

1983 Senate Bill 439

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## 1983 Wisconsin Act 236

AN ACT to amend 32.09 (6r) (a), 32.25 (1), 32.28 (1), (2) and (3) (i), 63.27, 66.079 (2) (b) and 66.610 (5) (f); and to create subchapter I (title) of chapter 32, subchapter II of chapter 32 and 67.04 (2) (zr) of the statutes; and to affect laws of 1931, chapter 275, relating to codifying laws of 1931, chapter 275 (the Kline Law), concerning condemnation procedures for 1st class cities.

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

SECTION 1. Subchapter I (title) of chapter 32 of the statutes is created to read:

CHAPTER 32  
SUBCHAPTER I  
GENERAL EMINENT DOMAIN  
(to precede s. 32.01)

SECTION 2. 32.09 (6r) (a) of the statutes is amended to read:

32.09 (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)~~ s. 32.57 (5), 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)~~, judgment under s. 32.61 (3) 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.

SECTION 3. 32.25 (1) of the statutes, as affected by 1983 Wisconsin Act 27, is amended to read:

32.25 (1) Notwithstanding ~~chapter 275, laws of 1931, or any other provision of law~~, except as provided under s. 85.09 (4g) and (4m), no condemnor may 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 industry, labor and human relations.

SECTION 4. 32.28 (1), (2) and (3) (i) of the statutes are amended to read:

32.28 (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) (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 s. 32.61 (3), if the judgment is at least \$700 and at least 15% greater than the award made by the city.

SECTION 5. Subchapter II of chapter 32 of the statutes is created to read:

CHAPTER 32  
SUBCHAPTER II  
ALTERNATE EMINENT DOMAIN  
PROCEDURES IN 1ST CLASS CITIES

**32.50 Definitions.** In this subchapter:

- (1) "Benefit district" means the area benefitting from and assessed for an improvement under this subchapter.
- (2) "Board" means the board of assessment.
- (3) "City" means any 1st class city.
- (4) "Common council" means the common council of the city.

**32.51 Exercise of eminent domain.** (1) **PURPOSES.** In addition to the powers granted under subch. I, any city may condemn or otherwise acquire property under this subchapter for:

- (a) Any purpose stated in article XI, section 3a of the state constitution.
- (b) Public alleys, grounds, harbors, libraries, museums, school sites, vehicle parking areas, airports, markets, hospitals, ward yards, bridges, viaducts, waterworks and water mains.
- (c) Constructing and maintaining sewers.
- (d) Slum elimination.
- (e) Low-income housing.
- (f) Blighted area redevelopment.
- (g) Any other municipal purposes.

(2) **LEVYING ASSESSMENTS.** Any city may levy assessments on property benefited to finance improvements under this subchapter.

**32.52 Board of assessment.** (1) **CREATION.** There is created a board, to which the mayor shall appoint 5 members with the appointments confirmed by the common council. If the common council rejects any appointment, the mayor shall submit a new appointment within 30 days.

(2) **TERMS.** The terms of the first 5 members of the board are staggered at 1, 2, 3, 4 and 5 years, each term commencing on January 1 of the year of the appointment. Subsequent appointments occur annually in December to succeed the member whose term expires the following January 1. The term of each subsequent appointment is 5 years, commencing on January 1 following the appointment.

(3) **QUALIFICATIONS OF MEMBERS.** One member shall have a general understanding of real estate values in the city and shall be a real estate broker licensed under s. 452.12 with at least 5 years' experience. One member shall be a civil engineer and have a general understanding of building and construction costs. Three members shall own real property in the city. All members shall be residents and electors of the city.

(4) ORGANIZATION. The board shall elect a chairperson to preside over all meetings of the board. The common council shall determine the compensation of each board member and of permanent employes of the board and may increase the compensation provided to full-time board members. The board shall determine the compensation of temporary employes. Permanent or temporary technical advisors and experts of the board are not classified under s. 63.23, but all other clerks and employes of the board are classified under s. 63.23.

(5) BUDGET PROCESS. The board shall annually prepare a budget for its operation on or before September 1. The common council may levy an annual tax to support the board's operations. If the common council appropriates funds to the board, the board may draw from the funds only upon written order signed by a board member and the city comptroller.

**32.53 Resolution of necessity.** If the common council proposes any public improvement involving the acquisition of private property or the use of public property, it shall pass a resolution by a three-fourths vote of the entire membership of the common council declaring the need to acquire or use certain property for a specified purpose. The common council shall state in its resolution the general nature of the proposed improvement and require the board to submit a report and tentative plan of the proposed improvement to the common council for its approval. The board may require the city engineer to submit to the board a detailed map and description of the property necessary for the proposed improvement plus adjacent property and other surveys, maps, descriptions of property or estimates of cost the board needs to prepare the report and tentative plan.

**32.54 Report and tentative plan of improvement.** (1) CONTENTS. The board shall submit to the common council a report and tentative plan of improvement following passage of a resolution under s. 32.53. The report and tentative plan shall include the following:

(a) An estimate of the total cost of the improvement.

(b) A map and description of all property to be taken or used or that may be benefited. The board shall indicate on the map the extent and boundary of the benefit district and a maximum and minimum benefit assessment rate for any representative parcel of property within the benefit district to indicate the estimated amount of the benefits that may be assessed.

(2) COST ESTIMATE. The board shall include the value of any city property and the cost of any previously completed improvement it incorporates into the report and tentative plan as part of the estimate of the cost of the improvement. The cost of grading, paving or repaving or laying out or improving any curbs, gutters or sidewalks for which benefits have been legally assessed prior to the adoption of the plan of improvement may not be included in the estimate, the determination of benefits or the cost of the proposed improvement.

**32.55 Hearing on the report and tentative plan of improvement.** (1) NOTICE. Upon receiving the report and tentative plan of improvement the common council shall refer the report to a council committee for a public hearing to discuss the tentative plan, the relative costs and benefits and the necessity of the proposed improvement. At least 10 days before the public hearing, the common council shall send notice of the hearing to the last-known mailing address of any owner of property that may be damaged or benefited by the proposed improvement.

(2) APPROVAL, REVISION, ABANDONMENT. (a) After the hearing the common council shall:

1. Approve the report and tentative plan, if it determines that taking the property mentioned in the plan is necessary, and commence implementation of the plan; or

2. Remand the report and tentative plan to the board for reconsideration and revision.

(b) If the common council remands the report and tentative plan, the board shall reconsider the report and tentative plan and submit a revised report and tentative plan to the common council. The common council shall refer the revised report and tentative plan to a council committee for a public hearing as provided in sub. (1). After the hearing, the common council may approve the revised report and tentative plan or revise the report and tentative plan itself and commence implementation of the plan. Instead of approving the original or revised report and tentative plan, the common council may abandon the proposed improvement.

(c) After approving the report and tentative plan the city may begin purchasing property to implement the plan.

(3) RECORDS. The city attorney shall file a certified copy of the common council's resolution approving the original or revised report and tentative plan with a description of the property to be condemned plus a map showing the condemned property and the benefit district in the office of the register of deeds of the county in which the property is located.

**32.56 Altering the plan of improvement.** (1) PROCEDURE. The city may alter the plan of improvement after its approval under s. 32.55 (2) at any time prior to the confirmation of the assessment of benefits and damages. The board shall submit to the common council the proposed alteration of the plan plus an amended estimate of the cost and the benefits and an amended map of the proposed improvement. The common council shall approve the alteration by resolution before the alteration is effective. If the city alters the plan while benefits and damages are being assessed under s. 32.57, the board shall reassess benefits and damages based on the altered plan.

(2) FILING THE ALTERATION. The city attorney shall file a certified copy of the common council's resolution approving the alteration under sub. (1) plus a description of the alteration in the office of the register of deeds of the county in which the property is located.

**32.57 Determining benefits and damages.** (1) RESOLUTION. After approving the plan under s. 32.55 (2), the common council may adopt a resolution directing the board to determine the damages to be paid for property condemned and the benefits to be assessed against property benefited within the benefit district. The board shall include the cost of all property acquired by purchase or condemnation for the improvement, as well as the cost of physical improvements that are approved under s. 32.55 (2), in the assessment of benefits and shall report its findings to the common council.

(2) EXEMPT PROPERTY. The board may not assess benefits against any property:

(a) Owned exclusively by the federal government.

(b) Purchased by any county at tax sales as provided in s. 75.32.

(c) Owned exclusively by or held in trust exclusively for this state, if exempt from taxation. Land contracted to be sold by this state is not exempt from assessment. State land that is part of a pedestrian mall under s. 66.610 is exempt from assessment only if it is held or used exclusively for highway purposes. State payment of assessments against a pedestrian mall is governed by s. 66.64 (2).

(d) Owned or occupied rent free exclusively by any county, city, village, town, school district or free public library.

(e) Used exclusively for public parks, boulevards or pleasure drives by any city or village.

(f) Owned by a military organization as a public park or memorial ground and not used for profit.

(g) Owned by any religious, charitable, scientific, literary, educational or benevolent association, incorporated historical society or public library association or by any fraternal society, order or association operating under the lodge system if the property is used not for profit or lease exclusively for the purposes of the association and is necessary for the location and convenience of the buildings of the association. This paragraph does not apply to any university, college or high school fraternity or sorority. Property reserved for a chartered college or university is exempt from assessment. Leasing buildings owned by associations listed in this paragraph for schools, public lectures, concerts or parsonage does not waive this exemption from assessment.

(h) Owned by any corporation formed solely to encourage the fine arts without capital stock and paying no dividends or profits to its members.

(i) Under any endowment or trust for the benefit of a state historical society.

(j) Owned and used exclusively by any state or county agricultural society or by any corporation or association for the encouragement of industry by agricultural and industrial fairs and exhibitions or for exhibition and sale of agricultural and dairy stock, products and property. Real property exempt under this paragraph may not exceed 80 acres. The corporation or association may permit use of this property as places of amusement.

(k) Owned by any cemetery association under s. 157.03 or any other person maintaining a cemetery, including any building located in the cemetery and owned and occupied exclusively by the cemetery association for cemetery purposes or any property held under s. 157.05 or 157.11.

(L) Used as a children's home.

(m) On which a Wisconsin national guard armory is located.

(n) Of any public art gallery to which the public has free access not less than 3 days per week.

(o) Of any religious organization, up to 320 acres, used as a home for the mentally ill, as defined in s. 51.01 (13).

(p) On which is located a memorial hall to members of the armed forces, owned by the Grand Army of the Republic, the Women's Relief Corps, the Sons of Veterans, the United Spanish War Veterans, the American Legion or the Veterans of Foreign Wars.

(q) Owned and used exclusively by any collective bargaining unit established under ch. 111.

(r) Owned and used exclusively by any farmers' organization.

(s) Owned by the Boy Scouts and Girl Scouts of America.

(t) Owned by an incorporated turner society and used exclusively for educational purposes.

(3) PRELIMINARY HEARING. (a) After the city adopts a resolution under sub. (1), the board shall publish a class 3 notice under ch. 985 that at a specified time and place the board shall meet to hear the testimony of any interested party regarding the benefits or damages resulting from the proposed improvement. The notice shall also briefly describe the general nature of the proposed improvement for which the assessment of benefits and damages is to be made and the general boundary line of the benefit district.

(b) At least 12 days before the hearing the board shall commence publishing the class 3 notice and mail a copy of the notice to the last-known mailing address of any owner of property that may be damaged or benefitted by the proposed improvement. The board shall also mail a copy of the notice to a mortgagee of each parcel of property affected by damages. Failure of these notices to reach an owner or mortgagee does not invalidate the assessment of benefits or damages.

(c) The board shall hold the preliminary hearing for at least 3 successive days, Sundays and legal holidays excluded, at which it shall hear testimony and consider evidence on the damages and the benefits resulting from the proposed improvement. Following the testimony, the board shall appraise the damages to property to be condemned by the proposed improvement. The board shall add the damages, the estimated expense of the proposed improvement and the cost of the proceedings and shall apportion the total cost among the property benefited in proportion to the benefits resulting from the proposed improvement. The board shall reduce its assessment of benefits to real property remaining of a larger parcel from which a portion has been given or dedicated for use as part of the proposed improvement by the reasonable value of the real property given or dedicated.

(4) **TENTATIVE ASSESSMENT OF BENEFITS AND DAMAGES.** The damages appraised under sub. (3) (c) are the compensation to all owners of the property. The board shall state separately the assessment of benefits to each piece of property. The board shall balance the appraisal of damages against any assessment of benefits to remaining property and record the difference.

(5) **REVIEW HEARING.** (a) After tentatively assessing benefits and damages under sub. (4), the board shall commence publishing a class 3 notice under ch. 985 stating that the tentative assessment is complete and will be open for review at a certain time and place. The notice shall also include the information required under sub. (3) (a).

(b) At least 18 days before the review hearing the board shall publish the notice and shall mail a copy of the notice as specified in sub. (3) (b). Failure of these notices to reach an owner or mortgagee does not invalidate the assessment of benefits and damages.

(c) The board shall hold the review hearing for at least 2 days, at which it shall hear testimony and consider evidence on the amount of benefits and damages assessed.

(d) Following the review hearing the board shall review the testimony and evidence received and determine its final assessment of benefits and damages. The board shall list its final assessment of benefits and damages separately and shall also list the difference between the benefits and damages to each parcel of property, so that the owner pays or receives only the difference. The board shall report its final assessment in writing to the common council.

(6) **COMMON COUNCIL HEARING.** (a) The common council shall record the date the final assessment report is submitted under sub. (5) (d) in its journal with a brief statement describing for what purpose and in what general locality the assessment has been made. The common council may not act upon the report until the day after the report's submission.

(b) The common council may confirm the assessment or remand the assessment to the board for revision and correction. If the common council remands the assessment to the board, the board shall review, correct and revise the assessment by holding a public hearing and providing notice of the hearing under sub. (3), reappraising damages and benefits under sub. (4) and allowing review of the revised assessment under sub. (5). The common council shall hear the revised assessment under this subsection. If the common council fails to confirm the assessment or remand the assessment to the board for revision and correction, it shall adopt a resolution terminating the project. Termination does not prevent the city from including the same property in a subsequent public improvement that involves the same or another municipal purpose.

(7) **RECORDS.** (a) After confirming the assessment under sub. (6) (b) the common council shall deliver a certified copy of the assessment to both the city treasurer and the city comptroller.

(b) The city attorney shall file with the register of deeds a certified copy of the resolution confirming the assessment of benefits and damages together with a description of the property to be condemned and the map showing the location of the condemned

property. The assessment of benefits and damages need not be filed with the register of deeds.

**32.58 Benefit assessment payments.** (1) **MAILING BILLS TO OWNERS.** After the common council confirms the final assessment of benefits and damages the city treasurer shall mail a bill for the full amount of the benefit assessment to the last-known mailing address of any owner of each parcel of property within the benefit district, as listed on the tax roll. The bill may be paid without interest if payment is remitted to the city treasurer within 45 days of the date of billing. Failure of this mailing to reach an owner does not affect the assessment or create any liability.

(2) **LATE PAYMENTS.** (a) 1. This paragraph does not apply if the city issues bonds under s. 32.67 or 32.69 (2).

2. If any property owner fails to pay the benefit assessment in full within 45 days of the date of billing, the city treasurer shall place the assessment plus any interest accruing on the tax roll, subject to the following conditions:

a. If the unpaid principal equals or exceeds \$125, the bill shall be spread equally over the first available tax roll and the next 5 tax rolls. The common council may direct that unpaid assessments to finance a municipal parking system under s. 66.079, plus interest accruing, be spread over the first available tax roll and up to the next 19 tax rolls.

b. If the unpaid principal is less than \$125, the bill shall be added to the first available tax roll.

c. The common council shall establish the interest rate on unpaid principal.

(b) 1. Any property owner may pay the outstanding principal and interest on a benefit assessment in full at any time. Unless the city issues or will issue bonds under s. 32.67 or 32.69 (2), interest on the benefit assessment is computed to the date of payment. If the city issues or will issue bonds, interest is computed to a date 6 months following the date of payment and interest on an instalment of the assessment that falls due within this 6-month period is computed to the date the instalment falls due.

2. After payment in full the city comptroller may purchase any bond issued against the assessment, without action of the common council, to prevent further payment of interest on the bond. The city may cancel the bond after purchase. The city comptroller shall report to the common council each July concerning all bonds purchased and canceled.

(3) **FAILURE TO PAY.** If any property owner is delinquent in paying a benefit assessment:

(a) The county treasurer, acting under s. 74.10 or 74.39, or the city, if authorized to act under s. 74.03 (10), may sell the owner's property to collect the delinquent assessment, unless a special improvement bond under s. 32.67 is issued against the property. If the city has issued a special improvement bond against the owner's property, it may foreclose the property to collect the delinquent assessment. Even if only part of the property is within the benefit district and assessed benefits, the entire property may be sold or foreclosed to collect the delinquent assessment.

(b) The city may attach a lien on the owner's property as of the date the assessment is placed on the tax roll under sub. (2) (a). The lien has the same priority as liens under s. 74.01.

(4) **SEPARATE ACCOUNT.** The city treasurer shall keep a separate account for the collection of benefit assessments that finance special improvement bonds issued under s. 32.67. The amounts collected shall be used to pay the principal and interest on the bonds.

**32.61 Appeal to circuit court.** (1) **LIMITATION ON REMEDIES.** An appeal to the circuit court is the only remedy for damages incurred under this subchapter and is the exclusive method of reviewing any assessment of benefits.

(2) **STATUTE OF LIMITATIONS; BOND.** Any person with any interest in property assessed benefits or damages may, within 20 days after the common council confirms the assessment, appeal to the circuit court of the county in which the assessment is made by filing with the clerk of the circuit court a notice of appeal. The notice shall state the person's residence and interest in the property, the interest of any other person in the property, any lien attached to the property and the grounds of the appeal, together with a \$100 bond to the city for the payment of court costs. At least 2 sureties shall sign the bond and state on the bond that each has a net worth in property within this state not exempt from execution at least equal to \$100. If the city attorney objects to the bond or sureties the judge shall determine the suitability of the bond or sureties. Any surety company authorized to do business in this state may sign the bond as surety. Within this 20-day period the appellant shall also deliver a copy of the notice of appeal and bond to the city attorney. The city clerk shall send to the clerk of the circuit court a certified copy of the assessment of benefits and damages. If more than one person appeals, the city clerk shall send only one certified copy of the assessment for all appeals. Any person may pay any benefits assessed against his or her property without prejudice to the right of appeal under this section.

(3) **PROCEDURE ON APPEAL; PARTIES; COSTS.** The appeal shall be conducted before a jury. The court may permit any person interested in the benefits or damages to the same piece of property to become a party to the appeal if the person submits a petition setting forth the nature and extent of the interest. If the judgment is less than the damages assessed by the city, the judgment less the taxable costs of the city is full compensation for the damages. If the judgment is greater than the damages assessed by the city, the judgment is full compensation for the damages, plus interest only on the amount by which the judgment increases the award. If the city pays the award of damages under s. 32.62 (2) (c), the city may withdraw the award prior to the determination of an appeal only if it files a bond approved by the court to repay the amount withdrawn with costs and with interest from the date of the withdrawal. If the judgment decreases the benefits assessed by the city or increases the damages assessed, the appellant shall recover taxable costs on the appeal. Under any other judgment, the city recovers taxable costs. The city may pay any increased cost from its general fund by levying a tax or by issuing a general obligation bond under s. 67.04 (2) (zr). The appeal has preference over all other civil cases not on trial and may be brought on for trial by either party.

(4) **ASSESSMENT CHANGES ON APPEAL.** (a) The city shall correct its tax roll to reflect any changes in benefits assessed by the judgment under sub. (3).

(b) If the appellant pays any instalment or all of any benefits assessed prior to a judgment reducing the benefits assessed, the city shall refund the excess payment plus interest. If the city sells any property for any delinquent benefit assessment that is subsequently reduced by a judgment, the city shall refund the amount reduced plus interest upon presentation of a receipt showing the redemption of the property from the tax sale.

(c) If the appellant pays any instalment or all of any benefits assessed or if the city sells any property for any delinquent benefit assessment prior to a judgment increasing the benefits assessed, the city shall enter the increase in benefits, plus interest on the increase in benefits from the date of the judgment entered on appeal, on the tax roll against the property. The city shall enter the revised assessment on the tax roll in one sum if the original benefit assessment was payable or paid in one sum, or shall add equal portions of the revised assessment to any subsequent benefit assessment instalments assessed against the property and enter the additions on the following tax rolls.

(d) If the city issues particular special improvement bonds under s. 32.67 (2) prior to a judgment reducing the benefits assessed against the property, any foreclosure of the bonds shall be for the reduced amount only of the benefits assessed. The city shall reimburse the bondholder for the difference due on the bonds.

**32.62 Transfer of title.** (1) **FEE SIMPLE TITLE TO CITY.** If the city acquires any property by gift, purchase or condemnation under this subchapter, the city holds fee simple title to the property except that the city may acquire only an easement for streets, alleys, bridges, viaducts or water or sewer mains or branches and may acquire temporary construction easements.

(2) **PROCEDURE.** (a) The city acquires title to any property if any of the following occur:

1. The city pays the property owner the damages assessed under s. 32.57.

2. The city reserves sufficient funds to pay the property owner the damages assessed under s. 32.57 and the board provides the property owner with 10 days' notice of the availability of the funds prior to acquisition by publication in any newspaper of general circulation in the city.

3. The city deposits the damages assessed under s. 32.57 with the clerk of the circuit court for the county in which the property is located for payment by order of the court under par. (c).

(b) Any person entitled to payment for an assessment of damages exceeding \$200 shall furnish to the city an abstract of title extended down to date to prove ownership, before the city may pay the assessment of damages. If the assessment of damages does not exceed \$200, the claimant may furnish a certificate of title to prove ownership instead of an abstract of title.

(c) The city may deposit the assessed damages with the clerk of the circuit court for the county in which the property is located. Deposit with the circuit court clerk relieves the city of any responsibility for the payment of damages and vests title to the property with the city. The circuit court has jurisdiction over the application of any party interested in the assessed damages, after notifying all interested parties and receiving proof of the applicant's interest, to distribute the payment of damages.

(d) 1. The city may deposit the assessed damages with the clerk of the circuit court for the county in which the property is located if either of the following persons fails to accept a payment of damages:

a. A trustee vested with title to property condemned under this subchapter but who is not authorized to convey the property.

b. A guardian of a person with an interest in property condemned under this subchapter.

2. The city shall notify the trustee or guardian of the deposit under subd. 1. Deposit with the circuit court clerk relieves the city of any responsibility for the payment of damages and vests title to the property with the city. The circuit court has jurisdiction over the application of any trustee or guardian to determine the rights of the parties and distribute the payment of damages.

(e) Payment of damages assessed under s. 32.57 voids all encumbrances to title, including any contract, lease or covenant attached to the property. Payment of assessed damages satisfies the interests in the property of all parties to the encumbrances.

(3) **PAYMENT OF TAXES.** The city may collect any unpaid property taxes, including property taxes assessed for the current year prior to transfer of title to the city, by reducing the assessed damages payable to the property owner proportionately. The court with jurisdiction under sub. (2) (c) or (d) may reduce the assessed damages proportionately prior to ordering the distribution of the assessed damages.

(4) **WRIT OF ASSISTANCE.** If the city is unable to obtain possession of the property under sub. (2), a circuit court may grant a writ of assistance with 24 hours' notice to assist the transfer of title. If the city receives a writ of assistance pending an appeal, the appellant may receive the money paid into court upon the order of the court without prejudice to the appeal.

**32.63 Completing certain improvements.** (1) APPLICATION. This section applies to any plan of improvement that includes the acquisition of property either for the purpose of laying out or improving an alley or street, as defined in s. 340.01 (2) and (64), or for the purpose of establishing any park or memorial ground and that includes any of the following improvements:

- (a) Creating or improving gutters, curbs or sidewalks of the alley or street.
- (b) Improving any park or memorial ground.
- (c) Erecting any bridge or viaduct.

(2) PERFORMANCE. After approving the plan of improvement under s. 32.55, the city may complete the improvement without submitting further estimates of the cost of the improvement to the common council. The common council may not revise its assessment of benefits or damages for the improvement.

**32.64 Appointing a guardian; service of notice.** Any minor or incompetent as defined in s. 880.01 (4) with an interest in affected property, any interested person as defined in s. 880.01 (6) or the city attorney may petition the circuit court for the county in which the property is located under s. 880.07 for appointment of a guardian to act for the minor or incompetent under this subchapter. Any notice to the minor or incompetent required under this subchapter shall be served on the guardian.

**32.66 Bonding.** The common council may, by resolution, authorize the issuance of general special improvement bonds or particular special improvement bonds to finance an improvement. The common council may register the bonds as to principal under s. 67.09 and may call the bonds on terms it prescribes.

**32.67 Special improvement bonds.** (1) GENERAL SPECIAL IMPROVEMENT BONDS. General special improvement bonds are payable as to principal and interest on April 1, as provided in sub. (3) from the collection of assessments of benefits for any improvement. The city comptroller shall issue the bonds. The common council shall determine the amount and denominations in which the bonds are issued and set the interest rate. The common council may issue the bonds in series. The bonds shall have interest coupons attached, bear the seal of the city and be signed by the mayor, one member of the board of assessment and the city comptroller. The mayor's signature may be engraved.

(2) PARTICULAR SPECIAL IMPROVEMENT BONDS. (a) The common council may authorize the issuance of particular special improvement bonds directly against any affected property. The city shall set the interest rate for these bonds.

(b) The city comptroller shall issue the bonds for the amounts assessed against the property. The bonds shall be made payable as provided by the authorizing resolution of the common council in equal annual instalments plus interest on the unpaid part of the bond accruing to the date of payment on April 1, as provided in sub. (3). The 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 and the amount of each instalment plus interest payable and the times of payment, describe the property upon which the bond is assessed, bear the seal of the city, be issued in the city's name and be signed by the mayor, one member of the board of assessment and the city comptroller. The signature of the mayor may be engraved. Coupons shall be attached to each bond in amounts equal to the instalment payments due plus interest remaining on unpaid portions of the bond.

(c) The lien of the bond attaches on the date the assessment is placed on the tax roll under par. (e).

(d) If the city fails to pay any instalment of the bond plus interest because the assessment against the property is delinquent, the bondholder may require the entire amount of the bond plus interest to be paid within 3 years after the default. The bondholder may foreclose against the property in the manner provided under s. 75.19. The bondholder

may also recover reasonable attorney fees and costs. The time for redemption of the property may be shortened by order of the court. A copy of the bond foreclosed may be filed as a part of the judgment roll in the action in place of the original.

(e) If bonds are issued, the city comptroller shall place benefit assessments against property financing the bonds on the tax roll for the year of issuance or, if the city comptroller is unable to place the assessments on this tax roll, on the next year's tax roll. Placement of benefit assessments on the tax roll is only for the purpose of collection by the city treasurer at the same time as other taxes are collected. If the owner defaults on payment of the assessment the property may not be sold for taxes. The sole remedy for the enforcement of the payment of the bonds is the foreclosure action against the property under par. (d).

(3) **TIME OF BOND PAYMENTS.** Bonds or coupons are payable at the office of the city treasurer on April 1 following the expiration of the tax collection period of each year in which the assessments may be placed on the tax roll for collection, to the extent the assessments financing the bonds or coupons are received.

(4) **NOT A DEBT OF THE CITY.** (a) No bond issued under this section is a debt of the city, except to the extent the city treasurer collects assessments for payment of the bonds.

(b) The common council may guarantee to pay any deficiencies in the collection of any assessment in an amount up to the principal and interest of any bond or coupon. If the city pays a deficiency it may become the owner of the bond or coupon, subrogated to the rights of the bondholder. The city may apply any redemption payments on delinquent assessments to the payment of any coupons or bonds it holds.

**32.68 Tax delinquent fund.** The city may create a tax delinquent fund to cover delinquent payment of assessments. The common council may authorize payment of deficiencies in the collection of assessments to pay the amount due on bonds issued under s. 32.67.

**32.69 Alternative financing by general obligation bonds, taxation or anticipation notes.**

(1) **FUNDING.** The city may finance any improvement under this subchapter by issuing general obligation bonds, levying a tax or by borrowing on anticipation notes. The city may collect assessments on property that finances bonds under s. 32.67 and apply the assessments to pay the principal and interest of general obligation bonds, or to reduce general taxes if the city levies a tax to finance an improvement. If the city issues no bonds under s. 32.67, the city shall apply all assessments collected to pay the principal and interest of general obligation bonds or to reduce taxes if the city levies a tax to finance an improvement.

(2) **GENERAL OBLIGATION BONDING.** The common council may adopt an initial resolution to issue general obligation bonds to pay the cost of laying out or improving any alley or street, as defined in s. 340.01 (2) and (64), without submitting the initial resolution to the electors of the city unless a number of electors equal to or greater than 10% of the votes cast for governor in the city at the last general election file a petition with the city clerk requesting submission. The city shall conduct any referendum for approval of the initial resolution as provided in s. 67.05 (5).

(3) **ANTICIPATION NOTES.** The common council may authorize borrowing on notes signed by the mayor and city comptroller in anticipation of the incoming assessments to pay the cost of any improvement authorized under this subchapter. The city shall pay the notes out of the assessments received in the year of issuance. The city shall pay the notes not later than April 1 following the date of issuance. The city may pay any deficit due to delinquencies in the collection of assessments out of the tax delinquent fund under s. 32.68.

**32.70 Statute of limitations.** Unless the action commences within one year after January 1 following the date the assessment of benefits is placed on the tax roll under s. 32.58 (2), no person may contest the sale of property or issuance of any tax sale certificate for

nonpayment of an assessment. Commencing an action is subject to s. 32.61 and does not prevent the issuance or payment of any bonds issued under s. 32.67 or 32.69.

**32.71 Liberal construction.** This subchapter shall be liberally construed to provide the city with the largest possible power and leeway of action.

**32.72 Approval by the electorate.** Sections 32.50 to 32.71 do not take effect in any city until the following question is submitted to the electors of the city at a special election and adopted by a majority vote of the electors voting: "Shall subchapter II of chapter 32, Wisconsin Statutes, be effective in the city of ....., thus allowing the city to acquire and condemn property for street widening and similar purposes, financed through assessments of benefits and damages?"

SECTION 6. 63.27 of the statutes is amended to read:

**63.27 Rules not applicable to certain officers.** Officers who are elected by the people, or who by the statutes are required to be elected by the city council, inspectors and clerks of election, one deputy in each department whose office was created and exists by reason of statute, the superintendent and teachers of schools, the members and secretary-business manager of the board of school directors, staff of the board of school directors if the board so decides pursuant to under s. 119.18 (10) (c), heads of principal departments of the city, all members of the law, fire and police departments, permanent or temporary technical advisors and experts employed by the board of assessment under s. 32.52 (4), one private secretary of the mayor and any other officers, clerks or employes in the service of the city whose positions, in the judgment of the city service commissioners, cannot for the time being be subjected, with advantage to the public service, to the general rules prepared under this chapter shall not be affected as to their election, selection or appointment by ~~such~~ rules made by said the commissioners.

SECTION 7. 66.079 (2) (b) of the statutes is amended to read:

66.079 (2) (b) The cost of operating and maintaining any parking system or facility may be assessed not more than once in each calendar year against all property in a benefited area, such area and such assessments to be determined in the manner prescribed by either subch. II of ch. 32 or by s. 66.60 ~~or by chapter 275, laws of 1931~~. Such costs may include a payment in lieu of taxes, operating, maintenance and replacement costs, and interest on any unpaid capital cost.

SECTION 8. 66.610 (5) (f) of the statutes is amended to read:

66.610 (5) (f) Proceedings governing the establishment of a pedestrian mall or the undertaking of a pedestrian mall improvement ~~shall be~~ are governed by ~~chapter 275, laws of 1931 as the same has been and from time to time may be amended, the provisions of which are made a part of this section so far as applicable and not inconsistent herewith subch. II of ch. 32.~~

SECTION 9. 67.04 (2) (zr) of the statutes is created to read:

67.04 (2) (zr) To pay the costs of an improvement under s. 32.69 (3) or to pay the cost of laying out or improving any alley or street under s. 32.69 (2).

SECTION 10. Laws of 1931, chapter 275, as last affected by chapter 347, laws of 1975, is repealed.

**SECTION 11. Nonstatutory provisions.** Notwithstanding section 32.72 of the statutes, subchapter II of chapter 32 of the statutes, as created by this act, is effective in any city that has used chapter 275, laws of 1931, to acquire and condemn property before the effective date of this act.

**SECTION 12. Terminology changes.** Wherever the term "chapter" appears in the following sections of the statutes, the term "subchapter" is substituted: 32.01 (intro.), 32.03 (1), 32.035 (4) (d), 32.075, 32.10, 32.12 (1) and (3), 32.13, 32.14, 32.16, 32.17 (2) and (3), 32.19 (2) (c), (4) (a) (intro.), as affected by 1983 Wisconsin Act 27, and (b) (intro.), as

affected by 1983 Wisconsin Act 27, and (4m) (a) (intro.) and (b) (intro.), as affected by 1983 Wisconsin Act 27, 32.195 (intro.), 32.197, as created by 1983 Wisconsin Act 27, 32.21 and 32.26 (1) and (4).

**SECTION 13. Cross-reference changes.** In the sections of the statutes listed in Column A, the cross-references shown in Column B are changed to the cross-references shown in Column C:

<b>A</b>	<b>B</b>	<b>C</b>
Statute Sections	Old Cross-References	New Cross-References
32.05 (intro.)	chapter 275, laws of 1931, as amended (Kline Law)	subch. II
32.06 (intro.)	chapter 275, laws of 1931, as amended (Kline Law)	subch. II
32.19 (1)	ch. 275, laws of 1931	subch. II
32.19 (2m)	chapter 275, laws of 1931, as amended (Kline Law)	subch. II
32.22 (2)	chapter 275, laws of 1931, as amended (Kline Law)	subch. II
66.079 (2)(a)	s. 66.60 or chapter 275, laws of 1931, as amended	subch. II of ch. 32 or s. 66.60
66.610 (2)(c) and (5)(d)	chapter 275, laws of 1931, as amended	subch. II of ch. 32
67.05 (5)(b)	67.04 (2)(zo) or (zq) or (4)(e)	67.04 (2)(zo), (zq) or (zr) or (4)(e)

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