

1971 Assembly Bill 583

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CHAPTER 103, Laws of 1971

AN ACT to repeal 32.19 (2) (b) and (3) (b) 3; to amend 32.19 (1), (2) (c) and (3) (a) and (b) 1 and 2 (intro.) and b, 32.25 (1), 32.26 (3) and 32.27 (2) (b); to repeal and recreate 32.19 (2) (d) and (4); and to create 32.19 (3) (c) and 32.26 (5) of the statutes, relating to relocation payments in eminent domain proceedings.

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

SECTION 1. 32.19 (1), (2) (c) and (3) (a) and (b) 1 and 2 (intro.) and b of the statutes are amended to read:

32.19 (1) The legislature declares that it is in the public interest that persons displaced by any public project be fairly compensated by payment for the property acquired and other losses hereinafter described and suffered as the result of programs designed for the benefit of the public as a whole; and the legislature further finds and declares that, notwithstanding ch. 275, laws of 1931, or any other provision of law, payment of such relocation assistance and assistance in the acquisition of replacement housing are proper costs of the construction of public improvements. If a the public improvement is funded in whole or in part by a non-lapsible trust, the relocation payments and assistance constitute a purpose for which the fund of the trust is accountable.

(2) (c) "Displaced person" means any person who moves from real property or who moves his personal property from real property, on or after July 1, 1970, as a result of the acquisition ~~or reasonable expectation of acquisition~~ of such real property, in whole or in part, ~~which is subsequently acquired, in whole or in part or subsequent to the issuance of a jurisdictional offer under this chapter,~~ for public purposes or, as the result of the acquisition for public purposes of other real property on which such person conducts a business or farm operation.

(3) (a) The condemnor shall compensate a displaced person for his actual and reasonable expenses in moving himself, his family, his business or his farm operation, including personal property. ~~Such relocation payments are limited only to new locations within 50 miles of the original site and within the state; actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been~~

required to relocate such property; and actual reasonable expenses in searching for a replacement business or farm.

(b) 1. Any displaced person who moves from a dwelling and who elects to accept the payments authorized by this paragraph in lieu of the payments authorized by par. (a) may receive a moving expense allowance, determined according to a schedule established by the condemnor not to exceed ~~\$200~~ \$300 and dislocation allowance of ~~\$100~~ \$200.

2. (intro.) Any displaced person who moves or discontinues his business or farm operation and who elects to accept payment authorized under this paragraph in lieu of the payment authorized under par. (a), may receive a fixed payment in an amount equal to the average annual net earnings of the business or farm operation, ~~or \$5,000, whichever is the lesser except that such payment shall not be less than \$2,500 nor more than \$10,000.~~ In the case of a business, no payment shall be made under this subsection unless the condemnor, ~~subject to appeal by the condemnee to the department of local affairs and development,~~ is satisfied that the business:

b. Is not part of a commercial enterprise having at least one other establishment, not being acquired by the condemnor which is engaged in the same or similar business. For the purpose of this subsection, the term "average annual net earnings" means one-half of any net earnings of the business or farm operation, before payment of federal, state and local income taxes, during the 2 taxable years immediately preceding the taxable year in which such business or farm operation moves from the real property acquired for such project, or during such other period as the condemnor determines to be more equitable for establishing such earnings. "Average annual net earnings" includes any compensation paid by the business or farm operation to the owner, his spouse or his dependents during such 2-year period. To be eligible for the payment authorized by this subsection, the business or farm operation shall make its state and federal income tax returns available and its financial statements and accounting records available for audit to determine the payment authorized by this subsection.

SECTION 2. 32.19 (2) (b) and (3) (b) 3 of the statutes are repealed.

SECTION 3. 32.19 (3) (c) of the statutes is created to read:

32.19 (3) (c) Optional payment for businesses. Any displaced person who moves his business, and elects to accept the payment authorized in par. (a), may, if otherwise qualified under par. (b) 2, elect to receive the payment authorized under par. (b) 2, minus whatever payment he received under par. (a), if he discontinues his business within 2 years of the date of receipt of payment under par. (a), provided that he has suffered a substantial loss of existing patronage. In no event shall the total combined payment be less than \$2,500 nor more than \$10,000.

SECTION 4. 32.19 (2) (d) and (4) of the statutes are repealed and recreated to read:

32.19 (2) (d) "Business" means any lawful activity, excepting a farm operation, conducted primarily:

1. For the purchase, sale, lease or rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;
2. For the sale of services to the public;
3. By a nonprofit organization; or

4. Solely for the purpose of sub. (3) for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

(4) REPLACEMENT HOUSING. (a) Owner-occupants. In addition to amounts otherwise authorized by this chapter, the condemnor shall make a payment, not to exceed \$15,000, to the owner of real property acquired for a project which property is improved by a dwelling actually owned and occupied by the owner for not less than 180 days prior to the initiation of negotiations for the acquisition of the property. For the purposes of this paragraph, a nonprofit corporation organized under ch. 181 may, if otherwise eligible, be considered a displaced owner. Such payment includes only the following:

1. The amount, if any, which when added to the acquisition payment, equals the reasonable cost of a comparable replacement dwelling which is decent, safe and sanitary as determined by the department of local affairs and development and the department of industry, labor and human relations jointly, reasonably accessible to public services and places of employment and available on the private market.

2. All expenses incurred by the owner to finance the purchase of another property substantially similar to the property taken provided that: a) at the time of the taking the land condemned was subject to a bona fide mortgage or was held under a vendee's interest in a bona fide land contract; and b) such mortgage or land contract had been executed in good faith not less than 180 days prior to the initiation of the attempt to purchase such property. Such expenses shall include reasonable incidental fees, commissions, discounts, surveying costs and title evidence costs necessary to refinance the balance of the debt at the time of taking if actually incurred, and increased interest cost above that provided in the former financing. The computation of the increased interest costs shall be based upon and limited to:

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

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

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

d. The present worth of the future payments of increased interest computed at the prevailing interest rate paid on savings deposits by commercial banks doing business in the vicinity.

3. Payment under this section shall be made only to a displaced owner who purchases and occupies a decent, safe and sanitary replacement dwelling not later than one year after the date on which he moves from the dwelling acquired for the project, or the date on which he receives payment from the condemnor, whichever is later.

(b) Tenants and certain others. In addition to amounts otherwise authorized by this chapter, the condemnor shall make a payment to any individual or family displaced from any dwelling not eligible to receive a payment under par. (a) which dwelling was actually and lawfully occupied by such individual or family for not less than 90 days prior to the initiation of the attempt to purchase such property. For purposes of this paragraph, a nonprofit corpora-

tion organized under ch. 181 may, if otherwise eligible, be considered a displaced tenant. Such payment shall be either:

1. The amount which is necessary to enable such person to lease or rent for a period not to exceed 4 years a decent, safe and sanitary dwelling meeting standards established by the department of local affairs and development and the department of industry, labor and human relations, jointly, and adequate to accommodate such individual or family in area not generally less desirable in regard to public utilities, public and commercial facilities and places of employment, but not to exceed \$4,000; or

2. The amount necessary to enable such person to make a downpayment, including incidental expenses described in par. (a) 2, on the purchase of a decent, safe and sanitary dwelling meeting standards established by the department of local affairs and development and the department of industry, labor and human relations, jointly, and adequate to accommodate such individual or family in areas not generally less desirable in regard to public utilities, public and commercial facilities and places of employment, but not to exceed \$4,000, but if the amount exceeds \$2,000, the person must equally match the excess over \$2,000 in making the downpayment.

(c) Expenses incidental to transfer of property. In addition to amounts otherwise authorized by this chapter, the condemnor shall reimburse the owner of real property acquired for a project for all reasonable and necessary expenses incurred for:

1. Recording fees, transfer taxes and similar expenses incidental to conveying such property.

2. Penalty costs for prepayment of any mortgage entered into in good faith encumbering such real property if the mortgage is recorded or has been filed for recording as provided by law prior to the date specified in par. (a) 2.

3. The pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting of title in the condemnor or the effective date of possession of such real property by the condemnor, whichever is earlier.

4. The cost of realigning personal property on the same site in partial takings or where realignment is required by reason of elimination or restriction of existing used rights of access.

5. Expenses incurred for plans and specifications specifically designed for the property taken and which are of no value elsewhere because of the taking.

6. Reasonable net rental losses where a) the losses are directly attributable to the public improvement project and b) such losses are shown to exceed the normal rental or vacancy experience for similar properties in the area.

7. Cost of fencing reasonably necessary pursuant to s. 32.09 (6) (g) shall, when incurred, be payable in the manner described in s. 32.20.

(d) No payments received under this section shall be considered as income for the purposes of ch. 71; nor shall such payments be considered as income or resources to any recipient of public assistance and such payment shall not be deducted from the amount of aid to which the recipient would otherwise be entitled under any welfare law.

SECTION 5. 32.25 (1) of the statutes is amended to read:

~~32.25 (1) No~~ Notwithstanding ~~ch. 275, laws of 1931, or any other provision of law, no~~ condemnor shall proceed with any property acquisition activities on any project which may involve acquisition of property and displacement of persons, business concerns or farm operations until the condemnor has filed in writing a relocation payment plan and relocation assistance service plan and has had both such plans approved in writing by the department of local affairs and development.

SECTION 6. 32.26 (3) of the statutes is amended to read:

~~32.26 (3) If a condemnor has a substantial number of projects involving relocation payments and assistance which are subject to regulation by the federal government, the condemnor shall not be required to submit a relocation plan for any project under such regulation. The department may make investigations to determine if the condemnor is complying with the plan approved by the department of local affairs and development ss. 32.19 to 32.27. The department may seek an order from the circuit court or county court requiring a condemnor to comply with the plan approved by the department of local affairs and development ss. 32.19 to 32.27 or to discontinue work on that part of the project which is not in substantial compliance with the plan ss. 32.19 to 32.27. The court shall give hearings on such actions precedence on the court's calendar.~~

SECTION 7. 32.26 (5) of the statutes is created to read:

32.26 (5) Any displaced person may, prior to commencing court action against the condemnor under s. 32.20, petition the department of local affairs and development for review of his complaint, setting forth in the petition the reasons for his dissatisfaction. The department may conduct an informal review of the situation and attempt to negotiate an acceptable solution. If an acceptable solution cannot be negotiated within 90 days, the department shall notify all parties, and the petitioner may then proceed under s. 32.20. The informal review procedure provided by this subsection shall not be a condition precedent to the filing of a claim and commencement of legal action pursuant to s. 32.20. In supplying information required by s. 32.25 (3) (d), the condemnor shall clearly indicate to each displaced person his right to proceed under this paragraph and under s. 32.20, and shall supply full information on how the displaced person may contact the department of local affairs and development.

SECTION 8. 32.27 (2) (b) of the statutes is amended to read:

~~32.27 (2) (b) If there is a project cost-sharing agreement between the condemnor and another unit or level of government, the costs of relocation payments and services shall be shared in the same proportion as other project costs unless otherwise provided. This direct proportion formula may be changed to take advantage of federal relocation subsidies. It is intended that the payments and services described by ss. 32.19 to 32.27 are required for any project which is not subject to federal regulation under P.L. 91-646: 84 Stat. 1894. Any condemnor exercising the power of eminent domain under this chapter for a project subject to such federal regulation shall be required to make payments and provide services described in ss. 32.19 to 32.27 only to the extent required to receive federal payment or assistance. The intent of this paragraph is to assure that condemnors take maximum advantage of federal payment or assistance for relocation, and to insure that in no event will any displaced person receive a combined payment in excess of payments authorized or required by s. 32.19 or by federal law. All condemnors, regardless of the source of funds, and regardless of regulations by any other agency, shall be required to comply with the requirements of s. 32.25 (1).~~

SECTION 9. EFFECTIVE DATE. This act shall be effective retroactive to January 2, 1971.
