

No. 296, A.]

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CHAPTER 308

AN ACT to amend 83.07 (4) and (5) and 84.09 (2); and to repeal and recreate 83.08 (2) of the statutes, relating to the acquisition of lands for highways.

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

SECTION 1. 83.07 (4) and (5) of the statutes are amended to read:

83.07 (4) In case the *county highway committee or the town board* is unable to acquire needed lands or rights by contract, * * * *such committee or board* may acquire the same in the name of the county or town by eminent domain, as provided in ch. 32 or in the following manner: They may, upon not less than 5 days' notice in writing, exclusive of Sundays and holidays, *delivered or mailed to the owner * * * of record, and any person having any lien against said lands, which lien is of record in the office*

of the register of deeds or clerk of any court of record of civil jurisdiction in the county wherein said lands are situated, and to the occupant of the land, if any, describing the property and stating the time and place of hearing the application, apply to the county judge of the county to appraise the value of the * * * lands sought to be taken. If the name and address of the owner or lienor is unknown, notice of such application shall be published once a week for 3 successive weeks in a newspaper having a general circulation in the county. At the time set therefor the judge shall hear the parties, and inform himself in respect to the matter, and within 5 days thereafter, make * * * and file * * * his written award in his office. The county highway committee or town board may then pay the sum awarded by delivering to the owner a county or town order or bank check, or * * * tendering the same * * *. If there are lienors as above defined, unless they and the owner shall join in a written direction to the highway committee or town board as to the distribution of the award, the county or town order or bank check may be made payable to and deposited with the clerk of a court of record of civil jurisdiction in said county, for the benefit of the persons who are named as recipients in the award as their interests may appear. The amount of the award so deposited shall be received by such clerk, deemed in the custody of the court and paid out only on such court's order. Upon making such payment, tender or deposit, the title to the * * * lands and rights sought to be acquired shall thereupon vest in the county or town to the extent and for the uses and purposes of the * * * acquisition, and the committee or board * * * shall cause a certificate under the hand and official seal of such judge, stating the facts * * * as to such award and payment to be recorded in the office of the register of deeds. A copy of such certificate shall be served upon said owner and lienor if their respective addresses are known and to an occupant of the land, if any. If such addresses are unknown, such certificate shall be published once a week for 3 successive weeks. After the service of a copy of the judge's certificate upon the owner and the occupant, if any, of such lands the circuit court of the county may upon 24 hours' notice to such owner or occupant, grant a writ of assistance to the county or town to put such county or town in possession of the lands.

(5) The landowner or the committee or board may, within * * * 60 days after the award is made, file with the judge a notice of appeal to the circuit court, whereupon the judge shall certify all the papers in the proceedings to * * * such court, and thereupon the matter shall be regarded as at issue, and the proceedings shall be as provided in s. 32.11. Payment or tender of the award shall not defeat the county's or town's right of appeal. * * * No interest upon the amount paid or tendered shall be recoverable or allowed in any subsequent appeal.

SECTION 2. 83.08 (2) of the statutes is repealed and recreated to read:

83.08 (2) If any of the needed lands or interests therein cannot be purchased expeditiously for a price deemed reasonable by the committee, the committee may acquire the same either by condemnation under ch. 32 or s. 83.07, or in the manner provided for the state highway commission in s. 84.09 (2), in which case the county highway committee shall have the same powers and duties as are vested in the state and the state highway commission by s. 84.09 (2), and the landowner or mortgagee shall have the same right of appeal as granted by said section.

SECTION 3. 84.09 (2) of the statutes is amended to read:

84.09 (2) If any of the needed lands or interests therein cannot be purchased expeditiously for a * * * price deemed reasonable by the commission, the commission may acquire the same by condemnation under ch. 32, or in the manner provided for counties under s. 83.07, or may make an award of damages naming as recipients * * * the owner of record and any person having any lien against said lands, which lien is of record in the office of the register of deeds or clerk of any court of record of civil jurisdiction in the county wherein said lands are situated. The original of said award shall be recorded in the office of the register of deeds of the county wherein the lands are situated and shall then be filed with the commission * * *. Thereupon the amount so awarded shall be * * * tendered to the said recipients which tender may be by a bank check payable to such recipients. If there is a single mortgage such tender may include the name of the mortgagee. If there is more than one lienor, unless all such lienors shall join with the owner in a written direction to the commission as to the distribution of said funds, the tender may be made payable to and deposited with the clerk of a court of record of civil jurisdiction in said county for the benefit of the persons named as recipients in the award as their interests may appear, and the amount of such award so deposited shall be received by such clerk, deemed in the custody of the court, and shall be paid out only on such court's order. The said * * * owners and lienors may receive the award without prejudice to * * * the right to claim and to contest for a greater sum, except that no interest upon the original amount of the award paid or

tendered shall be recoverable or allowed in any * * * appeal from the award. A copy of the award * * * shall be delivered or mailed to the * * * owners and said lienors if * * * their respective addresses * * * are known and * * * to * * * an occupant of the land if any. If the land is unoccupied and the name or address of the owner is unknown, the amount of the award shall be deposited with the clerk of a court of record of civil jurisdiction in the county wherein such land is situated in the manner as hereinabove provided and the award shall be published at least once each week for 3 successive weeks in a newspaper having a general circulation in the county, which publication * * * shall state that the amount awarded has been deposited with the * * * clerk of a designated court of record in such county for the benefit of said owner and is available to the owner of the land and any lienor if claimed within the time allowed by s. 59.89. * * * After the award of damages * * * has been recorded in the office of the register of deeds, * * * and the amount of the award has been paid, tendered or deposited as hereinabove set forth title to lands described in the award shall vest in the state for the use and to the extent designated in the award and the * * * state may take possession of the lands and exercise full control of the interests in lands acquired and the circuit court of the county may upon 24 hours' notice to the owner of such lands, grant a writ of assistance to the state to place it in possession of such lands. The owner or mortgagee of the lands may, within 2 years after the recording of the award with the register of deeds, proceed as provided in ch. 32 to have his damages appraised, or he may apply to the county judge on 5 days' written notice to the commission to appraise his damages and thereafter the proceedings shall be as provided in s. 83.07. In the event that the owner of the land accepts payment of the award and the amount awarded on such appeal, either by commissioners of appraisal under ch. 32 or by the county judge under s. 83.07, shall be less than the amount of the original award by the state highway commission, the state shall have a lien against such owner for the amount of the difference. The lien shall give the name and address of the appellant owner, refer to the original award and the award on appeal and state the difference in amounts. The lien may be filed in the office of the register of deeds and when so filed shall attach to all real property of the owner presently owned or subsequently acquired in any county in which such lien is filed. Such lien shall remain in force with interest until satisfied or until it is set aside by a judgment of the circuit court in an action pursuant to s. 32.11.

Approved June 17, 1953.
