

1977 Assembly Bill 1077

Date published: June 6, 1978

## CHAPTER 440, Laws of 1977

AN ACT to repeal 32.09 (5m); to amend 32.05 (2a), (5), (10) (b) and (11) (a) and (b), 32.06 (2a), (9) (a) and (10) (a) and (b), 32.09 (4) and (6) (intro.) and 32.10; to repeal and recreate 32.02 (intro.); and to create 32.035, 32.05 (3m), 32.06 (3m), 32.09 (1m), (6g) and (6r), 32.19 (4) (am) and (4m) and 32.28 of the statutes, relating to requiring the department of agriculture, trade and consumer protection to prepare an agricultural impact statement on certain actual or proposed public projects, changing certain aspects of recovery of costs in certain condemnation actions and in the removal of illegal outdoor signs and making other changes in the law on eminent domain.

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

SECTION 1. 32.02 (intro.) of the statutes, as affected by chapter 29, laws of 1977, is repealed and recreated to read:

**32.02 Who may condemn; purposes.** (intro.) The following departments, municipalities, boards, commissions, public officers and corporations may acquire by condemnation any real estate and personal property appurtenant thereto or interest therein which they have power to acquire and hold or transfer to the state, for the purposes specified, in case such property cannot be acquired by gift or purchase at an agreed price:

SECTION 2. 32.035 of the statutes is created to read:

**32.035 Agricultural impact statement.** (1) DEFINITIONS. In this section:

(a) "Department" means department of agriculture, trade and consumer protection.

(b) "Farm operation" means any activity conducted solely or primarily for the production of one or more agricultural commodities for sale and home use, and customarily producing the commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(2) EXCEPTION. This section shall not apply if an environmental impact statement under s. 1.11 is prepared for the proposed project and if the department submits the information required under this section as part of such statement or if the condemnation is for an easement for the purpose of constructing or operating an electric transmission line, except a high voltage transmission line as defined in s. 196.491 (1) (f).

(3) PROCEDURE. The condemnor shall notify the department of any project involving the actual or potential exercise of the powers of eminent domain affecting a farm operation. If the condemnor is the department of natural resources, the notice required by this subsection shall be given at the time that permission of the senate and assembly committees on natural resources is sought under s. 23.09 (2) (d) or 27.01 (2) (a). To prepare an agricultural impact statement under this section, the department may require the condemnor to compile and submit information about an affected farm operation. The department shall charge the condemnor a fee approximating the actual costs of preparing the statement. The department may not publish the statement if the fee is not paid.

(4) IMPACT STATEMENT. The department shall prepare an agricultural impact statement for each project, except a project under ch. 81, if the project involves the actual or potential exercise of the powers of eminent domain and if any interest in more than 5 acres of any farm operation may be taken. The department may prepare an agricultural impact statement on a project if any interest in 5 or less acres of any farm operation may be taken and if the condemnation will have a significant effect on any farm operation as a whole. The statement shall list the acreage and describe all land lost to agricultural production and all other land with reduced productive capacity, whether or not the land is taken. The department shall prepare the impact statement within 60 days of receiving the information requested from the condemnor under sub. (3). The department shall publish the statement upon receipt of the fee required under sub. (3). The condemnor may not negotiate with an owner or make a jurisdictional offer under this chapter until 30 days after the impact statement is published.

(5) PUBLICATION. Upon completing the impact statement, the department shall distribute the impact statement to the following:

- (a) The governor's office.
- (b) The senate and assembly committees on agriculture and transportation.
- (c) All local and regional units of government which have jurisdiction over the area affected by the project. The department shall request that each unit post the statement at the place normally used for public notice.
- (d) Local and regional news media in the area affected.
- (e) Public libraries in the area affected.
- (f) Any individual, group, club or committee which has demonstrated an interest and has requested receipt of such information.
- (g) The condemnor.

SECTION 3. 32.05 (3m) of the statutes is created to read:

32.05 (3m) In this section, "uneconomic remnant" means the property remaining after a partial taking of property, if the property remaining is of such size, shape or condition as to be of little value or of substantially impaired economic viability. If the acquisition of only part of a property would leave its owner with an uneconomic remnant, the condemnor shall offer to acquire the remnant concurrently and may acquire it by purchase or by condemnation if the owner consents.

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SECTION 4. 32.05 (2a), (5), (10) (b) and (11) (a) and (b) of the statutes are amended to read:

32.05 (2a) NEGOTIATION. Before making the jurisdictional offer provided in sub. (3), the condemnor shall attempt to negotiate personally with the owner or one of the owners or his or her personal representative of the property sought to be taken for the purchase of the same. In such negotiation the condemnor is authorized to contract to pay the items of compensation enumerated in ss. 32.09 and 32.19 as may be applicable to the property in one or more instalments on such conditions as the condemnor and property owners may agree. The condemnor shall record any conveyance by or on behalf of the owner of the property to the condemnor executed as a result of negotiations under this subsection with the register of deeds of the county in which the property is located. The condemnor shall also record a certificate of compensation stating the identity of all persons having an interest of record in the property immediately prior to its conveyance, the legal description of the property, the nature of the interest acquired and the compensation for such acquisition. The condemnor shall serve upon or mail by certified mail to all persons named therein a copy of the statement and a notice of the right to appeal the amount of compensation under this subsection. Any person named in the certificate may, within 6 months after the date of its recording, appeal from the amount of compensation therein stated in the manner set forth in subs. (9) to (13) for appeals from an award under sub. (7). For purposes of any such appeal, the amount of compensation stated in the certificate shall be treated as the award and the date the conveyance is recorded shall be treated as the date of taking and the date of evaluation.

(5) COURT ACTION TO CONTEST RIGHT OF CONDEMNATION. ~~When~~ If an owner desires to contest the right of the condemnor to condemn the property described in the jurisdictional offer, for any reason other than that the amount of compensation offered is inadequate, ~~such~~ the owner may within 40 days from the date of personal service of the jurisdictional offer or within 40 days from the date of postmark of the certified mail letter transmitting such offer, or within 40 days after date of publication of the jurisdictional offer as to persons for whom such publication was necessary and was made, commence an action in the circuit court of the county wherein the property is located, naming the condemnor as defendant. Such action shall be the only manner in which any issue other than the amount of just compensation, or other than proceedings to perfect title ~~as provided in~~ under ss. 32.11 and 32.12, may be raised pertaining to the condemnation of the property described in the jurisdictional offer. The trial of the issues raised by the pleadings in such action shall be given precedence over all other actions in said court then not on trial. If the action is not commenced within the time limited the owner or other person having any interest in the property shall be ~~forever~~ barred from raising any such objection in any other manner. Nothing in this section shall be construed to limit in any respect the right to determine the necessity of taking as conferred by s. 32.07 nor to prevent the condemnor from proceeding with condemnation during the pendency of the action to contest the right to condemn. ~~If the final judgment of the court is that the condemnor cannot condemn the property described in the jurisdictional offer, the judgment shall also award the owner such sum as will in the opinion of the court reimburse the owner for reasonable costs, disbursements and expenses including reasonable attorney and engineering fees actually incurred because of the action of the condemnor, but the judgment shall not, in addition thereto, award the owner taxable costs and disbursements pursuant to ch. 814.~~

(10) (b) The court shall enter judgment for the amount found to be due after giving effect to any amount paid by reason of a prior award. The judgment shall include legal interest on the amount so found due from the date of taking if judgment is for the condemnor, and from 14 days after the date of taking if judgment is for the condemnee. ~~Costs shall be allowed pursuant to s. 814.02 (2). If the appeal was by the condemnor and if the amount of just compensation found under par. (a) exceeds the amount of the basic award, the condemnee shall be deemed the "successful party" under s. 814.02 (2).~~

(11) (a) If the jury verdict as approved by the court does not exceed the basic award, the condemnor shall have judgment against the appellant for the difference between the jury verdict and the amount of the basic award, plus interest on the amount of such difference from the date of taking, ~~plus condemnor's taxable statutory costs and disbursements pursuant to s. 814.02 (2).~~

(b) If the jury verdict as approved by the court exceeds the basic award, the appellant shall have judgment for the amount of such excess plus legal interest thereon to date of payment in full from that date which is 14 days after the date of taking, ~~plus statutory taxable costs and disbursements pursuant to s. 814.02 (2).~~

SECTION 4m. 32.06 (2a) of the statutes is amended to read:

32.06 (2a) AGREED PRICE. Before making the jurisdictional offer ~~provided in~~ under sub. (3) the condemnor shall attempt to negotiate personally with the owner or one of the owners or his or her personal representative of the property sought to be taken for the purchase of the same. In such negotiation the condemnor may contract to pay the items of compensation enumerated in ss. 32.09 and 32.19 where shown to exist. The condemnor shall record any conveyance by or on behalf of the owner of the property to the condemnor executed as a result of negotiations under this subsection with the register of deeds of the county in which the property is located. The condemnor shall also record a certificate of compensation stating the identity of all persons having an interest of record in the property immediately prior to its conveyance, the legal description of the property, the nature of the interest acquired and the compensation for such acquisition. The condemnor shall serve upon or mail by certified mail to all persons named therein a copy of the statement and a notice of the right to appeal the amount of compensation under this subsection. Any person named in the certificate may, within 6 months after the date of its recording, appeal from the amount of compensation therein stated by filing a petition with the judge of the circuit court of the county in which the property is located for proceedings to determine the amount of just compensation. Notice of such petition shall be given to all persons having an interest of record in such property. The judge shall forthwith assign the matter to the chairperson of the county condemnation commissioners for hearing under sub. (8). The procedures prescribed under subs. (9) (a) and (b), (10), (12) and (13) shall govern such appeals. The date the conveyance is recorded shall be treated as the date of taking and the date of evaluation.

SECTION 5. 32.06 (3m) of the statutes is created to read:

32.06 (3m) DEFINITION. In this section, "uneconomic remnant" means the property remaining after a partial taking of property, if the property remaining is of such size, shape or condition as to be of little value or of substantially impaired economic viability. If acquisition of only part of a property would leave its owner with an uneconomic remnant, the condemnor shall offer to acquire the remnant concurrently and may acquire it by purchase or by condemnation if the owner consents.

SECTION 6. 32.06 (9) (a) and (10) (a) and (b) of the statutes are amended to read:

32.06 (9) (a) ~~The condemnor must within~~ Within 30 days after the date of filing of the commission's award, ~~if it desires to abandon the proceeding,~~ the condemnor shall petition the judge of the circuit court of the county wherein the property is situated, upon 5 days' notice by certified mail to the owner, for leave to abandon the petition for taking ~~if the condemnor desires to abandon the proceeding.~~ The circuit judge court shall grant such the petition upon such terms as he it deems just, which terms may include reasonable expert witness fees incurred by condemnee for not to exceed 3 expert witnesses and a reasonable attorney's fee both as approved by the judge. ~~Upon payment of such amount into court for the benefit of the owner, the judge and shall make a formal order discontinuing said the proceeding which order shall be recorded in the judgment book of the court after the record of the commission's award. The order shall operate to divest any title of condemnor to the lands involved and to automatically discharge the lis pendens.~~

(10) (a) If the jury verdict as approved by the court exceeds the commission's award, the owner shall have judgment increased by the amount of ~~his statutory taxable costs and disbursements, together with~~ legal interest from the date title vests in condemnor to date of entry of judgment on the excess of the verdict over the compensation awarded by the commission.

(b) If the jury verdict as approved by the court does not exceed the commission's award, the condemnor shall have judgment against the owner for the difference between the verdict and the amount of the commission's award, with legal interest on such difference from the date condemnor paid such award, ~~plus condemnor's statutory taxable costs and disbursements.~~

SECTION 7. 32.09 (1m), (6g) and (6r) of the statutes are created to read:

32.09 (1m) As a basis for determining value, a commission in condemnation or a court may consider the price and other terms and circumstances of any good faith sale or contract to sell and purchase comparable property. A sale or contract is comparable within the meaning of this subsection if it was made within a reasonable time before or after the date of evaluation and the property is sufficiently similar in the relevant market, with respect to situation, usability, improvements and other characteristics, to warrant a reasonable belief that it is comparable to the property being valued.

(6g) In the case of the taking of an easement, the compensation to be paid by the condemnor shall be determined by deducting from the fair market value of the whole property immediately before the date of evaluation, the fair market value of the remainder immediately after the date of evaluation, assuming the completion of the public improvement and giving effect, without allowance of offset for general benefits, and without restriction because of enumeration but without duplication, to the items of loss or damage to the property enumerated in sub. (6) (a) to (g) where shown to exist.

(6r) (a) In the case of a taking of an easement in lands zoned or used for agricultural purposes, for the purpose of constructing or operating a high-voltage transmission line, as defined in s. 196.491 (1) (f), or any petroleum or fuel pipeline, the offer under s. 32.05 (2a) or 32.06 (2a), the jurisdictional offer under s. 32.05 (3) or 32.06 (3) or the statement of damages and benefits under section 4 of chapter 275, laws of 1931, as amended (Kline Law), the award of damages under s. 32.05 (7), the award of the condemnation commissioners under s. 32.05 (9) or 32.06 (8) or the modified assessment under section 6 of chapter 275, laws of 1931, as amended (Kline Law), and the jury verdict as approved by the court under s. 32.05 (10) or (11) or 32.06 (10) or the verdict of the jury under section 10 (2) of chapter 275, laws of 1931, as amended (Kline Law), shall specify, in addition to a lump sum representing just compensation under sub. (6) for outright acquisition of the easement, an amount payable annually on the date therein set forth to the condemnee, which amount represents just compensation under sub. (6) for the taking of the easement for one year.

(b) The condemnee shall choose between the lump sum and the annual payment method of compensation at such time as the condemnee accepts the offer, award or verdict, or the proceedings relative to the issue of compensation are otherwise terminated. Selection of the lump sum method of payment shall irrevocably bind the condemnee and successors in interest.

(c) 1. Except as provided under subd. 2, if the condemnee selects the annual payment method of compensation, the fact of such selection and the amount of the annual payment shall be stated in the conveyance or an appendix thereto which shall be recorded with the register of deeds. The first annual payment shall be in addition to payment of any items payable under s. 32.19. Succeeding annual payments shall be determined by multiplying the amount of the first annual payment by the quotient of the state assessment under s. 70.575 for the year in question divided by the state assessment for the year in which the first annual payment for that easement was made, if the quotient exceeds one. A condemnee who selects the annual payment method of

compensation, or any successor in interest, may at any time, by agreement with the condemnor or otherwise, waive in writing his or her right, or the right of his or her successors in interest, to receive such payments. Any successor in interest shall be deemed to have waived such right until the date on which written notice of his or her right to receive annual payments is received by the condemnor or its successor in interest.

2. If lands which are zoned or used for agricultural purposes and which are condemned and compensated by the annual payment method of compensation under this paragraph are no longer zoned or used for agricultural purposes, the right to receive the annual payment method of compensation for a high-voltage transmission line easement shall cease and the condemnor or its successor in interest shall pay to the condemnee or any successor in interest who has given notice as required under subd. 1 a single payment equal to the difference between the lump sum representing just compensation under sub. (6) and the total of annual payments previously received by the condemnee and any successor in interest.

SECTION 8. 32.09 (4) and (6) (intro.) of the statutes are amended to read:

32.09 (4) ~~Where~~ If a depreciation in value of property results from an exercise of the police power, even though in conjunction with the taking by eminent domain, no compensation ~~shall~~ may be paid for such depreciation except as expressly allowed in subs. (5) (b), ~~(5m)~~ and (6) and s. 32.19.

(6) (intro.) In the case of a partial taking of property other than an easement, the compensation to be paid by the condemnor shall be the greater of either the fair market value of the property taken as of the date of evaluation or the sum determined by deducting from the fair market value of the whole property immediately before the date of evaluation, the fair market value of the remainder immediately after the date of evaluation, assuming the completion of the public improvement and giving effect, without allowance of offset for general benefits, and without restriction because of enumeration but without duplication, to the following items of loss or damage to the property where shown to exist:

SECTION 9. 32.09 (5m) of the statutes is repealed.

SECTION 10. 32.10 of the statutes is amended to read:

**32.10 Condemnation proceedings instituted by property owner.** ~~Whenever~~ If any property has been occupied by a ~~body~~ person possessing the power of condemnation ~~but where such body~~ and if the person has not exercised ~~said~~ the power, the owner, to institute condemnation proceedings, shall present a verified petition to the circuit judge of the county wherein the land is situated asking that such proceedings be commenced. ~~Such~~ The petition shall describe the land, state the ~~board, commission or corporation~~ person against which the condemnation proceedings are instituted and the use to which it has been put or is designed to have been put by the ~~board, commission or corporation~~ person against which the proceedings are instituted. A copy of ~~said~~ the petition shall be served upon the ~~board, commission or corporation~~ which person who has occupied petitioner's land, or interest in land. The petition shall be filed in the office of the clerk of the circuit court and thereupon the matter shall be deemed an action at law and at issue, with petitioner as plaintiff and the ~~board, commission or corporation~~ occupying person as defendant. The court shall ~~thereupon~~ make a finding of whether the defendant is occupying property of the plaintiff without having the right to do so. If the court determines that the defendant is occupying such property of the plaintiff without having the right to do so, it shall treat the matter in accordance with the provisions of this chapter assuming the plaintiff has received from the defendant a jurisdictional offer and has failed to accept the same and assuming the plaintiff is not questioning the right of the defendant to condemn the property so occupied. ~~The court rendering a judgment for the plaintiff in an action brought under this section shall also award to the plaintiff as a part of such judgment such sum as will in the opinion of the court reimburse the plaintiff for reasonable costs, disbursements and expenses including reasonable attorney, appraisal and engineering fees actually incurred because of such action, but the judgment shall not, in addition thereto, award the owner taxable costs and disbursements pursuant to ch. 814.~~

SECTION 11. 32.19 (4) (am) and (4m) of the statutes are created to read:

32.19 (4) (am) In determining the comparability of a replacement dwelling or mobile home under par. (a), the department of local affairs and development and the department of industry, labor and human relations shall consider and give effect to the overall size, number of rooms and size of rooms, hallways and storage areas of the dwelling or mobile home being replaced, as well as the size and utility of any garage or other outbuildings within the curtilage of the dwelling or mobile home being replaced, regardless of the contribution of the garage or other outbuildings to the owner's income.

(4m) **BUSINESS OR FARM REPLACEMENT PAYMENT.** In addition to amounts otherwise authorized by this chapter, the condemnor shall make a payment, not to exceed \$50,000, to any displaced person who is displaced from any business or farm operation which the person has owned for not less than 180 days prior to the initiation of negotiations for the acquisition of the real property on which the business or farm operation lies, and who actually purchases a comparable replacement for such acquired property within 2 years after the date the person vacates the acquired property or receives payment from the condemnor, whichever is later. The additional payment under this subsection shall include the following amounts:

(a) The amount, if any, which when added to the acquisition cost of the property (other than any dwelling on such property) equals the reasonable cost of a comparable replacement for such acquired property, as determined by the department of local affairs and development and the department of industry, labor and human relations, jointly. Such replacement property shall be within reasonable proximity of the property being acquired and shall be suited for the same type of business or farm operation as that which is being conducted by the displaced person at the time of acquisition.

(b) The amount, if any, which will compensate such displaced person for any increased interest cost which such person is required to pay for financing the acquisition of any replacement property, if the property acquired was encumbered by a bona fide mortgage which was a valid lien on the property for at least 180 days prior to the initiation of negotiations for its acquisition. The amount under this paragraph shall be equal to the excess in the aggregate interest and other debt services cost of that amount of the principal of the mortgage on the replacement property which is equal to the unpaid balance of the mortgage on the acquired property, reduced to discounted present value. The discount rate shall be the prevailing interest rate paid on savings deposits in commercial banks in the general area where the replacement property is located.

(c) Reasonable expenses incurred by the displaced person for evidence of title, recording fees and other closing costs incident to the purchase of the replacement property, but not including prepaid expenses.

SECTION 12. 32.28 of the statutes is created to read:

**32.28 Costs.** (1) In this section, "litigation expenses" means the sum of the costs, disbursements and expenses, including reasonable attorney, appraisal and engineering fees necessary to prepare for or participate in actual or anticipated proceedings before the condemnation commissioners, board of assessment or any court under this chapter or chapter 275, laws of 1931, as amended (Kline Law).

(2) Except as provided in sub. (3), costs shall be allowed under ch. 814 in any action brought under this chapter or chapter 275, laws of 1931, as amended (Kline Law). If the amount of just compensation found by the court or commissioners of condemnation exceeds the jurisdictional offer or the highest written offer prior to the jurisdictional offer, the condemnee shall be deemed the successful party under s. 814.02 (2).

(3) In lieu of costs under ch. 814, the court shall award litigation expenses to the condemnee if:

- (a) The proceeding is abandoned by the condemnor;
- (b) The court determines that the condemnor does not have the right to condemn part or all of the property described in the jurisdictional offer or there is no necessity for its taking;
- (c) The judgment is for the plaintiff in an action under s. 32.10;
- (d) The award of the condemnation commission under s. 32.05 (9) or 32.06 (8) exceeds the jurisdictional offer or the highest written offer prior to the jurisdictional offer by at least \$700 and at least 15% and neither party appeals the award to the circuit court;
- (e) The jury verdict as approved by the court under s. 32.05 (11) exceeds the jurisdictional offer or the highest written offer prior to the jurisdictional offer by at least \$700 and at least 15%;
- (f) The condemnee appeals an award of the condemnation commission which exceeds the jurisdictional offer or the highest written offer prior to the jurisdictional offer by at least \$700 and at least 15%, if the jury verdict as approved by the court under s. 32.05 (10) or 32.06 (10) exceeds the award of the condemnation commission by at least \$700 and at least 15%;
- (g) The condemnor appeals the award of the condemnation commission, if the jury verdict as approved by the court under s. 32.05 (10) or 32.06 (10) exceeds the jurisdictional offer or the highest written offer prior to the jurisdictional offer by at least \$700 and at least 15%;
- (h) The condemnee appeals an award of the condemnation commission which does not exceed the jurisdictional offer or the highest written offer prior to the jurisdictional offer by 15%, if the jury verdict as approved by the court under s. 32.05 (10) or 32.06 (10) exceeds the jurisdictional offer or the highest written offer prior to the jurisdictional offer by at least \$700 and at least 15%; or
- (i) The condemnee appeals an assessment of damages and benefits under section 10 (2) of chapter 275, laws of 1931, as amended (Kline Law), if the verdict of the jury awards an amount at least \$700 and at least 15% greater than the award made by the city.

**SECTION 14. Program responsibilities.** (1) In the list of program responsibilities specified for the department of agriculture, trade and consumer protection in section 15.131 (intro.) of the statutes, insert reference to section "32.035".

(2) In the list of program responsibilities specified for the department of industry, labor and human relations in section 15.221 (intro.) of the statutes, insert reference to section "32.19 (4m) (a)".

(3) In the list of program responsibilities specified for the department of local affairs and development in section 15.281 of the statutes, insert reference to section "32.19 (4m) (a)".

**SECTION 15. Applicability.** The treatment of sections 32.05 (5), (10) (b) and (11) (a) and (b), 32.06 (9) (a) and (10) (a) and (b), 32.10 and 32.28 of the statutes by this act shall apply to all actions and proceedings on or after the effective date of this act, regardless of when such actions or proceedings were commenced.

**SECTION 16. Effective date.** This act shall take effect on the first day of the 4th month after its publication.