

CHAPTER 202

AN ACT to repeal 32.05 (3) (f) and (7) (e), and 32.07 (1); and to amend 32.05 (5) and (7) (intro. par.), 32.06 (5), 32.07 (2), 62.23 (10) (a) and 66.431 (7) (a) and (8) (b) 1 and 2 of the statutes; and to repeal sections 7 and 8, and to amend sections 5 (3) and (4), 6 and 9 (2), as amended by chapter 352, laws of 1945, and 13 of chapter 275, laws of 1931, relating to making certain changes to eliminate the jury verdict of necessity in proceedings in condemnation as authorized by article XI, section 2, of the constitution.

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

SECTION 1. 32.05 (3) (f) of the statutes is repealed.

SECTION 2. 32.05 (5) and (7) (intro. par.) of the statutes are amended to read:

32.05 (5) When 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 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 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.

(7) (intro. par.) If the owner has not accepted the jurisdictional offer within the periods limited in sub. (6) or fails to consummate an acceptance as provided therein, the condemnor * * * may make an award of damages in the manner and sequence of acts as follows:

SECTION 3. 32.05 (7) (e) of the statutes is repealed.

SECTION 4. 32.06 (5) of the statutes is amended to read:

32.06 (5) When 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 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 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 such 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. The commencement of an action by an owner under this subsection shall not prevent a condemnor from filing the petition provided for in sub. (7) and proceeding thereon. Nothing in this subsection 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. This section shall not apply to any project initiated under s. 66.431, and in lieu of this section, s. 66.431 (7) shall govern.

SECTION 5. 32.07 (1) of the statutes is repealed.

SECTION 6. 32.07 (2) of the statutes is amended to read:

32.07 (2) If application is by the state or any commission, department, board or other branch of state government; or by a *city, village, town, county, board, commission, public officer, redevelopment authority created under s. 66.431* or housing authority created under ss. 66.40 to 66.404; or for the right of way of a railroad or a street or interurban railway up to 100 feet in width; or a telegraph, telephone or other electric line; or for the right of way for a gas pipeline, main or service; or for easements for the construction of any elevated structure or subway for railroad, street or interurban railway purposes, the petitioner shall determine necessity.

SECTION 7. 62.23 (10) (a) of the statutes is amended to read:

62.23 (10) (a) When the council by resolution * * * *declares* it necessary for the public use to widen any street or a part thereof, it may proceed as prescribed in ch. 32 * * *, except as herein modified. * * * *The determination of necessity by the council* shall not be a taking, but shall be an establishment of new future boundary lines.

SECTION 8. 66.431 (7) (a) and (8) (b) 1 and 2 of the statutes are amended to read:

66.431 (7) (a) Following the approval of redevelopment plan by the local legislative body, which approval is evidenced by a resolution adopted by a two-thirds vote thereof, a certified copy of such resolution together with a statement concerning its substance shall be served by the sheriff as is a summons, or if not found, then by registered mail to the address appearing on the written objection, to each owner of property filing written objections as provided in sub. (6) (b) 3, within 5 days following the approval of such resolution, and any owner of property directly affected by the redevelopment plan, and feeling himself aggrieved by the inclusion of his property within such plan, and such owner has filed written objections to such plan as provided in sub. (6) (b) 3, may petition the circuit court in the county in which such property is located within 30 days from the date of service of said certified copy and statement thereof. If an owner of property fails to file written objections to such plan as provided in sub. (6) (b) 3, he shall be precluded from filing a petition in the circuit court. Such verified petition shall state that the owner of the property is directly affected by the redevelopment plan, that his property is included within the boundaries of the redevelopment plan, and the basis for his petition. Within 15 days following the service of a copy of such petition, which shall be

served in the same manner as a circuit court summons, the authority shall answer, and the proceedings shall thereafter be scheduled for trial before a judge. The circuit court shall advance such case so that it may be tried at the earliest possible time. If the petitioner demonstrates to the satisfaction of the court that the inclusion of petitioner's property is fraudulent, arbitrary or capricious, the court shall order that such property be excluded from the plan, and the petitioner shall recover his actual disbursements, including his actual expert witness fees and actual attorney's fees, as approved by the judge, but not otherwise. Technicalities in the procedure applicable to the designation of boundaries or the approval of the plan shall not affect the validity of the plan unless substantial rights of any party are affected. Following the court's order, after hearing is held on the petition, either party to the proceedings may appeal to the supreme court within 30 days from the date of the order. In the event more than one petition is filed in the circuit court within the 30-day period, the proceedings may be consolidated for the purpose of trial in the discretion of the circuit court. The filing of such petition shall not act to either delay or stay the proceeding with the redevelopment plan, and the authority shall continue to exercise all of its powers with respect thereto. If the property is excluded from the plan by virtue of the court's determination, such result shall not affect the remaining parcels of the plan. The proceedings herein authorized shall constitute an exclusive remedy to such owner as to the taking power of the authority * * *.

(8) (b) 1. The authority shall first adopt a resolution of necessity finding that the acquisition of property within a project area is necessary to the carrying out of a redevelopment plan, and describing the parcels of property to be acquired through condemnation. The authority shall file a petition with the circuit court of the county in which the property is located and it may elect to file such petition either under * * * *ch. 32* or under subd. 2.

2. If the authority elects to file a petition under this paragraph * * *, such petition shall contain a description of the parcels of property to be acquired through condemnation, the names of the persons owning or having an interest in such property, and a brief statement as to the necessity of acquiring the property to carry out the redevelopment plan, if under this section, or a brief statement of the urban renewal plan, if under s. 66.435. The authority may also elect to include a recitation concerning the compensation to be paid with respect to the various parcels of property included in the petition, but such recitation may be omitted. The authority may include such other information in its petition as it deems appropriate. The petition may be addressed to all or an integral part of the area which is included within the redevelopment plan, it being intended that the redevelopment project may be divided into separate areas in order to permit a feasible method for executing the redevelopment plan. If the petition is addressed to some of the parcels of property included in the project area, such action shall not bar a subsequent action for the remaining parcels of property. The filing of the petition under this paragraph shall be deemed the commencement of an action for the determination of the necessity of the taking and with respect to the compensation to be made for the several parcels of property sought to be acquired through condemnation. The authority may at any time prior to the jury verdict of necessity amend its resolution of necessity and its petition to the court to delete therefrom any identified parcel or parcels of property.

SECTION 9. Chapter 275, laws of 1931, section 5 (3) and (4) are amended to read:

(Chapter 275, laws of 1931) Section 5. (3) Upon receipt of said report the common council shall refer the same to a committee thereof for a public hearing thereon, for the purpose of discussing the plan and the

relative costs and benefits, and necessity of said improvement. *Notice of such public hearing shall be sent to the last known mailing address of one of the owners of each parcel of property within said benefit district, if any, who may be affected, either by way of damages or benefits, at least 10 days prior to the date of such hearing.* After such hearing the common council may approve said report * * * and direct the * * * proper officers to do anything which is necessary to carry out said plan or the common council may remand said report to the board of assessment for reconsideration and revision, which board shall thereafter make a revised report to the common council. The common council shall then refer said revised report to a committee thereof for a public hearing thereon, as in the case of the original report, and may thereafter approve said report, or itself revise the same, or approve it as revised by the common council, * * * and * * * the proper officers proceed to complete the improvement after the acquisition of all the necessary property. The common council may instead of approving the original or revised report, abandon the whole improvement. The plan of improvement adopted in said report shall be considered the plan for the improvement and the adoption of the same shall constitute a declaration of the common council that the improvement is necessary, and that the taking or using of the property mentioned therein is necessary.

(4) (a) When, after the adoption of the plan of improvement as herein provided, the city for any reason desires to alter said plan, it may do so at any time * * * prior to the confirmation of the assessment of benefits and damages.

(b) The board of assessment shall present to the common council the proposed amendment of the plan together with an amended estimate of the cost and of the benefits and an amended map of the proposed improvement. The common council shall approve any such alteration by resolution before the same is effective.

(c) When such alteration is made while the assessment of benefits and damages is being made or is pending as herein provided the board of assessment shall make a new assessment based on the amended plan in the same manner in which an original assessment is made and the original assessment made or pending shall be disregarded.

(d) A certified copy of the resolution of the common council amending the plan together with a description of the change in the plan sufficient to describe the amendment shall be filed in the register of deeds office of the county in which the land is located.

SECTION 10. Chapter 275, laws of 1931, section 6, as amended by chapter 352, laws of 1945, is amended to read:

(Chapter 275, laws of 1931) Section 6. After the adoption of the plan by the city, the city may purchase any property needed to carry out said plan and include the cost of such purchased property together with property acquired by condemnation in the assessment of benefits * * *.

SECTION 11. Chapter 275, laws of 1931, sections 7 and 8, are repealed.

SECTION 12. Chapter 275, laws of 1931, section 9 (2), as amended by chapter 352, laws of 1945, is amended to read:

(Chapter 275, laws of 1931) SECTION 9. (2) The said board shall then publish in the official newspaper of said city, or any other newspaper published or of general circulation in said city, for not less than 6 days, a notice that at a certain time, which shall not be less than 12 days after the first publication of said notice, and at a certain place, during certain hours, to be designated in the published notice, of each successive day, Sundays * * * and legal holidays excluded, for not less than 3 days or for such longer time as said board * * * deems necessary, it will meet to hear such testimony as any party interested * * * desires to offer as to the damages or benefits, or both, resulting from the proposed improvement. Said

notice shall also be posted in at least 6 public places in said benefit district, the number and location of said places to be determined by said board, and said board shall in its report to the common council certify the number of notices and dates and places of posting the same and such certification shall be sufficient evidence of such posting and no removal, defacement, or destruction of such notices without the actual consent or authority of said board shall invalidate the proceedings. Said notices shall be * * * *sent to the last known mailing address of the owner or one of the owners, and the mortgagee or one of the mortgagees of each parcel of property affected by way of damages, at least 12 days prior to said hearing. Like notice shall also be sent to the owner or one of the owners of each parcel of property within the benefit district, if any, affected by way of assessment of benefits. Failure of either notice to reach such person shall not invalidate the assessment of benefits and damages hereinafter made and, in such case, publication shall be sufficient.* It shall be sufficient to state in such notice in brief for what improvement said assessment of benefits and damages is to be made and the general boundary lines of the benefit district as heretofore adopted by the common council, and a small map of said district may in the discretion of said board be published * * *, posted or mailed.

SECTION 13. Chapter 275, laws of 1931, section 13, is amended to read:

(Chapter 275, laws of 1931) SECTION 13. Whenever the common council of any such city * * * *adopts* a plan of improvement as herein provided and * * * *directs* the proper officers to complete the proposed improvement and said plan * * * *includes* in addition to the acquisition of property for laying out, opening or widening of any street or alley, arterial highway, boulevard or parkway or the establishment of any park, square, memorial ground or playground, also any or all of the following improvements, to wit, the grading, paving and repaving of, or the making of the gutters, curbs or sidewalks for such street or alleys, arterial highway, boulevard, or parkway, or the improving of any such park, square, memorial ground or playground, or the erection of any bridge or viaduct, the proper officer or officers of such city having charge of such public work or improvement may proceed, after the acquisition of the necessary property, to make plans and specifications and to let the contracts for the necessary work or improvements and cause such work to be done and improvements to be made to complete the improvement under the plan adopted, in accordance with any law governing such work or improvements in said city, excepting that no further estimate of the cost of the work or improvement or further recommendation to the common council need be made, and that no further assessment of benefits and damages on account of such work or improvement shall be made, except that which is authorized to be made for the whole plan of improvement in this act, and no limitation in any other law of the amount of benefits assessable shall be applicable to an assessment under this act. Payments due on any contracts for such work or improvements shall be payable at the times and in the amounts provided in the law governing such contracts in such city, except as herein otherwise provided, out of the funds provided therefor.

SECTION 14. Any action or proceeding commenced to condemn property under any eminent domain statute which in this act has been altered or amended to eliminate the requirement of a jury verdict of necessity may be abandoned without prejudice to recommencement and any such action or proceeding pending in any court may be dismissed upon motion by the condemnor without prejudice upon such terms as the court may deem just. The condemnor may then proceed to determine necessity pursuant to the provisions of this act.

Approved July 11, 1961.