

No. 813, A.]

[Published September 12, 1929.

- CHAPTER 480.

AN ACT to amend the introductory paragraph of subsection (1) of section 20.57 of the statutes, relating to the industrial commission and making an appropriation.

The people of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:

SECTION 1. The introductory paragraph of subsection (1) of section 20.57 of the statutes is amended to read: (20.57) (1) (Introductory paragraph) Annually, beginning July 1, * * * 1929, three hundred *twenty* thousand dollars, for the execution of its functions. Of this there is allotted:

SECTION 2. This act shall take effect upon passage and publication.

Approved September 10, 1929.

No. 257, S.]

[Published September 12, 1929.

CHAPTER 481.

AN ACT empowering cities of the first class to procure or condemn property for public purposes, prescribing the procedure therefor, and authorizing assessments of benefits and damages for projects where property has been acquired or condemned to carry out said projects.

The people of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:

SECTION 1. (1) Any city of the first class in acquiring property for any of the purposes enumerated in section 3a of article XI of the constitution is hereby empowered to do the same by the procedure herein prescribed as an alternative method as mentioned in section 32.03 of the statutes, and this act is an exception under the provisions of subsection (2) of section 32.20 of the statutes.

(2) Any ten or more freeholders residing in such city may, by petition, represent to the common council of such city that it is necessary to take certain lands in said city for public use for one or more of the purposes specified in section 3a of article XI of the constitution or for any other purpose for which said city is authorized to acquire land or any interest therein, setting forth

in such petition the courses, distances, metes and bounds of the lands proposed to be taken together with the names and residences of the owners and occupants of such premises, so far as the same shall be known to the petitioners, and praying that such lands may be taken for such purposes according to law.

(3) Every person signing said petition, shall write after his signature, a brief description of his real estate which makes him such freeholder or of some part thereof, and of the place of his residence in the city, and shall make and annex to such petition his affidavit that he is a resident and freeholder of said city, and that the names and residences of the owners of the lands proposed to be taken, so far as they are known to him are correctly set forth in said petition, and such signer making such affidavit shall thereupon be taken to be such resident and freeholder, and the names and residences of the owners of the lands proposed to be taken shall be deemed to be correctly stated in such petition, so far as the names and residences of such owners are known, and such petition shall be valid and effectual although it may afterward appear that such signers or some of them, were not such residents and freeholders, or that the names and residences of the owners and occupants of the lands proposed to be taken were not correctly stated in such petition, so far as known, or both. Persons in actual possession of real estate, under valid contracts for the purchase thereof, shall be deemed to be freeholders within the meaning of and for the purposes of this section.

SECTION 2. Whenever the common council of any such city with the concurrence of three-fourths of the members elected thereto shall declare by resolution that it is necessary for the public interest to take any described land for any authorized purposes, the said common council shall have the power to take said land for said purposes without any petition therefor, and to proceed thereafter in that behalf, as in cases of petition therefor duly made; the resolution in either event being the actual starting of the proceedings, provided that in cases of streets and alleys said resolution shall also be approved by the alderman of the ward or other political division of the said city for the purposes of local representation, in which the land proposed to be taken may be situated. The resolution provided for in this section shall declare why it is necessary for the public interest to so proceed; and no such resolution shall be passed by the com-

mon council at the same meeting at which it is first considered, but the same shall lie over to a subsequent meeting. The yeas and nays on the passage of such resolution shall be taken and duly entered in the journal of the proceedings of the common council. Such resolution may likewise contain direction to the city attorney to proceed in court for a jury determination of the question of necessity as subsequently provided for in this act and said resolution may likewise contain directions to the city engineer with reference to the making and filing of plats as subsequently specified in this act.

SECTION 3. If the city engineer has not already made and filed with the city attorney an accurate survey and plat of the proposed improvement and of the lands proposed to be taken, defining separately each parcel and indicating upon such plat location of any improvements upon said premises, he shall thereupon with all possible haste do so, either in accordance with a provision which may be included in the resolution mentioned in section 2, or pursuant to the provisions of this section.

The resolution provided for in section 2 may provide for the bringing of a civil action as herein specified; but if it does not contain such direction then the common council may pass a resolution directing the city attorney to start an action under the code of civil procedure against all persons having an interest in any of said property for the purpose of securing a jury verdict of necessity under section 2 of article XI of the constitution, by the service of the usual summons under section 262.03 of the statutes.

It shall be sufficient to state under subsection (2) of section 263.03 of the statutes, that the city has decided to take the land, describing the same, and that the taking is necessary for the public improvement, which may be briefly described. Within twenty days after the service of the complaint, any person owning or interested in any property proposed to be condemned, may serve and file an answer. After the expiration of the time for answering the action may be brought on for hearing on a three days' notice to all parties who have answered and shall have precedence over all other matters not on trial. The court shall thereupon impanel a jury under section 255.10 of the statutes and the question of the necessity of the taking shall thereupon be tried as a question of fact. If no answer to the complaint is interposed the trial by jury shall proceed *ex parte*.

Costs in such proceedings shall be paid by the municipality. The court may, in its discretion, submit to a single jury the determination of such necessity as to one or more than one or all of the parcels of land sought to be taken for the same purpose, or for one or more streets or alleys. If the jury find that the taking of such land is not necessary, the owner thereof shall recover from the municipality his necessary disbursements and taxable costs not to exceed twenty-five dollars.

SECTION 4. If the said jury shall return a verdict finding that the taking of such land is necessary, said verdict shall be filed by the clerk of the circuit court the same as other verdicts in other civil actions, which shall thereby become a public record; and the clerk of the circuit court shall furnish to the city attorney of any such city, or any other person interested, certified copies of such verdict, the same as other public records. When the city attorney files a certified copy of any such verdict with the clerk of any such city, or causes the same to be so filed, the said verdict shall then become a part of the records of the common council of any such city.

SECTION 5. The said common council may thereupon enter an order among its proceedings confirming the said verdict in whole or with reference to a separable part of the real estate involved therein; and the said common council shall direct the commissioner of public works, within one month thereafter, or such further time as may be deemed proper to lay out the district to be assessed. Said common council shall also forthwith proceed to have three commissioners appointed by the circuit court in accordance with the provisions of section 32.08 of the Wisconsin Statutes, who shall proceed to view said premises at such time as they shall designate and of which at least three days' notice shall be given by personal written notice to the owner or owners of the property affected and in the event such written notice cannot be given, by publication in three papers of said city having the largest circulation, for the purpose of ascertaining and determining the amount of damages to be paid to the owner or owners of the property proposed to be taken or other persons interested therein, and also what lands or premises will be benefited by such taking, which is more fully defined in the following section, and to make report of their assessment of such damages and benefits to the common council. Said commissioners may obtain the testimony of witnesses as to the facts

in this case, and shall hear such testimony as may be offered by any party interested, which testimony shall be reduced to writing under the direction of said commissioners upon the request of any person so interested; and said commissioners shall determine and assess and return such damages and benefits in the manner hereinafter directed. In any such city any other officer, board or department performing the functions of a commissioner of public works shall perform the duties bestowed upon the commissioner of public works herein.

SECTION 6. If any such city shall have adopted a plan for any improvement and if the acquisition or condemnation of lands is for the purpose of carrying out said plan, the said commissioners shall have the right to include in said assessment all lands which have been acquired by direct purchase, gift, or lease for the purposes of carrying out said plan as well as the lands which are being presently condemned in said proceeding; and shall likewise continue to consider in said assessment for the purpose of benefits land which may have been in said condemnation proceeding but which is dropped out because of settlement, deed, gift, or for any other reason resulting in the title to said land becoming vested in the city for said purposes. And the said commissioners when they view premises to make any assessment under this law, whether a plan has been adopted or not, shall have the right to include property so acquired either by direct purchase, gift, or compromise during the proceeding, provided, said property was in the proceedings when started, together with the land being condemned for the purpose of arriving at the benefits to be assessed upon the real estate which they determine is benefited thereby and shall make said assessment of benefits along with the assessment of damages which they are then proceeding to make for the purpose of paying awards to any person owning any interest in the land which is being taken in said proceedings for the purpose of carrying out said plan. In assessing benefits against the land of any owner who has given or dedicated other land, the commissioner shall take into account an amount not to exceed the reasonable value of the land so given or dedicated. In cases where the total amount of damages is in excess of the total amount of benefits assessed against any particular piece of property, the excess of said damages shall be chargeable to and paid out of the funds of the city which have been provided

for said purposes and the excess of benefits over damages or the assessment of benefits where no damages have been occasioned shall be assessed against the said properties and carried on to the tax roll as a tax as hereinafter provided.

SECTION 7. Said commissioners within the time limited by the common council shall view and examine the premises proposed to be taken and all such other premises as will in their judgment be injured or benefited by the taking or by the acquisition of land as provided in section 6 above, and after hearing such testimony as they may obtain or as may be offered by any party interested, they shall proceed to make his assessment and to determine and appraise the value of the real estate so proposed to be taken, and the injury arising to owners thereof respectively, in consequence of the taking thereof, as well as the benefits that may be bestowed upon each piece of property which they shall have determined to have been benefited thereby together with land that has already been acquired for the purposes of said project as provided in section 6 above. The amount of said appraisal of real estate and injury to real estate so determined shall be awarded to the owner of each interest therein respectively as damages, after making due allowance therefrom and deduction therefrom for any benefit which such owner may respectively derive from such improvement; and the benefits to each parcel of land or premises where benefits exceed the damages or where there are benefits and no damages shall be separately stated in said assessment as hereinafter provided.

SECTION 8. If the damages to any person be greater than the benefits received, or if the benefits be greater than the damages; in either case the commissioner shall strike a balance and carry the difference forward to another column, so that the assessment will show what amount is to be received or paid by said owner or owners respectively and the difference only shall in any case be collected of them or payable to them.

SECTION 9. Whenever there is any building upon the land proposed to be taken and the land and the building belong to different persons, or if the land be subject to lease, judgment, mortgage or other lien recognizable by law, or if there be any estate in it less than an estate in fee, the injury done to such persons or property respectively may be awarded to them by the

commissioners, less the benefits resulting to them respectively from the proposed improvement.

SECTION 10. Having ascertained the damages and expense of the proposed improvement as aforesaid, the commissioners shall thereupon apportion and assess the same, or such portion thereof as shall have been determined to be chargeable to the lots and lands benefited in accordance with the provisions of this act, together with the costs of the proceedings upon the real estate by them deemed benefited, in proportion to the benefits resulting thereto from the proposed improvement, as nearly as may be, and shall describe the real estate upon which his assessment is made.

SECTION 11. It shall be the duty of the commissioner, after such assessment shall be made and before the same shall be reported by him to the common council, to give personal written notice to the owner or owners of the property affected and in the event such notice cannot be given, by public notice of not less than six days in three official papers of said city, that such assessment has been made, and that the same will be open for review and correction by him, at his office, for not less than ten days after the first publication of such notice, during certain hours, and not less than two hours of each day, and that all will be heard by the said commissioner in objection to such assessments, and generally in the matter of such review and correction, whether the objection be with reference to damages or the balance between benefits and damages or the assessment of benefits where no damages are awarded. It shall be sufficient to state in such notice in brief what such assessment has been made for, and in what locality.

SECTION 12. During the time specified in the notice mentioned in the last preceding section it shall be the duty of the commissioner to hear all persons interested in property assessed, or otherwise personally interested in such assessment, in making objection to any part of such assessment, and to hear all evidence which may be produced in support of such objection; and the commissioners shall thereupon have power to review, modify and correct such assessment in such manner as to them shall seem just, at any time during such review and for three days thereafter; and thereupon it shall be their duty to make report of such assessment in writing signed by them together with the testimony taken, if any, to the common coun-

eil within the time limited by said common council. Should the time originally limited for making such report prove insufficient, the common council may in its discretion, from time to time, enlarge or extend the same.

SECTION 13. The assessment so reported shall be laid before the common council when in session, and the fact of its presentation shall be entered upon the journal and mentioned in the proceedings of such session with a statement in brief for what purpose and in what locality such assessment has been made, but the common council shall not have power to act finally upon such report until at least one week from the date of the session at which it was presented. At or after the expiration of such period of one week last mentioned, the common council may, in its discretion, revise and correct the assessment, and shall confirm the same as corrected by them, or without correction, or refer it back to the said commissioners for revision and correction. If said assessment shall be so referred back, the said commissioner shall proceed to review, correct and report the same in like manner and upon like notice as herein required in relation to the first assessment, and all parties interested shall have the like rights, and the commissioner and the common council respectively, shall perform like duties and have like powers in relation to any such subsequent assessment as are hereby given in relation to the first. In all cases, however, the excess of damages over benefits in any such proceeding shall be paid out of the funds provided by the city therefor and the excess of benefits over damages shall be reported and assessed by the proper city officers as a tax upon the respective properties, in the same manner that benefits are placed upon the tax roll in street improvements cases, as far as taxing proceedings are concerned, but exclusive of all installment features except where the common council shall specifically provide that the installment feature shall apply to the project.

SECTION 14. Any person or persons owning or having any interest in any property affected by such assessment either by way of assessment of damages or assessment of benefits may within thirty days after the confirmation of such assessment by the common council, appeal therefrom to the circuit court of the county containing a city of the first class, by filing with the clerk of said circuit court his notice of appeal, setting forth therein his interests in the premises and the grounds of his appeal,

together with a bond to any such city of the first class in the penal sum of one hundred dollars, conditioned for the payment of all costs that shall be adjudged against him on such appeal, which bond shall be signed by at least two sufficient sureties, each of whom shall make affidavit endorsed upon such bond that he is worth one hundred dollars over and above all his debts, in property not exempt from execution; and said bond and sureties, if objected to by the city attorney, shall also be approved by the judge of said court. Such appeal shall be ineffectual unless the appellant shall also, within said twenty days, serve a copy of his notice of appeal and bond upon the city attorney. In case of an appeal under the provisions of this section, the city clerk shall send to the clerk of the said circuit court a certified copy of the assessment of damages and benefits made and reported by the commissioner, as confirmed by the common council, and of all proceedings of the common council in relation thereto.

The appeal shall be tried as ordinary issues of fact are tried in said circuit court; the form of the issue shall be subject to the direction of the court; and the court shall permit any person or persons interested in such damages or benefits to become parties to such appeal, upon their petition setting forth the nature and extent of such interests. If upon such trial the benefits assessed by the said commissioner shall be diminished, or the damages so assessed shall be increased, then and in either case the appellant shall recover costs on such appeal, otherwise the city shall recover costs. When the jury shall by their verdict, award damages to the owner of any lot or part of a lot, and judgment shall have been rendered upon said verdict, the said city shall pay the amount of such judgment and the costs, if any, recovered therewith, or make provision for the payment thereof, within one year after the same shall have been rendered; provided that in case of an appeal from such judgment to the supreme court, the time of the pendency of such appeal shall not form any part of such year. And in case the appellant shall succeed, the difference between the amount assessed and the amount finally adjudged shall be chargeable and paid out of funds provided by the said city for said improvement.

SECTION 15. An appeal to the circuit court as provided in and by the foregoing section, shall be the only remedy for

damages sustained by the acts or proceedings of said city or its officers in the matter to which such assessment relates, and shall be the exclusive method of review of any assessment of benefits made therein; and no action at law or in equity shall be had or maintained for such injuries or on account of such acts or proceedings.

SECTION 16. Whenever the damages awarded to the owner by the report of the commissioner, as confirmed by the common council, for any property condemned by said city for public use, shall have been paid or tendered to such owner or his agent, or when sufficient money for that purpose shall be provided in the hands of the city treasurer, and ready to be paid over to such owner, and ten days notice thereof shall have been given by the commissioner, in the official papers, the city may enter upon and appropriate such property to the use for which the same was condemned; and the same shall thereafter be subject to all the laws and ordinances of the city, to the same extent as streets, alleys and public grounds heretofore opened or laid out. The claimant of such damages shall, in all cases furnish an abstract of title except as provided in section 16a, showing himself entitled to the same before they shall be paid to him. If in any case there shall be any doubt as to who is entitled to the damages for land taken, the city may require of the claimant a bond with good and sufficient sureties to hold said city harmless from all loss, costs and expenses in case any other person shall claim said damages. The damages assessed by the commissioner or awarded by the verdict of the jury and judgment rendered thereon in case of appeal, shall be paid or tendered or provided in the hands of the city treasurer and ready to be paid over to the person or persons entitled thereto, and notice shall be given in the official papers, as herein provided, within twelve months after the rendering of such judgment, or after the confirmation of such assessment by the common council, in case no appeal shall have been taken and if not so paid or tendered or provided in the hands of the city treasurer, all the proceedings in any such case shall be void; provided, that such period of twelve months shall be exclusive of the time any such judgment may be pending in the supreme court on appeal; and provided, also, that if the common council of said city shall, at any time before the city has actually entered upon and appropriated the property to the use for which it is proposed

to be taken, by resolution, determine and declare that the cost of the property proposed to be taken, whether ascertained by the commissioner or by the court on appeal in any case from the decision of such commissioners, is unreasonably great, or so large as to be burdensome and injurious to the owners of the property assessed for benefits thereby, or that for any reason the taking of any property so proposed to be taken for public use is inexpedient, it shall be lawful for the common council to direct that the proceedings for taking any or all such property be abandoned, and thereupon and thereafter such property, or the part thereof for the taking of which the proceedings are so abandoned, shall be and remain private property the same as if no such proceedings had been instituted for the purpose of taking the same for public use, and the expense of such proceedings so abandoned, shall be paid by the said city, out of the funds provided by the said city for said improvement; and provided further, that no such abandonment of any proceedings shall in any way hinder or prevent other or subsequent proceedings to take the same property or any part of it for the same or any other public use for which it may be taken by law. The benefits assessed and reported by the commissioner from the confirmation of such report by the common council, shall be and remain a lien upon the premises so determined by the commissioner to be benefited by the taking and appropriation of lands to the public use as proposed.

SECTION 16a. The claimant of any such damages shall, in all cases where the amount of the same exceeds two hundred dollars furnish an abstract of title showing himself entitled to the same before they shall be paid to him; in all cases where the damages awarded do not exceed two hundred dollars, the claimant of the same may at his option furnish a certificate of title in lieu of an abstract of title.

SECTION 17. Whenever such city shall be entitled under this act to enter upon and appropriate any property to the use for which it was taken, all covenants, contracts or engagements between landlord and tenant or any other contracting parties touching the same or any part thereof shall respectively cease and be absolutely discharged. When only a part of lot, tract of land or any other premises so under lease or other contract shall be taken for any of the purposes aforesaid, the city shall be entitled under this act to enter upon and appropriate the

same to the purpose for which the same was taken and all the covenants, contracts or agreements respecting the part so taken shall be absolutely discharged as to the part thereof so taken, but shall remain as valid as theretofore to the residue thereof, and the rents, considerations and payments reserved, payable and to be paid for and in respect to the same shall be so apportioned that that part thereof just and equitably payable for such residue thereof and no more shall be paid or recoverable for or in respect to the same.

Any claim to a share of damages for property taken based on any of the aforesaid covenants, contracts or engagements touching the property taken or on any liens upon the property taken shall be deducted and paid out of the award of damages, if any, for said property, or shall be released and satisfied before such award or any part thereof is paid to the owner of said property. If there are two or more claimants to said award or to any part thereof and they cannot agree upon a division thereof, or if for any reason such city cannot safely determine who may be entitled to receive said award or any part thereof, it may pay said award into the circuit court of the county where said property is situated by depositing the same with the clerk of said court and serving notice of such deposit on the claimants to said award; and thereafter the responsibility of the city for the payment of said award shall cease and it shall have the right to possession of the property and such property shall then be free of such claims and liens. Thereupon the circuit court shall have jurisdiction to make such order respecting the determination of the rights of the claimants to said award and the disposition of the same as may be just.

SECTION 18. When any known owner of lands or tenements affected by any proceeding under this act shall be an infant, or labor under any legal disability, the judge of the circuit court of Milwaukee county, or in his absence, the judge of any court of record in said county, may, upon the application of the city attorney, or of such party or his next friend, appoint a guardian for such party and all notices required by this act shall be served upon said guardian.

SECTION 18a. In case the title or any interest in real estate proceeded against under this act shall be vested in any trustee not authorized to sell or convey the same, or in any infant, idiot or person of unsound mind, who shall have a general guardian

already in existence, as distinguished from the provisions of section 18 above herein, and if any such trustee or general guardian, or any guardian appointed under section 18 shall deny or contest the right of the city to condemn any such property or shall refuse to accept the moneys provided for the same in the hands of the city treasurer, as provided in section 16 above herein, the city may by depositing said money with the clerk of the circuit court of the county wherein such city is located, convert said real estate to personal property by said condemnation proceedings by serving notice the same as a summons upon any such trustee, general guardian or guardian ad litem notifying the same that said deposit has been made for the benefit of the said trustee, general guardian or special guardian and the beneficiary or ward in any such case; and the said circuit court shall then have jurisdiction upon application of any such trustee, general guardian or guardian ad litem to make such order with respect to said money and the disposition thereof as shall be required by law as a determination of the rights of the parties thereto; but the city's interest in the said controversy shall cease with the deposit of said money and the service of the notice as provided for in this section.

SECTION 18b. If the said city is unable to obtain peaceable possession of property under section 16 of this act in cases where the owner has accepted the award, by filing the receipt for the same in the office of the clerk of the circuit court, duly verified as the receipt of the owner, a writ of assistance may be granted by the said circuit court or a judge thereof upon twenty-four hours' notice to put such city in possession of the land; or if peaceable possession cannot be procured where the award has not been accepted but is available in the hands of the city treasurer, the city by depositing the amount of said award with the clerk of the circuit court of the county wherein such city is situated, which deposit shall be made for the benefit of the owner or owners of such property or interest therein, may secure a like writ of assistance. If the city be thus put into possession of any property pending an appeal, the owner or parties entitled thereto may receive the money thus paid into court on account of the award appealed from without prejudice to the appeal. If the city appeals from the award, the money thus paid into court shall only be withdrawn upon filing a bond, to

be approved by the court or judge, to repay the amount by which such award may be abated on such appeal with costs.

SECTION 18c. To comply with section 281.04 of the statutes it shall be sufficient to file a notice of the pendency of the resolution described in section 2 hereof, together with a map and description of the property to be taken, in the office of the register of deeds of the county in which the property is located, on or before the day of the presentation of said resolution to the common council of such city; and to record in the office of said register of deeds the order mentioned in section 5 hereof confirming the verdict in whole or in part, together with a description of the property taken and a map showing the location thereof.

SECTION 19. Whenever any public ground, street or alley, or any river, canal or waterway shall be laid out, widened or enlarged, under the provisions of this chapter, the commissioner of public works shall cause an accurate survey, plat and profile thereof to be made and filed in the office of the city engineer.

SECTION 20. All the foregoing directions given in this act shall be deemed only directory; and no error, irregularity or informality in any of the proceedings under the provisions of this act, not affecting substantial justice, shall in any way affect the validity of the proceedings.

SECTION 21. This act shall not in any way be construed as a repeal of chapter 347 of the laws of 1923 or of subsections (14), (15) and (16) of section 62.23 of statutes created thereby. The procedure herein provided for shall be an alternative method within the provisions of subsection (2) of section 32.20 of the statutes.

SECTION 22. This act shall take effect upon passage and publication.

Approved September 10, 1929.