

CHAPTER 329

AN ACT to amend 59.965 (5) (a), (d) 1 and 2, (f), (h) 2 and 3, (7) and (8) and 84.09 (7); to repeal and recreate 59.965 (5) (i); and to create 59.965 (5) (d) 6 of the statutes, relating to expressways in counties having a population of 500,000 or more.

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

SECTION 1. 59.965 (5) (a) and (d) 1 and 2 of the statutes are amended to read:

59.965 (5) (a) As soon as possible after its organization, consider and devise a general plan of expressways to serve the entire county. Such plan shall be presented to the governing body of each municipality through which a part of the expressway system is routed for its consideration and approval. The commission may in its discretion, prior to its presentation of such general plan to the county board as hereinafter provided, by formal action modify such general plan to meet objections raised by the governing body of any municipality through which a route of such expressway passes. If the approval of such governing body is not granted within 60 days from the date of submission, the commission shall present the general plan to the state highway commission, which shall hold a public hearing on that part of the plan which is located in such municipality. After such hearing, the state highway commission shall make recommendations to the commission with reference to the matters objected to by the municipal governing body. Thereafter the commission shall incorporate such recommendations in its general plan. When the approval of the necessary local governing bodies has been obtained or the recommendation of the state highway commission has been obtained in lieu thereof, the general plan shall be presented to the county board of such county. The county board upon receipt of such general plan shall promptly consider the same and approve or reject such plan. If the plan \* \* \* is rejected, the commission shall devise a revised plan with such modifications or changes as to it seem proper, secure the approval thereof by the governing bodies of the municipalities affected or the recommendations of the highway commission as hereinbefore provided and submit such revised plan to the county board, and thereupon the county board shall again consider and approve or reject such plan. This procedure shall continue until some general plan has been approved by the county board. Thereafter, upon request of the commission, such general plan may be amended by the county board in conformity with such request, *provided that a deviation of not to exceed 1,000 feet from any expressway route in the approved general plan may in the discretion of the expressway commission be authorized and shall not be an amendment requiring approval by the county board.*

(d) 1. To acquire in the name of the county or in the name of the state when so directed by the state highway commission, after the county board has adopted an expressways project budget, or in advance thereof with the general approval of the county board as hereinafter provided, by donation, purchase, condemnation or otherwise, such lands, including any improvements thereon, and any interests, easements, franchises, rights and privileges in or pertaining to lands, of whatever nature and by whomsoever owned, as the commission deems are necessary and required for expressway purposes, and to dispose of the same. *The use of expressway lands for the location or relocation of any facility for mass transportation, including private or public utilities, is authorized when so determined by*

*the expressway commission and approved by the county board.* The commission may purchase or accept donation of remnants of tracts or parcels of land remaining at the time or after it has acquired by condemnation or after or coincident with its acquisition by purchase or donation portions of such tracts or parcels for expressway purposes where in the judgment of the commission such action would assist in rendering just compensation to a land owner, a part of whose lands are required for expressway purposes, and would serve to minimize the over-all cost of such necessary taking by the public. The county may dispose of such remnants. No lands or interest of any kind therein acquired as hereinabove provided shall be disposed of by the county without the consent of the commission, and all moneys received for any such lands, improvements thereon or interests of any kind therein, so disposed of, shall be credited to the land acquisition account as an abatement of expense. No lands acquired by the commission, as provided in this subsection, in the name of or in trust for the state, shall be disposed of by the county without prior approval of the state, and the proceeds of such sale shall be remitted to the state or retained and used for expressway purposes when so directed by the state highway commission.

2. The commission may also, for specific approved highway projects or otherwise, with the general approval of the county board once given and after the general plan of expressways has been adopted by the county board, as the same may be amended, acquire lands and interests therein of the nature and in the manner specified in this paragraph for the right of way of such expressways in advance of the time of the adoption of an expressway project budget including such lands and interests. Such power may be exercised when in the judgment of the commission the public interest will be served and economy effected by forestalling development of such lands which will entail greater acquisition costs at a later date. Upon such acquisition the commission may improve, use, maintain or lease such lands until the same are required for expressway construction. It is recognized that there may necessarily be a period of time between the acquisition of needed lands for right of way and the commencement of actual site clearance and construction, but such fact shall not minimize the public purpose of such acquisition. The owners of such lands at the time of such acquisition shall have the first right to enter into lease thereof with the county acting by the commission until such lands are needed for expressway construction. Any lands so leased *for more than one year* shall be subject to general property taxation during the term of the lease. All rentals shall be credited to the project or to the expressway land acquisition account. On request of the commission, the county board shall provide out of funds acquired by bond issue or otherwise a land acquisition fund in an amount specified by the commission from time to time, but not in excess of \$5,000,000 of expendable funds at any one time, to be used primarily for the acquisition of lands, improvements thereon and interests therein as specified in this subsection prior to the approval of the specific expressway project for which such lands or interests will be required. Such fund shall be adjusted to reflect acquisition costs for lands and interests therein thereafter incorporated in specific approved expressway projects by transferring both the appropriations and the acquisition costs therefor to the proper expressway improvement expenditures account.

SECTION 2. 59.965 (5) (d) 6 of the statutes is created to read:

59.965 (5) (d) 6. When the commission has acquired title to lands in fee either for the county or the state, the county shall have power to use and develop any portion of said lands not directly needed for expressway-roadway purposes and which do not interfere with the primary expressway purpose, and without exclusion because of enumeration the power to

use the subsoil beneath the ground, the ground level area or air space above the ground, for parking, storage or building purposes, subject to municipal land use zoning regulations except as to parking, provided that where the expressway right of way area in question is either on the federal interstate system or on a state trunk highway, the consent of the state highway commission to such development and use shall be obtained prior to construction or initiation of such use, and the state shall receive a share of the rentals or sale price derived from such use in the proportion that the amount of federal or state funds used in the purchase of the site bears to the total cost of the land and improvement which is the subject of such sale or rental. Such sharing shall not be made until the county has been reimbursed for all sums expended by it, in the developments herein above referred to and such sharing shall terminate when the fair proportion of the federal and state funds allocable to the purchase of the area so developed has been reimbursed. No supplies or service for motor vehicles at retail, other than the parking thereof, shall be dispensed or rendered at, on or in connection with any portion of such lands developed or used for parking, storage, building or any other purpose.

SECTION 3. 59.965 (5) (f) and (h) 2 and 3 of the statutes are amended to read:

59.965 (5) (f) 1. Whenever the commission \* \* \* *determines* that it is necessary for the proper construction of an expressway project that streets or alleys shall be vacated in whole or in part, or be dead-ended at the expressway right of way line; that existing streets or alleys be relocated; that new streets or alleys be laid out and opened; that accessory streets or ramps to serve as approaches to the expressway be constructed; *that existing streets, leading to or off from expressway ramps, be designated as "one-way" streets for such distance as the commission and the municipality wherein such streets are located shall agree is necessary for such purpose*; that the grade of existing streets be changed or that the traveled portion of existing streets be widened and improved so as to facilitate entrance to the expressway, it shall formulate a tentative order evidencing such requirement and file a certified copy thereof with the clerk of each town, city or village affected by such tentative order for consideration thereof by the governing body of such town, city or village.

2. Said governing body or *such committee thereof as said governing body shall designate* shall hold a public hearing in considering such tentative order and shall give notice of such hearing by publication once a week for 2 successive weeks in such newspaper, published in the county, as such governing body may designate.

3. If such tentative order is not approved within 90 days from the date of such filing, the commission shall present the tentative order to the state highway commission, which shall hold a public hearing thereon, of which hearing the municipality in question shall be given notice. The highway commission shall have jurisdiction to pass upon the necessity and reasonableness of the proposed tentative order, and it may approve, modify and approve or disapprove of the order, and its decision thereon shall be final, with no review allowed under ch. 227.

4. If such tentative order is approved by the governing body of the municipality affected, or if it is approved or modified and approved by the state highway commission, the county expressway commission may thereafter issue a final order identical with the original tentative order as the same may be modified by the state highway commission's decision. A certified copy of such final order shall be filed with the clerk of the town, village or city affected. Notice of the making of such order shall be published once a week for 2 successive weeks in such newspaper published in the county as the county board shall designate to publish official county notices.

5. The governing body of such town, village or city shall within 30 days after such filing take the necessary action to comply with such order and in so doing shall not be limited by the objections of any abutting owner, and the provisions of s. 80.32 (4) shall not be applicable to any vacation or discontinuance required by such order and any such town, village or city may act upon the initiative of its governing body without the necessity of obtaining the consent of any abutting owners, notwithstanding any provisions of chs. 60, 61, 62 and 66 and s. 80.32 (4) and any and all other provisions of law to the contrary.

6. If the town, village or city does not comply with the order within a reasonable time, the commission may perform the work required by the order with its own forces or by contract and in so doing and for such purpose shall have the same powers and freedom from limitations as are vested by the above specified chapters and this \* \* \* subsection in the governing body of the town, village or city.

7. The plans, specifications, proposed contracts and the appraisal of damages, if any, caused to abutting owners by compliance with such order shall be subject to approval by the commission prior to the commencement of any work under such order but such requirement for approval of such order shall not affect the abutting property owners' rights of appeal from the determination of damages by the commissioner of public works of the city or by any other authorized person or body.

8. The cost of performing such work as may be required by any order of the commission under this subsection, including damages granted for changes of legally established grade or necessary acquisition of lands, shall be paid by the county from expressway funds as an item of the particular expressway project budget upon presentation of vouchers which have been approved for payment by the governing body of such town, village or city and the commission. If the payment made by the county has been increased by reason of the town, city or village requesting an expenditure in excess of replacement or termination costs, the said town, village or city shall reimburse the county for such excess cost. Said reimbursement shall be credited by the county to abatement of the respective expense for which it was received.

(h) 2. Whenever the commission proposes to submit an expressway project to the county board for its approval it shall give notice thereof to each privately owned public utility or other person affected by such project indicating in such notice the action which it desires such utility or person to take, and such utility or person shall within 90 days after receipt of such notice furnish to the commission its plan to comply with such request \* \* \*.

3. When the utility pursuant to the commission's order proceeds with the work in a manner satisfactory to the commission, the county by the commission shall pay the utility from expressway funds upon monthly estimates of work performed and submitted for payment by the utility, two-thirds of the net cost incurred by the utility in performing such work, after deducting reasonable and fair credits for items salvaged, for any betterments made at the option of the company and for the value as carried on the utility's books, of the used life of a facility retired from use if the service life of the new facility will extend beyond the expectancy of the one removed. *The county shall not be liable to pay any value whatever for utility facilities where use of the same has been abandoned for reasons other than the construction or proposed construction of an expressway project even though the installation is intact.*

SECTION 4. 59.965 (5) (i) of the statutes is repealed and recreated to read:

59.965 (5) (i) *Entry on private lands.* The commission, its agents or servants, may enter upon any land in the county for the purpose of

making surveys, test borings or any other type of examination necessary in the performance of its duties and shall be liable to restore the surface of said lands to the same or as good condition as existed at the time of such entry and for any other actual and demonstrable damage caused to said lands by such entry.

SECTION 5. 59.965 (7) and (8) of the statutes are amended to read:

59.965 (7) The state highway commission and any county having a population of 500,000 or more are authorized to enter into an agreement providing that when the proceeds of bonds issued by such county are expended in the improvement of a portion of the federal aid highway system as a part of the comprehensive expressway system in such a county, and are so expended under the provisions of ch. 84, and in compliance with section 5 of the federal aid highway act of 1950, or acts amendatory of or supplementary to such section, and regulations applicable thereto, such sum of money derived from federal aid for highways which may be authorized by the congress and apportioned to this state \* \* \* for any \* \* \* fiscal year as shall be stipulated in the aforesaid agreement may be applied to aid in retirement of annual maturities of the principal indebtedness of such bonds, and that to the extent that such federal aid can be claimed and received by the state for such purpose, it will upon receipt be paid to the county. Any money so paid shall be deposited by the county in the sinking fund provided for the retirement of the bond issue of which such bonds formed a part.

(8) The state highway commission is authorized to enter into a contract with a county containing a population of 500,000 or more providing that, to the extent that the proceeds of bonds issued by such county are expended under the provisions of ch. 84 in the improvement of state trunk highways or connecting streets, in addition to the agreed county share of such improvement and for which the county has not been or will not be reimbursed with federal funds, such sum as may be approved by the state highway commission \* \* \* in any \* \* \* fiscal year \* \* \* will be paid to such county to aid in retirement of the annual maturities of the principal indebtedness of such bonds from funds appropriated and available to the commission for the improvement of state trunk highways or connecting streets. Payments may be made pursuant to such agreement, before or after the bonds mature, from funds appropriated and available to the commission for the improvement of state trunk highways or connecting streets after making provision for adequate maintenance and traffic service, but this section or such agreement shall not constitute a commitment on the part of this state or the county to provide such funds. Any money so paid shall be deposited by such county in its sinking fund created for the purpose of payment of the bond issue of which such bonds formed a part.

SECTION 6. 84.09 (7) of the statutes is amended to read:

84.09 (7) When state highway funds or federal aid are involved in financing an expressway project pursuant to s. 59.965, the state highway commission, proceeding under the general authority in this section, may order that all or certain parts of the required land or interests therein shall be acquired by the county expressway commission. When so ordered, the expressway commission and the highway commission shall appraise and agree on the maximum price, including *all damages recoverable in condemnation proceedings*, considered reasonable for the lands or interests to be so acquired. The expressway commission shall endeavor to obtain easements or title in fee simple by conveyance of the lands or interests required, to the county or the state as grantee, all as directed in the highway commission's order. The instrument of conveyance shall be subject to approval by the highway commission, and shall be recorded in the

office of the register of deeds and filed with the highway commission. If the needed lands or interests therein cannot be purchased expeditiously within the *agreed* appraised price, the expressway commission may acquire them by condemnation under ch. 32, or \* \* \* *as* provided in s. 83.07 or \* \* \* *as* provided in sub. (2), *but any award by the expressway commission in excess of the agreed appraisal price shall be subject to review by the highway commission.* For the purposes and in the manner provided in s. 59.965 (5) (d) 1, when so directed in the highway commission's order, the expressway commission may acquire remnants, and with the approval of the highway commission the expressway commission may dispose of remnants and may improve, use, maintain or lease lands and interests acquired and held in trust for the state until they are actually needed for expressway construction. The net proceeds of such sales or rentals shall be remitted to the state or retained and used for expressway purposes when so directed by the highway commission.

Approved July 5, 1957.

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