

No. 110
AN ACT

Providing for the laying out, widening, extending, and relocating by cities of the first class of highways and streets connecting with, or used as direct approaches to, bridges crossing streams or tunnels under streams, which form boundaries between this and any other state, and for the construction thereof and of appurtenances thereto; authorizing the acquisition by gift, purchase, or condemnation, of land and property therefor, and of additional land and property in connection therewith not needed for actual construction; providing for the acquisition of a fee simple title; authorizing the use, sale, or leasing, subject to restrictions by the city, of additional land and property acquired; and the erection, occupation, use, sale, or leasing of buildings and structures thereon by the city; and authorizing and prescribing the procedure for the assessment of damages and benefits.

Section 1. Be it enacted, &c., That the word "improvement," as used in this act, shall mean and include any highways or streets connecting with, or used as direct approaches to, bridges crossing streams or tunnels under streams, which form boundaries between this and any other state, together with viaducts carrying such highways or streets over other highways or streets or over other property, and any ramps and approaches and other structures and superstructures in connection therewith.

"Improvement,"
defined.

Section 2. Any city of the first class may lay out, widen, extend, or relocate highways and streets connecting with, or used as direct approaches to, bridges crossing streams or tunnels under streams, which form boundaries between this and any other state, and construct the same, either at, above, or below grade, together with such viaducts carrying such highways and streets over other highways and streets and over other property, and such ramps and approaches and such other structures and superstructures in connection therewith, as in the discretion of the council of such city, shall be necessary or convenient: Provided, That any such improvement shall in all cases follow substantially the course of the existing streets of such city which are in the most nearly direct continuous line with such bridge or tunnel.

City of the first
class may widen,
extend or relocate
highways.

Proviso.

Section 3. Any city of the first class undertaking any improvement, authorized by the foregoing section, may acquire any land and property necessary therefor, either by gift, purchase, or the exercise of the power of eminent domain. Such city may also, in like manner, acquire and take more land and property than is needed for the actual construction of such improvements, or any of them; but the additional land and property, so taken, shall not be more than sufficient to form suitable building sites on such highways or streets, nor shall such additional land and property be acquired at any point more than three miles distant from the approach to any such bridge or tunnel. The title, which the city shall

May acquire
property for the
improvement.

Must acquire
fee simple title.

acquire to all land and property under the provisions of this section, shall be fee simple absolute.

Additional property may be acquired.

Section 4. Additional land and property shall be acquired by the city in connection with an improvement only when the title acquired for the improvement shall be in fee. The acquisition of title to additional land and property, in connection with an improvement, shall be authorized in the same manner and at the same time as the acquisition of title to the land and property required for the improvement is authorized. When the acquisition of title to additional land and property in connection with an improvement is authorized, title to such additional land and property shall be acquired by the city in the manner, and according to the procedure (except in such respects as are herein set forth) provided for the acquisition of title to land and property required for the improvement, and in the same proceeding in which title to the land and property required for the improvement is acquired.

Method of acquisition.

Authorizing ordinance.

Section 5. Every ordinance, which shall authorize the acquisition of additional land and property in connection with any improvement, shall provide that the department of public works shall make a plain and accurate map, showing the land and property to be acquired for the improvement, and such additional land and property to be acquired in connection with the land and property to be acquired for the improvement. When additional land and property is to be taken by condemnation, the petition for the appointment of viewers shall separately describe such additional land and property to be so taken, and shall state what part of the land and property to be condemned is required for the improvement and what part thereof is to be acquired as additional land and property. The acquisition of such additional land and property, when duly authorized, shall be deemed to be for a public purpose.

Condemnation.

Condemnation proceedings.

Section 6. Whenever proceedings are begun by the city under the condemnation law to acquire any land and property, or any interest therein, in which proceedings additional land and property is to be acquired, the court, in which such proceedings are pending, may, at any stage of such proceedings, authorize the city to continue in possession of such additional land and property, or any part of the same, or to take immediate possession thereof, or any part thereof, in the same manner now authorized by law in connection with the land and property required for such improvement. Title to such additional land and property shall vest in the city at the same time, and subject to the same conditions as apply to other lands and property acquired for the improvement.

City may remain in possession during the proceedings.

Time title shall vest.

Section 7. Whenever an ordinance has been duly adopted for the purpose of any improvement provided for in section one of this act, such ordinance may be amended by authorizing the acquisition of land and property additional to that required for the improvement. All provisions of law, now applying to the payment by the city for land and property taken under the provisions of this act, shall apply with reference to the payment for additional land and property taken hereunder.

Ordinance may be amended, permitting acquisition of additional property.

Payment.

Section 8. After title to the land and property required for the improvement and to the additional land and property shall have vested in the city, the additional land and property may be either held and used by the city, or sold or leased by it.

Property may be used, leased, or sold.

Such additional land and property may be held and used by the city for any purpose authorized by existing law, or the council may authorize the erection thereon of buildings or other structures, and the occupation and use thereof by the city for any purpose which the city is authorized to use the same, or the leasing or sale thereof, either in whole or in part.

Additional land may be used, leased, or sold.

The council shall provide that such additional land and property, and any buildings or other structures erected thereon by the city, shall be sold or leased subject to such restrictions, covenants, or conditions as to location of buildings with reference to the land and property acquired for the improvement, or the height of buildings or structures, or the character of construction and architecture thereof, or such other covenants, conditions, or restrictions as will preserve or enhance the benefit to the public of the land, any property actually needed for the public use provided for in section one of this act, and such additional land and property shall be sold or leased subject to such restrictions, covenants, or conditions as may be prescribed, which shall be set forth in the instrument of conveyance or lease.

Restrictions to be inserted in lease or deed.

Section 9. In every proceeding in which land and property additional to those required for the improvement are acquired, the council shall have power by ordinance to provide that the whole of the expense of any such improvements be assessed upon the property benefited, or that the whole or a portion of such expense (which shall be specified in such ordinance) be borne by the city at large, and the remainder, if any, assessed upon the property benefited.

Payment of expense.

Section 10. Where part of any land and property is acquired for an improvement, and the remainder, or a portion of the remainder thereof, in the same ownership, is acquired in the same proceeding as additional land and property, the portion of the damages, due to the acquisition of the land and property required for the improvement, shall be determined and stated separately

Where city takes additional property from owner.

from the entire damage due to each such owner. In determining the damage due to the acquisition of that portion of such land and property which is required for the improvement, the same rule shall be applied as would govern the determination of damages for the taking of the land and property required for the improvement in case no additional land and property were acquired. Where part of any land and property is acquired for the improvement, and the remainder, or a portion of the remainder thereof, in the same ownership, is acquired in the same proceeding as additional land and property, the damages due to the acquisition of title to the land and property required for the improvement shall, in every case, equal the amount which would be awarded to such owner in case only that part of his land and property which is required for the improvement were acquired.

Aggregate of damages.

The aggregate of damages, due to the acquisition of the land and property required for the improvement, shall be determined by the court or other tribunal authorized to determine the compensation to be paid to the owners, and, when so determined, be assessed as a part of the damages in the proceeding

Scope of the act.

Section 11. The provisions of this act shall be construed as supplementing and extending the effect of the provisions of the general law relating to the acquisition of land and property by cities of the first class, so as to provide for the acquisition of title to additional land and property in connection with an improvement; and nothing in this act contained shall be construed as limiting the effect of the provisions of such general laws in their application to the acquisition of title to land and property required for an improvement when acquired in a proceeding in which additional land and property shall or shall not be acquired, except as the provisions of such general laws are in this act expressly so limited in their application.

Constitutional provision.

Section 12. The provisions of this act shall be severable, and if any of the provisions shall be held to be unconstitutional, such decision shall not affect the validity of any of the remaining provisions of this act. It is hereby declared as the legislative intent that this act would have been adopted had such unconstitutional provisions not been included therein.

When effective.

Section 13. The provisions of this act shall become effective immediately upon its final enactment.

APPROVED—The 29th day of May, A. D. 1935.

GEORGE H. EARLE