CHAPTER 32

EMINENT DOMAIN

SUBCHAPTER I

GENERAL EMINENT DOMAIN

32.01 Definitions. In this subchapter unless the context clearly requires otherwise:

(1g) "Business entity" has the meaning given in s. 13.62 (5).

(1r) "Person" includes the state, a county, town, village, city, school district or other municipal corporation, a board, commission, including a commission created by contract under s. 66.0301, corporation, or housing authority created under ss. 66.1201 to 66.1211 or redevelopment authority created under s. 66.1333 or the Wisconsin Aerospace Authority created under s. 114.61.

(2) "Property" includes estates in lands, fixtures and personal property directly connected with lands.

History: 1973 c. 305; 1979 c. 175 s. 53; 1983 a. 27; 1983 a. 236 s. 12; 1999 a. 150 s. 672; 2005 a. 335; 2015 a. 55.

The rule of strict construction should be applied to a condemnor's power and to the exercise of this power. This is because the exercise of the power of eminent domain has been characterized as an extraordinary power, and the rule of strict construction is intended to benefit the owner whose property is taken against his or her will. Conversely, statutory provisions in favor of the owner, such as those which regulate the compensation to be paid to him or her, are to be afforded liberal construction. Standard Theatres, Inc. v. DOT, 118 Wis. 2d 730, 349 N.W.2d 661 (1984).

The statutes governing condemnation action procedures are in derogation of the common law and therefore are to be strictly construed. Accordingly, strict adherence to the statute is required. Likewise, engrafting onto the statute things it does not require is forbidden. City of Racine v. Bassinger, 163 Wis. 2d 1029, 473 N.W.2d 526 (Ct. App. 1991).

32.015 Limitations. Property may not be acquired by condemnation to establish or extend a recreational trail; a bicycle way, as defined in s. 340.01 (5s); a bicycle lane, as defined in s. 340.01 (5e); or a pedestrian way, as defined in s. 346.02 (8) (a).

History: 2017 a. 59.

32.02 Who may condemn; purposes. The following departments, municipalities, boards, commissions, public officers, and business entities 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:

(1) Any county, town, village, city, including villages and cities incorporated under general or special acts, school district, the department of health services, the department of corrections, the board of regents of the University of Wisconsin System, the building commission, a commission created by contract under s. 66.0301, with the approval of the municipality in which condemnation is proposed, a commission created by contract under s. 66.0303 that is acting under s. 66.0304, if the condemnation occurs within the boundaries of a member of the commission, or any public board or commission, for any lawful purpose, but in the case of city and village boards or commissions approval of that action is required to be granted by the governing body. A mosquito control commission, created under s. 59.70 (12), and a local professional football stadium district board, created under subch. IV of ch. 229, may not acquire property by condemnation.

(2) The governor and adjutant general for land adjacent to the Wisconsin state military reservation at Camp Douglas for the use of the Wisconsin national guard.

(3) Any railroad corporation, any grantee of a permit to construct a dam to develop hydroelectric energy for sale to the public, any Wisconsin plank or turnpike road corporation, any drainage corporation, any interstate bridge corporation, or any corporation formed under chapter 288, laws of 1899, for any public purpose authorized by its articles of incorporation.

(4) Any Wisconsin telegraph or telecommunications corporation for the construction and location of its lines.

(5) (a) "Foreign transmission provider" means a foreign corporation that satisfies each of the following:

1. The foreign corporation is an independent system operator, as defined in s. 196.485 (1) (d), or an independent transmission owner, as defined in s. 196.485 (1) (dm), that is approved by the applicable federal agency, as defined in s. 196.485 (1) (c).

2. The foreign corporation controls transmission facilities, as defined in s. 196.485 (1) (h), in this and another state.

(b) Any Wisconsin corporation engaged in the business of transmitting or furnishing heat, power or electric light for the public or any foreign transmission provider for the construction and location of its lines or for ponds or reservoirs or any dam, dam site, flowage rights or undeveloped water power.

(6) Any Wisconsin corporation furnishing gas, electric light or power to the public, for additions or extensions to its plant and for the purpose of conducting tests or studies to determine the suitability of a site for the placement of a facility.

(7) Any Wisconsin corporation formed for the improvement of any stream and driving logs therein, for the purpose of the improvement of such stream, or for ponds or reservoir purposes.

(8) Any Wisconsin corporation organized to furnish water or light to any city, village or town or the inhabitants thereof, for the construction and maintenance of its plant.

(9) Any Wisconsin corporation transmitting gas, oil or related products in pipelines for sale to the public directly or for sale to one or more other corporations furnishing such gas, oil or related products to the public.

(10) Any rural electric cooperative association organized under ch. 185 which operates a rural electrification project to:

(a) Generate, distribute or furnish at cost electric energy at retail to 500 or more members of said association in accordance with standard rules for extension of its service and facilities as provided in the bylaws of said association and whose bylaws also provide for the acceptance into membership of all applicants therefor who may reside within the territory in which such association undertakes to furnish its service, without discrimination as to such applicants; or

(b) Generate, transmit and furnish electric energy at wholesale to 3 or more rural electric cooperative associations furnishing electric energy under the conditions set forth in par. (a), for the construction and location of its lines, substation or generating plants, ponds or reservoirs, any dam, dam site, flowage rights or undeveloped water power, or for additions or extension of its plant and for the purpose of conducting tests or studies to determine the suitability of a site for the placement of a facility.

(11) Any housing authority created under ss. 66.1201 to 66.1211; redevelopment authority created under s. 66.1333; community development authority created under s. 66.1335; local cultural arts district created under subch. V of ch. 229, subject to s. 229.844 (4) (c); or local exposition district created under subch. II of ch. 229.

(11m) The Wisconsin Aerospace Authority created under subch. II of ch. 114.

(12) Any person operating a plant which creates waste material which, if released without treatment would cause stream pollution, for the location of treatment facilities. This subsection does not apply to a person with a permit under ch. 293 or subch. III of ch. 295.

(13) Any business entity authorized to do business in Wisconsin that shall transmit oil or related products including all hydrocarbons which are in a liquid form at the temperature and pressure under which they are transported in pipelines in Wisconsin, and shall maintain terminal or product delivery facilities in Wisconsin, and shall be engaged in interstate or international commerce, subject to the approval of the public service commission upon a finding by it that the proposed real estate interests sought to be acquired are in the public interest.

(15) The department of transportation for the acquisition of abandoned rail and utility property under s. 85.09.

(16) The department of natural resources with the approval of the appropriate standing committees of each house of the legislature as determined by the presiding officer thereof and as authorized by law, for acquisition of lands.

History: 1971 c. 100 s. 23; 1973 c. 243, 305; 1975 c. 68, 311; 1977 c. 29, 203, 438, 440; 1979 c. 34 s. 2102 (52) (b); 1979 c. 122; 1979 c. 175 s. 53; 1981 c. 86, 346, 374; 1983 a. 27; 1985 a. 29 s. 3200 (51); 1985 a. 30 s. 42; 1985 a. 187; 1985 a. 297 s. 76; 1987 a. 27; 1989 a. 31; 1993 a. 246, 263; 1993 a. 491 s. 284; 1995 a. 27 s. 9126 (19); 1995 a. 201; 1997 a. 204; 1999 a. 65; 1999 a. 150 s. 672; 1999 a. 167; 2001 a. 30 s. 108; 2005 a. 335; 2007 a. 20, s. 9121 (6) (a); 2009 a. 28, 205; 2011 a. 32; 2013 a. 1; 2015 a. 55.

Cross–reference: See s. 13.48 (16) for limitation on condemnation authority of the building commission.

The inalienability of the power of eminent domain is a well–settled rule. A party with the right to condemn cannot lose that power through contract. The right to condemnation cannot be waived or abrogated by estoppel. Personal rights may be waivable, but public rights are not. Andrews v. Wisconsin Public Service Corporation, 2009 WI App 6, 315 Wis. 2d 772, 762 N.W.2d 837, 07–2541.

32.03 When condemnation not to be exercised.

(1) The general power of condemnation conferred in this subchapter does not extend to property owned by the state, a municipality, public board or commission, nor to the condemnation by a railroad, public utility or electric cooperative of the property of either a railroad, public utility or electric cooperative unless such power is specifically conferred by law, provided that property not to exceed 100 feet in width owned by or otherwise under the control or jurisdiction of a public board or commission of any city, village or town may be condemned by a railroad corporation for right–of–way or other purposes, whenever a city, village or town by ordinance consents thereto. This subchapter does not apply to the acquisition by municipalities of the property of public utilities used and useful in their business, nor to any city of the 1st class, except that every such city may conduct any condemnation proceedings either under this subchapter or, at its option, under other laws applicable to such city.

(2) Any railroad corporation or pipeline corporation may acquire by condemnation lands or interest therein which are held and owned by another railroad corporation or pipeline corporation. In the case of a railroad corporation, no such land shall be taken so as to interfere with the main track of the railroad first established except for crossing, and in the case of a pipeline corporation no such land shall be taken except for crossing or in such manner as to interfere with or endanger railroad operations.

(3) Any public utility corporation, or cooperative association mentioned in s. 32.02 (10), upon securing from the public service commission, pursuant to written application and upon due notice to all interested parties, an order determining that lands or interests therein sought to be acquired by the applicant are owned by a public utility corporation or such rural electric cooperative and are not then being used by the owner for service to the public by the public utility or to its members by such cooperative association and will not be required in the future for such purposes to an extent and within a period which will be interfered with by the appropriation of the lands or interests sought to be condemned, may acquire by condemnation such lands or interests therein. No lands, or interests therein, belonging to a public utility corporation or to any such cooperative association which is being held by such owner as a site for an electric generating plant, and no other property so owned, or any interest therein, which is used or suitable for the development of water power, shall be subject to condemnation under this subsection; except that an undeveloped water power site, belonging to any such public utility corporation or to any such cooperative association and which is within the flowage area of any other undeveloped water power site, may be condemned pursuant to this subsection, but only if, upon application to it, the public service commission, after hearing held upon notice to such owner and all parties interested, shall by order determine the necessity of taking such lands or interest therein. Such order shall be subject to review as prescribed by ch. 227. Any condemnation of lands pursuant to this subsection shall be conducted in accordance with the procedure and requirements prescribed by ss. 32.04 to 32.14.

(5) (a) If an electric utility is required to obtain a certificate of public convenience and necessity from the public service commission under s. 196.491 (3), no right to acquire real estate or personal property appurtenant thereto or interest therein for such project by condemnation shall accrue or exist under s. 32.02 or 32.075 (2) until such a certificate of public convenience and necessity has been issued.

(b) This subsection does not apply to the condemnation of a limited interest in real property or appurtenant personal property, except structures with foundations, necessary to conduct tests or studies to determine the suitability of a site for the placement of a utility facility, provided that:

1. Such a limited interest does not run for more than 3 years; and

2. Activities associated with such tests or studies will be conducted at reasonable hours with minimal disturbance, and the property will be reasonably restored to its former state, upon completion of such tests or studies.

(c) This subsection does not prohibit an electric utility from negotiating with the owner, or one of the owners, of a property, or the representative of an owner, before the issuance of a certificate of public convenience and necessity, if the electric utility advises the owner or representative that the electric utility does not have the authority to acquire the property by condemnation until the issuance of a certificate of public convenience and necessity.

(6) (a) In this subsection, "blighted property" means any property that, by reason of abandonment, dilapidation, deterioration, age or obsolescence, inadequate provisions for ventilation, light, air, or sanitation, high density of population and overcrowding, faulty lot layout in relation to size, adequacy, accessibility, or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, or the existence of conditions that endanger life or property by fire or other causes, or any combination of such factors, is detrimental to the public health, safety, or welfare. Property that consists of only one dwelling unit is not blighted property unless, in addition, at least one of the following applies:

1. The property is not occupied by the owner of the property, his or her spouse, or an individual related to the owner by blood, marriage, or adoption within the 4th degree of kinship under s. 990.001 (16).

2. The crime rate in, on, or adjacent to the property is at least 3 times the crime rate in the remainder of the municipality in which the property is located.

(b) Property that is not blighted property may not be acquired by condemnation by an entity authorized to condemn property under s. 32.02 (1) or (11) if the condemnor intends to convey or lease the acquired property to a private entity.

(c) Before commencing the condemnation of property that a condemnor authorized to condemn property under s. 32.02 (1) or (11) intends to convey or lease to a private entity, the condemnor shall make written findings and provide a copy of the findings to the owner of the property. The findings shall include all of the following:

1. The scope of the redevelopment project encompassing the owner's property.

2. A legal description of the redevelopment area that includes the owner's property.

3. The purpose of the condemnation.

4. A finding that the owner's property is blighted and the reasons for that finding.

History: 1973 c. 305; 1975 c. 68; 1979 c. 175 s. 53; 1983 a. 27; 1983 a. 236 s. 12; 1983 a. 338 s. 3; 1985 a. 30 s. 42; 1985 a. 187; 1993 a. 246, 490; 1997 a. 204; 2003 a. 89; 2005 a. 233.

County lands are not subject to condemnation by a town absent express statutory authority authorizing such condemnation. 62 Atty. Gen. 64.

Wisconsin's Response to Condemnation for Economic Development. Braun. Wis. Law. Sept. 2007.

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 resulting from an agricultural use, as defined in s. 91.01 (2), 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. (a) *When an impact statement is required; permitted.* The department shall prepare an agricultural impact statement for each project, except a project under ch. 82 or a project located entirely within the boundaries of a city or village, 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 located entirely within the boundaries of a city, village, or town or involving any interest in 5 or fewer acres of any farm operation if the condemnation would have a significant effect on any farm operation as a whole.

(b) *Contents.* The agricultural impact statement shall include:

1. A list of the acreage and description of all land lost to agricultural production and all other land with reduced productive capacity, whether or not the land is taken.

2. The department's analyses, conclusions and recommendations concerning the agricultural impact of the project.

(c) *Preparation time; publication.* 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).

(d) *Waiting period.* The condemnor may not negotiate with an owner or make a jurisdictional offer under this subchapter 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.

History: 1977 c. 440; 1979 c. 34; 1983 a. 236 s. 12; 1985 a. 140; 1987 a. 175; 2003 a. 214; 2009 a. 28.

NOTE: 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.

32.04 Procedure in condemnation. All acquisition of property in this state by condemnation, except as hereinafter provided, commenced after April 6, 1960 shall be accomplished in the following manner:

32.05 Condemnation for sewers and transportation facilities. In this section, "mass transit facility" includes, without limitation because of enumeration, exclusive or preferential bus lanes if those lanes are limited to abandoned railroad rights–of–way or existing expressways constructed before May 17, 1978, highway control devices, bus passenger loading areas and terminal facilities, including shelters, and fringe and corridor parking facilities to serve bus and other public mass transportation passengers, together with the acquisition, construction, reconstruction and maintenance of lands and facilities for the development, improvement and use of public mass transportation systems for the transportation of passengers. This section does not apply to proceedings in 1st class cities under subch. II. In any city, condemnation for housing under ss. 66.1201 to 66.1211, for urban renewal under s. 66.1333, or for cultural arts facilities under subch. V of ch. 229, may proceed under this section or under s. 32.06 at the option of the condemning authority. In any village, condemnation for housing under ss. 66.1201 to 66.1211 or for urban renewal under s. 66.1333 may proceed under this section or under s. 32.06 at the option of the condemning authority. Condemnation by a local exposition district under subch. II of ch. 229 for any exposition center or exposition center facility may proceed under this section or under s. 32.06 at the option of the local exposition district. All other condemnation of property for public alleys, streets, highways, airports, spaceports, mass transit facilities, or other transportation facilities, gas or leachate extraction systems to remedy environmental pollution from a solid waste disposal facility, storm sewers and sanitary sewers, watercourses or water transmission and distribution facilities shall proceed as follows:

(1) RELOCATION ORDER. (a) Except as provided under par. (b), a county board of supervisors or a county highway committee when so authorized by the county board of supervisors, a city council, a village board, a town board, a sewerage commission governing a metropolitan sewerage district created by ss. 200.05 or 200.21 to 200.65, the secretary of transportation, a commission created by contract under s. 66.0301, a joint local water authority created by contract under s. 66.0823, a housing authority under ss. 66.1201 to 66.1211, a local exposition district created under subch. II of ch. 229, a local cultural arts district created under subch. V of ch. 229, a redevelopment authority under s. 66.1333 or a community development authority under s. 66.1335 shall make an order providing for the laying out, relocation and improvement of the public highway, street, alley, storm and sanitary sewers, watercourses, water transmission and distribution facilities, mass transit facilities, airport, or other transportation facilities, gas or leachate extraction systems to remedy environmental pollution from a solid waste disposal facility, housing project, redevelopment project, cultural arts facilities, exposition center or exposition center facilities which shall be known as the relocation order. This order shall include a map or plat showing the old and new locations and the lands and interests required. A copy of the order shall, within 20 days after its issue, be filed with the county clerk of the county wherein the lands are located or, in lieu of filing a copy of the order, a plat may be filed or recorded in accordance with s. 84.095.

(b) No relocation order is necessary under par. (a) if the compensation, as estimated by the appraisal under sub. (2) (a), will be less than $1,000 in the aggregate.

(2) APPRAISAL. (a) The condemnor shall cause at least one, or more in the condemnor's discretion, appraisal to be made of all property proposed to be acquired. In making any such appraisal the appraiser shall confer with the owner or one of the owners, or the personal representative of the owner or one of the owners, if reasonably possible.

(b) The condemnor shall provide the owner with a full narrative appraisal upon which the jurisdictional offer is based and a copy of any other appraisal made under par. (a) and at the same time shall inform the owner of his or her right to obtain an appraisal under this paragraph. The owner may obtain an appraisal by a qualified appraiser of all property proposed to be acquired, and may submit the reasonable costs of the appraisal to the condemnor for payment. The owner shall submit a full narrative appraisal to the condemnor within 60 days after the owner receives the condemnor's appraisal. If the owner does not accept a negotiated offer under sub. (2a) or the jurisdictional offer under sub. (3), the owner may use an appraisal prepared under this paragraph in any subsequent appeal.

(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 representative of the property sought to be taken for the purchase of the same. In such negotiation the condemnor shall consider the owner's appraisal under sub. (2) (b) and may 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 installments on such conditions as the condemnor and property owners may agree. Before attempting to negotiate under this subsection, the condemnor shall provide the owner or his or her representative with copies of applicable pamphlets prepared under s. 32.26 (6). When negotiating under this subsection, the condemnor shall provide the owner or his or her representative with the names of at least 10 neighboring landowners to whom offers are being made, or a list of all offerees if less than 10 owners are affected, together with a map showing all property affected by the project. Upon request by an owner or his or her representative, the condemnor shall provide the name of the owner of any other property which may be taken for the project. The owner or his or her representative shall also have the right, upon request, to examine any maps in the possession of the condemnor showing property affected by the project. The owner or his or her representative may obtain copies of such maps by tendering the reasonable and necessary costs of preparing copies. 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 conveyance shall state 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 conveyance and a notice of the right to appeal the amount of compensation under this subsection. Any person named in the conveyance 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 (12) and chs. 808 and 809 for appeals from an award under sub. (7). For purposes of any such appeal, the amount of compensation stated in the conveyance 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.

(3) JURISDICTIONAL OFFER TO PURCHASE. Condemnor shall send to the owner, or one of the owners of record, and to the mortgagee, or one of the mortgagees of each mortgage of record, a notice:

(a) Stating briefly the nature of the project, with reference to the relocation order if required, and that the condemnor in good

faith intends to use the property sought to be condemned for such public purpose.

(b) Describing the property and the interest therein sought to be taken.

(c) Stating the proposed date of occupancy regardless of the date of taking.

(d) Stating the amount of compensation offered, itemized as to the items of damage as set forth in s. 32.09 and that compensation for additional items of damage as set forth in s. 32.19 may be claimed under s. 32.20 and will be paid if shown to exist.

(e) Stating that the appraisal or one of the appraisals of the property on which condemnor's offer is based is available for inspection at a specified place by persons having an interest in the lands sought to be acquired.

(g) Stating that the owner has 20 days from date of completion of service upon the owner of the offer, as specified in sub. (6), in which to accept or reject the offer.

(h) Stating that if the owner has not accepted such offer as provided in sub. (6) the owner has 40 days from the date of completion of service upon the owner of the offer to commence a court action to contest the right of condemnation as provided in sub. (5); provided that the acceptance and retention of any compensation resulting from an award made prior to the commencement of such an action shall be an absolute bar to such action.

(i) Stating that the owner, subject to subs. (9) (a) and (11), will have 2 years from the date of taking the property by award in which to appeal for greater compensation without prejudice to the right to use the compensation given by the award. If the condemning authority is a housing authority organized under ss. 66.1201 to 66.1211 a redevelopment authority organized under s. 66.1333 or a community development authority organized under s. 66.1335, the notice shall also state that in the case of an appeal under sub. (9) (a) the parties having an interest in the property who are taking the appeal may initiate such appeal by filing with the condemning authority a letter requesting that the issue of the amount of such compensation be determined by the condemnation commission.

(3m) UNECONOMIC REMNANT. (a) In this subsection, "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.

(b) 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.

(4) HOW NOTICE OF JURISDICTIONAL OFFER IS GIVEN. The giving of such notice is a jurisdictional requisite to a taking by condemnation. Such notice may be given by personal service in the manner of service of a circuit court summons, or it may be transmitted by certified mail. If service is by mail, service of the papers shall be deemed completed on the date of mailing and the use of mail service shall not increase the time allowed to act in answer to or in consequence of such service. If such owner or mortgagee is unknown or cannot be found there shall be published in the county wherein the property is located a class 1 notice, under ch. 985. If such owner is a minor, or an individual adjudicated incompetent, the condemnor shall serve such notice upon the legal guardian of the minor or individual, and if there is no such guardian the condemnor shall proceed under s. 32.15 to have a special guardian appointed to represent the minor or individual in the proceeding. The reasonable fees of any special guardian as approved by the court shall be paid by the condemnor. The notice shall be called the "jurisdictional offer". The condemnor shall file a lis pendens on or within 14 days of the date of service or mailing of the jurisdictional offer or within 14 days of the date of publication if publication is necessary. The lis pendens shall include a copy of the jurisdictional offer. From the time of such filing every purchaser or encumbrancer whose conveyance or encumbrance is not recorded or filed shall be deemed a subsequent purchaser or encumbrancer and shall be bound by the terms of the jurisdictional offer and it shall not be necessary to serve other jurisdictional offers on such subsequent purchaser or encumbrancer. In the award the condemnor may name and make payment to parties who were owners or mortgagees at the time of the filing of the lis pendens unless subsequent purchasers or encumbrancers give written notice to the condemnor of their subsequently acquired interests in which event such parties shall be named in the award as their interests may appear.

(5) COURT ACTION TO CONTEST RIGHT OF CONDEMNATION. 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, 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 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 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.

(6) ACCEPTANCE OF JURISDICTIONAL OFFER. The owner has 20 days from the date of personal service of the jurisdictional offer or 20 days from the date of postmark of the certified mail letter transmitting such offer, or if publication of the jurisdictional offer was necessary and was made, 20 days after the date of such publication, in which to accept the jurisdictional offer unless such time is extended by mutual written consent of the condemnor and condemnee. If such offer is accepted, the transfer of title shall be accomplished within 60 days after acceptance including payment of the consideration stipulated in such offer. If the jurisdictional offer is rejected in writing by all of the owners of record the condemnor may proceed to make an award forthwith. At any time prior to acceptance of the jurisdictional offer by the condemnee the same may be withdrawn by the condemnor.

(7) AWARD OF COMPENSATION. 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:

(a) The award shall be in writing. Except as provided in sub. (1) (b), the award shall state that it is made pursuant to relocation order of (name of commission, authority, board or council having jurisdiction to make the improvement) No. .... dated .... filed in the office of the County Clerk, County of ...., or pursuant to transportation project plat no. .... dated .... filed or recorded in the office of register of deeds, ... County. If a relocation order is not required under sub. (1) (b), the award shall name the condemnor. It shall name all persons having an interest of record in the property taken and may name the other persons. It shall describe such property by legal description, or by the parcel number shown on a plat filed or recorded under s. 84.095, and state the interest therein sought to be condemned and the date when actual occupancy of the property condemned will be taken by condemnor. The award shall also state the compensation for the taking which shall be an amount at least equal to the amount of the jurisdictional

offer. The award shall state that the condemnor has complied with all jurisdictional requirements. An amended award for the purpose of correcting errors wherein the award as recorded differs from the jurisdictional offer may be made, served and recorded as provided by this section.

(b) Copy of such award shall be served on or mailed by certified mail to all persons named therein. If any such person cannot be found or the person's address is unknown, the award shall be published in the county wherein the property is situated as a class 3 notice, under ch. 985, and completed publication as shown by affidavit shall constitute proper service. Such award shall be known as the "basic award".

(c) When service of the award has been completed, and after payment of the award as provided in par. (d), the award shall be recorded in the office of the register of deeds of the county wherein the property is located. Thereupon title in fee simple to the property described in the award, or the lesser right in property acquired by the award shall vest in the condemnor as of the time of recording. The date of such recording is the "date of evaluation" and also the "date of taking".

(d) On or before said date of taking, a check, naming the parties in interest as payees, for the amount of the award less outstanding delinquent tax liens, proportionately allocated as in division in redemption under ss. 74.51 and 75.01 when necessary and less prorated taxes of the same year, if any, likewise proportionately allocated when necessary against the property taken, shall at the option of the condemnor be mailed by certified mail to the owner or one of the owners of record or be deposited with the clerk of the circuit court of the county for the benefit of the persons named in the award. The clerk shall give notice thereof by certified mail to such parties. The persons entitled thereto may receive their proper share of the award by petition to and order of the circuit court of the county. The petition shall be filed with the clerk of the court without fee.

(8) OCCUPANCY; WRIT OF ASSISTANCE; WASTE. (a) In this subsection, "condemnor" has the meaning given in s. 32.185.

(b) No person occupying real property may be required to move from a dwelling or move his or her business or farm without at least 90 days' written notice of the intended vacation date from the condemnor. The displaced person shall have rent–free occupancy of the acquired property for a period of 30 days, commencing with the next 1st or 15th day of the month after title vests in the condemnor, whichever is sooner. Any person occupying the property after the date that title vests in the condemnor is liable to the condemnor for all waste committed or allowed by the occupant on the lands condemned during the occupancy. The condemnor has the right to possession when the persons who occupied the acquired property vacate, or hold over beyond the vacation date established by the condemnor, whichever is sooner, except as provided under par. (c). If the condemnor is denied the right of possession, the condemnor may, upon 48 hours' notice to the occupant, apply to the circuit court where the property is located for a writ of assistance to be put in possession. The circuit court shall grant the writ of assistance if all jurisdictional requirements have been complied with, if the award has been paid or tendered as required and if the condemnor has made a comparable replacement property available to the occupants, except as provided under par. (c).

(c) The condemnor may not require the persons who occupied the premises on the date that title vested in the condemnor to vacate until a comparable replacement property is made available. This paragraph does not apply to any person who waives his or her right to receive relocation benefits or services under s. 32.197 or who is not a displaced person, as defined under s. 32.19 (2) (e), unless the acquired property is part of a program or project receiving federal financial assistance.

(9) APPEAL FROM AWARD BY OWNER OR OTHER PARTY IN INTEREST. (a) Any party having an interest in the property condemned may, within 2 years after the date of taking, appeal from the award, except as limited by this subsection by applying to the judge of the circuit court for the county wherein the property is located for assignment to a commission of county condemnation commissioners as provided in s. 32.08, except that if the condemning authority is a housing authority organized under ss. 66.1201 to 66.1211, a redevelopment authority organized under s. 66.1333 or a community development authority organized under s. 66.1335, the appeals may be initiated by filing with the condemning authority a letter requesting that the issue of the amount of the compensation be determined by the condemnation commission. The condemning authority shall, upon receipt of the letter, apply to the judge of the circuit court for the county wherein the property is located for assignment to a commission of county condemnation commissioners as provided in s. 32.08. This application shall contain a description of the property condemned and the names and last–known addresses of all parties in interest but shall not disclose the amount of the jurisdictional offer nor the amount of the basic award. Violation of this prohibition shall nullify the application. Notice of the application shall be given to the clerk of the court and to all other persons other than the applicant who were parties to the award. The notice may be given by certified mail or personal service. Upon proof of the service the judge shall forthwith make assignment. Where one party in interest has appealed from the award, no other party in interest who has been served with a notice of the appeal may take a separate appeal, but may join in the appeal by serving notice upon the condemnor and the appellant of the party's election to do so. The notice shall be given by certified mail or personal service within 10 days after receipt of notice of the appeal and shall be filed with the clerk of the court. Upon failure to give and file the notice all other parties of interest shall be deemed not to have appealed. The result of the appeal shall not affect parties who have not joined in the appeal as provided in this paragraph. In cases involving more than one party in interest with a right to appeal, the first of the parties filing an appeal under this subsection or under sub. (11) shall determine whether the appeal shall be under this subsection or under sub. (11). No party in interest may file an appeal under this subsection if another party in interest in the same lands has filed a prior appeal complying with the requirements of sub. (11). Thereafter the procedure shall be as prescribed in s. 32.08. In cases involving multiple ownership or interests in lands taken the following rules shall also apply:

1. Where all parties having an interest in the property taken do not join in an appeal, such fact shall not change the requirement that a finding of fair market value of the entire property taken and damages, if any, to the entire property taken, shall be made in determining compensation. Determination of the separate interests of parties having an interest in property taken shall, in cases of dispute, be resolved by a separate partition action as set forth herein.

2. In cases where the amount of the award appealed from is increased on appeal, such amount shall be paid by the condemnor making tender of the amount to one of the appellant owners or appellant parties of interest in the same manner governing the tender of a basic award. In the event that a determination on appeal reduces the amount of the appealed award, those parties who joined in the appeal shall be liable, jointly and severally, to the condemning authority.

3. When the owners or parties having an interest in land taken cannot agree on the division of an award, any of such owners or parties of interest may petition the circuit court for the county wherein the property is located for partition of the award moneys as provided in s. 820.01. When the tender of an award is refused, the condemning authority may pay the award to the clerk of the circuit court for the county wherein the property is located and no interest shall accrue against the condemning authority for moneys so paid.

(b) If the commission's award exceeds the basic award the owner shall recover the excess plus interest thereon until payment from the date of taking less a period which is 14 days after the date of filing the commission's award. If the commission's award is

less than the basic award, the condemnor shall recover the difference with interest until payment from the date of taking.

(c) All sums due under this subsection shall be paid within 70 days after date of filing of the commission's award unless within such time an appeal is taken to the circuit court. In the event such appeal is later dismissed before trial such payment shall be made within 60 days after the dismissal date.

(d) In the event the award of the county condemnation commissioners is lower than the basic award and tender of the basic award has been accepted by an owner, the condemnor shall have a lien against such owner for the amount of the difference. The lien shall give the name and address of the owner or owners, refer to the basic award and the award on appeal and state the difference in amounts. The lien may be recorded in the office of the register of deeds and when so recorded shall attach to all property of the owner presently owned or subsequently acquired in any county where such lien is recorded. Such lien shall remain in force with interest until satisfied or until it is set aside by a judgment of the circuit court in an action pursuant to sub. (10).

(10) APPEAL FROM COMMISSION'S AWARD TO CIRCUIT COURT. (a) Within 60 days after the date of filing of the commission's award, any party to the proceeding before the commission may appeal to the circuit court of the county wherein the property is located. Notice of such appeal shall be given to the clerk of the circuit court and to all persons other than the appellant who were parties to the proceeding before the commissioners. Notice of appeal may be given by certified mail or by personal service. The clerk shall thereupon enter the appeal as an action pending in said court with the condemnee as plaintiff and the condemnor as defendant. It shall thereupon proceed as an action in said court subject to all the provisions of law relating to actions brought therein and shall have precedence over all actions not then on trial. The sole issues to be tried shall be questions of title, if any, under ss. 32.11 and 32.12 and the amount of just compensation to be paid by condemnor. It shall be tried by jury unless waived by both plaintiff and defendant. Neither the amount of the jurisdictional offer, the basic award, nor the award made by the commission shall be disclosed to the jury during such trial.

(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.

(c) All moneys due under this subsection shall be paid within 60 days after entry of judgment unless within such period an appeal is taken by any party to the court of appeals.

(11) WAIVER OF HEARING BEFORE COMMISSION; APPEAL TO CIRCUIT COURT AND JURY. The owner of any interest in the property condemned named in the basic award may elect to waive the appeal procedure specified in sub. (9) and instead, within 2 years after the date of taking, appeal to the circuit court of the county wherein the property is located. The notice of appeal shall be served as provided in sub. (9) (a). Filing of the notice of appeal shall constitute such waiver. The clerk shall thereupon enter the appeal as an action pending in said court with the condemnee as plaintiff and the condemnor as defendant. It shall proceed as an action in said court subject to all the provisions of law relating to actions originally brought therein and shall have precedence over all other actions not then on trial. The sole issues to be tried shall be questions of title, if any, under ss. 32.11 and 32.12 and the amount of just compensation to be paid by condemnor. It shall be tried by jury unless waived by both plaintiff and defendant. The amount of the jurisdictional offer or basic award shall not be disclosed to the jury during such trial. Where one party in interest has appealed from the award, no other party in interest who has been served with notice of such appeal may take a separate appeal but may join in the appeal by serving notice upon the condemnor and the appellant of that party's election to do so. Such notice shall be given by certified mail or personal service within 10 days after receipt of notice of the appeal and shall be filed with the clerk of court. Upon failure to give such notice such parties shall be deemed not to have appealed. The appeal shall not affect parties who have not joined in the appeal as herein provided. In cases involving more than one party in interest with a right to appeal, the first of such parties filing an appeal under sub. (9) or under this subsection shall determine whether such appeal shall be under sub. (9) or directly to the circuit court as here provided. No party in interest may file an appeal under this subsection if another party in interest in the same lands has filed a prior appeal complying with the requirements of sub. (9). In cases involving multiple ownership or interests in lands taken the provisions of sub. (9) (a) 1., 2. and 3. shall govern.

(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.

(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.

(c) All moneys payable under this subsection shall be paid within 60 days after entry of judgment unless within such period an appeal is taken to the court of appeals.

(12) EFFECT OF DETERMINATION OF COMPENSATION BY THE COURT WHERE JURY WAIVED. If the action is tried by the court upon waiver of a jury the determination of the amount of damages by the court shall be considered in lieu of the words "jury verdict as approved by the court" where such language occurs in this section.

History: 1971 c. 244, 287, 307; 1973 c. 244; Sup. Ct. Order, 67 Wis. 2d 585, 773 (1975); 1975 c. 218, 311, 410, 421; 1977 c. 29, 203, 338; 1977 c. 418 ss. 259, 924 (8m); 1977 c. 438, 440, 447, 449; 1979 c. 310; 1981 c. 282 s. 47; 1981 c. 390 s. 252; 1983 a. 27; 1983 a. 219 ss. 3, 46; 1983 a. 236 s. 13; 1983 a. 249; 1985 a. 29 s. 3200 (51); 1985 a. 135; 1987 a. 378; 1989 a. 31, 89; 1991 a. 32, 39, 316; 1993 a. 246, 263, 301, 453, 491; 1995 a. 417; 1997 a. 184, 282; 1999 a. 32, 65; 1999 a. 150 s. 672; 1999 a. 186; 2003 a. 214; 2005 a. 335, 387; 2009 a. 28, 173; 2011 a. 32; 2013 a. 168 s. 21; 2015 a. 196.

NOTE: 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.

If a notice of appeal from a condemnation award is not served on the condemnor, the appeal is not perfected. In making an assignment to condemnation commissioners, a judge is acting in an administrative capacity. State ex rel. Milwaukee County Expressway Commission v. Spenner, 51 Wis. 2d 138, 186 N.W.2d 298 (1971).

When the plaintiffs sold 2 parcels of land but reserved a strip between them for street purposes and the state then condemned the strip for a street, the taking was total and no special benefits to the land already sold could be considered. Renk v. State, 52 Wis. 2d 539, 191 N.W.2d 4 (1971).

When the record owner of property is deceased, the jurisdictional offer may properly be served on the heirs. Any objection may be raised only by action under sub. (5). A motion to quash the proceeding is not sufficient. Area Board of Vocational, Technical & Adult Education District #2 v. Saltz, 57 Wis. 2d 524, 204 N.W.2d 909 (1973).

Sub. (11) (c) does not govern the time within which an appeal may be taken, but rather sets forth the time within which a party seeking to withhold payment pending the outcome of the appeal must file its appeal. Weiland v. DOT, 62 Wis. 2d 456, 215 N.W.2d 455 (1974).

The sub. (10) (a) requirement of service of a notice of appeal by personal service or by certified mail is not met by service through regular mail. Big Valley Farms, Inc. v. Public Service Corp. 66 Wis. 2d 620, 225 N.W.2d 488 (1975).

Scale drawings of a proposed sewer line as it traversed the condemnee's property was sufficient to comply with sub. (1). Ingalls v. Village of Walworth, 66 Wis. 2d 773, 226 N.W.2d 201 (1975).

A condemnor appealing under sub. (10) has no right to abandon the appeal over the condemnee's objection if the time for the condemnee to appeal has expired. Huth v. Public Service Corp. 82 Wis. 2d 102, 260 N.W.2d 676 (1978).

The valuation of a financially troubled mass transit public utility in a condemnation take–over by a governmental unit is discussed. Sub. (11) (b) requires the payment of continuous simple interest at the legal rate of 5 percent from 14 days after the date of the taking until the date of payment. Milwaukee & Suburban Transport Corp. v. Milwaukee County, 82 Wis. 2d 420, 263 N.W.2d 503 (1978).

If an action under sub. (5) is untimely, a court must, on its own motion, dismiss for lack of subject–matter jurisdiction. Achtor v. Pewaukee Lake Sanitary District 88 Wis. 2d 658, 277 N.W.2d 778 (1979).

A court had no jurisdiction over a party to an appeal when service under sub. (10) (a) was by first class mail. 519 Corp. v. DOT, 92 Wis. 2d 276, 284 N.W.2d 643 (1979).

Sales of components comparable to components of a unitary economic entity were admissible to prove the value of the entity. Income evidence was properly excluded. Leathem Smith Lodge, Inc. v. State, 94 Wis. 2d 406, 288 N.W.2d 808 (1980).

In the absence of special circumstances, giving notice of "appeal" under sub. (10) (a) to a party's attorney was not sufficient notice to the party. Time computations under sub. (10) (a) and s. 32.06 (10) are controlled by s. 801.15 (1), not s. 990.001 (4). In the Matter of Wisconsin Electric Power Co. 110 Wis. 2d 649, 329 N.W.2d 186 (1983).

The market value of a unique property that cannot be sold for near its value to its owner may be determined by the cost approach; replacement cost minus depreciation. Milwaukee Rescue Mission v. Milwaukee Redevelopment Authority, 161 Wis. 2d 472, 468 N.W.2d 663 (1991).

In a review under sub. (11), the jury was not limited to the ultimate opinion of expert appraisers in setting value through the cost approach but was entitled to consider a contractor's testimony of replacement cost. Milwaukee Rescue Mission v. Milwaukee Redevelopment Authority, 161 Wis. 2d 472, 468 N.W.2d 663 (1991).

Service of an appeal under sub. (9) must be made within the time prescribed under s. 801.02 (1). City of LaCrosse v. Shiftar Bros. 162 Wis. 2d 556, 469 N.W.2d 915 (Ct. App. 1991).

One of the conditions precedent for the issuance to the condemnor of a writ of assistance under sub. (8) is that the displaced person must have comparable replacement property made available to the extent required by ss. 32.19 to 32.27. No substantive right is created by sub. (8). City of Racine v. Bassinger, 163 Wis. 2d 1029, 473 N.W.2d 526 (Ct. App. 1991).

The removal, in eminent domain proceedings, of billboards not in conformity with s. 84.30 is subject to the just compensation provisions of s. 84.30 (6). Vivid, Inc. v. Fiedler, 182 Wis. 2d 71, 512 N.W.2d 771 (1994).

A purchase agreement under sub. (2a) is subject to the provisions of ch. 32; failure to refer to the provisions of ch. 32 is not a waiver. Sub. (11) (a) applies to all awards including negotiated awards. Dorschner v. DOT, 183 Wis. 2d 236, 515 N.W.2d 311 (Ct. App. 1994).

Comparable sales occurring after the taking may be considered by a court, but may be found inadmissible as too remote. Postjudgment interest under sub. (10) (b) is determined under s. 815.05 (8) while interest under sub. (11) (b) is at the statutory rate. Calaway v. Brown County, 202 Wis. 2d 736, 553 N.W.2d 809 (Ct. App. 1996), 95–2337.

After the DOT commences condemnation proceedings under this section, sovereign immunity is fully waived. The question of whether the cost of the condemnee's appraisal was reasonable and, therefore, subject to payment by the DOT under sub. (2) (b) is not for the DOT to unilaterally determine; it is a question of fact for the court. Miesen v. DOT, 226 Wis. 2d 298, 594 N.W.2d 821 (Ct. App. 1999), 98–3093.

Service on the state through the attorney general, rather than the department of transportation, was sufficient service under sub. (9). DOT v. Peterson, 226 Wis. 2d 623, 594 N.W.2d 765 (1999), 97–2718.

When through inadvertent error the award of damages was attached to the notice of application under sub. (9), the award was not a part of the application, and it was error to declare the application a nullity and to withdraw the assignment of the application from the county condemnation committee. Schoenhofen v. DOT, 231 Wis. 2d 508, 605 N.W.2d 249 (Ct. App. 1999), 99–0629.

Filing of an award is complete, and the 60–day appeal period under sub. (10) (a) begins to run, when the commission has filed its award with the circuit court clerk and the clerk has mailed and recorded the award under s. 32.08 (6) (b). Dairyland Fuels, Inc. v. State, 2000 WI App 129, 237 Wis. 2d 467, 614 N.W.2d 829, 99–1296.

Consistent with *Peterson*, service on the state through the attorney general, rather than the department of transportation, was sufficient service under sub. (10). Dairyland Fuels, Inc. v. State, 2000 WI App 129, 237 Wis. 2d 467, 614 N.W.2d 829, 99–1296.

Taking jurisprudence does not divide a single parcel into discrete segments and attempt to determine whether rights in a given part have been entirely abrogated but instead focuses on the extent of the interference with rights in the parcel as a whole. R.W. Docks & Slips v. State, 2001 WI 73, 244 Wis. 2d 497, 628 N.W.2d 781, 99–2904.

Section 893.80 (1), 2001 Stats., [now s. 893.80 (1d)] does not require that the making of a relocation order be the first step in the condemnation process. Danielson v. City of Sun Prairie, 2000 WI App 227, 239 Wis. 2d 178, 619 N.W.2d 108, 99–2719.

"Acceptance and retention of any compensation" under sub. (3) (h) requires that the landowner negotiate the check and retain the check proceeds before the landowner can be barred from contesting the condemnation. Additionally, a landowner who negotiates the check but returns the proceeds to the DOT before filing suit may pursue an action contesting the condemnation. TJF Nominee Trust v. DOT, 2001 WI App 116, 244 Wis. 2d 242, 629 N.W.2d 57, 00–2099.

Sub. (8) does not mean that a court may not grant a condemnor possession of condemned premises until a replacement property deemed acceptable by the condemnee is procured, regardless of its acquisition costs, all of which the condemnor must bear or tender, nor does it mean that the condemnee will never have to vacate the condemned property if a replacement property acceptable to the condemnee cannot be acquired for an amount not exceeding the award of compensation plus the maximum relocation benefits to which the condemnee is entitled. Dotty Dumpling's Dowry, Ltd. v. Community Development Authority of the City of Madison, 2002 WI App 200, 257 Wis. 2d 377, 651 N.W.2d 1, 01–1913.

A condemnor may obtain a writ of assistance after it has provided the relocation assistance to which a displaced person is statutorily entitled. Dotty Dumpling's Dowry, Ltd. v. Community Development Authority of the City of Madison, 2002 WI App 200, 257 Wis. 2d 377, 651 N.W.2d 1, 01–1913.

When the condemnee's counsel instructed the department to not contact the condemnee directly regarding the condemnation, the instruction constituted a special circumstance that excused the department from having to serve the jurisdictional offer on the condemnee personally. Morris v. DOT, 2002 WI App 283, 258 Wis. 2d 816, 654 N.W.2d 16, 02–0288.

Income evidence is generally disfavored as a method of measuring property values. It is within the trial court's discretion to admit or exclude this evidence. National Auto Truckstops v. DOT, 2003 WI 95, 263 Wis. 2d 649, 665 N.W.2d 198, 02–1384.

Sub. (1) does not apply to appeals of condemnation awards under sub. (11). Nesbitt Farms, LLC v. City of Madison, 2003 WI App 122, 265 Wis. 2d 422, 665 N.W.2d 379, 02–2212.

A business that owned a parking lot used for customer and employee parking was an occupant of the lot and a displaced person under s. 32.19 (2) (e) eligible for relocation benefits under sub. (8). City of Milwaukee v. Roadster LLC, 2003 WI App 131, 265 Wis. 2d 518, 666 N.W.2d 524, 02–3102.

Sub. (11) does not require service of an authenticated copy of a notice of appeal. To cut off the landowners' right to a review when they complied with the literal language of the service requirement in sub. (11) would be extraordinarily harsh. The Landings LLC v. The City of Waupaca, 2005 WI App 181, 287 Wis. 2d 120, 703 N.W.2d 689, 04–1301.

The sale price of a surrounding property voluntarily sold to the condemnation authority is not admissible in determining the fair market value of a property taken by formal condemnation proceedings. That formal condemnation had not been commenced at the time of the sale did not make the evidence admissible when the condemning authority's intent was known at the time of the sale. Pinczkowski v. Milwaukee County, 2005 WI 161, 286 Wis. 2d 339, 706 N.W.2d 642, 03–1732.

In certain situations, fair market value may be proved using offers to purchase, but only when they are made with actual intent and pursuant to an actual effort to purchase. In order to qualify as probative evidence, there must be a preliminary foundation of the bona fides of the offer, the financial responsibility of the offeror, and the offeror's qualifications to know the value of the property. Pinczkowski v. Milwaukee County, 2005 WI 161, 286 Wis. 2d 339, 706 N.W.2d 642, 03–1732.

Section 801.02 (1) serves to extend by 90 days the 2–year deadline in sub. (9) (a) for the filing of the proof of service. When the original assignment of an appeal to the condemnation commission was premature because the proof of service had not yet been filed, but the defect was corrected within the extended time limits, there was no impediment to the issuance of a fresh assignment of the appeal. Community Development Authority v. Racine County Condemnation Commission, 2006 WI App 51, 289 Wis. 2d 613, 712 N.W.2d 380, 05–1370.

Complete condemnation of a property terminates a lease attached to that property, but the parties to a lease may contract for their rights and obligations in the event of a condemnation. Condemnation does not necessarily preclude a lessor from seeking a remedy against a lessee in a breach of contract action. Wisconsin Mall Properties, LLC v. Younkers, Inc. 2006 WI 95, 293 Wis. 2d 573, 717 N.W.2d 703, 05–0323.

In satisfying its statutory obligation to make available a comparable replacement property under sub. (8) (c) and prior to being entitled to a writ of assistance, the condemnor must identify one or more properties that meet the parameters of s. 32.19 (2) (c) to serve as a comparable replacement business. A condemnor has no open–ended obligation to provide a replacement property that is acceptable to the business being relocated. City of Janesville v. CC Midwest, Inc. 2007 WI 93, 302 Wis. 2d 599, 734 N.W.2d 428, 04–0267.

When read in conjunction with sub. (7) (d), s. 59.40 (3) (c) empowers a circuit judge not only to veto the clerk's authority to invest a condemnation award but also to direct the clerk to transfer the award from the clerk's control into a private money market account for the benefit of the persons named in the award or to otherwise invest the funds for the benefit of those persons. HSBC Realty Credit Corporation v. City of Glendale, 2007 WI 94, 303 Wis. 2d 1, 734 N.W.2d 874, 05–1042.

Although sub. (5) allows owners to bring a wide range of cases, the necessity of a condemnation will be upheld absent a showing of fraud, bad faith, or a gross abuse of discretion. A reviewing court may find a gross abuse of discretion where there is utter disregard for the necessity of use of the land or when the land is taken for an illegal purpose. Generally, an allegedly unsafe road design does not constitute an utter disregard for the necessity of the use of the land. Kauer v. Department of Transportation, 2010 WI App 139, 329 Wis. 2d 713, 793 N.W.2d 99, 09–1615.

Sub. (11) makes clear that a party in interest does not lose any rights by not joining in another party's appeal of an award. Sub. (9) (a) 1. makes clear that the unit rule applies in cases in which all parties in interest have not joined in an appeal and instructs that the separate property interests shall, in cases of dispute, be resolved by a separate partition action. A party does not lose its right to bring a claim for partition by accepting payment from the DOT for relocation expenses, which are distinct from the DOT's award for the fair market value of the property taken. The Lamar Company, LLC v. Country Side Restaurant, Inc. 2012 WI 46, 340 Wis. 2d 335, 814 N.W.2d 159, 10–2023.

There is no language in this section that supports the argument that the jurisdictional offer under sub. (3) must equal the appraisal on which the offer is based and no language that would prevent a condemnor from offering more than the appraised amount as part of the effort to "attempt to negotiate personally with the owner" under sub. (2a). Otterstatter v. City of Watertown, 2017 WI App 76, 378 Wis. 2d 697, 904 N.W.2d 396, 16–2000.

There is no statutory provision suggesting that an appraisal cannot serve as the basis for a jurisdictional offer because it is too old. Under *Schey Enterprises, Inc. v. State*, 52 Wis. 2d 361, an appraisal offered to support the amount of compensation at a just compensation trial after an award of damages has been recorded must be conducted on the day of taking. However the provisions that govern activity after an award of damages do not apply to jurisdictional offers, which precede the award of damages. Otterstatter v. City of Watertown, 2017 WI App 76, 378 Wis. 2d 697, 904 N.W.2d 396, 16–2000.

The language in sub. (8) (b) is unambiguous. Written notice to vacate must be provided at least 90 days before the intended vacation date. There is no language in the statute indicating that the 90–day notice must be provided after the condemnor has acquired title to the property. Regardless of when a condemnor provides the 90–day notice, the condemnor may not apply for a writ of assistance to require an owner to vacate until after the condemnor has acquired title. Otterstatter v. City of Watertown, 2017 WI App 76, 378 Wis. 2d 697, 904 N.W.2d 396, 16–2000.

Under sub. (2) (a), an appraisal must value all property proposed to be acquired and must form a fundamental ingredient or supporting part of a jurisdictional offer under sub. (3). The appraisal in this case omitted a significant item of damages that was subsequently included in the jurisdictional offer, namely, severance damages. The appraisal failed to form a supporting part or fundamental ingredient of the jurisdictional offer because it did not value a statutorily enumerated item of just compensation to which the condemnee was entitled. Accordingly, the appraisal failed to value all property proposed to be acquired, contrary to sub. (2) (a). Absent a negotiated agreement with the property owner, if the Department of Transportation, based solely upon its independent review of an appraisal, believes additional statutory items of just

compensation warrant inclusion in the jurisdictional offer, the department must obtain a new appraisal that substantiates that belief and provides an opinion as to the value of those interests. Christus Lutheran Church of Appleton v. DOT, 2019 WI App 67, 389 Wis. 2d 600, 937 N.W.2d 63, 18–1114.

Statutory restrictions on the exercise of eminent domain in Wisconsin: Dual requirements of prior negotiation and provision of negotiating materials. 63 MLR 489 (1980).

Towards Success in Eminent Domain Litigation. Southwick. WBB Oct. 1973.

New Developments In Law of Eminent Domain, Condemnation and Relocation. Thiel. WBB June 1979.

32.06 Condemnation procedure in other than transportation matters. The procedure in condemnation in all matters except acquisitions under s. 32.05 or 32.22, acquisitions under subch. II, acquisitions under subch. II of ch. 157, and acquisitions under ch. 197, shall be as follows:

(1) DETERMINATION OF NECESSITY OF TAKING. The necessity of the taking shall be determined as provided in s. 32.07.

(2) APPRAISAL. (a) The condemnor shall cause at least one (or more in the condemnor's discretion) appraisal to be made of the property proposed to be acquired. In making any such appraisal the appraiser shall confer with the owner or one of the owners, or the personal representative of the owner or one of the owners, if reasonably possible.

(b) The condemnor shall provide the owner with a full narrative appraisal upon which the jurisdictional offer is based and a copy of any appraisal made under par. (a) and at the same time shall inform the owner of his or her right to obtain an appraisal under this paragraph. The owner may obtain an appraisal by a qualified appraiser of all property proposed to be acquired, and submit the reasonable costs of the appraisal to the condemnor for payment. The owner shall submit a full narrative appraisal to the condemnor within 60 days after the owner receives the condemnor's appraisal. If the owner does not accept a negotiated offer under sub. (2a) or the jurisdictional offer under sub. (3), the owner may use an appraisal prepared under this paragraph in any subsequent appeal.

(2a) AGREED PRICE. Before making the jurisdictional offer under sub. (3) the condemnor shall attempt to negotiate personally with the owner or one of the owners or his or her representative of the property sought to be taken for the purchase of the same. In such negotiation the condemnor shall consider the owner's appraisal under sub. (2) (b) and may contract to pay the items of compensation enumerated in ss. 32.09 and 32.19 where shown to exist. Before attempting to negotiate under this subsection, the condemnor shall provide the owner or his or her representative with copies of applicable pamphlets prepared under s. 32.26 (6). When negotiating under this subsection, the condemnor shall provide the owner or his or her representative with the names of at least 10 neighboring landowners to whom offers are being made, or a list of all offerees if less than 10 owners are affected, together with a map showing all property affected by the project. Upon request by an owner or his or her representative, the condemnor shall provide the name of the owner of any other property which may be taken for the project. The owner or his or her representative shall also have the right, upon request, to examine any maps in the possession of the condemnor showing property affected by the project. The owner or his or her representative may obtain copies of such maps by tendering the reasonable and necessary costs of preparing copies. 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) and (12) and chs. 808 and 809 shall govern such appeals. The date the conveyance is recorded shall be treated as the date of taking and the date of evaluation.

(3) MAKING JURISDICTIONAL OFFER. The condemnor shall make and serve the jurisdictional offer and notice in the form (insofar as applicable) and manner of service provided in s. 32.05 (3) and (4), but lis pendens shall not be filed until date of petition under sub. (7). The offer shall state that if it is not accepted within 20 days, the condemnor may petition for a determination of just compensation by county condemnation commissioners and that either party may appeal from the award of the county condemnation commissioners to the circuit court within 60 days as provided in sub. (10).

(3m) UNECONOMIC REMNANT. (a) In this subsection, "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.

(b) 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.

(4) RIGHT OF MINORS AND INDIVIDUALS ADJUDICATED INCOMPETENT. If any person having an ownership interest in the property proposed to be condemned is a minor or is adjudicated incompetent, a special guardian shall be appointed for the person pursuant to s. 32.05 (4).

(5) COURT ACTION TO CONTEST RIGHT OF CONDEMNATION. 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 owner who had a right to bring a proceeding pursuant to s. 66.431 (7), 1959 stats., prior to its repeal by chapter 526, laws of 1961, effective on October 8, 1961, and, in lieu of this section, s. 66.431 (7), 1959 stats., as it existed prior to such effective date of repeal shall be the owner's exclusive remedy.

(6) ACCEPTANCE OF JURISDICTIONAL OFFER. The owner has 20 days from the date of personal service of the jurisdictional offer or 20 days from the date of postmark of the certified mail letter transmitting such offer or 20 days from the date of filing the final judgment order or remittitur in the circuit court of the county in an action commenced under sub. (5), if the judgment permits the taking of the land, in which to accept the jurisdictional offer and deliver the same to the condemnor. If the offer is accepted, the transfer of title shall be accomplished within 60 days after acceptance including payment of the consideration stipulated in such offer unless such time is extended by mutual written consent of the condemnor and condemnee. If the jurisdictional offer is rejected in writing by all of the owners of record the condemnor may proceed to petition in condemnation forthwith. If the owner fails to convey the condemnor may proceed as hereinafter set forth.

(7) PETITION FOR CONDEMNATION PROCEEDINGS. If the jurisdictional offer is not accepted within the periods limited in sub. (6) or the owner fails to consummate an acceptance as provided in sub. (6), the condemnor may present a verified petition to the circuit court for the county in which the property to be taken is located, for proceedings to determine the necessity of taking, where such determination is required, and the amount of just compensation. The petition shall state that the jurisdictional offer required by sub. (3) has been made and rejected; that it is the intention of the condemnor in good faith to use the property or right therein for the specified purpose. It shall name the parties having an interest of record in the property as near as may be and shall name the parties who are minors, who are adjudicated incompetent, or whose location is unknown. The petition may not disclose the amount of the jurisdictional offer, and if it does so it is a nullity. The petition shall be filed with the clerk of the court. Notice of the petition shall be given as provided in s. 32.05 (4) to all persons having an interest of record in the property, including the special guardian appointed for minors or individuals adjudicated incompetent. A lis pendens shall be filed on the date of filing the petition. The date of filing the lis pendens is the "date of evaluation" of the property for the purpose of fixing just compensation, except that if the property is to be used in connection with the construction of a facility, as defined under s. 196.491 (1), the "date of evaluation" is the date that is 2 years prior to the date on which the certificate of public convenience and necessity is issued for the facility. The hearing on the petition may not be earlier than 20 days after the date of its filing unless the petitioner acquired possession of the land under s. 32.12 (1) in which event this hearing is not necessary. If the petitioner is entitled to condemn the property or any portion of it, the judge immediately shall assign the matter to the chairperson of the county condemnation commissioners for hearing under s. 32.08. An order by the judge determining that the petitioner does not have the right to condemn or refusing to assign the matter to the chairperson of the county condemnation commissioners may be appealed directly to the court of appeals.

(8) COMMISSION HEARING. Thereafter the commission shall proceed in the manner and with the rights and duties as specified in s. 32.08 to hear the matter and make and file its award with the clerk of the circuit court, specifying therein the property or interests therein taken and the compensation allowed the owner, and the clerk shall give certified mail notice with return receipt requested of such filing, with a copy of the award to condemnor and owner.

(9) ABANDONMENT OF PROCEEDINGS; OR PAYMENT OF AWARD. (a) Within 30 days after the date of filing of the commission's award, the condemnor shall petition the circuit court for 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 court shall grant the petition upon such terms as it deems just, and shall make a formal order discontinuing the proceeding which order shall be recorded in the judgment record 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.

(b) If condemnor does not elect to abandon the condemnation proceeding as provided in par. (a), it shall within 70 days after the date of filing of the commission's award, pay the amount of the award, plus legal interest from the date of taking but less delinquent tax liens, proportionately allocated as in division in redemption under ss. 74.51 and 75.01 when necessary and less prorated taxes of the year of taking, if any, likewise proportionately allocated when necessary, to the owner and take and file the owner's receipt therefor with the clerk of the circuit court, or at the option of the condemnor pay the same into the office of the clerk of the circuit court for the benefit of the parties having an interest of record on the date of evaluation in the property taken and give notice thereof by certified mail to such parties. If the condemnor pays the amount of said award within 14 days after the date of filing of the commission's award, no interest shall accrue. Title to the property taken shall vest in the condemnor upon the filing of such receipt or the making of such payment.

(c) 1. In this paragraph, "condemnor" has the meaning given in s. 32.185.

2. No person occupying real property may be required to move from a dwelling or move his or her business or farm without at least 90 days' written notice of the intended vacation date from the condemnor. The person shall have rent–free occupancy of the acquired property for a period of 30 days commencing with the next 1st or 15th day of the month after title vests in the condemnor, whichever is sooner. Any person occupying the property after the date that title vests in the condemnor is liable to the condemnor for all waste committed or allowed by the occupant on the lands condemned during the occupancy. The condemnor has the right to possession when the persons who occupied the acquired property vacate, or hold over beyond the vacation date established by the condemnor, whichever is sooner, except as provided under subd. 3. If the condemnor is denied the right of possession, the condemnor may, upon 48 hours' notice to the occupant, apply to the circuit court where the property is located for a writ of assistance to be put in possession. The circuit court shall grant the writ of assistance if all jurisdictional requirements have been complied with, if the award has been paid or tendered as required and if the condemnor has made a comparable replacement property available to the occupants, except as provided under subd. 3.

3. The condemnor may not require the persons who occupied the premises on the date that title vested in the condemnor to vacate until a comparable replacement property is made available. This subdivision does not apply to any person who waives his or her right to receive relocation benefits or services under s. 32.197 or who is not a displaced person, as defined under s. 32.19 (2) (e), unless the acquired property is part of a program or project receiving federal financial assistance.

(10) APPEAL TO CIRCUIT COURT. Within 60 days after the date of filing of the commission's award either condemnor or owner may appeal to the circuit court by giving notice of appeal to the opposite party and to the clerk of the circuit court as provided in s. 32.05 (10). The clerk shall thereupon enter the appeal as an action pending in said court with the condemnee as plaintiff and the condemnor as defendant. It shall thereupon proceed as an action in said court subject to all the provisions of law relating to actions brought therein, but the only issues to be tried shall be questions of title, if any, as provided by ss. 32.11 and 32.12 and the amount of just compensation to be paid by condemnor, and it shall have precedence over all other actions not then on trial. It shall be tried by jury unless waived by both plaintiff and defendant. The amount of the jurisdictional offer or of the commission's award shall not be disclosed to the jury during such trial.

(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 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.

(c) If the jury verdict as approved by the court exceeds the amount of the jurisdictional offer, the condemnor may within 40 days after filing of such verdict petition the court for leave to abandon the proceeding and thereafter sub. (9) (a) shall apply.

(d) All judgments required to be paid shall be paid within 60 days after entry of judgment unless within this period appeal is taken to the court of appeals or unless condemnor has petitioned for and been granted an order abandoning the condemnation proceeding. Otherwise such judgment shall bear interest from the date of entry of judgment at the rate of 10 percent per year until payment.

(11) WITHDRAWAL OF COMPENSATION PAID INTO COURT; BOND. If either party appeals from the award of the commission, the owner shall not be entitled to receive the amount of compensation paid into court by condemnor unless the owner files with the clerk of the court a surety bond executed by a licensed corporate surety company in an amount equal to one–half of the commission's award, conditioned to pay to the condemnor, any sums together with interest and costs as allowed by the court, by which the award of the commission may be diminished.

(12) EFFECT OF DETERMINATION OF COMPENSATION BY THE COURT WHERE JURY WAIVED. If the action is tried by the court upon waiver of a jury, the determination of the amount of the damages by the court shall be considered in lieu of the words "jury verdict as approved by the court" where such language occurs in this section.

History: 1973 c. 244; 1975 c. 68, 410, 422; 1977 c. 29; 1977 c. 187 s. 134; 1977 c. 438, 440, 447, 449; 1979 c. 37; 1979 c. 110 s. 60 (13); 1981 c. 390; 1983 a. 27; 1983 a. 219 ss. 4, 46; 1983 a. 236 s. 13; 1983 a. 302 s. 8; 1985 a. 316 s. 25; 1987 a. 378; 1991 a. 39, 316; 1993 a. 184; 1997 a. 204; 2005 a. 387; 2013 a. 168 s. 21; 2015 a. 196.

There was no failure to negotiate when the condemnor made an offer based on a competent appraisal offer after the condemnee had already rejected an offer that was higher and had refused to make a counteroffer. Herro v. Natural Resources Board, 53 Wis. 2d 157, 192 N.W.2d 104 (1971).

A news report of the amount of the jurisdictional offer did not invalidate the proceedings when the record did not show that the condemnation commission knew of it or was influenced by it. Herro v. Natural Resources Board, 53 Wis. 2d 157, 192 N.W.2d 104 (1971).

Costs may not be recovered if condemnation proceedings are involuntarily terminated by court order. Martineau v. State Conservation Commission, 54 Wis. 2d 76, 194 N.W.2d 664 (1972).

The issues of title and navigability were entirely collateral to the amount of compensation. When the condemnation proceeding was terminated, the issues collateral thereto were likewise dismissed. Martineau v. State Conservation Commission, 66 Wis. 2d 439, 225 N.W.2d 613 (1975).

An owner who under sub. (5) contests a condemnation on grounds that achievement of the stated public purpose is too remote or contingent must demonstrate a lack of reasonable assurance that the intended use will come to pass. Falkner v. Northern State Power Co. 75 Wis. 2d 116, 248 N.W.2d 885 (1977).

A condemnor did not exercise condemnation powers when it made a jurisdictional offer. A lessee's share of a condemnation award is discussed. Maxey v. Redevelopment Authority of Racine, 94 Wis. 2d 375, 288 N.W.2d 794 (1980).

Time computations under ss. 32.05 (10) (a) and 32.06 (10) are controlled by s. 801.15 (1), not s. 990.001 (4). Matter of Wisconsin Electric Power Co. 110 Wis. 2d 649, 329 N.W.2d 186 (1983).

Notice of appeal under sub. (10) and the unit rule are discussed. Green Bay Broadcasting v. Green Bay Authority, 116 Wis. 2d 1, 342 N.W.2d 27 (1983); reconsidered 119 Wis. 2d 251, 349 N.W.2d 478 (1984).

A condemnee may, under s. 805.04, voluntarily dismiss an appeal to a circuit court without court order. Dickie v. City of Tomah, 160 Wis. 2d 20, 465 N.W.2d 262 (Ct. App. 1990).

Sub. (2a) does not require the condemnor to file the certificate of compensation at the same time that it records the conveyance. Kurylo v. Wisconsin Electric Power Company, 2000 WI App 102, 235 Wis. 2d 166, 612 N.W.2d 380, 99–1342.

The existence of an uneconomic remnant is not an issue of just compensation for a jury to decide under sub. (10). The proper forum in which to declare an uneconomic remnant and to compel the condemnor to include compensation for the remnant in its offer is in an action under sub. (5). Sub. (3m) requires the condemnor to make a concurrent offer to purchase or condemn an uneconomic remnant. A property owner who is left with a substantially diminished parcel of unencumbered property must have the right to contest a condemnation that does not acknowledge an uneconomic remnant. The only statute that provides the property owner with a forum for asserting such a right is sub. (5). Waller v. American Transmission Co., LLC, 2009 WI App 172, 322 Wis. 2d 255, 776 N.W.2d 612, 09–0411.

A clerk of circuit court must comply strictly with the notice requirements in sub. (8) in order to commence the 60–day time limit for an appeal under sub. (10). Dahir Lands, LLC v. American Transmission Company LLC, 2010 WI App 167, 330 Wis. 2d 556, 794 N.W.2d 784, 09–2583.

Whether a property is an uneconomic remnant under sub. (3m) is not just a question of value. A circuit court must also determine whether the property is of substantially impaired economic viability. A court must first determine whether a property is an uneconomic remnant before moving on to the just compensation issue. Waller v. American Transmission Co., LLC, 2011 WI App 91, 334 Wis. 2d 740, 799 N.W.2d 487, 10–1447.

Sub. (5) sets out the proper and exclusive way for a property owner to raise a claim that the owner will be left with an uneconomic remnant after a partial taking by the condemnor. An uneconomic remnant claim should be brought under sub. (5) because the condemnor has failed to include an offer to acquire any uneconomic remnant in the condemnor's jurisdictional offer. The inclusion of an offer to acquire an uneconomic remnant acknowledges the existence of the uneconomic remnant. The exclusion of such an offer indicates that the condemnor disputes the existence of an uneconomic remnant. Waller v. American Transmission Company, LLC, 2013 WI 77, 350 Wis. 2d 242, 833 N.W.2d 764, 12–0805.

A jury verdict need not be set aside on the ground that the before– and after–taking values arrived at by the jury exceed the values offered by the parties' experts. The jury is permitted to accept or reject figures experts use in determining the value of condemned property and to make adjustments to those figures based on its own view of the evidence. Geise v. American Transmission Co. 2014 WI App 72, 355 Wis. 2d 454, 853 N.W.2d 564, 11–0482.

Under sub. (10) (d), a judgment that is appealed within 60 days after entry of judgment does not have to be paid within that time period. The judgment nonetheless bears interest from the date of entry of judgment if it is not paid within that time period, assuming the judgment, or some portion of it, is upheld on appeal. Geise v. American Transmission Co. 2014 WI App 72, 355 Wis. 2d 454, 853 N.W.2d 564, 11–0482.

Sub. (2a) does not require a condemnor to negotiate in good faith regarding any subject other than condemnation. Zastrow v. American Transmission Company LLC, 2018 WI App 51, 383 Wis. 2d 644, 916 N.W.2d 821, 17–1848.

A right–to–take case under sub. (5) is a limited purpose action and addresses issues related to the condemnor's right to acquire the property. This type of action does not reach the amount of compensation owed to the property owner if the condemning authority is successful. But it is the only opportunity to raise an objection to the authority's right to acquire the property. DSG Evergreen Family Limited Partnership v. Town of Perry, 2020 WI 23, 390 Wis. 2d 533, 939 N.W.2d 564, 17–2352.

The only issues the parties may litigate in a just compensation case under sub. (10) are matters of title and the amount of money to be paid to the property owner. Not only must the circuit court follow a statutorily–prescribed method of calculating just compensation, the court, under s. 32.09 (6), must also assume the completion of the public improvement when doing so. Thus, in this case, even if the property owner was convinced the condemnor would renege on its road–building obligation, or perform it inadequately or short of the required standards, the property owner could not have litigated that issue in the just compensation case, and claim preclusion did not bar the property owner's later claim that the condemnor did not build the replacement road to the standards required by the condemnation petition. DSG Evergreen Family Limited Partnership v. Town of Perry, 2020 WI 23, 390 Wis. 2d 533, 939 N.W.2d 564, 17–2352.

Condemnation of a lessor's property for purchase by lessees in order to reduce concentration of land ownership was a constitutional "public use." Hawaii Housing Authority v. Midkiff, 467 U.S. 229 (1984).

Statutory restrictions on the exercise of eminent domain in Wisconsin: Dual requirements of prior negotiation and provision of negotiating materials. 63 MLR 489 (1980).

Picking up the Remnants Post–*Waller*: Properly Limiting the Scope of Uneconomic Remnant Claims in Wisconsin Eminent Domain Proceedings. Magnuson. 98 MLR 1425 (2015).

New Developments In Law of Eminent Domain, Condemnation and Relocation. Thiel. WBB June 1979.

32.07 Necessity, determination of.

The necessity of the taking shall be determined as follows:

(1) A certificate of public convenience and necessity issued under s. 196.491 (3) shall constitute the determination of the necessity of the taking for any lands or interests described in the certificate.

(2) The petitioner shall determine necessity if application is by the state or any commission, department, board or other branch of state government or by a city, village, town, county, school district, board, commission, public officer, commission created by contract under s. 66.0301, joint local water authority under s. 66.0823, redevelopment authority created under s. 66.1333, local exposition district created under subch. II of ch. 229, local cultural arts district created under subch. V of ch. 229, housing authority created under ss. 66.1201 to 66.1211 or for the right–of–way of a railroad up to 100 feet in width, for a telegraph, telephone or other electric line, 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 purposes.

(3) In all other cases, the judge shall determine the necessity.

(4) The determination of the public service commission of the necessity of taking any undeveloped water power site made pursuant to s. 32.03 (3) shall be conclusive.

History: 1973 c. 305; 1975 c. 68; 1979 c. 175 s. 53; 1981 c. 346; 1983 a. 27; 1985 a. 187; 1993 a. 134, 263; 1997 a. 184, 204; 1999 a. 65; 1999 a. 150 s. 672; 2009 a. 28; 2011 a. 32.

A public utility need only show that the property sought to be condemned is reasonably necessary, reasonably requisite, and proper for the accomplishment of the desired public purpose. Falkner v. Northern States Power Co. 75 Wis. 2d 116, 248 N.W.2d 885 (1977).

32.075 Use after condemnation. (1) In this section, "public utility" has the meaning given under s. 196.01 (5) and includes a telecommunications carrier, as defined in s. 196.01 (8m).

(2) Whenever the public service commission has made a finding, either with or without hearing, that it is reasonably certain it will be necessary for a public utility to acquire lands or interests therein for the purpose of the conveyance of telegraph and telephone messages, or for the production, transformation or transmission of electric energy for the public, or for right–of–way for a gas pipeline, main or service, and that such public utility is unlikely to commence construction of its facilities upon such lands within 2 years of such finding, such public utility may file its petition and proceed with condemnation as prescribed in s. 32.06 and no further determination of necessity shall be required. When the lands to be condemned under this subsection are needed for rights–of–way for telegraph, telephone or electric lines or pipelines, it shall not be necessary that the particular parcel or parcels of land be described in the commission's finding, but it shall be sufficient that such finding described the end points of any such lines and the general direction or course of the lines between the end points, but when the public utility files its petition under s. 32.06 it shall specifically describe therein the lands to be acquired. Notwithstanding the completion of the condemnation proceedings and the payment of the award made under this subchapter, the owner may continue to use the land until such time as the public utility constructs its facilities thereon.

(3) (a) The public service commission shall notify by certified mail any person whose ownership interest in the property was terminated by condemnation by a public utility under this chapter if all of the following occur:

1. The public utility's legal title was obtained after May 1, 1984, solely by a condemnation award under s. 32.06.

2. The public service commission revokes a certificate of public convenience and necessity required under s. 196.491 (3) (a) 1. or finds that a state or federal agency has denied or revoked any license, permit, certificate or other requirement on which completion of the public utility's project for which the land was condemned is contingent or that the public utility has for any other reason abandoned a project for which the condemned property was acquired.

3. The public utility within 365 days after issuance of the public service commission denial, revocation or finding under subd. 2. has not proposed, by application to the commission, an alternative use for the property or the public service commission has denied an alternative use proposed by the public utility.

(b) If the person is a minor or an individual adjudicated incompetent, the notice under par. (a) shall be to the special guardian appointed for him or her. The notice under par. (a) shall state that the person, or, if the person is deceased, the person's heirs, may petition the circuit court of the county in which the property is located, within 90 days after receipt of the notice, for an order to require the public utility to return the interest in the property to the petitioner. The circuit court shall grant the petition and shall make a formal order returning the petitioner's interest in the property. The order shall operate to divest any title of the public utility to the property subject to the petition and to automatically discharge any lis pendens filed in relation to the condemnation of the property.

(c) An order issued under par. (b) shall direct that:

1. The public utility return the petitioner's ownership interest in the property.

2. The public utility remove any lien or other encumbrance that may have accrued or been assessed since acquisition by the public utility.

3. The petitioner pay to the public utility the fair market value of the property returned to the petitioner under the order, which fair market value shall be determined under a method prescribed by the court.

4. The public utility pay its prorated share of any real estate or ad valorem taxes due on the date of the order.

5. If requested by the petitioner, the public utility pay for all costs for return of property to a reasonable topographic configuration or the condition the property was in at the time the public utility first acquired the property, as established by the court and subject to applicable land use restrictions.

6. The public utility remove from the property, at the option of the petitioner but at no expense or inconvenience to the petitioner, all buildings, equipment and other materials placed on the property by the public utility.

(d) In an order issued under par. (b), the court may award the petitioner court costs and reasonable attorney fees and may include in the order any other terms that it deems just and reasonable.

History: 1979 c. 110; 1983 a. 236 s. 12; 1983 a. 338, 538; 1993 a. 496; 1997 a. 204; 2005 a. 387.

32.08 Commissioner of condemnation. (1) The office of commissioner of condemnation is created. In counties having a population of less than 100,000 there shall be 6 commissioners; in counties having a population of 100,000 or more and less than 750,000 there shall be 9 commissioners; in counties having a population of 750,000 or more there shall be 12 commissioners. Each such commissioner must be a resident of the county or of an adjoining county in the same judicial circuit prior to appointment and remain so during the term of office. Not more than one–third of such commissioners shall be attorneys at law, licensed for active practice in this state.

(2) Such commissioners shall be appointed by the circuit judge or judges of the circuit court for such county and may be removed by said judge or judges at their pleasure. Where any county has more than one circuit judge, the affirmative vote of a majority of such judges shall be necessary to an appointment or a removal. All appointments and removals shall be filed with the clerk of the circuit court for the county. Each commissioner shall take and file the official oath. The first appointments after April 6, 1960 shall be made for staggered terms of 1, 2 and 3 years as fixed by the circuit judge. Thereafter all appointments shall be made for 3–year terms. Vacancies shall be filled for the remainder of the unexpired term.

(3) The commissioners in each county shall annually elect one of their number as chairperson, and the chairperson shall select and notify the commissioners to serve on each commission of 3 required to sit in condemnation.

(4) Commissioners shall receive no salary but shall be compensated for actual service at an hourly rate to be fixed by the county board of the county. Commissioners shall also receive mileage at a rate fixed by the county board for necessary and direct round trip travel from their homes to the place where the condemnation commission conducts its hearings. The chairperson of the county commission shall receive such reasonable sum, computed at the hourly rate as fixed by the county board, as shall be allowed by the circuit judge having jurisdiction over the hearing, for his or her administrative work in selecting and notifying the commissioners to serve in the condemnation hearing and his or her necessary out–of–pocket expenses in connection with the hearing. All such compensation and expenses shall be paid by the condemnor on order approved by the circuit judge.

(5) If the petitioner under s. 32.06 is entitled to condemn the property or any portion of it or interest therein, the circuit judge having jurisdiction of the petition, or to whom an application for county commissioner of condemnation review is taken from a highway taking award, shall assign the matter to the chairperson of the county condemnation commissioners who shall within 7 days select 3 of the commissioners to serve as a commission to ascertain the compensation to be made for the taking of the property or rights in property sought to be condemned, fix the time and place of the hearing before the commission, which time shall not be less than 20 nor more than 30 days after the assignment date, and notify the parties in interest thereof. The judge's order of assignment shall be accompanied by a copy of the petition for condemnation. Notice shall be given to each interested person or, where the persons have appeared in the proceeding by an attorney then to the attorney, by certified mail with return receipt requested, postmarked at least 10 days prior to the date of hearing. If any party cannot be found and has not appeared in the proceedings, a class 3 notice shall be published, under ch. 985, in the community which the chairperson of the condemnation commission directs. Costs of notification shall be paid by the petitioner upon certification by the commission chairperson.

(6) (a) At the hearing the commissioners shall first view the property sought to be condemned and then hear all evidence desired to be produced. The condemnee shall present his or her testimony first and have the right to close. Except as provided in s. 901.05, in conducting the hearing the commission shall not be bound by common law or statutory rules of evidence. The commission shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant and unduly repetitious testimony. The amount of a prior jurisdictional offer or award shall not be disclosed to the commission. The commission shall give effect to the rules of privilege recognized by law. Basic principles of relevancy, materiality and probative force, as recognized in equitable proceedings, shall govern the proof of all questions of fact. The commission may on its own motion adjourn the hearing once for not more than 7 days, but may by stipulation of all parties grant other adjournments. A majority of the commissioners, being present, may determine all matters.

(b) If either party desires that the proceedings by the commission be transcribed, the commission may order the same and the applicant shall pay the cost thereof. Within 10 days after the conclusion of such hearing the commission shall make a written award specifying therein the property taken and the compensation, and file such award with the clerk of the circuit court, who shall cause a copy thereof to be mailed to each party in interest and record the original in the judgment record of such court. The commission shall file with the clerk of the court a sworn voucher for the compensation due each member, which sum, upon approval by the circuit judge, shall be paid by the condemnor.

History: 1977 c. 449; 1983 a. 302 s. 8; 1991 a. 269, 316; 1993 a. 184; 2017 a. 207 s. 5.

The failure of a condemnation commission to file its award within 10 days did not deprive it of jurisdiction. Herro v. Natural Resources Board, 53 Wis. 2d 157, 192 N.W.2d 104 (1971).

The 60–day period under s. 32.05 (10) (a) for appealing a condemnation commission award begins to run when the commission has filed its award with the circuit court clerk and the clerk has mailed and recorded the award under sub. (6) (b). Dairyland Fuels, Inc. v. State, 2000 WI App 129, 237 Wis. 2d 467, 614 N.W.2d 829, 99–1296.

32.09 Rules governing determination of just compensation. In all matters involving the determination of just compensation in eminent domain proceedings, the following rules shall be followed:

(1) The compensation so determined and the status of the property under condemnation for the purpose of determining whether severance damages exist shall be as of the date of evaluation as fixed by s. 32.05 (7) (c) or 32.06 (7).

(1m) (a) As a basis for determining value, a commission in condemnation or a court shall 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 paragraph 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.

(b) As a basis for determining value, a commission in condemnation or a court shall consider, if provided by the condemnor or condemnee, an appraisal based on the income approach and an appraisal based on the cost approach.

(2) In determining just compensation the property sought to be condemned shall be considered on the basis of its most advantageous use but only such use as actually affects the present market value.

(2m) In determining just compensation for property sought to be condemned in connection with the construction of facilities, as defined under s. 196.491 (1) (e), any increase in the market value of such property occurring after the date of evaluation but before the date upon which the lis pendens is filed under s. 32.06 (7) shall be considered and allowed to the extent it is caused by factors other than the planned facility.

(3) Special benefits accruing to the property and affecting its market value because of the planned public improvement shall be considered and used to offset the value of property taken or damages under sub. (6), but in no event shall such benefits be allowed in excess of damages described under sub. (6).

(4) 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 may be paid for such depreciation except as expressly allowed in subs. (5) (b) and (6) and s. 32.19.

(5) (a) In the case of a total taking the condemnor shall pay the fair market value of the property taken and shall be liable for the items in s. 32.19 if shown to exist.

(b) Any increase or decrease in the fair market value of real property prior to the date of evaluation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, may not be taken into account in determining the just compensation for the property.

(6) 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:

(a) Loss of land including improvements and fixtures actually taken.

(b) Deprivation or restriction of existing right of access to highway from abutting land, provided that nothing herein shall operate to restrict the power of the state or any of its subdivisions or any municipality to deprive or restrict such access without compensation under any duly authorized exercise of the police power.

(c) Loss of air rights.

(d) Loss of a legal nonconforming use.

(e) Damages resulting from actual severance of land including damages resulting from severance of improvements or fixtures and proximity damage to improvements remaining on condemnee's land. In determining severance damages under this paragraph, the condemnor may consider damages which may arise during construction of the public improvement, including damages from noise, dirt, temporary interference with vehicular or pedestrian access to the property and limitations on use of the

property. The condemnor may also consider costs of extra travel made necessary by the public improvement based on the increased distance after construction of the public improvement necessary to reach any point on the property from any other point on the property.

(f) Damages to property abutting on a highway right–of–way due to change of grade where accompanied by a taking of land.

(g) Cost of fencing reasonably necessary to separate land taken from remainder of condemnee's land, less the amount allowed for fencing taken under par. (a), but no such damage shall be allowed where the public improvement includes fencing of right–of–way without cost to abutting lands.

(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), 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 assessment under 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 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.

(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.

(7) In addition to the amount of compensation paid pursuant to sub. (6), the owner shall be paid for the items provided for in s. 32.19, if shown to exist, and in the manner described in s. 32.20.

(8) A commission in condemnation or a court may in their respective discretion require that both condemnor and owner submit to the commission or court at a specified time in advance of the commission hearing or court trial, a statement covering the respective contentions of the parties on the following points:

(a) Highest and best use of the property.

(b) Applicable zoning.

(c) Designation of claimed comparable lands, sale of which will be used in appraisal opinion evidence.

(d) Severance damage, if any.

(e) Maps and pictures to be used.

(f) Costs of reproduction less depreciation and rate of depreciation used.

(g) Statements of capitalization of income where used as a factor in valuation, with supporting data.

(h) Separate opinion as to fair market value, including before and after value where applicable by not to exceed 3 appraisers.

(i) A recitation of all damages claimed by owner.

(j) Qualifications and experience of witnesses offered as experts.

(9) A condemnation commission or a court may make regulations for the exchange of the statements referred to in sub. (8) by the parties, but only where both owner and condemnor furnish same, and for the holding of prehearing or pretrial conference between parties for the purpose of simplifying the issues at the commission hearing or court trial.

History: 1975 c. 68, 191, 410, 425; 1977 c. 438, 440; 1983 a. 236; 1993 a. 490; 1997 a. 204; 2017 a. 243.

When a strip of land was taken and highway access to a loading dock restricted without a prior finding of necessity to limit access, the plaintiff could recover damages for loss of access because the police power under sub. (4) had not been exercised; rather the taking was by eminent domain. Crown Zellerbach Corp. v. City of Milwaukee Development Department, 47 Wis. 2d 142, 177 N.W.2d 94 (1970).

While the general rule is that evidence of net income is inadmissible to establish fair market value, that rule does not preclude admission of net income evidence under certain circumstances for certain purposes, including impeachment, refreshing the recollection of a witness, or when proper objection is not timely made. Mancheski v. State, 49 Wis. 2d 46, 181 N.W.2d 420 (1970).

The closing of an intersection under the police power does not require compensation so long as access to property is preserved. There is no property right to the flow of traffic. Schneider v. State, 51 Wis. 2d 458, 187 N.W.2d 172 (1971).

It was error to receive testimony of an appraiser who made his appraisal 10 months before the date of the taking and acknowledged that the value had changed in the 10 months but could not update his appraisal. Schey Enterprises, Inc. v. State, 52 Wis. 2d 361, 190 N.W.2d 149 (1971).

The elimination of respondent's sewer connection, which had the effect of rendering the existing lateral sewer useless, is a damage resulting from the severance of an improvement within the meaning of sub. (6) (e), which was of such consequence as not to be incidental to the taking under the exercise of appellant's police power that it was a compensable item of damage. Hanser v. Metropolitan Sewerage District of Milwaukee, 52 Wis. 2d 429, 190 N.W.2d 161 (1971).

Zoning changes and sanitary facilities are elements of value and are factors to be admitted in evidence concerning value when the evidence is in proper form. When a zoning ordinance prohibits the most advantageous use of the property, the landowner may show there is a reasonable probability of rezoning so as to allow for the highest use. Bembinster v. State, 57 Wis. 2d 277, 203 N.W.2d 897 (1973).

Damages caused by a change of the grade of a street or highway where no land is taken constitutes an exercise of police power that is separate and distinct from the exercise of the power of eminent domain under sub. (6) (f) and is only compensable under s. 32.18. Jantz v. State, 63 Wis. 2d 404, 217 N.W.2d 266 (1974).

Inconvenience is a factor only when the landowner's property rights in the remaining portion are so impaired that the owner has, in effect, had that portion taken also. DeBruin v. Green County, 72 Wis. 2d 464, 241 N.W.2d 167 (1976).

An owner's opinion as to the value of real estate may be accepted, but in order to support a verdict some basis for the opinion must be shown. Genge v. Baraboo, 72 Wis. 2d 531, 241 N.W.2d 183 (1976).

The requirement that property be valued as an integrated and comprehensive entity does not mean that the individual components of value may not be examined or considered in arriving at an overall fair market value. Milwaukee & Suburban Transport Corp. v. Milwaukee County, 82 Wis. 2d 420, 263 N.W.2d 503 (1978).

An existing right of access in s. 32.09 (6) (b) includes the right of an abutting property owner to ingress and egress and the right to be judged on criteria for granting permits for access points under s. 86.07 (2). The restriction of access was a compensable taking. Narloch v. DOT, 115 Wis. 2d 419, 340 N.W.2d 542 (1983).

A court may apply the "assemblage" doctrine that permits consideration of evidence of prospective use that requires integration of the condemned parcel with other parcels if integration of the lands is reasonably probable. Clarmar v. City of Milwaukee Redevelopment Authority, 129 Wis. 2d 81, 383 N.W.2d 890 (1986).

There can be no compensation under sub. (6) (b) without the denial of substantially all beneficial use of a property. Sippel v. City of St. Francis, 164 Wis. 2d 527, 476 N.W.2d 579 (Ct. App. 1991).

A change in use is not a prerequisite to finding a special benefit under sub. (3); the real issue is whether the property has gained a benefit not shared by any other parcel. Red Top Farms v. DOT, 177 Wis. 2d 822, 503 N.W.2d 354 (Ct. App. 1993).

Damage to property is not compensated as a taking. For flooding to be a taking it must constitute a permanent physical occupation of property. Menick v. City of Menasha, 200 Wis. 2d 737, 547 N.W.2d 778 (Ct. App. 1996), 95–0185.

The state's assertion that the plaintiff's property, even if rendered uninhabitable as a residence by state construction activities, could be used for some non–residential purpose could not support a motion for dismissal. Factual issues of damage and causation are properly deferred to the summary judgment or trial stage. Wikel v. DOT, 2001 WI App 214, 247 Wis. 2d 626, 635 N.W.2d 213, 00–3215.

Evidence of net income is ordinarily inadmissible for purposes of establishing property values in condemnation cases involving commercial enterprises because income is dependent upon too many variables to serve as a reliable guide in determining fair market value. Rademann v. DOT, 2002 WI App 59, 252 Wis. 2d 191, 642 N.W.2d 600, 00–2995.

Comparable sales evidence is admissible as direct evidence of the land's value or for the limited indirect purpose of demonstrating a basis for and giving weight to an expert opinion. Admission of comparable sales as direct evidence of value is more restrictive than the admissibility rule when offered to show a basis for an expert opinion. Admission of comparable sales evidence is within the discretion of the trial court. When offered as the basis for an expert's opinion, the extent to which the offered sales are truly comparable goes to the weight of the testimony, not to admissibility. Raddeman v. DOT, 2002 WI App 59, 252 Wis. 2d 191, 642 N.W.2d 600, 00–2995.

The "existing right of access" under sub. (6) (b) includes the right of an abutting property owner to reasonable ingress and egress. A frontage road might not always constitute "reasonable" access. Whether there is reasonable access depends on the specific facts in a case, to be determined by the jury. National Auto Truckstops v. DOT, 2003 WI 95, 263 Wis. 2d 649, 665 N.W.2d 198, 02–1384.

When comparable sales are offered as substantive evidence of property value, the other property must be closely comparable to the property being taken. The properties must be located near each other and sufficiently similar in relevant market, usability, improvements, and other characteristics so as to support a finding of comparability. Alsum v. Department of Transportation, 2004 WI App 196, 276 Wis. 2d 654, 689 N.W.2d 68, 03–2563.

Sub. (6) does not provide severance damages when compensation for a partial taking is based on the fair market value of the property taken. Justmann v. Portage County, 2005 WI App 9, 278 Wis. 2d 487, 692 N.W.2d 273, 03–3310.

Evidence regarding fear and safety concerns of natural gas transmission pipelines, electrical transmission lines, and oil and gasoline pipelines in partial takings cases is admissible if a qualified expert has successfully drawn the pertinent nexus in the calculation of damages between evidence of that fear and the fair market value of the property being condemned following the taking. Arents v. ANR Pipeline Company, 2005 WI App 61, 281 Wis. 2d 173, 696 N.W.2d 194, 03–1488.

Evidence of comparable sales is not the only relevant and admissible evidence in determining fair market value when available in a condemnation case. Arents v. ANR Pipeline Company, 2005 WI App 61, 281 Wis. 2d 173, 696 N.W.2d 194, 03–1488.

The requirement in sub. (6) to consider the "whole property" does not require that an individual assessment always treat contiguous, commonly–owned tax parcels separately or as a single unit, but requires that no portion of the property be left out of an assessment. When the property's highest and best use that affects its present market value is most appropriately appraised by considering the contiguous tax parcels separately, that is the appropriate appraisal method. Conversely, when, the highest and best use is more adequately represented through an appraisal of the property as a single unit, that approach is appropriate. Spiegelberg v. State, 2006 WI 75, 291 Wis. 2d 601, 717 N.W.2d 641, 04–3384.

Under Wisconsin eminent domain law, courts apply the unit rule, which prohibits valuing individual property interests or aspects separately from the property as a whole. When a parcel of land is taken by eminent domain, the compensation award is for the land itself, not the sum of the different interests therein. Hoekstra v. Guardian Pipeline, LLC, 2006 WI App 245, 298 Wis. 2d 165, 726 N.W.2d 648, 03–2809.

The lessor under a long–term favorable lease who received no compensation for its leasehold interest under the unit rule when the fair market value of the entire property was determined to be zero was not denied the right to just compensation under Article I, Section 13, of the Wisconsin constitution. City of Milwaukee VFW Post No. 2874 v. Redevelopment Authority of the City of Milwaukee, 2009 WI 84, 319 Wis. 2d 553, 768 N.W.2d 749, 06–2866.

Wisconsin's project influence statute, sub. (5) (b), contains nothing about comparables. It simply states that any increase or decrease in the fair market value of the subject property caused by the public improvement may not be taken into consideration in determining just compensation. Sub. (5) (b) does not create a bright–line rule mandating that when evidence exists of comparable sales not impacted by a public improvement project, any sale alleged to be comparable that was made after the project plans were known that was located in whole or in part within the project footprint must be excluded as a matter of law. Spanbauer v. State, 2009 WI App 83, 320 Wis. 2d 242, 769 N.W.2d 137, 08–1165.

In easement condemnation cases, property owners are compensated for the loss in fair market value of their whole property. Pre–existing easement rights may be considered by a jury when determining just compensation. The circuit court's exclusion of evidence of existing easement rights was erroneous because evidence of those rights was highly probative of the difference in fair market value of the property before and after the new easement was condemned. Fields v. American Transmission Company, LLC, 2010 WI App 59, 324 Wis. 2d 417, 782 N.W.2d 729, 09–1008.

Evidence of environmental contamination and of remediation costs is admissible in condemnation proceedings under. ch. 32 so long as it is relevant to the fair market value of the property. A property's environmental contamination and the costs to remediate it are relevant to the property's fair market value if they would influence a prudent purchaser who is willing and able, but not obliged, to buy the property. Liability for environmental contamination has no place in a condemnation proceeding under ch. 32. 260 North 12th Street, LLC v. State of Wisconsin Department of Transportation, 2011 WI 103, 338 Wis. 2d 34, 808 N.W.2d 372, 09–1557.

Damages for a partial taking cannot include damages for the impact caused by loss of access to a highway if the loss of access resulted from the relocation of the highway, rather than from the taking. Damages are allowed under sub. (6g) only for loss that was a consequence of the particular taking. An award for a temporary limited easement cannot serve to bootstrap damages that emanate from a road relocation, especially when no land was taken and the property's boundaries were unchanged. 118th Street Kenosha, LLC v. Wisconsin Department of Transportation, 2014 WI 125, 359 Wis. 2d 30, 856 N.W.2d 486, 12–2784.

Section 84.25 (3) authorizes DOT to change access to a highway designated as controlled access in whatever way it deems "necessary or desirable." In controlled–access highway cases, abutting property owners are precluded from compensation for a change in access under sub. (6) (b) as a matter of law. However, exercises of the police power cannot deprive the owner of all or substantially all beneficial use of the property without compensation. If the replacement access is so circuitous as to amount to a regulatory taking of the property, compensation is due and the abutting property owner may bring an inverse condemnation claim under s. 32.10. Provision of some access preserves the abutting property owner's controlled right of access to the property. Reasonableness is not the standard to apply to determine if compensation is due under sub. (6) (b). Hoffer Properties, LLC v. State of Wisconsin, 2016 WI 5, 366 Wis. 2d 372, 874 N.W.2d 533, 12–2520.

Special benefits means an "uncommon advantage" and has the same meaning under both sub. (3) and s. 66.0703 (1) (a), the special assessments statute. Under sub. (3), only those special benefits that affect the market value of a property because of a planned improvement are considered and used to offset the value of the property taken. In contrast, s. 66.0703 (1) allows a municipality to levy and collect a special assessment upon property for special benefits conferred on the property by an improvement, regardless of the improvement's effect on the property's market value. Because of this distinction, a municipality's failure to raise the issue of special benefits in an eminent domain action does not foreclose the municipality's ability to levy and collect a special assessment upon a property for special benefits conferred. CED Properties, LLC v. City of Oshkosh, 2018 WI 24, 380 Wis. 2d 399, 909 N.W.2d 136, 16–0474.

Although *118th Street Kenosha, LLC*, 2014 WI 125, involved the "taking of an easement" under sub. (6g), that court's statutory construction analysis applies equally to a "partial taking of property" under sub. (6). The damages authorized by subs. (6) and (6g) must be caused by "a partial taking of property" under sub. (6) or caused by "the taking of an easement" under sub. (6g). In this case, it was undisputed that the partial taking of property was not the cause of the damages the plaintiffs sought. Therefore, the plaintiffs were not entitled to loss–of–access damages under sub. (6). James & Judith Nonn Trust v. DOT, 2019 WI App 29, 388 Wis. 2d 53, 930 N.W.2d 668, 18–0888.

The owner of condemned property is not entitled to the cost of developing functionally equivalent substitute facilities. United States v. 564.54 Acres of Land, 441 U.S. 506 (1979).

32.10 Condemnation proceedings instituted by property owner. If any property has been occupied by a person possessing the power of condemnation and if the person has not exercised 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. The petition shall describe the land, state the 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 person against which the proceedings are instituted. A copy of the petition shall be served upon the 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 occupying person as defendant. The court shall 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 subchapter 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.

History: 1973 c. 170; Sup. Ct. Order, 67 Wis. 2d 575, 749 (1975); 1975 c. 218; 1977 c. 440; 1983 a. 236 s. 12.

A cause of action under this section arises prior to the actual condemnation of the property if the complaint alleges facts that indicate the property owner has been deprived of all, or substantially all, of the beneficial use of the property. Howell Plaza, Inc. v. State Highway Comm. 66 Wis. 2d 720, 226 N.W.2d 185 (1975).

In order for the petitioner to succeed in the initial stages of an inverse condemnation proceeding, the petitioner must allege facts that, prima facie, at least show there has been either an occupation of its property, or a taking, which must be compensated

under the terms of the Wisconsin Constitution. Howell Plaza, Inc. v. State Highway Commission, 66 Wis. 2d 720, 226 N.W.2d 185 (1975).

A landowner's petition for inverse condemnation, like a municipality's petition for condemnation, is not subject to demurrer. Revival Center Tabernacle of Battle Creek v. Milwaukee, 68 Wis. 2d 94, 227 N.W.2d 694 (1975).

A taking occurred when a city refused to renew a lessee's theater license because of a proposed renewal project encompassing the theater's location, not when the city made a jurisdictional offer. Property is valued as of the date of the taking. Maxey v. Redevelopment Authority of Racine, 94 Wis. 2d 375, 288 N.W.2d 794 (1980).

The doctrine of sovereign immunity cannot bar an action for just compensation based on the taking of private property for public use even though the legislature has failed to establish specific provisions for the recovery of just compensation. Zinn v. State, 112 Wis. 2d 417, 334 N.W.2d 67 (1983).

A successful plaintiff in an inverse condemnation action was entitled to litigation expenses, which included expenses related to a direct condemnation action. Expenses related to an allocation proceeding under s. 32.11 were not recoverable. Maxey v. Racine Redevelopment Authority, 120 Wis. 2d 13, 353 N.W.2d 812 (Ct. App. 1984).

The owner of property at the time of a taking is entitled to bring an action for inverse condemnation and need not own the property at the time of the commencement of the action. Riley v. Town of Hamilton, 153 Wis. 2d 582, 451 N.W.2d 454 (Ct. App. 1989).

A constructive taking occurs when government regulation renders a property useless for all practical purposes. Taking jurisprudence does not allow dividing the property into segments and determining whether rights in a particular segment have been abrogated. Zealy v. City of Waukesha, 201 Wis. 2d 365, 548 N.W.2d 528 (1996), 93–2831.

This section does not govern inverse condemnation proceedings seeking just compensation for a temporary taking of land for public use. Such takings claims are based directly on Article I, section 13, of the constitution. Anderson v. Village of Little Chute, 201 Wis. 2d 467, 549 N.W.2d 561 (Ct. App. 1996), 95–1677.

The reversal of an agency decision by a court does not convert an action that might otherwise have been actionable as a taking into one that is not. Once there has been sufficient deprivation of the use of property there has been a taking even though the property owner regains full use of the land through rescission of the restriction. Eberle v. Dane County Board of Adjustment, 227 Wis. 2d 609, 595 N.W.2d 730 (1999), 97–2869.

When a regulatory taking claim is made, the plaintiff must prove that: 1) a government restriction or regulation is excessive and therefore constitutes a taking; and 2) any proffered compensation is unjust. Eberle v. Dane County Board of Adjustment, 227 Wis. 2d 609, 595 N.W.2d 730 (1999), 97–2869.

A claimant who asserted ownership of condemned land, compensation for which was awarded to another as owner with the claimant having had full notice of the proceedings, could not institute an inverse condemnation action because the municipality had exercised its power of condemnation. Koskey v. Town of Bergen, 2000 WI App 140, 237 Wis. 2d 284, 614 N.W.2d 845, 99–2192.

The state holds title to the waters of the state and any private property interest in constructing facilities in those waters is encumbered by the public trust doctrine. A riparian owner does not have a right to unfettered use of the bed of the waterway or to the issuance of a permit to construct a structure, which weighs against a finding that a riparian owner suffered a compensable regulatory taking as the result of a permit denial. R.W. Docks & Slips v. State, 2001 WI 73, 244 Wis. 2d 497, 628 N.W.2d 781, 99–2904.

Taking jurisprudence does not divide a single parcel into discrete segments and attempt to determine whether rights in a given piece have been entirely abrogated but instead focuses on the extent of the interference with rights in the parcel as a whole. R.W. Docks & Slips v. State, 2001 WI 73, 244 Wis. 2d 497, 628 N.W.2d 781, 99–2904.

In order to state a claim of inverse condemnation under this section, the facts alleged must show either that there was an actual physical occupation by the condemning authority or that a government–imposed restriction deprived the owner of all, or substantially all, of the beneficial use of his or her property. E–L Enterprises, Inc. v. Milwaukee Metropolitan Sewerage District, 2010 WI 58, 326 Wis. 2d 82, 785 N.W.2d 409, 08–0921.

A taking occurs in airplane overflight cases when government action results in aircraft flying over a landowner's property low enough and with sufficient frequency to have a direct and immediate effect on the use and enjoyment of the property. The government airport operator bears responsibility if aircraft are regularly deviating from FAA flight patterns and those deviations result in invasions of the superadjacent airspace of neighboring property owners with adverse effects on their property. Placing the burden on property owners to seek enforcement against individual airlines or pilots would effectively deprive the owners of a remedy for such takings. Brenner v. City of New Richmond, 2012 WI 98, 343 Wis. 2d 320, 816 N.W.2d 291, 10–0342.

In order to constitute a taking, the property loss at issue must be the result of government action. The court is not free to disregard this plainly stated rule and search for inaction that might be considered to be the functional equivalent of action, as might be at issue for example in the negligence context. Fromm v. Village of Lake Delton, 2014 WI App 47, 354 Wis. 2d 30, 847 N.W.2d 845, 13–0014.

Section 84.25 (3) authorizes DOT to change access to a highway designated as controlled access in whatever way it deems "necessary or desirable." In controlled–access highway cases, abutting property owners are precluded from compensation for a change in access under s. 32.09 (6) (b) as a matter of law. However, exercises of the police power cannot deprive the owner of all or substantially all beneficial use of the property without compensation. If the replacement access is so circuitous as to amount to a regulatory taking of the property, compensation is due and the abutting property owner may bring an inverse condemnation claim under this section. Provision of some access preserves the abutting property owner's controlled right of access to the property. Reasonableness is not the standard to apply to determine if compensation is due under s. 32.09 (6) (b). Hoffer Properties, LLC v. State of Wisconsin, 2016 WI 5, 366 Wis. 2d 372, 874 N.W.2d 533, 12–2520.

It has long been settled that constitutional takings provisions interpose no barrier to the exercise of the police power of the state. Injury to property resulting from the exercise of the police power of the state does not necessitate compensation. A state acts under its police power when it regulates in the interest of public safety, convenience, and the general welfare of the public. The protection of public rights may be accomplished by the exercise of the police power unless the damage to the property owner is too great and amounts to a confiscation. Claims for such "regulatory takings" must be brought under this section. Hoffer Properties, LLC v. State of Wisconsin, 2016 WI 5, 366 Wis. 2d 372, 874 N.W.2d 533, 12–2520.

32.11 Trial of title. If any defect of title to or encumbrance upon any parcel of land is suggested upon any appeal, or if any person petitions the court in which an appeal is pending setting up a claim adverse to the title set out in said petition to said premises and to the money or any part thereof to be paid as compensation for the property so taken, the court shall thereupon determine the question so presented. Judgment shall be entered on such determination, with costs to the prevailing party. An appeal from such judgment may be taken as from a judgment in an action.

A successful plaintiff in an inverse condemnation action was entitled to litigation expenses, which included expenses related to a direct condemnation action. Expenses related to an allocation proceeding under s. 32.11 were not recoverable. Maxey v. Racine Redevelopment Authority, 120 Wis. 2d 13, 353 N.W.2d 812 (Ct. App. 1984).

32.12 Proceedings to perfect title. (1) If any person having the power to acquire property by condemnation enters into the possession of any property and is using the property for a purpose for which condemnation proceedings might be instituted but has not acquired title to the property, or if the title is defective, or if not in possession, has petitioned the circuit court as provided by s. 32.06 (7) and for an order as authorized under this section either at the time of filing the petition for condemnation or thereafter, and the necessity for taking has been determined as authorized by law, the person may proceed to acquire or perfect the title as provided in this subchapter or be authorized to enter into possession as provided in this section. At any stage of the proceedings the court in which they are pending may authorize the person, if in possession, to continue in possession, and if not in possession to take possession and have and use the lands during the pendency of the proceedings and may stay all actions or proceedings against the person on account thereof on the paying in court of a sufficient sum or the giving of such securities as the court may direct to pay the compensation therefor when finally ascertained. The "date of taking" in proceedings under this section is the date on which the security required by the order for such security is approved and evidence thereof is filed with the clerk of court. In every such case the party interested in the property may institute and conduct, at the expense of the person, the proceedings to a conclusion if the person delays or omits to prosecute the same.

(2) No injunction to restrain the possession or use of lands subject to proceedings under sub. (1) by the party interested in the property or the operation thereon of any plant, line, railroad or other structure, shall be granted until compensation therefor has been fixed and determined.

(3) In case such person or the person through or under whom that person claims title has paid to the owner of such lands or to any former owner thereof, or to any other person having any valid mortgage or other lien thereon, or to any owner, lien holder, mortgagee or other person entitled to any award or part of any award in satisfaction of the whole or any part of such award to which such owner, lien holder, mortgagee or other person may become entitled upon completion of such condemnation proceedings in the manner authorized by this subchapter, such sum with interest thereon from the date of such payment at the rate of 5 percent per year shall be deducted from the award made by said commissioners to such owners or other person.

(4) In case there is a dispute in relation to the payment of any sum as aforesaid or the amount or date of any payment that may have been made, the court or judge thereof shall at the request of any party, award an issue which shall be tried in the same manner as issues of fact in said court and an appeal from the judgment thereon may be taken in the same manner as from any judgment.

History: 1977 c. 449; 1979 c. 110 s. 60 (13); 1983 a. 236 s. 12; 1991 a. 316.

32.13 Proceedings when land mortgaged. Whenever any person has acquired title to any property for which it could

institute condemnation proceedings and said property is subject to any mortgage or other lien and proceedings have been afterwards commenced by the holders of any such mortgage or lien to enforce the same, the court in which such proceedings are pending may on due notice appoint 3 commissioners from among the county commissioners created by s. 32.08 to appraise and value said property in the manner prescribed in this subchapter as of the time when such person acquired title. Such appraisal shall be exclusive of the improvements made by that person or that person's predecessors. Said appraisal, with interest, when confirmed by said court shall stand as the maximum amount of the encumbrance chargeable to the property so taken and judgment shall be rendered according to equity for an amount not exceeding such appraisal, with interest, against such person and may be enforced as in other cases. On the payment of such amount such person shall hold said property free and discharged from said mortgage or lien. An appeal may be taken from the award of such commission by the plaintiff and tried and determined as an appeal from the county condemnation commissioners under this subchapter and the action to enforce such mortgage or lien shall in the meantime be stayed.

History: 1983 a. 236 s. 12; 1991 a. 316.

32.14 Amendments. The court or judge may at any time permit amendments to be made to a petition filed pursuant to s. 32.06, amend any defect or informality in any of the proceedings authorized by this subchapter and may cause any parties to be added and direct such notice to be given to any party of interest as it deems proper.

History: 1983 a. 236 s. 12.

32.15 How title in trustee acquired. In case any title or interest in real estate lawfully required by any person having the power of condemnation is vested in any trustee not authorized to sell, release and convey the same or in any minor or person adjudged mentally incompetent, the circuit court may in a summary proceeding authorize and empower such trustee or the general guardian of such minor or person adjudged mentally incompetent to sell and convey the same for the purposes required on such terms as may be just. If such minor or person adjudged mentally incompetent has no general guardian, the court may appoint a special guardian for such sale, release or conveyance. The court may require from such trustee, or general or special guardian, such security as it deems proper before any conveyance or release authorized in this section is executed. The terms of the same shall be reported to the court on oath. If the court is satisfied that such terms are just to the party interested in such real estate, it shall confirm the report and direct the conveyance or release to be executed. Such conveyance or release shall have the same effect as if executed by one having legal power to sell and convey the land.

History: 1977 c. 83.

32.16 Abandonment of easements for public use. An easement for public use acquired by gift or purchase or by condemnation under this subchapter shall not be deemed abandoned on the grounds of nonuser thereof for any period less than that prescribed in the applicable statutes of limitations in ch. 893. Nothing contained in this section shall be presumed to adversely affect any highway right possessed by the state or any county or municipality thereof.

History: 1983 a. 236 s. 12.

32.17 General provisions. (1) Where power of condemnation is given to a state officer the title acquired shall be in the name of the state. Payments of the costs and expenses of such condemnation shall be paid from the appropriation covering the purposes for which the property is acquired.

(2) Any condemnation proceedings authorized under any local or special law of this state, except those applicable to cities of the 1st class, shall be conducted under the procedure provided in this subchapter.

(3) Where disbursements and costs, including expert witness fees and reasonable actual attorney fees in case of abandonment of proceedings by the condemnor are recoverable from a condemnor under this subchapter, they shall be recoverable from the state or any of its agencies when the state or such agency is the condemnor.

History: 1983 s. 236 s. 12; 1993 a. 490.

32.18 Damage caused by change of grade of street or highway where no land is taken; claim; right of action. Where a street or highway improvement project undertaken by the department of transportation, a county, city, town or village, causes a change of the grade of such street or highway in cases where such grade was not previously fixed by city, village or town ordinance, but does not require a taking of any abutting lands, the owner of such lands at the date of such change of grade may file with the department of transportation in the case of state trunk highways, a county in the case of county highways or the city, town or village, causing such change of grade to be effected, whichever has jurisdiction over the street or highway, a claim for any damages to said lands occasioned by such change of grade. Special benefits may be offset against any claims for damages under this section. Such claim shall be filed within 90 days following the completion of said project; if allowed, it shall be paid in the case of the department of transportation, out of the state highway funds, otherwise, out of the funds of the respective county, city, village or town against which the claim is made as the case may be. If it is not allowed within 90 days after such date of filing it shall be deemed denied. Thereupon such owner may within 90 days following such denial commence an action against the department of transportation, the city, county, village or town as the case may be, to recover any damages to the lands shown to have resulted from such change of grade. Any judgment recovered against the department of transportation shall be paid out of the state highway funds, otherwise out of the funds of city, county, village or town against which the judgment is recovered. Where a grade has been established by ordinance, the property owner's remedy shall be as provided by municipal law. This section shall in no way contravene, limit or restrict s. 88.87.

History: 1977 c. 29 s. 1654 (8) (c); 1977 c. 273.

A municipality may not initiate the running of the second 90–day period by affirmatively denying a claim within the first 90–day period. A claimant has 180 days from the filing of the original claim to commence legal action. Johnson v. City of Onalaska, 153 Wis. 2d 611, 451 N.W.2d 466 (Ct. App. 1989).

The state was not a proper party for claims against the Department of Transportation as the two are distinct legal entities. Service on the state of a summons and complaint that named the state and not the DOT as a party does not constitute service on the DOT necessary to establish personal jurisdiction over the DOT. Hoops Enterprises, III, LLC v. Super Western, Inc. 2013 WI App 7, 345 Wis. 2d 733, 827 N.W.2d 120, 12–0062.

32.185 Condemnor. "Condemnor", for the purposes of ss. 32.19 to 32.27, means any municipality, board, commission, public officer, or business entity vested with the power of eminent domain which acquires property for public purposes either by negotiated purchase when authorized by statute to employ its powers of eminent domain or by the power of eminent domain. "Condemnor" also means a displacing agency. In this section, "displacing agency" means any state agency, political subdivision of the state or person carrying out a program or project with public financial assistance that causes a person to be a displaced person, as defined in s. 32.19 (2) (e).

History: 1975 c. 224; 1987 a. 399; 2015 a. 55.
Cross–reference: See also s. Adm 92.001, Wis. adm. code.

32.19 Additional items payable. (1) DECLARATION OF PURPOSE. The legislature declares that it is in the public interest that persons displaced by any public project be fairly compensated by payment for the property acquired and other losses hereinafter described and suffered as the result of programs designed for the benefit of the public as a whole; and the legislature further finds and declares that, notwithstanding subch. II, or any other provision of law, payment of such relocation assistance and assistance in the acquisition of replacement housing are proper costs of the

construction of public improvements. If the public improvement is funded in whole or in part by a nonlapsible trust, the relocation payments and assistance constitute a purpose for which the fund of the trust is accountable.

(2) DEFINITIONS. In this section and ss. 32.25 to 32.27:

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

1. For the purchase, sale, lease or rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

2. For the sale of services to the public;

3. By a nonprofit organization; or

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

(b) "Comparable dwelling" means one which, when compared with the dwelling being taken, is substantially equal concerning all major characteristics and functionally equivalent with respect to: the number and size of rooms and closets, area of living space, type of construction, age, state of repair, size and utility of any garage or other outbuilding, type of neighborhood and accessibility to public services and places of employment. "Comparable dwelling" shall meet all of the standard building requirements and other code requirements of the local governmental body and shall also be decent, safe and sanitary and within the financial means of the displaced person, as defined by the department of administration.

(c) "Comparable replacement business" means a replacement business which, when compared with the business premises being acquired by the condemnor, is adequate for the needs of the business, is reasonably similar in all major characteristics, is functionally equivalent with respect to condition, state of repair, land area, building square footage required, access to transportation, utilities and public service, is available on the market, meets all applicable federal, state or local codes required of the particular business being conducted, is within reasonable proximity of the business acquired and is suited for the same type of business conducted by the acquired business at the time of acquisition.

(d) "Comparable replacement farm operation" means a replacement farm operation which, when compared with the farm operation being acquired by the condemnor, is adequate for the needs of the farmer, is reasonably similar in all major characteristics, is functionally equivalent with respect to type of farm operation, condition and state of repair of farm buildings, soil quality, yield per acre, land area, access to transportation, utilities and public services, is within reasonable proximity of the acquired farm operation, is available on the market, meets all applicable federal, state or local codes required of the particular farm operation acquired and is suited for the same type of farming operation conducted by the displaced person at the time of acquisition.

(e) 1. "Displaced person" means, except as provided under subd. 2., any person who moves from real property or who moves his or her personal property from real property:

a. As a direct result of a written notice of intent to acquire or the acquisition of the real property, in whole or in part or subsequent to the issuance of a jurisdictional offer under this subchapter, for public purposes; or

b. As a result of rehabilitation, demolition or other displacing activity, as determined by the department of administration, if the person is a tenant–occupant of a dwelling, business or farm operation and the displacement is permanent.

2. "Displaced person" does not include:

a. Any person determined to be unlawfully occupying the property or to have occupied the property solely for the purpose of obtaining assistance under ss. 32.19 to 32.27; or

b. Any person, other than a person who is an occupant of the property at the time it is acquired, who occupies the property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project for which it is being acquired.

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

(g) "Owner displaced person" means a displaced person who owned the real property being acquired and also owned the business or farm operation conducted on the real property being acquired.

(h) "Person" means:

1. Any individual, partnership, limited liability company, corporation or association which owns a business concern; or

2. Any owner, part owner, tenant or sharecropper operating a farm; or

3. An individual who is the head of a family; or

4. An individual not a member of a family, except that 2 or more tenant occupants of the same dwelling unit shall be considered as one person.

(hm) "Reasonable project costs" means the total of all of the following costs that an owner displaced person of an owner–occupied business or farm operation or tenant displaced person of a tenant–occupied business or farm operation must reasonably incur to make a business or farm operation to which the owner or tenant moves a comparable replacement business or farm operation under sub. (4m):

1. Capital costs, including the actual costs of the construction of improvements, new buildings, structures, and fixtures; the demolition, alteration, remodeling, repair or reconstruction of existing buildings, structures, and fixtures; the removal or containment of, or the restoration of soil or groundwater affected by, environmental pollution; and the clearing and grading of land.

2. Financing costs, including all interest paid to holders of evidences of indebtedness issued to pay for project costs and any premium paid over the principal amount of the obligations because of the redemption of the obligations prior to maturity.

3. Professional service costs, including costs incurred for architectural, planning, engineering, and legal advice and services.

4. Imputed administrative costs, including reasonable charges for the time spent by the owner or tenant in connection with the implementation of the project.

5. Costs related to the construction or alteration of sewerage treatment plants, water treatment plants or other environmental protection devices, storm or sanitary sewer lines, water lines, or amenities on streets; the relocation of utility lines or other utility infrastructure, including any lines or infrastructure related to an electric utility, natural gas utility, or telecommunications utility; the installation of infrastructure necessary to provide utility service to the property, including any service from an electric utility, natural gas utility, or telecommunications utility; or the rebuilding or expansion of streets if such costs are required by the applicable municipality and are not paid for by the municipality.

(i) "Tenant displaced person" means a displaced person who owned the business or farm operation conducted on the real property being acquired but leased or rented the real property.

(2m) INFORMATION ON PAYMENTS. Before initiating negotiations to acquire the property under s. 32.05 (2a), 32.06 (2a) or subch. II, the condemnor shall provide displaced persons with copies of applicable pamphlets prepared under s. 32.26 (6).

(3) RELOCATION PAYMENTS. Any condemnor which proceeds with the acquisition of real and personal property for purposes of any project for which the power of condemnation may be exercised, or undertakes a program or project that causes a person to

be a displaced person, shall make fair and reasonable relocation payments to displaced persons, business concerns and farm operations under this section. Payments shall be made as follows:

(a) *Moving expenses; actual.* The condemnor shall compensate a displaced person for the actual and reasonable expenses of moving the displaced person and his or her family, business or farm operation, including personal property; actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property; actual reasonable expenses in searching for a replacement business or farm operation; and actual reasonable expenses necessary to reestablish a business or farm operation, not to exceed $10,000, unless compensation for such expenses is included in the payment provided under sub. (4m).

(b) *Moving expenses; optional fixed payments.* 1. 'Dwellings.' Any displaced person who moves from a dwelling and who elects to accept the payments authorized by this paragraph in lieu of the payments authorized by par. (a) may receive an expense and dislocation allowance, determined according to a schedule established by the department of administration.

2. 'Business and farm operations.' Any displaced person who moves or discontinues his or her business or farm operation, is eligible under criteria established by the department of administration by rule and elects to accept payment authorized under this paragraph in lieu of the payment authorized under par. (a), may receive a fixed payment in an amount determined according to criteria established by the department of administration by rule, except that such payment shall not be less than $1,000 nor more than $20,000. A person whose sole business at the displacement dwelling is the rental of such property to others is not eligible for a payment under this subdivision.

(c) *Optional payment for businesses.* Any displaced person who moves his or her business, and elects to accept the payment authorized in par. (a), may, if otherwise qualified under par. (b) 2., elect to receive the payment authorized under par. (b) 2., minus whatever payment the displaced person received under par. (a), if the displaced person discontinues the business within 2 years of the date of receipt of payment under par. (a), provided that the displaced person meets eligibility criteria established by the department of administration by rule. In no event may the total combined payment be less than $1,000 nor more than $20,000.

(d) *Federally financed projects.* Notwithstanding pars. (a) to (c), in the case of a program or project receiving federal financial assistance, a condemnor shall, in addition to any payment under pars. (a) to (c), make any additional payment required to comply with the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 USC 4601 to 4655, and any regulations adopted thereunder.

(4) REPLACEMENT HOUSING. (a) *Owner−occupants.* In addition to amounts otherwise authorized by this subchapter, the condemnor shall make a payment, not to exceed $25,000, to any displaced person who is displaced from a dwelling actually owned and occupied, or from a mobile home site actually owned or occupied, by the displaced person for not less than 180 days prior to the initiation of negotiations for the acquisition of the property. For the purposes of this paragraph, a corporation organized under ch. 181 that is a nonprofit corporation, as defined in s. 181.0103 (17), may, if otherwise eligible, be considered a displaced owner. A displaced owner may elect to receive the payment under par. (b) 1. in lieu of the payment under this paragraph. Such payment includes only the following:

1. The amount, if any, which when added to the acquisition payment, equals the reasonable cost of a comparable replacement dwelling available on the private market, as determined by the condemnor.

1m. In the case of a person displaced from a mobile home site who meets one of the conditions under subd. 1m. a., b. or c., the amount, if any, which when added to the trade−in or salvage value of the mobile home equals the reasonable cost of a comparable mobile home which is decent, safe and sanitary, plus an amount equal to 48 times the difference between the monthly rent being paid for the site on which the mobile home is located and the monthly rent for a comparable mobile home site or the amount necessary to enable the displaced person to make a down payment on the purchase of a comparable mobile home site. If a comparable mobile home dwelling is not available, the replacement housing payment shall be calculated on the basis of the next highest type of mobile home or a conventional dwelling that is available and meets the requirements and standards for a comparable dwelling. The owner of a mobile home shall be eligible for payments under this subdivision if one of the following conditions is met:

a. The mobile home is not considered to be a decent, safe and sanitary dwelling unit.

b. The structural condition of the mobile home is such that it cannot be moved without substantial damage or unreasonable cost.

c. There are no adequate or available replacement sites to which the mobile home can be moved.

2. The amount of increased interest expenses and other debt service costs incurred by the owner to finance the purchase of another property substantially similar to the property taken, if at the time of the taking the land acquired was subject to a bona fide mortgage or was held under a vendee's interest in a bona fide land contract, and such mortgage or land contract had been executed in good faith not less than 180 days prior to the initiation of negotiations for the acquisition of such property. The computation of the increased interest costs shall be determined according to rules promulgated by the department of administration.

3. Reasonable incidental fees, commissions, discounts, surveying costs, title evidence costs and other closing costs incurred in the purchase of replacement housing, but not including prepaid expenses.

(ag) *Limitation.* Payment under par. (a) shall be made only to a displaced person who purchases and occupies a decent, safe and sanitary replacement dwelling not later than one year after the date on which the person moves from the dwelling acquired for the project, or the date on which the person receives payment from the condemnor, whichever is later, except that the condemnor may extend the period for good cause. If the period is extended, payment under par. (a) shall be based on the costs of relocating the displaced person to a comparable replacement dwelling within one year of the date on which the person moves from the dwelling acquired for the project.

(b) *Tenants and certain others.* In addition to amounts otherwise authorized by this subchapter, the condemnor shall make a payment to any individual or family displaced from any dwelling which was actually and lawfully occupied by such individual or family for not less than 90 days prior to the initiation of negotiations for the acquisition of such property or, if displacement is not a direct result of acquisition, such other event as determined by the department of administration by rule. For purposes of this paragraph, a corporation organized under ch. 181 that is a nonprofit corporation, as defined in s. 181.0103 (17), may, if otherwise eligible, be considered a displaced tenant. Subject to the limitations under par. (bm), such payment shall be either:

1. The amount, if any, which, when added to the rental cost of the acquired dwelling, equals the reasonable cost of leasing or renting a comparable dwelling available on the private market for a period not to exceed 4 years, as determined by the condemnor, but not to exceed $8,000; or

2. If the person elects to purchase a comparable dwelling, the amount determined under subd. 1. plus expenses under par. (a) 3.

(bm) *Limitations.* 1. Payment under par. (b) shall be made only to a displaced person who rents, leases or purchases a decent, safe and sanitary replacement dwelling and occupies that dwelling not later than one year after the date on which the person

moves from the displacement dwelling, except that the condemnor may extend the period for good cause.

2. If a displaced person occupied the dwelling acquired for at least 90 days but not more than 180 days prior to the initiation of negotiations for the acquisition of the property, the payment under par. (b) may not exceed the amount the displaced person would receive if the displaced person was eligible for a payment under par. (a).

(c) *Additional payment.* If a comparable dwelling is not available within the monetary limits established in par. (a) or (b), the condemnor may exceed the monetary limits and make payments necessary to provide a comparable dwelling.

(d) *Federally financed projects.* Notwithstanding pars. (a) to (c), in the case of a program or project receiving federal financial assistance, a condemnor shall, in addition to any payment under pars. (a) to (c), make any additional payment required to comply with the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 USC 4601 to 4655, and any regulations adopted thereunder.

(4m) BUSINESS OR FARM REPLACEMENT PAYMENT. (a) *Owner–occupied business or farm operation.* In addition to amounts otherwise authorized by this subchapter, the condemnor shall make a payment to any owner displaced person who has owned and occupied the business operation, or owned the farm operation, for not less than one year 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 business or farm operation for the acquired property within 2 years after the date the person vacates the acquired property or receives payment from the condemnor, whichever is later. An owner displaced person who has owned and occupied the business operation, or owned the farm operation, for not less than one year prior to the initiation of negotiations for the acquisition of the real property on which the business or farm operation lies may elect to receive the payment under par. (b) 1. in lieu of the payment under this paragraph, but the amount of payment under par. (b) 1. to such an owner displaced person may not exceed the amount the owner displaced person is eligible to receive under this paragraph. If the condemnor is a village, town, or city, the payment by the condemnor under this paragraph may not exceed $100,000. The additional payment under this paragraph shall include the following amounts:

1. The amount, if any, which when added to the acquisition cost of the property, other than any dwelling on the property, equals the reasonable cost of a comparable replacement business or farm operation for the acquired property, as determined by the condemnor.

2. The amount, if any, which will compensate such owner displaced person for any increased interest and other debt service costs 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 or land contract which was a valid lien on the property for at least one year prior to the initiation of negotiations for its acquisition. The amount under this subdivision shall be determined according to rules promulgated by the department of administration.

3. 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.

4. Any reasonable project costs incurred or to be incurred by the displaced person.

(b) *Tenant–occupied business or farm operation.* In addition to amounts otherwise authorized by this subchapter, the condemnor shall make a payment to any tenant displaced person who has owned and occupied the business operation, or owned the farm operation, for not less than one year prior to initiation of negotiations for the acquisition of the real property on which the business or farm operation lies or, if displacement is not a direct result of acquisition, such other event as determined by the department of administration, and who actually rents or purchases a comparable replacement business or farm operation for the displaced business or farm operation within 2 years after the date the person vacates the acquired property. At the option of the tenant displaced person, such payment shall be either:

1. The amount that is necessary to lease or rent a comparable replacement business or farm operation for a period of 4 years, plus any reasonable project costs incurred or to be incurred by the tenant displaced person. If the condemnor is a village, town, or city, the amount paid under this subdivision may not exceed $80,000. The rental payment shall be computed by determining the average monthly rent paid for the property from which the person was displaced for the 12 months prior to the initiation of negotiations or, if displacement is not a direct result of acquisition, such other event as determined by the department of administration and the monthly rent of a comparable replacement business or farm operation, and multiplying the difference by 48; or

2. If the tenant displaced person elects to purchase a comparable replacement business or farm operation, the amount determined under subd. 1. plus expenses under par. (a) 3.

(5) EMINENT DOMAIN. Nothing in this section or ss. 32.25 to 32.27 shall be construed as creating in any condemnation proceedings brought under the power of eminent domain, any element of damages.

History: 1971 c. 99, 103, 244, 287; 1973 c. 192; 1975 c. 224, 273; 1977 c. 418, 438, 440; 1979 c. 32, 221, 358, 361; 1981 c. 390 s. 252; 1983 a. 27 ss. 881 to 888; 1983 a. 186, 189; 1983 a. 236 ss. 12, 13; 1983 a. 538; 1987 a. 399; 1993 a. 112; 1995 a. 27 ss. 1713 to 1722, 9116 (5); 1995 a. 225; 1997 a. 79; 2011 a. 32; 2015 a. 55; 2017 a. 243.

Cross–reference: See also s. Adm 92.001, Wis. adm. code.

Owners of rental property who do not physically occupy the real property taken for public use are ineligible for business replacement payments under sub. (4m). A business that owned a parking lot used for customer and employee parking was an occupants of the lot and a displaced person under sub. (2) (e) eligible for relocation benefits under s. 32.05 (8). City of Milwaukee v. Roadster LLC, 2003 WI App 131, 265 Wis. 2d 518, 666 N.W.2d 524, 02–3102.

Both statutory and administrative code provisions contemplate that the initial offer of a replacement housing payment is not static in amount. These provisions contemplate a more dynamic approach, allowing for recomputation of the payment after the acquisition damages have been more fully assessed. Pinczkowski v. Milwaukee County, 2005 WI 161, 286 Wis. 2d 339, 706 N.W.2d 642, 03–1732.

Sub. (2) (c) does not require: 1) identification of a property that is identical to the property condemned; or 2) that at the moment of identification, the property, without modification, can be used by the business that was relocated. Rather, it requires identification of a property that with modification can be used for the occupier's business. A condemnor has no open–ended obligation to provide a replacement property that is acceptable to the business being relocated. City of Janesville v. CC Midwest, Inc. 2007 WI 93, 302 Wis. 2d 599; 734 N.W.2d 428, 04–0267.

The definition of "displaced person" in sub. (2) (e) 1. b. provides that a "displaced person" is one whose move is prompted by "rehabilitation, demolition, or other displacing activity" and is an alternative to in sub. (2) (e) 1. a., which contains no reference to the physical condition or habitability of the condemned property, and instead defines "displaced person" in terms of "direct" causation. Sub. sub. (2) (e) 1. b. contains no explicit requirement that a person's move must be "forced" or involuntary in order to render that person "displaced." Waller v. American Transmission Company, LLC, 2013 WI 77, 350 Wis. 2d 242, 833 N.W.2d 764, 12–0805.

A suit against a state agency constitutes a suit against the state for purposes of sovereign immunity. If the legislature has not specifically consented to the suit, then sovereign immunity deprives the court of personal jurisdiction. The legislature has specifically directed the manner in which suits may be brought against the state to vindicate rights under this section. The displaced person must file a claim under s. 32.20, which must, under that section's specific language, precede any resort to court. Aesthetic and Cosmetic Plastic Surgery Center, LLC v. Department of Transportation, 2014 WI App 88, 356 Wis. 2d 197, 853 N.W.2d 607, 13–2052.

State debt financing of relocation payments is permissible under art. VIII, s. 7 (2) (a). 62 Atty. Gen. 42.

Relocation benefits and services, when an owner initiates negotiations for the acquisition, is discussed. 62 Atty. Gen. 168.

State agencies engaging in advance land acquisitions must comply with this section et seq., Wisconsin's relocation assistance and payment law. 63 Atty. Gen. 201.

Wisconsin condemnors are not bound by the federal relocation act. Relocation assistance and payments to displaced persons must be made in accordance with ss. 32.19 to 32.27. Unrelated individuals who share a common dwelling for convenience sake without a common head of the household are persons under this section. 63 Atty. Gen. 229.

Religious societies incorporated under ch. 187 are "persons" within the meaning of the relocation assistance act and are entitled to the benefits of the act if they otherwise qualify. 63 Atty. Gen. 578.

An owner of rental property, regardless of its size, is engaged in "business" under sub. (2) (d) [now sub. (2) (a)]. 69 Atty. Gen. 11.

Owners of rental property who do not physically occupy real property taken for public use are not eligible for business replacement payments under sub. (4m). 69 Atty. Gen. 263.

Condemnors may not offer displaced persons a loan or alternative assistance in lieu of payments. Condemnors may not obtain waivers of benefits as a condition for participation in acquisition program. 70 Atty. Gen. 94.

A tenant who rents new property in reasonable anticipation of displacement prior to actual displacement is entitled to replacement payments under sub. (4m) (b). 70 Atty. Gen. 120.

There was no constitutional "taking" when tenants were ordered to vacate temporarily their uninhabitable dwelling to permit repairs pursuant to a housing code. Devines v. Maier, 728 F.2d 876 (1984).

Compensation for lost rents. 1971 WLR 657.

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

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

(2) Penalty costs for prepayment of any mortgage entered into in good faith encumbering such real property if the mortgage is recorded or has been filed for recording as provided by law prior to the date specified in s. 32.19 (4) (a) 2.

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

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

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

(6) Reasonable net rental losses when all of the following are true:

(a) The losses are directly attributable to the public improvement project.

(b) The losses are shown to exceed the normal rental or vacancy experience for similar properties in the area.

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

History: 1973 c. 192 ss. 4, 6; 1979 c. 110 s. 60 (10); 1983 a. 236 s. 12; 1995 a. 225.

Cross–reference: See also s. Adm 92.001, Wis. adm. code.

An owner who is legally liable for expenses incurred for plans relating to condemned property is entitled to reimbursement under sub. (5). Shepherd Legan Aldrian Ltd. v. Village of Shorewood, 182 Wis. 2d 472, 513 N.W.2d 686 (Ct. App. 1994).

32.196 Relocation payments not taxable. Except for reasonable net rental losses under s. 32.195 (6), no payments received under s. 32.19 or 32.195 may be considered income for the purposes of ch. 71; nor may such payments be considered income or resources to any recipient of public assistance and such payments shall not be deducted from the amount of aid to which the recipient would otherwise be entitled under any welfare law.

History: 1983 a. 27 s. 888.

Cross–reference: See also s. Adm 92.001, Wis. adm. code.

32.197 Waiver of relocation assistance. An owner–occupant of property being acquired may waive his or her right to receive any relocation payments or services under this subchapter if the property being acquired is not contiguous to any property which may be acquired by the condemnor and is not part of a previously identified or proposed project where it is reasonable to conclude that acquisition by the condemnor may occur in the foreseeable future. Prior to the execution of any waiver under this section, the condemnor shall provide to the owner–occupant, in writing, full information about the specific payments and services being waived by the owner–occupant. The department of administration shall by rule establish procedures for relocation assistance waivers under this section to ensure that the waivers are voluntarily and knowledgeably executed.

History: 1983 a. 27; 1983 a. 236 s. 12; 1995 a. 27 ss. 1723, 9116 (5); 2011 a. 32.

Cross–reference: See also s. Adm 92.001, Wis. adm. code.

32.20 Procedure for collection of itemized items of compensation. Claims for damages itemized in ss. 32.19 and 32.195 shall be filed with the condemnor carrying on the project through which condemnee's or claimant's claims arise. All such claims must be filed after the damages upon which they are based have fully materialized but not later than 2 years after the condemnor takes physical possession of the entire property acquired or such other event as determined by the department of administration by rule. If such claim is not allowed within 90 days after the filing thereof, the claimant has a right of action against the condemnor carrying on the project through which the claim arises. Such action shall be commenced in a court of record in the county wherein the damages occurred. In causes of action, involving any state commission, board or other agency, excluding counties, the sum recovered by the claimant shall be paid out of any funds appropriated to such condemning agency. Any judgment shall be appealable by either party and any amount recovered by the body against which the claim was filed, arising from costs, counterclaims, punitive damages or otherwise may be used as an offset to any amount owed by it to the claimant, or may be collected in the same manner and form as any other judgment.

History: 1977 c. 29 s. 1654 (8) (c); 1981 c. 249; 1987 a. 399; 1995 a. 27 ss. 1724, 9116 (5); 2011 a. 32; 2017 a. 243.

Cross–reference: See also s. Adm 92.001, Wis. adm. code.

This statute mandates the procedure for making any and all claims by condemnees. Rotter v. Milwaukee County Expressway & Transportation Commission, 72 Wis. 2d 553, 241 N.W.2d 440 (1976).

To stop this time limit from beginning to run, the condemnee must avoid giving physical possession of the property to the condemnor. The statute provides no exception for the circumstance in which the condemnor and condemnee engage in good faith negotiations as to the amount of relocation expenses to be paid. The legislature specifically used the term "physical" to avoid uncertainty in identifying the exact time when the legal right to possession arises. C. Coakley Relocation Systems v. City of Milwaukee, 2007 WI App 209, 305 Wis. 2d 487, 740 N.W.2d 636, 06–2292. Affirmed. 2008 WI 68, 310 Wis. 2d 456, 750 N.W.2d 900, 06–2292.

32.21 Emergency condemnation. Whenever any lands or interest therein are urgently needed by any state board, or commission, or other agency of the state, and a contract for the purchase or use of the property cannot be made for a reasonable price, or for any other reason, including the unavailability of the owner or owners, the board, commission or agency may, with the approval of the governor, issue an award of damages and upon tender of the award to the owner or owners, or deposit in a court of record in the county where the lands are situated in cases where an owner is not available or tender is refused, take immediate possession of said property. Deposit in a court of record may be made by registered mail addressed to the clerk of the court. The governor shall determine whether or not such an award shall issue. Appeal from said award of damages will lie as in other similar cases and all provisions of this subchapter shall govern, except as to the provision herein concerning the immediate issuance of the award tender and immediate possession.

History: 1981 c. 390 s. 252; 1983 a. 236 s. 12.

Cross–reference: See also s. Adm 92.001, Wis. adm. code.

32.22 Special procedure for immediate condemnation. (1) DEFINITIONS. In this section, unless the context requires otherwise:

(a) "Blighted property" means any property which, by reason of abandonment, dilapidation, deterioration, age or obsolescence, inadequate provisions for ventilation, light, air or sanitation, high density of population and overcrowding, faulty lot layout in relation to size, adequacy, accessibility or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, or the existence of conditions which endanger life or property by fire or other causes, or any combination of such factors, is detrimental to the public health, safety or welfare.

(b) "Municipality" means a city, a village, a town, a housing authority created under ss. 66.1201 to 66.1211, a redevelopment

authority created under s. 66.1333 or a community development authority created under s. 66.1335.

(c) "Owner" means any person holding record title in the property.

(d) "Residential" means used principally for dwelling purposes.

(2) APPLICABILITY. Any municipality may use the procedures in this section for the condemnation of blighted residential property, in lieu of the procedures in s. 32.06. Any 1st class city may use the procedures in this section for the condemnation of blighted residential property, in lieu of the procedures in subch. II. The procedures in this section may only be used to acquire all of the property in a single parcel. Except as provided in sub. (12), the procedures in this section may not be used by a municipality to acquire blighted residential property for any purpose which requires the razing of the residential building.

(3) DETERMINATION OF NECESSITY OF TAKING. The necessity of taking shall be determined under s. 32.07.

(4) APPRAISAL; INFORMATION ON BLIGHT; WARRANT. (a) 1. The municipality shall prepare one or more appraisals of any blighted residential property proposed to be acquired under this section. In preparing any appraisal under this paragraph, the appraiser shall confer with the owner or the owner's representative, if either can be located with reasonable diligence. The condemnor shall provide the owner with a full narrative appraisal upon which the petition under sub. (5) is based and a copy of any other appraisal made under this paragraph and at the same time shall inform the owner of his or her right to obtain an appraisal under subd. 2.

2. The owner may obtain an appraisal by a qualified appraiser of all property proposed to be acquired. The owner may submit the reasonable costs of the appraisal to the condemnor for payment, along with a copy of the owner's full narrative appraisal and evidence of the owner's payment for the appraisal within 60 days after the petition is filed under sub. (5). After receipt of the statement of appraisal costs, proof of payment and a copy of the appraisal, the municipality shall promptly reimburse the owner for the reasonable costs of the appraisal. The condemnor shall not be required to reimburse more than one owner under this subdivision for an appraisal relating to the condemnation under this section of any single parcel of real estate. If record title exists in more than one person, the person obtaining reimbursement under this subdivision shall provide a copy of the owner's appraisal to each other person who is an owner, as defined in sub. (1) (c).

(b) Before submitting the petition under sub. (5), the municipality shall ascertain that the property is blighted and shall note any other evidence of blight, such as unlocked doors, unlocked or broken windows and screens, lack of gas, electric or water service, absence of personal belongings in the building and any conditions which render the building untenantable.

(c) Prior to entry into any building proposed to be acquired under this section, the condemnor shall obtain a special condemnation warrant under this paragraph. To obtain a special condemnation warrant, the condemnor shall petition the circuit court for the county in which the property proposed to be acquired is located and shall mail a copy of the petition for a warrant under this paragraph by registered or certified mail to the owner's last–known address if any. The court shall issue the warrant on the condemnor's affidavit that the condemnor intends to condemn the property under this section; that the condemnor has mailed a copy of the petition for the warrant as required in this paragraph; and that an external inspection of the property indicates that it is blighted.

(5) PETITION FOR CONDEMNATION PROCEEDINGS. (a) A municipality may present a verified petition to the circuit court for the county in which the property to be taken is located, for proceedings to take immediate possession of blighted residential property and for proceedings to determine the necessity of taking, where such determination is required. The compensation offered for the property shall accompany the petition.

(b) The petition shall:

1. Describe the property and interests sought to be acquired.

2. Name all owners of record of the property.

3. State the authority of the municipality to condemn the property.

4. Describe the facts which indicate that property is blighted.

5. Itemize the compensation offered for the property according to the items of damages under s. 32.09.

6. Describe the condemnor's plan to preserve the property pending rehabilitation.

7. Describe the condemnor's plan to rehabilitate the property and return it to the housing market.

(6) ACTION ON THE PETITION. (a) Immediately upon receipt of the petition, the circuit court shall examine the evidence presented by the municipality showing that the property is blighted. If the circuit court finds that the property is blighted, the court shall immediately direct the municipality to serve a copy of the petition and a notice on the owner under s. 801.12 (1), and to post a copy of the petition and notice on the main entrance to the residential building. The notice shall state that:

1. The owner may accept the compensation offered by filing a petition with the clerk of the court.

2. The owner may commence a court action to contest the right of condemnation as provided in sub. (8) within 40 days from completion of service of process.

3. The owner may appeal for greater compensation without prejudice to the right to use the compensation given by the award under sub. (10) within 2 years from the date of taking of the property.

4. Acceptance of the award is an absolute bar to an action to contest the right of condemnation under sub. (8).

(b) If any owner is a minor or an individual adjudicated incompetent, a special guardian shall be appointed under s. 32.05 (4).

(7) POSSESSION AND PROTECTION OF THE PROPERTY. Within one working day after the municipality files proof of service of the petition and notice under s. 801.12 (1), the court shall grant the municipality immediate possession of the property. After obtaining the right to possession of the property, the municipality may take any action necessary to protect the property. The municipality shall post a notice on the main entrance to the building directing any occupant of the property to contact the municipality for information on relocation assistance.

(8) ACTION TO CONTEST RIGHT OF CONDEMNATION. (a) If an owner desires to contest the right of the condemnor to condemn the property described in the petition, for any reason other than that the amount of compensation offered is inadequate, the owner may within 40 days from the date of service and posting of the notice under sub. (6) commence an action in the circuit court of the county in which the property is located, naming the condemnor as defendant. If the action is based on the allegation that the condemned property is not blighted, the owner shall demonstrate by a preponderance of the credible evidence that the property is not blighted.

(b) An action under this subsection 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 petition. The trial of the issues raised by the pleadings in an action under this subsection shall be given precedence over all other actions in the circuit court then not actually on trial. If the action under this subsection is not commenced within the time limited, or if compensation offered for the condemned property is accepted, the owner or other person having any interest in the property shall be barred from raising any objection to the condemnor's right to condemn the property under this section in any manner.

(c) Nothing in this subsection limits in any respect the right to determine the necessity of taking under s. 32.07. Nothing in this

subsection limits the right of the municipality to exercise control over the property under sub. (7).

(d) If the final judgment of the court is that the municipality is not authorized to condemn the property, the court shall award the owner a sum equal to actual damages, if any, caused by the municipality in exercising control over the property, in addition to the amounts provided in s. 32.28.

(9) PAYMENT OF COMPENSATION; TRANSFER OF TITLE. (a) If the owner accepts the compensation offered, or if the owner does not accept the compensation offered but no timely action is commenced under sub. (8), or if in an action under sub. (8) the circuit court holds that the municipality may condemn the property, the court shall order the title transferred to the municipality and the compensation paid to the owner.

(b) The clerk of court shall give notice of the order under par. (a) by certified mail, or by a class 3 notice under ch. 985, if any owner cannot be found, or any owner's address is unknown. The notice shall indicate that the owner may receive his or her proper share of the award by petition to and order of the court. The petition may be filed with the clerk of the court without fee.

(10) ACTION TO CONTEST AMOUNT OF COMPENSATION. Within 2 years after the date of taking under this section, an owner may appeal from the award using the procedures in s. 32.05 (9) to (12) and chs. 808 and 809 without prejudice to the owner's right to use the compensation received under sub. (9) pending final determination under this subsection. For purposes of this subsection, the "date of taking" and the "date of evaluation" shall be the date of filing the petition in circuit court under sub. (5). For the purposes of this subsection, the "basic award" shall be the amount paid into the circuit court by the municipality under sub. (5). If the owner is successful on the appeal and the circuit court awards an amount higher than the basic award, the court shall award the owner the amounts provided in s. 32.28.

(11) CLAIMS BY OCCUPANTS. (a) If within 2 years after the petition is filed by the municipality, any person claims to have been a lawful occupant of the property condemned on the date the petition was filed, that individual may submit a request for relocation assistance under s. 32.25 to the municipality. The municipality shall, within 30 days after receipt of the request, either grant this request or apply to the circuit court for the county in which the property is located for a resolution of the claim.

(b) If an application is made to the circuit court under par. (a), the court shall conduct a hearing and determine whether the claimant had a lawful right to occupy the property and whether the claimant actually occupied the property on the date the petition was filed. If the court finds in favor of the claimant, the court shall direct the municipality to provide the relocation assistance and other aid available under s. 32.25 to a displaced person at the time of condemnation, unless the municipality abandons the proceedings and the claimant is able to resume occupancy of the property.

(c) No determination by a court under par. (b) in favor of a claimant affects the right of the municipality to condemn the property under this section in any case in which the owner accepts the compensation offered by the municipality or in which the claim under par. (a) is made after the latest date on which the owner could have filed an action under sub. (8).

(12) DISPOSITION OF CONDEMNED PROPERTY. (a) Nothing in this section requires the municipality to rehabilitate a residential building, if it appears at any time that total cost of rehabilitation, including structural repairs and alterations, exceeds 80 percent of the estimated fair market value of the building when rehabilitation is complete. If the municipality determines under this paragraph not to rehabilitate a residential building condemned under this section, the municipality shall sell the building to any corporation organized under ch. 181 that is a nonprofit corporation, as defined in s. 181.0103 (17), or any cooperative organized under ch. 185 or 193 which:

1. Offers to purchase the building within 60 days after the municipality determines not to rehabilitate the building for an amount which is not less than the amount paid by the municipality to acquire the building from the previous owner under this section;

2. Agrees to submit to the municipality its plans to rehabilitate the building within 3 months after the date on which the nonprofit corporation or cooperative acquires title to the building, to commence significant rehabilitation activities within 6 months after that date and to complete the rehabilitation program and return the building to residential use within 18 months after that date; and

3. Agrees to execute a quitclaim deed returning the property to the municipality without compensation or reimbursement if the nonprofit corporation or cooperative fails to satisfy any of the requirements of subd. 2.

(b) If the municipality undertakes and completes the rehabilitation of any residential building acquired under this section, the municipality shall:

1. Sell, lease or otherwise convey the rehabilitated building to any person authorized to exercise condemnation powers under this section.

2. Sell the rehabilitated building to any person not authorized to exercise condemnation powers under this section. If the condemnor sells the building to any person not authorized to exercise condemnation powers under this section, the sale price shall be not less than fair market value of the rehabilitated building at the time of the sale.

(c) If a residential building is not rehabilitated or conveyed under par. (a) or (b), the municipality may use the property condemned under this section for any lawful purpose, including any purpose which requires razing of the building.

History: 1979 c. 37; 1983 a. 219 s. 46; 1983 a. 236 s. 13; 1989 a. 347; 1993 a. 246; 1997 a. 79; 1999 a. 150 s. 672; 2005 a. 387, 441.

NOTE: Chapter 37, laws of 1979, which created this section, gives the legislative intent in section 1.

Cross–reference: See also s. Adm 92.001, Wis. adm. code.

32.25 Relocation payment plan and assistance services. (1) Except as provided under sub. (3) and s. 85.09 (4m), no condemnor may proceed with any activity that may involve the 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 plans approved in writing by the department of administration.

(2) The relocation assistance service plan shall contain evidence that the condemnor has taken reasonable and appropriate steps to:

(a) Determine the cost of any relocation payments and services or the methods that are going to be used to determine such costs.

(b) Assist owners of displaced business concerns and farm operations in obtaining and becoming established in suitable business locations or replacement farms.

(c) Assist displaced owners or renters in the location of comparable dwellings.

(d) Supply information concerning programs of federal, state and local governments which offer assistance to displaced persons and business concerns.

(e) Assist in minimizing hardships to displaced persons in adjusting to relocation.

(f) Secure, to the greatest extent practicable, the coordination of relocation activities with other project activities and other planned or proposed governmental actions in the community or nearby areas which may affect the implementation of the relocation program.

(g) Determine the approximate number of persons, farms or businesses that will be displaced and the availability of decent, safe and sanitary replacement housing.

(h) Assure that, within a reasonable time prior to displacement, there will be available, to the extent that may reasonably be accomplished, housing meeting the standards established by the department of administration for decent, safe and sanitary dwellings. The housing, so far as practicable, shall be in areas not gen-

erally less desirable in regard to public utilities, public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced and equal in number to the number of such displaced families or individuals and reasonably accessible to their places of employment.

(i) Assure that a person shall not be required to move from a dwelling unless the person has had a reasonable opportunity to relocate to a comparable dwelling.

(3) (a) Subsection (1) does not apply to any of the following activities engaged in by a condemnor:

1. Obtaining an appraisal of property.

2. Obtaining an option to purchase property, regardless of whether the option specifies the purchase price, if the property is not part of a program or project receiving federal financial assistance.

(4) The department of administration may assess condemnors required to file relocation payment plans and relocation assistance service plans under sub. (1). The department of administration shall prescribe a methodology to determine the amount of the assessments such that the amount of an assessment reflects the approximate costs incurred by the department in connection with reviewing and approving the plans filed by the condemnor. Assessments under this subsection shall be paid to the department of administration and credited to the appropriation account under s. 20.505 (1) (kr).

History: 1971 c. 99, 103; 1979 c. 361; 1983 a. 27, 236; 1987 a. 5, 399; 1991 a. 269; 1995 a. 27 ss. 1725, 1726, 9116 (5); 2011 a. 32; 2017 a. 59.
Cross–reference: See also s. Adm 92.001, Wis. adm. code.

32.26 Authority of the department of administration.

(1) In addition to all other powers granted in this subchapter, the department of administration shall formulate local standards for decent, safe and sanitary dwelling accommodations.

(2) (a) The department of administration shall promulgate rules to implement and administer ss. 32.19 to 32.27.

(b) The department of administration and the department of transportation shall establish interdepartmental liaison procedures for the purpose of cooperating and exchanging information to assist the department of administration in promulgating rules under par. (a).

(3) The department of administration may make investigations to determine if the condemnor is complying with ss. 32.19 to 32.27. The department may seek an order from the circuit court requiring a condemnor to comply with ss. 32.19 to 32.27 or to discontinue work on that part of the project which is not in substantial compliance with ss. 32.19 to 32.27. The court shall give hearings on these actions precedence on the court's calendar.

(4) Upon the request of the department of administration, the attorney general shall aid and prosecute all necessary actions or proceedings for the enforcement of this subchapter and for the punishment of all violations of this subchapter.

(5) Any displaced person may, prior to commencing court action against the condemnor under s. 32.20, petition the department of administration for review of his or her complaint, setting forth in the petition the reasons for his or her dissatisfaction. The department may conduct an informal review of the situation and attempt to negotiate an acceptable solution. If an acceptable solution cannot be negotiated within 90 days, the department shall notify all parties, and the petitioner may then proceed under s. 32.20. The informal review procedure provided by this subsection is not a condition precedent to the filing of a claim and commencement of legal action pursuant to s. 32.20. In supplying information required by s. 32.25 (2) (d), the condemnor shall clearly indicate to each displaced person his or her right to proceed under this paragraph and under s. 32.20, and shall supply full information on how the displaced person may contact the department of administration.

(6) The department of administration, with the cooperation of the attorney general, shall prepare pamphlets in simple language and in readable format describing the eminent domain laws of this state, including the reasons for condemnation, the procedures followed by condemnors, how citizens may influence the condemnation process and the rights of property owners and citizens affected by condemnation. The department shall make copies of the pamphlets available to all condemnors, who may be charged a price for the pamphlets sufficient to recover the costs of production.

(7) The department of administration shall provide technical assistance on relocation plan development and implementation to any condemnor carrying out a project which may result in the displacement of any person.

History: 1971 c. 103; 1971 c. 211 s. 126; 1977 c. 438, 449; 1979 c. 361; 1983 a. 236 s. 12; 1985 a. 332 s. 251 (5); 1987 a. 399; 1995 a. 27 ss. 1727 to 1735, 9116 (5); 2011 a. 32.
Cross–reference: See also s. Adm 92.001, Wis. adm. code.

32.27 Records to be kept by condemnor.

(1) CONTENTS OF RECORDS. The condemnor shall maintain records for each project requiring a relocation payment plan. The records shall contain such information as are necessary to carry out ss. 32.19 and 32.25 to 32.27. The records shall be preserved by the condemnor for a period of not less than 3 years after conclusion of the project to which the records pertain.

(2) COSTS OF RELOCATION PAYMENTS AND SERVICES; SHARING FORMULA. (a) The costs of relocation payments and services shall be computed and paid by the condemnor and included as part of the total project cost.

(b) If there is a project cost–sharing agreement between the condemnor and another unit or level of government, the costs of relocation payments and services shall be shared in the same proportion as other project costs unless otherwise provided. This direct proportion formula may be changed to take advantage of federal relocation subsidies. It is intended that the payments and services described by ss. 32.19 to 32.27 are required for any project whether or not it is subject to federal regulation under P.L. 91–646; 84 Stat. 1894. The intent of this paragraph is to assure that condemnors take maximum advantage of federal payment or assistance for relocation, and to ensure that in no event will any displaced person receive a combined payment in excess of payments authorized or required by s. 32.19 or by federal law.

History: 1971 c. 103; 1977 c. 418; 1991 a. 189.
Cross–reference: See also s. Adm 92.001, Wis. adm. code.

32.28 Costs.

(1) In this section:

(a) "Consumer price index" means the average of the consumer price index over each 12–month period, all items, U.S. city average, as determined by the bureau of labor statistics of the U.S. department of labor.

(b) "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.

(2) Except as provided in sub. (3), costs shall be allowed under ch. 814 in any action brought under this chapter. 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, litigation expenses shall be awarded 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 writ-

ten offer prior to the jurisdictional offer by at least the amount specified in sub. (4) and at least 15 percent 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 the amount specified in sub. (4) and at least 15 percent;

(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 the amount specified in sub. (4) and at least 15 percent, 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 [the amount specified in sub. (4)] and at least 15 percent;

NOTE: The correct amount is shown in brackets. Corrective legislation is pending.

(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 the amount specified in sub. (4) and at least 15 percent;

(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 percent, 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 the amount specified in sub. (4) and at least 15 percent; or

(i) The condemnee appeals an assessment of damages and benefits under s. 32.61 (3), if the judgment is at least the amount specified in sub. (4) and at least 15 percent greater than the award made by the city.

(4) (a) The amount for the purposes of sub. (3) (d) to (i) shall be $2,700, adjusted as specified in par. (b).

(b) Beginning on January 1, 2018, and annually on January 1 thereafter, the department of administration shall adjust the dollar amount specified in par. (a) by an amount equal to that dollar amount multiplied by the percentage change in the consumer price index for the prior year, rounded to the nearest dollar. The department shall publish the dollar amounts on its Internet site. Notwithstanding s. 227.10, the adjusted dollar amounts need not be promulgated as rules under ch. 227.

History: 1977 c. 440; 1983 a. 236; 1995 a. 140; 2017 a. 59.

Under sub. (3) (d), the difference between the award and offer must meet both the $700 and 15 percent tests, but the two are not cumulative. Acquisition of Certain Lands by Benson, 101 Wis. 2d 691, 305 N.W.2d 184 (Ct. App. 1981).

A condemnee may not recover attorney fees incurred prior to a jurisdictional offer. A contingent fee of 40 percent of an award, plus interest, was reasonable. A condemnor must pay an appraiser for time spent as an adviser during most of a trial. Kluenker v. State, 109 Wis. 2d 602, 327 N.W.2d 145 (Ct. App. 1982).

An evidentiary hearing on the reasonableness of litigation expenses is discretionary, not mandatory. Appellate litigation expenses may be awarded. Narloch v. DOT, 115 Wis. 2d 419, 340 N.W.2d 540 (1983).

For attorney fees to be found reasonable, a condemnee is not required to retain counsel from the locality where the condemned property is located. It implies a reasonable choice of counsel based on the facts of the case. Standard Theatres v. DOT, 118 Wis. 2d 730, 349 N.W.2d 661 (1984).

Litigation expenses were properly awarded under sub. (3) (b) when the condemnor failed to establish the necessity for taking the property. Toombs v. Washburn County, 119 Wis. 2d 346, 350 N.W.2d 720 (Ct. App. 1984).

A successful plaintiff in an inverse condemnation action was entitled to litigation expenses, which included expenses related to a direct condemnation action. Expenses related to an allocation proceeding under s. 32.11 were not recoverable. Maxey v. Racine Redevelopment Authority, 120 Wis. 2d 13, 353 N.W.2d 812 (Ct. App. 1984).

An award under s. 32.06 (8) exclusively for tenant's immovable fixtures constitutes a separate award for purposes of s. 32.28 (3) (d). The unit rule of damages is inapplicable. Litigation expenses are awarded by court order, not by the clerk under s. 814.10. Green Bay Redevelopment Authority v. Bee Frank, 120 Wis. 2d 402, 355 N.W.2d 240 (1984).

A contingent fee contract while not improper, is only a guide in awarding expenses under sub. (3) (e). Milwaukee Rescue Mission v. Milwaukee Redevelopment Authority, 161 Wis. 2d 472, 468 N.W.2d 663 (1991).

A judge who assigns a condemnation petition to the commission may award attorney fees when neither party appeals the commission's award. Contingent fees as the basis of an award are discussed. Village of Shorewood v. Steinberg, 174 Wis. 2d 191, 496 N.W.2d 191 (1993).

The award of litigation expenses upon abandonment of condemnation proceedings applies to all ch. 32 condemnations. Expenses may be awarded when any proceeding in the process is abandoned. Pelfrense v. Dane County Regional Airport, 186 Wis. 2d 538, 521 N.W.2d 460 (Ct. App. 1994).

When an award is appealed, but does not proceed to a verdict, the issue of litigation expenses is treated as arising under sub. (3) (d). Dickie v. City of Tomah, 190 Wis. 2d 455, 527 N.W.2d 697 (Ct. App. 1994).

Attorney fees may not be awarded when an attorney–client relationship does not exist. An attorney represented by his own law firm is not entitled to attorney fees. Dickie v. City of Tomah, 190 Wis. 2d 455, 527 N.W.2d 697 (Ct. App. 1994).

When language in a lease provided that the lessor would receive all of any condemnation award, the calculation of the 15 percent under sub. (3) (e) was based on the entire jurisdictional offer, even though under terms of the lease the lessee was entitled to payments from the lessor upon condemnation. Van Asten v. DOT, 214 Wis. 2d 135, 571 N.W.2d 420 (Ct. App. 1997), 96–1835.

Sub. (3) (b) entitles a successful condemnee to litigation expenses when the condemnor fails to negotiate in good faith before issuing the jurisdictional offer. Good faith negotiation prior to issuing a jurisdictional offer is not merely a technical obligation, but rather, is a fundamental, statutory requirement necessary to validly commence condemnation and confer jurisdiction on the condemnation commission and the courts. The Warehouse II, LLC v. State of Wisconsin Department of Transportation, 2006 WI 62, 291 Wis. 2d 80, 715 N.W.2d 213, 03–2865.

This section does not expressly state that fees are only recoverable prior to abandonment or if the continuation of proceedings was not attributable to the condemnee. However the circuit court in this case properly exercised its discretion in determining that the fees incurred after abandonment were not reasonable or necessary. DSG Evergreen F.L.P. v. Town of Perry, 2007 WI App 115, 300 Wis. 2d 590, 731 N.W.2d 667, 06–0585.

Litigation expenses shall be awarded to an owner under sub. (3) (d) if the owner conveys the property and receives a certificate of compensation pursuant to s. 32.06 (2a), with no jurisdictional offer issued under s. 32.06 (3); timely appeals to the circuit court, which refers the matter to the chairperson of the county condemnation commissioners; is awarded at least $700 and at least 15 percent more than the negotiated price under s. 32.06 (2a); and neither party appeals the commission's award. Klemm v. American Transmission Company, LLC, 2011 WI 37, 333 Wis. 2d 580, 798 N.W.2d 223, 09–2784.

32.29 False statements prohibited. Any officer, agent, or employee of a governmental body or business entity granted condemnation power under s. 32.02 (1) or (3) to (16) who intentionally makes or causes to be made a statement which he or she knows to be false to any owner of property concerning the condemnation of such property or to any displaced person concerning his or her relocation benefits under s. 32.19, 32.20, 32.25, or 32.26 or who fails to provide the information required under s. 32.26 (6) shall be fined not less than $50 nor more than $1,000, or imprisoned for not more than one year in the county jail or both.

History: 1977 c. 158; 1983 a. 27 s. 879; Stats. 1983 s. 32.29; 2015 a. 55.

SUBCHAPTER II

ALTERNATE EMINENT DOMAIN PROCEDURES IN 1ST CLASS CITIES

32.50 Definitions. In this subchapter:

(1) "Benefit district" means the area benefiting 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.

History: 1983 a. 236.

32.51 Exercise of eminent domain. (1) PURPOSES. In addition to the powers granted under subch. I and subject to the limitations under s. 32.015, any city may condemn or otherwise acquire property under this subchapter for:

(a) Any purpose stated in article XI, section 3a, of the constitution.

(b) Public alleys, grounds, harbors, libraries, museums, school sites, vehicle parking areas, airports, markets, hospitals, ward yards, bridges, viaducts, water systems 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.

History: 1983 a. 236, 538; 1995 a. 378; 2017 a. 59.

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 employees of the board and may increase the compensation provided to full–time board members. The board shall determine the compensation of temporary employees. Permanent or temporary technical advisers and experts of the board are not classified under s. 63.23, but all other clerks and employees 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.

History: 1983 a. 236.

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.

History: 1983 a. 236.

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.

History: 1983 a. 236.

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 record 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.

History: 1983 a. 236; 1993 a. 301.

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) RECORDING THE ALTERATION. The city attorney shall record 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.

History: 1983 a. 236; 1993 a. 301.

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) Included in a tax certificate previously issued under s. 74.57.

(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. 62.71 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. 66.0705 (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 or operated for cemetery purposes by any cemetery authority, as defined in s. 157.061 (2), including any building located in the cemetery and owned and occupied exclusively by the cemetery authority for cemetery purposes or any property held under s. 157.064 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 benefited 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 record with the register of deeds 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 recorded with the register of deeds.

History: 1983 a. 236; 1985 a. 316 s. 25; 1987 a. 378; 1989 a. 307; 1993 a. 301; 1999 a. 150 s. 672.

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. 66.0829, 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 installment of the assessment that falls due within this 6–month period is computed to the date the installment 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, under s. 74.57 or the city treasurer, if authorized to act under s. 74.87, may include the owner's property in a tax certificate 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. 70.01.

(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.

History: 1983 a. 236; 1987 a. 378; 1999 a. 150 s. 672.

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. 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 installment 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 county issues a tax certificate on any property for any delinquent benefit assessment that is subsequently reduced by a judgment, the county shall refund the amount reduced plus interest upon presentation of a receipt showing the redemption of the property under s. 75.01.

(c) If the appellant pays any installment or all of any benefits assessed or if the county issues a tax certificate on 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 installments 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.

History: 1983 a. 236; 1985 a. 135; 1987 a. 378.

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.

History: 1983 a. 236.

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.

History: 1983 a. 236.

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.

History: 1983 a. 236.

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 installments 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 installment 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 installment 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 installment 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 no tax certificate may be issued for the property under s. 74.57. 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.

History: 1983 a. 236; 1987 a. 378.

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.

History: 1983 a. 236.

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 percent of the votes cast for governor in the city at the last general election file a petition conforming to the requirements of s. 8.40 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.

History: 1983 a. 236; 1989 a. 192.

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 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.

History: 1983 a. 236; 1987 a. 378.

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

History: 1983 a. 236.

32.72 Approval by the electorate. (1) 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?". The question shall be filed as provided in s. 8.37.

(2) Notwithstanding sub. (1), this subchapter is effective in any city that has used chapter 275, laws of 1931, to acquire and condemn property before April 27, 1984.

History: 1983 a. 236; 1983 a. 538 ss. 39, 264; 1999 a. 182.