

No. 483, A.]

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### CHAPTER 639

AN ACT to repeal 32.07 (1) and (2), as amended by chapter 410, laws of 1959, and chapter 410, laws of 1959, section 4; to repeal and recreate chapter 32; and to create 86.07 (2a) of the statutes, relating to eminent domain.

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

SECTION 1. Chapter 32 of the statutes is repealed and recreated to read:

#### CHAPTER 32.

#### EMINENT DOMAIN.

32.01 DEFINITIONS. In this chapter unless the context clearly requires otherwise:

(1) "Person" includes the state, a county, town, village, city school district or other municipal corporation, a board, commission, corporation, or housing authority created under ss. 66.40 to 66.404, or redevelopment authority created under s. 66.431.

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

32.02 WHO MAY CONDEMN; PURPOSES. The following municipalities, boards, commissions, public officers and corporations may acquire by condemnation any real estate and personal property appurtenant thereto or interest therein which they have power to acquire and hold, 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, soil conservation district, the state department of public welfare, the regents of the university of Wisconsin, the board of regents of state colleges, or any public board or commission, for any lawful purpose, but in the case of city and village boards or commissions approval thereof shall have been granted by the governing body.

(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 street or interurban railway corporation, any grantee of a permit to construct a dam to develop hydroelectric energy for sale to the public or for the operation of a street or interurban railway, 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 organization.

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

(5) Any Wisconsin corporation engaged in the business of transmitting or furnishing heat, power or electric light for the public, 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.

(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 or village 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 co-operative 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 co-operative associations furnishing electric energy under the conditions set forth in par. (a), for the construction and location of its lines, or substation or generating plants, or for ponds or reservoirs, or any dam, dam site, flowage rights or undeveloped water power, or for additions or extension of its plant.

(11) Any housing authority created under ss. 66.40 to 66.404, or redevelopment authority created under s. 66.431.

(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.

(13) Any corporation licensed to do business in Wisconsin that transmits oil or related products in pipelines in Wisconsin, and maintains terminal or product delivery facilities in Wisconsin, and is 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.

**32.03 WHEN CONDEMNATION NOT TO BE EXERCISED. (1)**  
The general power of condemnation conferred in this chapter 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 co-operative of the property of either a railroad, public utility or electric co-operative 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 may be condemned by a railroad corporation for right of way or other purposes, whenever such city by ordinance consents thereto. This chapter 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 first class, except that every such city may conduct any condemnation proceedings either under this chapter or, at its option, under other laws applicable to such city.

(2) Any railroad corporation or street or interurban railway corporation, or pipe-line corporation may acquire by condemnation lands or interest therein which are held and owned by another railroad corporation, street or interurban railway or pipe-line corporation. In the case of a railroad corporation, or street or interurban railway corporation no such land shall be taken so as to interfere with the main track of the rail-

road first established except for crossing, and in the case of a pipe-line 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 co-operative 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 co-operative and are not then being used by the owner for service to the public by the public utility or to its members by such co-operative 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 co-operative 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 co-operative 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.

**32.04 PROCEDURE IN CONDEMNATION.** All acquisition of property in this state by condemnation, except as hereinafter provided, commenced after the effective date of this chapter (639, 1959) shall be accomplished in the following manner:

**32.05 CONDEMNATION FOR STREETS, HIGHWAYS, ALLEYS AND AIRPORTS.** This section does not apply to town highways created under ch. 80 except as to jury trials on appeals provided for by s. 80.24, nor to proceedings in cities of the first class under chapter 275, laws of 1931, as amended (Kline Law). All other condemnation of property for public alleys, streets, highways or airports shall proceed as follows:

(1) **RELOCATION ORDER.** The state highway commission, turnpike commission, county board of supervisors, county expressway commission, city council, village board or state aeronautics commission shall make an order providing for the laying out, relocation and improvement of the public highway, street, alley or airport 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 10 days after its issue, be filed with the county clerk of the county wherein the lands are located.

(2) **APPRAISAL.** The condemner shall cause an appraisal to be made of all property necessary to be acquired. In making the appraisal the appraiser shall confer with the owner or one of the owners, or his designated representative if reasonably possible.

(2a) Before making the jurisdictional offer provided in sub. (3), the condemner shall attempt to negotiate personally with the owner or one of the owners of the property sought to be taken for the purchase of the same.

(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 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 (5).

(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.

(f) Stating that if the condemnor is a municipal corporation and the offer is not accepted by the owner within 20 days after the date of service, condemnor will apply to the circuit court for a determination of the necessity of the taking.

(g) Stating that the owner has 20 days from date of completion of service upon him 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) he has 40 days from date of completion of service upon him 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 will have 2 years from the date of taking his property by award in which to appeal for greater compensation without prejudice to his right to use the compensation given him in the award.

(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 such owner or mortgagee is unknown or cannot be found such notice shall be published once in a newspaper of general circulation in the county wherein the property is located. If such owner is a minor, or an incompetent person, the condemnor shall serve such notice upon the legal guardian of such minor or incompetent, and if there is no such guardian the condemnor shall proceed under s. 32.15 to have a special guardian appointed to represent such minor or incompetent in such proceeding. The reasonable fees of such special guardian as approved by the court shall be paid by the condemnor. Such notice shall be called the "jurisdictional offer". The condemnor shall file a lis pendens on or before the date of the service or mailing of the jurisdictional offer. 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.

(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 as provided in ss. 32.11 and 32.12, may be raised pertaining to the condemnation of the property described in the jurisdictional offer. If the defendant condemnor is a city or village it may have a jury trial to determine the necessity of the taking as required and provided for in s. 32.07 (1). If the jury finds necessity sub. (7) (e) shall not apply. The trial of the issues raised by the pleadings in such action shall be given precedence over all other actions in said court then not on trial. If the action is not commenced within the time limited the owner or other person having any interest in the property shall be forever barred from raising any such objection in any other manner. Nothing in this section shall be construed to limit in any respect the right to determine the necessity of taking as conferred by s. 32.07 nor to prevent the condemnor from proceeding with condemnation during the pendency of the action to contest the right to condemn.

(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. 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 (except in the case of a municipal corporation) may make an award of damages in the manner and sequence of acts as follows:

(a) The award shall be in writing. It shall state that it is made pursuant to relocation order of (name of commission, board or council having jurisdiction to make the highway improvement) No. \_\_\_\_\_ dated \_\_\_\_\_ filed in the office of the County Clerk, County of \_\_\_\_\_. It shall name all persons having an interest of record in the property taken and may name other persons. It shall describe such property by legal description 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 condemnor has complied with all jurisdictional requirements. An amended award for the purpose of correcting error 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 his address is unknown, the award shall be published once a week for 3 weeks in a newspaper of general circulation in the county wherein the

property is situated 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. 74.06, 74.32 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 persons entitled thereto may receive their proper share of such award by petition to and order of the circuit court of the county. Such petition shall be filed with the clerk of such court without fee.

(e) If the jurisdictional offer by a city or village is not accepted by the landowner, the city or village may file a petition with the circuit court for a jury trial to determine the necessity of taking. Thereafter s. 32.07 (1) shall apply. If the jury finds that it is necessary to take the lands, this section shall apply thereafter.

(8) WRIT OF ASSISTANCE; LIABILITY FOR WASTE; RENT. If all jurisdictional requirements necessary to making the award have been complied with and if the amount of such award has been paid or tendered as required, the circuit court of the county wherein such property is located shall upon 48 hours' notice of hearing of a petition therefor, grant a writ of assistance to the condemnor to be put in possession of such interest in the property condemned as is taken by the award. Any person occupying the property after title has vested in the condemnor shall be liable to the condemnor for all waste committed or allowed by such occupant during such occupancy, and shall also, at the condemnor's option, be liable to pay to condemnor a reasonable rental of land improved by buildings for all periods of occupancy after the date of taking or the date of occupancy indicated in the jurisdictional offer, whichever is later.

(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, apply to the judge of the circuit or county court of the county wherein the property is located for assignment to a commission of county condemnation commissioners as provided in s. 32.08. Such application shall not disclose the amount of the jurisdictional offer nor the amount of the basic award. Violation of this prohibition shall nullify such application. Notice of such application shall be given to the clerk of the circuit court and to all other persons other than the applicant who were parties to the award. Such notice may be given by certified mail or personal service. Upon proof of such service the judge shall forthwith make such assignment. Thereafter the procedure shall be as prescribed in s. 32.08.

(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 60 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.

(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 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. 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. Costs shall be allowed pursuant to s. 271.02 (2).

(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 supreme court.

(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.

(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, plus condemnor's taxable statutory costs and disbursements pursuant to s. 271.02 (2).

(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 entry of judgment from that date which is 14 days after the date of taking, plus his statutory taxable costs and disbursements pursuant to s. 271.02 (2).

(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 supreme court.

(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.

(13) APPEAL TO SUPREME COURT. Either party may appeal to the supreme court within 6 months after date of notice of entry of circuit court judgment.

**32.06 CONDEMNATION PROCEDURE IN OTHER THAN HIGHWAY MATTERS.** The procedure in condemnation in all matters except highway and airport acquisitions, acquisitions under chapter 275, laws of 1931, as amended (Kline Law), 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. The condemnor shall make an appraisal of the property proposed to be taken. In making such appraisal the appraiser shall confer with the owner or one of the owners, or his designated representative, if reasonably possible.

(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 as 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 such determination to the circuit court within 70 days.

(4) RIGHT OF MINORS AND INCOMPETENTS. If any person having an ownership interest in the property proposed to be condemned is a minor or an incompetent person, a special guardian shall be appointed for him 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. If the defendant condemnor is a city or village it may have a jury trial to determine the necessity of the taking as required and provided for in s. 32.07 (1). Such action shall be the only manner in which any issue other than the amount of just compensation or other than proceedings to perfect title under ss. 32.11 and 32.12, may be raised pertaining to the condemnation of the property described in the jurisdictional offer. The trial of the issues raised by the pleadings in such action shall be given precedence over all other actions in said court then not on trial. If such action is not commenced within the time limited the owner or other person having any interest in the property shall be forever barred from raising



any such objection in any other manner. The commencement of an action by an owner under this subsection shall not prevent a condemnor from filing the petition provided for in sub. (7) and proceeding thereon. Nothing in this subsection shall be construed to limit in any respect the right to determine the necessity of taking as conferred by s. 32.07 nor to prevent the condemnor from proceeding with condemnation during the pendency of the action to contest the right to condemn. This section shall not apply to any project initiated under s. 66.431, and in lieu of this section, s. 66.431 (7) shall govern.

(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 as provided in sub. (5), if the judgment permits the taking of the land, in which to accept the jurisdictional offer. 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 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 judge of the circuit or county court of 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. Such 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 such property as near as may be and shall name such parties who are minors or persons of unsound mind or unknown. Such petition shall not disclose the amount of the jurisdictional offer, and if it does so it shall be a nullity. Such petition shall be filed with the clerk of such court. Notice of such petition shall be given to all persons having an interest of record in such property, including the special guardian appointed for minors or incompetent persons. A lis pendens shall be filed on the date of filing the petition. The date of filing the lis pendens shall be the "date of evaluation" of the property for purpose of fixing just compensation. The hearing on the petition shall not be earlier than 20 days after the date of its filing. If the petitioner is entitled to condemn the property or any portion thereof the judge shall forthwith assign the matter to the chairman of the county condemnation commissioners for hearing pursuant to 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 chairman of the county condemnation commissioners may be appealed directly to the supreme court.

(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. The date of filing the commission's award shall be the "date of taking."

(9) ABANDONMENT OF PROCEEDINGS; OR PAYMENT OF AWARD. (a) The condemnor must within 30 days after the date of filing of the commission's

award, if it desires to abandon the proceeding, petition the judge of the circuit court of 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. The circuit judge shall grant such petition upon such terms as he deems just, which terms may include reasonable expert witness fees incurred by condemnee for not to exceed 3 expert witnesses and a reasonable attorney's fee both as approved by the judge. Upon payment of such amount into court for the benefit of the owner, the judge shall make a formal order discontinuing said proceeding which order shall be recorded in the judgment book 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 65 days after the date of taking pay the amount of the award, plus legal interest from date of taking but less delinquent tax liens, proportionately allocated as in division in redemption under ss. 74.06, 74.32 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 his 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 taking no interest shall accrue.

(c) Condemnor shall have the right to possession on the date of payment of the award as hereinabove provided or as provided by an order of the court entered under s. 32.12, or on such later date as he has specified in the jurisdictional offer. If the condemnor is denied such right of possession he may upon 48 hours' notice to the occupant apply to the circuit court for a writ of assistance to put him in possession, and if the condemnor has complied with all jurisdictional requirements the court shall grant such writ. Any person occupying the property after title has vested in the condemnor shall be liable to the condemnor for all waste committed or allowed on the lands condemned after the date of taking. An occupant of said lands after said date of taking or the date of occupancy indicated in the jurisdictional offer, whichever is later, if said lands are improved by buildings, shall be liable to condemnor at his option for the reasonable rental of the said lands.

(10) APPEAL TO CIRCUIT COURT. Within 70 days after the date of taking 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 condemnor as defendant. It shall thereupon proceed as an action in said court subject to all the provisions of law relating to actions originally brought therein, but the only issues to be tried shall be question 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 his statutory taxable costs and disbursements, together with legal interest from the date of taking 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, plus condemnor's statutory taxable costs and disbursements.

(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 the provisions of 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 supreme court 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 per cent per annum 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.

(13) APPEAL TO SUPREME COURT. Either party may appeal to the supreme court within 6 months after date of notice of entry of circuit court judgment.

32.07 NECESSITY, DETERMINATION OF. The necessity of the taking shall be determined as follows:

(1) If the application is by a municipal corporation, or by a redevelopment authority created under s. 66.431, the filing of the petition under s. 32.05 (7) (e) or 32.06 (7) shall be deemed the commencement of an action for the determination of the necessity of the taking. Within 20 days after the service of notice of the filing of such petition, 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 3 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 and the question of the necessity of the taking shall thereupon be tried as a question of fact. Juries shall be obtained in the manner provided for circuit courts. If no answer to the petition is interposed the trial by jury shall proceed ex parte. The costs in such proceedings shall be paid by the municipality or the redevelopment authority, as the case may be. 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 finds that the taking of such lands is not necessary the owner thereof shall recover his necessary disbursements and taxable costs, not to exceed \$25.

(2) If application is by the state or any commission, department, board or other branch of state government; or by a town, county, board, commission, public officer or housing authority created under ss. 66.40 to

CHAPTER 639

66.404; or for the right of way of a railroad or a street or interurban railway up to 100 feet in width; or a telegraph, telephone or other electric line; or for the right of way for a gas pipe line, main or service; or for easements for the construction of any elevated structure or subway for railroad, street or interurban railway purposes, the petitioner shall determine necessity.

(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.

**32.075 USE AFTER CONDEMNATION.** Whenever the public service commission has made a finding, either with or without hearing, (1) that it is reasonably certain it will be necessary for a public utility, as defined in ch. 196, 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 pipe line, main or service, and (2) 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 the provisions hereof are needed for rights of way for telegraph, telephone or electric lines or pipe lines, 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 termini of any such lines and the general direction or course of the lines between the termini, but when the 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 chapter, the owner may continue to use the land until such time as the utility constructs its facilities thereon.

**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 500,000 there shall be 9 commissioners; in counties having a population of 500,000 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 his appointment and remain so during his 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 the effective date of this chapter (1959) 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) Commissioners shall receive no salary but shall be compensated on a per diem basis for actual service of not less than 6 hours for each full day and 3 hours for each half day at a per diem rate which shall be fixed by ordinance of the county board of such county. The circuit judge shall fix the rate of per diem compensation until the county board enacts

such ordinance. Such compensation shall be paid by the condemnor on order approved by the circuit judge.

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

(5) If the petitioner under s. 32.06 is entitled to condemn the property or any portion thereof or interest therein, the circuit or county judge having jurisdiction of such 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 chairman of the county condemnation commissioners who shall within 7 days select 3 of said 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 from such assignment date, and notify the parties in interest thereof. Notice shall be given to each interested person or, where such persons have appeared in the proceeding by an attorney then to such 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 notice shall be given by publication once a week for 2 successive weeks in the newspaper in the community which the chairman of the condemnation commission directs. Costs of notification shall be paid by the petitioner upon certification by the commission chairman.

(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 testimony first and have the right to close. In conducting said hearing the commission shall not be bound by common law or statutory rules of evidence. It shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant and unduly repetitious testimony. It 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 such hearing once for not more than 7 days, but may by stipulation of all parties grant other adjournments not in excess of a total of 30 days. 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 book 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.

**32.09 RULES GOVERNING DETERMINATION OF JUST COMPENSATION.** In all matters involving the determination of just compensation by either commissioners of condemnation or a court, 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).

(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.

(3) Special benefits accruing to the property and affecting its market value because of the planned public improvement shall be considered and used as an offset to damages but in no event shall such benefits be allowed in excess of damages.

(4) Where 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 shall be paid for such depreciation except as expressly allowed in sub. (5).

(5) Without restriction because of enumeration, compensation may be awarded for the following items of damage if shown to exist:

- (a) Property actually taken;
- (b) Severance damages;
- (c) Loss of or damage to improvements and fixtures;
- (d) Destruction of a legal nonconforming use;
- (e) Taking of air rights;
- (f) Cost of realigning personal property on the same site in partial takings or where existing used rights of access are eliminated or restricted;
- (g) Damage to property abutting on a highway right of way due to change of grade where accompanied by a taking of land;
- (h) Cost of fencing land taken from remainder of condemnee's land;
- (i) Proximity of new improvement to improvements remaining on condemnee's land;
- (j) Deprivation or restriction of existing right of access to highway from abutting land, provided that nothing herein contained 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 presently authorized exercise of the police power;
- (k) Cost of removal of land owner's personal property to another site, if bonafide showing thereof is made. Such costs shall not exceed \$150 for removals from a residence or \$2,000 from non-residential sites;
- (L) Where an owner whose land is mortgaged at the time of acquisition by the public, and such owner desires to refinance such mortgage on another property in a price range and class of property similar to the property taken, the cost incident to such refinancing, including the total interest cost of such new financing over that of the former financing for the term of the new loan, computed on the prevailing rate charged by the larger lending institutions doing business in the community, with prepayment assumed at the end of 7 years if the loan term is longer, shall be a recoverable element of damages in the case of a total taking, or where in the case of a partial taking the mortgagee has and exercises the legal right to demand prepayment of the mortgage;
- (m) Rental loss exceeding normal experience where proved to be caused by the public land acquisition project and when the vacancy occurs after the parcel is shown on a relocation order;
- (n) Expenses incurred for plans and specifications specifically designed for the property taken and which are of no value elsewhere because of the taking.

(6) In the case of a partial taking the compensation shall be determined by deducting from the value of the property immediately before the time of evaluation, its fair market value immediately after the date of evaluation, assuming the completion of the public improvement and after giving effect to the items of just compensation set forth in sub. (5) where shown to exist.

(7) A commission in condemnation or a court may in their respective discretion require that both condemnor and owner submit to the com-

mission 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 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.
- (8) A condemnation commission or a court may make regulations for the exchange of the statements referred to in sub. (7) by the parties, but only where both owner and condemnor furnish same, and for the holding of prehearing or pretrial conference between the parties for the purpose of simplifying the issues at the commission hearing or court trial.

**32.10 CONDEMNATION PROCEEDINGS INSTITUTED BY PROPERTY OWNER.** Whenever any property has been occupied by a body possessing the power of condemnation but where such body has not exercised said power, the owner, if he desires 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. Such petition shall describe the land, state the board, commission or corporation 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 board, commission or corporation against which the proceedings are instituted. A copy of said petition shall be served upon the board, commission or corporation which 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 board, commission or corporation as defendant. Thereafter the matter shall be treated as provided in s. 32.06 (7) to (13) and other applicable sections of this chapter.

**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.

**32.12 PROCEEDINGS TO PERFECT TITLE, OWNER MAY BRING.** (1) If any person having the power to acquire property by condemnation has entered into the possession of any property and is using the same for a purpose for which condemnation proceedings might be instituted but has not acquired title thereto, or if such title is defective, or if not in possession, has petitioned the judge of the circuit court as provided by s. 32.06 (7) and for an order as herein authorized either at the time of filing the petition for condemnation or thereafter, and the necessity

for taking has been determined as authorized by law, such person may proceed to acquire or perfect such title as provided in this chapter or be authorized to enter into possession as provided in this section. At any stage of such proceedings the court in which they are pending or the judge thereof may authorize such person, if in possession, to continue in possession, and if not in possession to take possession and have and use such lands during the pendency of such proceedings and may stay all actions or proceedings against such person on account thereof on the paying in court of a sufficient sum or the giving of such securities as such court or judge may direct to pay the compensation therefor when finally ascertained. The "date of taking" in proceedings under this section shall be 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 such property may institute and conduct, at the expense of such person, the proceedings to a conclusion if such person delays or omits to prosecute the same.

(2) No injunction to restrain such person in his possession of said lands or his use thereof or the operation thereon of any plant, line, railroad or other structure, shall be granted until such compensation has been fixed and determined.

(3) In case such person or the person through or under whom he 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 chapter, such sum with interest thereon from the date of such payment at the rate of 5 per cent per annum 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.

**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 chapter as of the time when such person acquired title. Such appraisal shall be exclusive of the improvements made by such person or his 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 chapter and the action to enforce such mortgage or lien shall in the meantime be stayed.



**32.14 AMENDMENTS; VACANCIES.** 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 chapter and may cause any parties to be added and direct such notice to be given to any party of interest as it deems proper.

**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 infant, idiot or person of unsound mind, the circuit court may in a summary proceeding authorize and empower such trustee or the general guardian of such infant, idiot or person of unsound mind to sell and convey the same for the purposes required on such terms as may be just. If such infant, idiot or person of unsound mind 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 herein authorized 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.

**32.16 ABANDONMENT OF EASEMENTS FOR PUBLIC USE.** An easement for public use acquired by gift or purchase or by condemnation under this chapter 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. 330. Nothing contained in this section shall be presumed to adversely affect any highway right possessed by the state or any county or municipality thereof.

**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 first class shall be conducted under the procedure provided in this chapter.

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

**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 state highway commission, 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 state highway commission 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. 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 state

highway commission, 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 60 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 state highway commission, the city, county, village or town as the case may be, to recover any damages to his said lands shown to have resulted from such change of grade. Any judgment recovered against the state highway commission shall be paid out of state highway funds, otherwise out of the funds of city, county, village or town against which the judgment is recovered. This section shall in no way contravene, limit or restrict the provisions of s. 88.38.

SECTION 2. (1) In all cases where awards in condemnation have been made within 2 years prior to the effective date of this act under sections 59.965, 83.07, 83.08, 84.09 or 114.33 (Stats. 1957), the right of appeal from such awards granted by such statutes shall remain in force provided:

(a) Any appeal from awards under sections 59.965, 83.08, 84.09 or 114.33 (Stats. 1957), not yet taken shall hereafter be taken as provided in section 32.05 of the statutes as created by this act.

(b) Any application to a county judge under section 83.07 (Stats. 1957), or any appeal from awards under sections 59.965, 83.08, 84.09 or 114.33 (Stats. 1957), which has been perfected but the county judge has not as yet heard the same shall be forthwith assigned by said county judge to the commission of county condemnation commissioners in the manner provided in section 32.05 (9) of the statutes as created by this act, or to the circuit court as directed by the appellant within 20 days after request of county judge for such owner's instruction. In the absence of such direction such assignment shall be to the circuit court.

(c) In any appeal from an award wherein the county judge has commenced the hearing of testimony or completed the same, such judge shall render his decision, and appeal to the circuit court may be taken therefrom as provided for appeals from awards by condemnation commissioners in section 32.05 (10) of the statutes, as created by this act.

(2) The right of appeal to the circuit court from awards of commissioners in condemnation heretofore appointed under section 32.08 (Stats. 1957), made prior to the effective date of this act is preserved, provided such appeal is perfected within 30 days from the date of the filing of the report of the commissioners.

(3) The trial of any appeal from any condemnation award made prior to the effective date of this act shall be heard under the rules of evidence and compensability in condemnation matters applicable at the date of such award.

(4) It is the intent of the legislature in enacting this section that no property owner shall lose any substantive right which he possessed prior to the effective date of this act.

SECTION 3. 32.07 (1) and (2) of the statutes, as amended by chapter 410, laws of 1959, is repealed.

SECTION 3a. 86.07 (2a) of the statutes is created to read:

86.07 (2a) The restriction or depriving of used access to highways from abutting lands through the use of posts under any program to delineate driveways is prohibited.

SECTION 4. Section 4 of chapter 410, laws of 1959, is repealed.

SECTION 5. This act shall take effect 60 days after publication.

Approved January 28, 1960.