the laws of 1923, or of subsections (13), (14), (15) and (16) of section 62.23 of the statutes. The procedure herein provided shall be an additional and alternative method which such city may in its discretion follow.

SECTION 44. The provisions of this act shall not take effect in any city of the first class until it shall have been submitted to the electors of such city at the spring election in 1932 or at a special election and adopted by a majority vote of the electors voting thereon. In such election the question shall be stated on the ballot as follows: "Shall Chapter, of the Laws of 1931, be effective in the city of, which law empowers the city to acquire and condemn property for street widening and similar purposes, and to finance the same through assessments of benefits and damages?"

SECTION 45. This act shall take effect upon passage and publication.

Approved June 16, 1931.