



2011 SENATE BILL 83

April 28, 2011 – Introduced by Senators LAZICH, ZIPPERER, MOULTON, KAPANKE and SCHULTZ, cosponsored by Representatives WILLIAMS, WYNN, STEINEKE, RIVARD, BIES and T. LARSON. Referred to Committee on Judiciary, Utilities, Commerce, and Government Operations.

1 **AN ACT to repeal** 32.07 (2), 32.22, 32.51 (1) (a) to (g) and 66.1201 (10) (b) to (g);
2 **to renumber and amend** 32.07 (4) and 32.51 (1) (intro.); **to amend** 32.03 (6)
3 (a) (intro.), 32.06 (intro.), 32.06 (5), 32.07 (3), 32.71, 66.1201 (10) (a), 66.1311 (3),
4 66.1313 (1), 66.1327 (1), 66.1331 (2), 66.1331 (4) (b), 66.1331 (15), 66.1333 (3)
5 (f), 66.1333 (5) (b) 1., 66.1333 (5) (c) 1r., 66.1333 (17) and 66.1337 (5); **to repeal**
6 **and recreate** 66.1331 (3) (a), 66.1333 (2m) (b) and 66.1333 (2m) (bm); and **to**
7 **create** 32.015 and 32.03 (6) (c) 5. to 7. of the statutes; **relating to:** various
8 changes to the eminent domain laws.

Analysis by the Legislative Reference Bureau

This bill makes a number of changes to the laws governing condemnation in general, and to the laws governing the condemnation of blighted property in particular, including the following:

1. Under current law, an entity vested with the power of eminent domain may acquire property by condemnation for any public purpose. This bill provides that property may be condemned only for the following public uses:

(a) The possession, occupation, and ownership of the property by a public agency for the enjoyment of the public agency or the general public.

(b) The establishment or operation of a public utility.

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(c) The elimination of blighted property.

2. Current law provides that, in general, property that is not blighted may not be condemned if the condemnor intends to convey the property to a private entity. This bill narrows the meaning of “blighted property,” thus expanding the scope of the prohibition. The bill also requires a condemnor who intends to convey property to a private entity to make additional written findings before commencing the condemnation. The condemnor must find that the property has been cited for one or more violations of state or local building codes, that the violations have not been remedied despite at least two notices to do so, and that the cost of remedying the violations is equal to more than one-half the assessed value of the property, excluding the value of the land.

3. Currently, a municipality may use a special procedure to condemn blighted residential property. The special procedure allows such condemnations to occur more quickly. This bill eliminates the special procedure and also requires that all condemnations by a housing authority, redevelopment authority, or community development authority be conducted using the regular procedure.

4. The bill specifies that whenever a property owner wishes to contest the right of a condemnor to condemn his or her property in court, the owner’s failure to raise specific objections before receiving the condemnor’s jurisdictional offer does not preclude the owner’s claim. The bill provides that in an action to contest the right of a condemnor to condemn the owner’s property, if the condemnor’s intent is to eliminate blight, the condemnor must prove by a preponderance of the evidence that the owner’s property is blighted property.

5. Currently, in most condemnation proceedings, the condemnor determines the necessity of the taking. In certain instances involving public utilities, the Public Service Commission (PSC) must issue a certificate of public convenience and necessity, which constitutes the determination of the necessity of the taking. This bill provides that in all cases except those in which a certificate of public convenience and necessity suffices, a judge must determine the necessity of the taking, which must be established by a preponderance of the evidence. The bill also provides that the determination by the PSC of the necessity of taking an undeveloped water power site is conclusive only if it is not arbitrary or unreasonable.

6. Current law allows a first class city (currently, only the city of Milwaukee) to use an alternative procedure to condemn property. Current law requires that the laws governing the alternative procedure be liberally construed “to provide the city with the largest possible power.” This bill requires that the laws governing the alternative procedure be strictly construed.

7. The bill narrows the definition of “blighted area” and “blighted property” for condemnations conducted by redevelopment authorities and eliminates the provision requiring that the grant of eminent domain authority to redevelopment authorities and the procedures governing such condemnations be liberally construed.

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For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 32.015 of the statutes is created to read:

2 **32.015 Public use requirements.** In addition to the restrictions specified in
3 ss. 32.02 and 32.03, property may be acquired by condemnation only for the following
4 public uses:

5 (1) The possession, occupation, and ownership of the property by a public
6 agency for the enjoyment of the public agency or the general public.

7 (2) The establishment or operation of a public utility, as specified in s. 32.02.

8 (3) The elimination of blighted property.

9 **SECTION 2.** 32.03 (6) (a) (intro.) of the statutes is amended to read:

10 32.03 **(6)** (a) (intro.) In this subsection, “blighted property” means any property
11 that is not zoned or used for agricultural purposes; that, by reason of abandonment,
12 dilapidation, deterioration, ~~age or obsolescence, inadequate provisions for~~
13 ~~ventilation, light, air, or sanitation, high density of population and overcrowding,~~
14 ~~faulty lot layout in relation to size, adequacy, accessibility, or usefulness, unsanitary~~
15 ~~or unsafe conditions, deterioration of site or other improvements, or the existence of~~
16 ~~conditions that endanger life or property by fire or other causes, or any combination~~
17 ~~of such factors, is detrimental to the public health, safety, or welfare. Property that~~
18 ~~consists of only one dwelling unit is not blighted property unless, in addition,; and~~
19 to which at least one of the following applies:

20 **SECTION 3.** 32.03 (6) (c) 5. to 7. of the statutes are created to read:

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1 32.03 (6) (c) 5. A finding that the owner's property has been cited for one or more
2 violations of applicable state or local building codes involving the roof and roof
3 framing elements; support walls, beams, and headers; the foundation, footings, and
4 subgrade conditions; light and ventilation; plumbing; fire protection; public utilities;
5 flooring; or walls, insulation, and exterior envelope.

6 6. The code violations under subd. 5. have not been remedied despite the
7 issuance by the local governmental unit that issued the citations of at least 2 notices
8 to do so.

9 7. The cost of remedying the code violations under subd. 5. would exceed an
10 amount equal to 50 percent of the most recent assessed value of the property,
11 excluding the value of the land.

12 **SECTION 4.** 32.06 (intro.) of the statutes is amended to read:

13 **32.06 Condemnation procedure in other than transportation matters.**
14 (intro.) The procedure in condemnation in all matters except acquisitions under s.
15 32.05 or ~~32.22~~, acquisitions under subch. II, acquisitions under subch. II of ch. 157,
16 and acquisitions under ch. 197, shall be as follows:

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

18 **32.06 (5) COURT ACTION TO CONTEST RIGHT OF CONDEMNATION.** When an owner
19 desires to contest the right of the condemnor to condemn the property described in
20 the jurisdictional offer for any reason other than that the amount of compensation
21 offered is inadequate, such the owner may within 40 days from the date of personal
22 service of the jurisdictional offer or within 40 days from the date of postmark of the
23 certified mail letter transmitting such offer, or within 40 days after date of
24 publication of the jurisdictional offer as to persons for whom such publication was
25 necessary and was made, commence an action in the circuit court of the county

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1 ~~wherein~~ in which the property is located, naming the condemnor as defendant. Such
2 action shall be the only manner in which any issue other than the amount of just
3 compensation or other than proceedings to perfect title under ss. 32.11 and 32.12 may
4 be raised pertaining to the condemnation of the property described in the
5 jurisdictional offer. Failure to raise specific objections to the condemnation before
6 the service of the jurisdictional offer does not preclude any claims in an action under
7 this subsection. If the condemnor's intent in condemning the owner's property is to
8 eliminate blight, the condemnor shall prove by a preponderance of the evidence that
9 the owner's property is blighted property. The trial of the issues raised by the
10 pleadings in such action shall be given precedence over all other actions in said court
11 then not on trial. If such action is not commenced within the time limited the owner
12 or other person having any interest in the property shall be forever barred from
13 raising any such objection in any other manner. The commencement of an action by
14 an owner under this subsection shall not prevent a condemnor from filing the
15 petition provided for in sub. (7) and proceeding thereon. Nothing in this subsection
16 shall be construed to limit in any respect the right to determine the necessity of
17 taking as conferred by s. 32.07 nor to prevent the condemnor from proceeding with
18 condemnation during the pendency of the action to contest the right to condemn.
19 This section shall not apply to any owner who had a right to bring a proceeding
20 pursuant to s. 66.431 (7), 1959 stats., prior to its repeal by chapter 526, laws of 1961,
21 effective on October 8, 1961, and, in lieu of this section, s. 66.431 (7), 1959 stats., as
22 it existed prior to such effective date of repeal shall be the owner's exclusive remedy.

23 **SECTION 6.** 32.07 (2) of the statutes is repealed.

24 **SECTION 7.** 32.07 (3) of the statutes is amended to read:

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1 32.07 (3) In all other cases, the judge shall determine the necessity, which shall
2 be established by a preponderance of the evidence.

3 **SECTION 8.** 32.07 (4) of the statutes is renumbered 32.07 (2m) amended to read:

4 32.07 (2m) The determination of the public service commission of the necessity
5 of taking any undeveloped water power site made pursuant to s. 32.03 (3) shall be
6 conclusive unless the determination is arbitrary or unreasonable.

7 **SECTION 9.** 32.22 of the statutes is repealed.

8 **SECTION 10.** 32.51 (1) (intro.) of the statutes is renumbered 32.51 (1) and
9 amended to read:

10 32.51 (1) PURPOSES. ~~In addition to the powers granted under subch. I, any~~ Any
11 city may condemn or otherwise acquire property under this subchapter for: the
12 purposes specified in s. 32.015.

13 **SECTION 11.** 32.51 (1) (a) to (g) of the statutes are repealed.

14 **SECTION 12.** 32.71 of the statutes is amended to read:

15 **32.71 Liberal Strict construction.** This subchapter, being in derogation of
16 the common law, shall be liberally strictly construed ~~to provide the city with the~~
17 ~~largest possible power and leeway of action.~~

18 **SECTION 13.** 66.1201 (10) (a) of the statutes is amended to read:

19 66.1201 (10) (a) The authority may acquire by eminent domain any real
20 property, including fixtures and improvements, which it deems necessary to carry
21 out the purposes of ss. 66.1201 to 66.1211 after the adoption by it of a resolution
22 declaring that the acquisition of the property described in the resolution is in the
23 public interest and necessary for public use. The authority ~~may~~ shall exercise the
24 power of eminent domain pursuant to ch. 32 ~~or pursuant to any other applicable~~
25 ~~statutory provisions.~~

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1 **SECTION 14.** 66.1201 (10) (b) to (g) of the statutes are repealed.

2 **SECTION 15.** 66.1311 (3) of the statutes is amended to read:

3 66.1311 **(3)** The provisions of ss. 66.1301 to 66.1329 with respect to the
4 condemnation of real property by a city for a redevelopment corporation ~~prevail over~~
5 ~~the provisions of any other law~~ are subject to the requirements in ch. 32.

6 **SECTION 16.** 66.1313 (1) of the statutes is amended to read:

7 66.1313 **(1)** Condemnation proceedings for a redevelopment corporation shall
8 be initiated by a petition to the city to institute proceedings to acquire for the
9 redevelopment corporation any real property in the development area. The petition
10 shall be granted or rejected by the local governing body, and the resolution or
11 resolutions granting the petition shall require that the redevelopment corporation
12 pay the city all sums expended or required to be expended by the city in the
13 acquisition of the real property, or for any real property to be conveyed to the
14 corporation by the city in connection with the plan, and the time of payment and
15 manner of securing payment, and may require that the city receive, before
16 proceeding with the acquisition of the real property, such assurances as to payment
17 or reimbursement by the redevelopment corporation, or otherwise, as the city deems
18 advisable. Upon the passage of a resolution by the local governing body granting the
19 petition, the redevelopment corporation shall make 3 copies of surveys or maps of the
20 real property described in the petition, one of which shall be filed in the office of the
21 redevelopment corporation, one in the office of the city attorney of the city, and one
22 in the office in which instruments affecting real property in the county are recorded.
23 The filing of copies of surveys or maps constitutes acceptance by the redevelopment
24 corporation of the terms and conditions contained in the resolution. The city may
25 shall conduct condemnation proceedings ~~either under ch. 32 or under other laws~~

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1 ~~applicable to the city.~~ When title to real property vests in the city, it shall convey or
2 lease the real property, with any other real property to be conveyed or leased to the
3 redevelopment corporation by the city in connection with the redevelopment plan,
4 to the redevelopment corporation upon payment by the redevelopment corporation
5 of the sums and the giving of the security required by the resolution granting the
6 petition.

7 **SECTION 17.** 66.1327 (1) of the statutes is amended to read:

8 66.1327 (1) Sections 66.1301 to 66.1309 and ss. 66.1315 to 66.1329 shall be
9 construed liberally to effectuate the purposes of urban redevelopment, and the
10 enumeration of specific powers in those sections does not operate to restrict the
11 meaning of any general grant of power contained in ss. ~~66.1301 to 66.1329~~ those
12 sections or to exclude other powers comprehended in the general grant.

13 **SECTION 18.** 66.1331 (2) of the statutes is amended to read:

14 66.1331 (2) FINDINGS AND DECLARATION OF NECESSITY. It is found and declared
15 that there have existed and continue to exist in cities within the state, ~~substandard,~~
16 ~~insanitary, deteriorated, slum and~~ blighted areas which constitute a serious and
17 growing menace, injurious and inimical to the public health, safety, morals and
18 welfare of the residents of the state. The existence of these areas contributes
19 substantially and increasingly to the spread of disease and crime (necessitating
20 excessive and disproportionate expenditures of public funds for the preservation of
21 the public health and safety, for crime prevention, correction, prosecution,
22 punishment, and the treatment of juvenile delinquency and for the maintenance of
23 adequate police, fire and accident protection, and other public services and facilities),
24 constitutes an economic and social liability, substantially impairs or arrests the
25 sound growth of cities, and retards the provision of housing accommodations. This

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1 menace is beyond remedy and control solely by regulatory process in the exercise of
2 the police power and cannot be dealt with effectively by the ordinary operations of
3 private enterprise without the aids provided in this section. The acquisition of
4 property for the purpose of eliminating ~~substandard, insanitary, deteriorated, slum~~
5 ~~or blighted conditions or preventing recurrence of these conditions in the area, the~~
6 ~~removal of structures and improvement of sites~~ areas, the disposition of the property
7 for redevelopment incidental to ~~these activities~~ this activity, and any assistance
8 which may be given by cities or any other public bodies, are public uses and purposes
9 for which public money may be expended and the power of eminent domain
10 exercised. The necessity in the public interest for the provisions of this section is
11 declared as a matter of legislative determination.

12 **SECTION 19.** 66.1331 (3) (a) of the statutes is repealed and recreated to read:

13 66.1331 (3) (a) "Blighted area" means an area, including a slum area but
14 excluding any area that is zoned or used for agricultural purposes, in which all of the
15 following apply to a majority of the buildings:

16 1. They have been cited for one or more violations of applicable state or local
17 building codes involving the roof and roof framing elements; support walls, beams,
18 and headers; the foundation, footings, and subgrade conditions; light and
19 ventilation; plumbing; fire protection; public utilities; flooring; or walls, insulation,
20 and exterior envelope.

21 2. The code violations under subd. 1. have not been remedied despite the
22 issuance by the local governmental unit that issued the citations of at least 2 notices
23 to do so.

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1 3. The cost of remedying the code violations under subd. 1. would exceed an
2 amount equal to 50 percent of the most recent assessed value of the buildings,
3 excluding the value of the land.

4 **SECTION 20.** 66.1331 (4) (b) of the statutes is amended to read:

5 66.1331 (4) (b) Condemnation proceedings for the acquisition of real property
6 necessary or incidental to a redevelopment project shall be conducted in accordance
7 with ch. 32 ~~or any other laws applicable to the city.~~

8 **SECTION 21.** 66.1331 (15) of the statutes is amended to read:

9 66.1331 (15) CONSTRUCTION. This section shall be construed liberally to
10 effectuate its purposes and the enumeration in this section of specific powers does
11 not restrict the meaning of any general grant of power contained in this section or
12 to exclude other powers comprehended in the general grant. This subsection does
13 not apply to subs. (2) and (4) (a) 3.

14 **SECTION 22.** 66.1333 (2m) (b) of the statutes is repealed and recreated to read:

15 66.1333 (2m) (b) “Blighted area” means an area, including a slum area but
16 excluding any area that is zoned or used for agricultural purposes, in which a
17 majority of the buildings are blighted properties.

18 **SECTION 23.** 66.1333 (2m) (bm) of the statutes is repealed and recreated to read:

19 66.1333 (2m) (bm) “Blighted property” means any property within a city, other
20 than land zoned or used for agricultural purposes, that by reason of abandonment,
21 dilapidation, deterioration, unsafe conditions, or the existence of conditions that
22 endanger life or property by fire or other causes, or any combination of such factors,
23 is detrimental to the public health, safety, or welfare, and to which all of the following
24 apply:

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1 1. The property has been cited for one or more violations of applicable state or
2 local building codes involving the roof and roof framing elements; support walls,
3 beams, and headers; the foundation, footings, and subgrade conditions; light and
4 ventilation; plumbing; fire protection; public utilities; flooring; or walls, insulation,
5 and exterior envelope.

6 2. The code violations under subd. 1. have not been remedied despite the
7 issuance by the local governmental unit that issued the citations of at least 2 notices
8 to do so.

9 3. The cost of remedying the code violations under subd. 1. would exceed an
10 amount equal to 50 percent of the most recent appraised value of the property,
11 excluding the value of the land.

12 **SECTION 24.** 66.1333 (3) (f) of the statutes is amended to read:

13 66.1333 (3) (f) An authority is an independent, separate and distinct public
14 body and a body corporate and politic, exercising public powers determined to be
15 necessary by the state to protect and promote the health, safety and morals of its
16 residents, and may take title to real and personal property in its own name. The
17 authority ~~may~~ shall proceed with the acquisition of property by eminent domain
18 under ch. 32, ~~or any other law relating specifically to eminent domain procedures of~~
19 ~~redevelopment authorities.~~

20 **SECTION 25.** 66.1333 (5) (b) 1. of the statutes is amended to read:

21 66.1333 (5) (b) 1. Condemnation proceedings for the acquisition of real property
22 necessary or incidental to a redevelopment project shall be conducted in accordance
23 with ch. 32, ~~or any other law relating specifically to eminent domain procedures of~~
24 ~~redevelopment authorities.~~

25 **SECTION 26.** 66.1333 (5) (c) 1r. of the statutes is amended to read:

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1 66.1333 (5) (c) 1r. Condemnation proceedings for the acquisition of blighted
2 property shall be conducted under ch. 32 ~~or under any other law relating specifically~~
3 ~~to eminent domain procedures of authorities.~~ The authority may hold, clear,
4 construct, manage, improve or dispose of the blighted property, for the purpose of
5 eliminating its status as blighted property. Notwithstanding sub. (9), the authority
6 may dispose of the blighted property in any manner. The authority may assist
7 private acquisition, improvement and development of blighted property for the
8 purpose of eliminating its status as blighted property, and for that purpose the
9 authority has all of the duties, rights, powers and privileges given to the authority
10 under this section, as if it had acquired the blighted property.

11 **SECTION 27.** 66.1333 (17) of the statutes is amended to read:

12 66.1333 (17) CONSTRUCTION. This section shall be construed liberally to
13 effectuate its purposes and the enumeration in this section of specific powers does
14 not restrict the meaning of any general grant of power contained in this section or
15 exclude other powers comprehended in the general grant. This subsection does not
16 apply to subs. (3) (f), (5) (a) 3., (b) 1., and (c) 1r., and (6) (b) 3.

17 **SECTION 28.** 66.1337 (5) of the statutes is amended to read:

18 66.1337 (5) GENERAL POWERS CONFERRED UPON MUNICIPALITIES. The governing
19 body of a municipality has all powers necessary and incidental to effect a program
20 of urban renewal, including functions with respect to rehabilitation and
21 conservation for the restoration and removal of blighted, deteriorated or
22 deteriorating areas, and the local governing body may adopt resolutions or
23 ordinances for the purpose of carrying out that program and the objectives and
24 purposes of this section. In connection with the planning, undertaking and financing
25 of the urban renewal program or projects, the governing body of any municipality

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1 and all public officers, agencies and bodies have all the rights, powers, privileges and
2 immunities which they have with respect to a redevelopment project under s.
3 66.1331. The acquisition of property by condemnation is subject to the requirements
4 in ch. 32.

5 **SECTION 29. Initial applicability.**

6 (1) This act first applies to condemnation proceedings commenced on the
7 effective date of this subsection.

8 (END)