

No. 438, S.]

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#### CHAPTER 597

AN ACT to renumber and amend 32.11; to amend 32.09, 32.10 (1), 32.17, 70.10, 83.07 (4) and (5) and 84.09 (2); and to create 32.11 (2) of the statutes, relating to procedure in condemnation proceedings.

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

SECTION 1. 32.09 of the statutes is amended to read:

32.09 Such commissioners shall, before entering on their duties, take and subscribe an oath that they will faithfully and to the best of their ability examine the property and impartially estimate and appraise the value of the same. Whenever requested in writing by the petitioner or any party interested they shall proceed to appraise the property mentioned in the request *and shall set a time and place for their meeting to be held within 60 days from the date they were requested to proceed.* They shall give notice of the time and place of meeting to each person interested, which notice shall be served personally or upon the attorney of the party at least ten days before the hearing, or if a party cannot be found and has not appeared in the proceedings then by publication once a week for three weeks in such newspaper as the judge appointing the commissioners shall direct. In case the proceeding is one to acquire streets or highways a notice of the time and place of such hearing addressed "To Whom It May Concern" shall be published once a week for three successive weeks prior to such hearing in such newspapers.

SECTION 2. 32.10 (1) of the statutes is amended to read:

32.10 (1) The commissioners shall view the property described in the request and hear any evidence produced by the parties thereto and shall determine the value of the property taken. *The value so determined shall be as of the date of the taking and the status of the property under condemnation for the purpose of determining whether severance damages*

*exist shall be determined as of the date of taking. Such value shall be determined by deducting the value of the property as it will be immediately after the taking from the value of the property immediately prior to such taking, the remainder being the compensation to which the owner is entitled. In making such determination the commissioners shall consider the property upon the basis of its most advantageous use, but only such use as actually affects \* \* \* the present market value. Where a part of a parcel of land is condemned severance damage shall be allowed if shown to exist. Special benefits accruing to the property and affecting its market value because of the planned public improvement shall be considered and used as an offset to damages, but in no event shall benefits be allowed in excess of damages. Where a depreciation in value results from an exercise of the police power, even though in conjunction with the taking by eminent domain, no compensation shall be paid for such depreciation. The commissioners shall have the same powers to require submission of statements of the matters relating to claims of condemnor and owner as are given to the circuit court by s. 32.11 (2). The landowner shall in all cases present his testimony first, followed by condemnor, with rebuttal by landowner. The rules for the determination of compensation to be paid landowners set forth above shall be controlling in all condemnation actions and any appeal thereon including, but not limited to, those instituted under ss. 83.07, 83.08 and 84.09, provided, that in proceedings under ch. 275, laws of 1931 as amended, the value of the property taken shall be determined as of the date of the taking.*

SECTION 3. 32.11 of the statutes is renumbered 32.11 (1) and amended to read:

32.11 (1) Any party to a condemnation proceeding, and any persons 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 by filing a notice of appeal in the office of the clerk of such court. Such notice must be filed within \* \* \* 90 days from the date of filing of the report of the commissioners. The clerk shall thereupon enter the appeal as an action pending in said court with the owner or owners of the property for which the award was made and who are parties to the appeal as plaintiffs and the party by whom the property is taken as defendant. It shall thereupon proceed as an action in said court subject to all the provisions of law relating to actions originally brought therein. It shall be tried by jury unless waived. Costs shall be allowed to the successful party on the appeal. If in favor of the plaintiff they shall be added to the verdict. If in favor of the defendant, they shall be deducted therefrom.

SECTION 4. 32.11 (2) of the statutes is created to read:

32.11 (2) The court shall have power to require that both owner and condemnor shall submit to the court at such time in advance of the trial as the court may determine, a statement covering the respective contentions of the parties on the following points:

- (a) Highest and best use of property.
- (b) Applicable zoning.
- (c) Designation of claimed comparable lands, sale of which will be used in appraisal opinion.
- (d) Severance damage, if any.
- (e) Maps and pictures to be used.
- (f) Costs of reproduction less depreciation and rate of depreciation.
- (g) Statement of capitalization of income with supporting data.
- (h) Separate opinion as to fair market value, including before and after value where applicable by not to exceed 3 appraisers.

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

The court may make regulations for the exchange of such statements as between the parties, but only where both owner and condemnor furnish same, and for the holding of pre-trial conference between the parties for the purpose of simplifying the issues at the trial.

SECTION 5. 32.17 of the statutes is amended to read:

32.17 The court or judge may at any time *permit amendments to be made to a petition filed pursuant to s. 32.04*, amend any defect or informality in any of the proceedings authorized by this chapter and may cause \* \* \* *any parties to be added and direct such notice to be given to any party of interest as it deems proper and appoint other commissioners to fill any vacancies which may occur.*

SECTION 6. 70.10 of the statutes is amended to read:

70.10 ASSESSMENT, WHEN MADE, EXEMPTION. The assessor shall begin as soon as practicable after the April election, if he is elected at such election, otherwise as soon as practicable after January 1, to assess all the real and personal property as of the close of May 1 \* \* \* of each year. Except in cities of the first class, such assessment shall be finally completed before the first Monday in July. All real property conveyed *by condemnation or in any other manner to the state*, any county \* \* \*, city, *village or town* by gift, purchase, tax deed or power of eminent domain before the \* \* \* *second day of May in such year* shall not be included in such assessment.

SECTION 7. 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, *or at an earlier date upon stipulation of the parties*, the judge \* \* \* *shall set a date for hearing such application and he shall have the power in his discretion to require production of and provide for exchange of statements of the parties' claims as set forth in s. 32.11 (2). Where such statements are required and are furnished, the judge may determine as to whether there shall be a formal hearing on said application. If a formal hearing be held, the landowner shall in all cases present his testimony first, followed by condemnor, with rebuttal by landowner. Within 5 days \* \* \* after the date set for hearing or the termination of such hearing if one be held, the judge shall 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. *Application for such order shall be on notice to all named recipients.* 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 \* \* \* 90 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 8. 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 or owners and any person known to have any legal or equitable interest in said lands. 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 owner, or in the case of more than one owner to one of them by a bank check made payable to the owner, owners and any person known to have any legal or equitable interest in said lands. Said tender may be made by registered mail or by personal service. If the owner to whom tender is made shall refuse to accept the same, or if the whereabouts of any recipient cannot be ascertained, tender may be made by depositing the same with and payable to the clerk of any court of record in the county in which all or any part of the lands taken are situated. The award shall be received by said clerk, deemed in the custody of the court and paid out only on order of the court. A copy of said award shall also be filed with the court at the time. Any recipient may \* \* \* *apply to such court upon notice to all other recipients for an order determining the rights of the recipients and for distribution of the award.* In all cases where tender is accepted or made through the court as aforesaid, it shall be without prejudice to the right of appeal for a greater sum but no interest on the amount of the original award shall be recoverable. A copy of said award and notice to whom the check has been delivered shall be delivered or mailed to all recipients whose addresses are known.

In addition to the above provisions, if the name or address of any recipient is unknown, the award shall be published at least once each week for 3 successive weeks in a newspaper having general circulation in the same county in which the award was deposited, shall state where the award has been deposited and that it is available to the recipients 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 herein 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. The circuit court of the county may upon 24 hours' notice to the occupant of such lands grant a writ of assistance to the state to place it in possession of such lands. Any recipient may, within 2 years after the *date of recording* of the award with the register of deeds, apply to the county judge on \* \* \* 10 days' written notice to the state highway commission to appraise \* \* \* *the* damages and thereafter proceedings shall be as provided in s. 83.07. Any recipient appealing shall join all other recipients by service of \* \* \* 10 days' notice of such appeal. In the event the award of the county judge shall be lower than the original award and tender of the award has been accepted by an owner, 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 owner or owners, 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 property of the owner presently owned or subsequently acquired in any county where such lien is filed. Such lien shall remain in force with interest until satisfied or until it is set aside by a judgment of the circuit court in an action pursuant to s. 32.11.

Approved August 14, 1957.