

*proved*, shall be less than one-half mile in length, nor shall the improved portion thereof be less than twelve feet in width.

APPROVED—The 28th day of April, A. D. 1927.

JOHN S. FISHER

No. 330

AN ACT

Authorizing cities of the first class to condemn, enter upon, take, appropriate, occupy, and use street railway transit facilities and properties used and useful in connection with the transportation of passengers by street, underground, or elevated railway, motor bus, taxicabs, or trackless trolley, principally within such cities, and the franchises and leases for operating the same; providing the procedure therefor and for the determination by the Public Service Commission, subject to appeal, and subject to the right of trial by jury, of the amount of compensation to be paid for the properties, facilities, and franchises so taken; providing for the obtaining of the assent of the electors thereto and for the deduction from the indebtedness of such cities, in calculating their borrowing power, of such sum as may be required to be borrowed for said purposes; and empowering such cities to operate, maintain, use, lease, license, or contract for the operation of the facilities and property so acquired.

Section 1. Be it enacted, &c., That it shall be lawful for, and the right is hereby conferred upon, any city of the first class to condemn, enter upon, take, appropriate, occupy, and use street railway transit facilities, together with the property and franchises of any individual, partnership, corporation, or other artificial person, owning, leasing, or operating street, underground, or elevated passenger railways, motor buses, taxicabs, or trackless trolleys, situated or operated principally within such city, together with the properties and franchises of any subsidiary of any such owner. The term "street railway transit facilities," as used in this act, includes every railroad and railway, by whatsoever power operated, or any extension or extensions thereof, for public use in the conveyance of passengers and property or both, being mainly located upon, over, above, below, across, through, or along any street, avenue, road, highway, bridge, or public place, and the facilities, plant, and equipment thereof, including tunnels, subways, bridges, elevated structures, tracks, poles, wires, conduits, power houses, sub-stations, lines for the transmission of power, car barns, shops, yards, sidings, turn-outs, switches, stations, and approaches thereto, cars and motive equipment, and all works, buildings, appliances, and appurtenances, necessary and convenient for the proper construction, equipment maintenance, and operation of such railroad or railway: Pro-

Cities of first class.

Condemnation of transit facilities.

"Street railway transit facilities," defined.

Proviso.

vided, however, That there shall excluded from any such condemnation or taking stocks, bonds, and other securities and property owned by such individual, partnership, corporation, or other artificial person, not used or useful in connection with the operation of the said transit facilities: And provided further, That whenever an operating company shall operate as one system, whether as owner, lessee, operating agent, or otherwise any such transit facilities under two or more separate franchises, it shall not be lawful for any such city to condemn or take hereunder the properties, facilities, and franchises, or any of them, pertaining to or operated under any one or more separate franchises, unless it shall at the same time condemn and take all of the properties, facilities, and franchises, as hereinabove defined, pertaining to the entire system, except as in section two hereinafter provided.

Proviso.

Section 2. Whenever an operating company shall operate as one system street railway transit facilities, or any surface, underground, and/or elevated railways, under two or more separate franchises, such city may, if it so elect, condemn and take hereunder the property and franchises of all companies which own or have an interest in such railways or in any of them, and which have, by lease or otherwise, surrendered to such operating company the possession and operation thereof, without at the same time condemning the interest of the operating company therein or the properties, facilities, and franchises of such operating company, to the intent that such city may, if it so elect, succeed to the rights, properties, facilities, and franchises of all lessor and/or underlying companies of such system of railways, exclusive of the rights, properties, facilities, and franchises of the operating company: Provided, however, That nothing herein contained shall prevent the taking and condemnation of the properties, facilities, and franchises of all the lessor and/or underlying companies, together with those of the operating company: And provided further, That the right to take and condemn hereunder motor buses, taxicabs, or trackless trolleys, owned by or controlled by such operating company through stock ownership or otherwise, shall be exercised only in case all other properties, facilities, franchises, and leaseholds of such operating company, used or useful in connection with the operation of transit facilities, are taken and condemned, but nothing herein contained shall affect the rights of such cities to acquire such motor buses, taxicabs or trackless trolleys under the terms of any ordinance or ordinances relating thereto.

When street railway system operated by an operating company.

Proviso.

Proviso.

Section 3. The taking and condemnation of properties, facilities, and franchises, as authorized by this

Property may be taken subject to liens and other liabilities.

act, may, at the option of such cities, be made subject to the existing bonds, obligations, or other liabilities, liens, and encumbrances of the owners thereof, or to which such properties, facilities, and franchises may be subject; or such taking and condemnation may be free therefrom, or may be subject in part thereto and in part free therefrom, as any such city may elect.

Ordinance providing for condemnation.

Section 4. Whenever any city of the first class may desire to condemn, enter upon, take, appropriate, occupy, and use any properties, facilities, and franchises hereunder, it shall declare its intention so to do by ordinance duly enacted, which ordinance shall set forth what properties, facilities, and franchises the city desires to condemn, and whether the acquisition thereof shall be subject to or free from the bonds, obligations, or other liabilities, liens, and encumbrances in whole or in part. Thereupon the said city may proceed to the condemnation thereof under the terms of said ordinance; and the compensation or damages arising from such condemnation, taking, appropriation, occupying, and using of such properties, facilities, and franchises, shall be ascertained, determined, and paid in the manner hereinafter set forth. The condemnation proceedings shall be begun by petition to the Public Service Commission, to assess and determine the proper amount of compensation to be paid therefor, and shall set forth, with reasonable certainty, a description of the properties, facilities, and franchises to be condemned, and the names of the owners thereof, and whether the same are to be taken free from or subject to the bonds, obligations, or other liabilities, liens, and encumbrances, or to what extent they are to be so taken, and the Public Service Commission shall, after due notice to all parties interested and after such public hearings thereon as it shall deem necessary and proper, assess and determine the amount of compensation or damages to be paid by the city to the owner or owners aforesaid.

Petition to Public Service Commission.

Contents.

Assessment of damages.

Factors to be taken into account.

Section 5. In ascertaining, assessing, and determining the amount of compensation or damages to be paid by the city, the Public Service Commission may determine every fact, matter, or thing, which in its judgment does or may have any bearing on the fair amount of the compensation. The factors thus to be taken into account may, in the discretion of the Public Service Commission, include, among other things, the original cost of construction, with particular reference to the amount expended in existing and useful permanent improvements, with such consideration for the amount in market value of the owner's bonds and stocks, if the owner be a corporation, as to the Public Service Commission may seem

just and fair; the probable earning capacity of the property, under particular rates prescribed by statute or ordinance, or other municipal, contract or fixed or proposed by the Public Service Commission; and for the items of expenditures for obsolete equipment and construction as the circumstances and historical development of the properties may warrant. The reproduction cost of the property, based upon the fair average price of materials, property and labor, and the development and going-concern value of such properties, facilities, and franchises, any element of delay under these proceedings, and other elements of value, shall be given such weight by the commission as may in its judgment be just and right in each case, as in other matters involving the valuation of properties and facilities devoted to the public service and coming before the said Public Service Commission for determination. The determination of the Public Service Commission shall award compensation or damages to each owner separately; and, in case any owner is also the lessee of the properties, facilities, and franchises of any other company whose properties, facilities, or franchises are acquired or to be acquired hereunder, the total amount awarded with respect thereto shall be apportioned between the owner or owners of such properties, facilities, and franchises and any person or persons, company or companies, having an interest therein by virtue of any such lease or series of leases; the purpose of this provision being that the gross amount of damages or compensation, ascertained and determined as hereinabove provided, shall be distributed among those rightfully entitled thereto in such manner as may be just and equitable having in view their respective interests therein. Should the condemnation be free from any or all bonds, obligations, or other liabilities, liens, and encumbrances, the award to any individual or company, whose property is subject thereto, shall include a sum or sums sufficient to satisfy the same, and the award to such company or individual in such case shall be made subject to the rights of those entitled under any such bonds, obligations, or other liabilities, liens, and encumbrances: Provided, That in no case shall the amount awarded to any company be less than the amount paid into the treasury of such company by its stockholders and invested in the acquisition or development of its property and franchises taken and appropriated. In case the properties, facilities, and franchises of the operating company are not taken and condemned in any proceeding under this act, the award shall not include any interest which the said operating company may have in any of the condemned properties, facilities, and franchises represented by

Distribution of compensation for damages.

When property taken free from obligations.

Proviso.

Where properties of operating company not taken.

any lease, operating agreement, assignment, or other contract, which interest shall continue as theretofore; but, in case it is a stockholder or creditor either in its own right or as lessee of any company whose properties, facilities, and franchises are taken and condemned under said proceedings, and such stock or credit is pledged to secure an issue or issues of bonds, then there shall be a proper and equitable adjustment in the award to meet these conditions.

Appeal from determination of Public Service Commission.

Section 6. Within thirty days after the filing of any determination by the Public Service Commission of the amount of compensation or damages to be paid by any city for any taking and appropriation hereunder, unless application for a rehearing be pending, and then within thirty days after refusal of such application, any party to the proceedings may appeal therefrom to the Superior Court, and the said court shall have the power to confirm the commission's determination, or to direct the commission to reconsider the question and file a new determination, modified and corrected in such manner as the court shall prescribe.

Trial by jury.

If, however, any party shall desire a trial by jury, such party, within thirty days after the filing by the Public Service Commission of its determination, or, if an application for a rehearing shall have been made within thirty days after the refusal of such application, shall take an appeal to the court of common pleas of the county in which said city of the first class is situated, demanding a jury trial according to the course of the common law, which court shall have jurisdiction of said trial both as to the properties, facilities, and franchises of such party within said county, and within any adjacent counties in which such properties, facilities, and franchises, or any part thereof, may be situated. Upon any such jury trial the determination of the Public Service Commission and any opinion rendered by the said commission in connection therewith shall be admissible in evidence. Upon the entry of final judgment on any issue had upon any such trial, either party shall have the right to an appeal to the Superior or Supreme Court as in other cases.

Opinion and determination admissible in evidence.

Appeal.

Assent of electors to determination.

Section 7. Before any city of the first class shall actually enter upon, take, and appropriate properties, facilities, and franchises sought to be condemned under this act, and before it shall tender or file its bond as hereinafter provided, the city shall first obtain the assent of the electors to such condemnation. The question shall be submitted to the electors at the time, in the manner, and under the requirements provided by law with respect to elections for the purpose of obtaining the assent of the electors to the in-

Manner of holding elections.

crease of the indebtedness of such city when such assent is necessary; and the question to be submitted to the electors at such election shall be whether they will assent to the incurring or increase of the debt, in the amount which shall be stated, for the purpose of the condemnation of such properties, facilities, and franchises, which purpose shall be briefly indicated and, if the consent of the court to the deduction of the amount to be so borrowed from the city's debt in calculating its borrowing power shall have been first obtained, that fact shall be stated in the notice of the election required to be given by section five, of article eighteen, of the act, approved June twenty-fifth, one thousand nine hundred and nineteen, entitled "An act for the better government of cities of the first class of the Commonwealth of Pennsylvania." The assent of a majority of the electors of such city voting upon the question shall be a condition precedent to the consummation of such condemnation and taking.

Question to be submitted.

Section 8. In all cases in which such city intends to pay the damages and compensation awarded from money to be borrowed, and in which the condition of its debt is such as to make necessary the deduction from its total indebtedness of the debt about to be incurred for that purpose, in calculating its borrowing capacity, before it shall actually enter upon, take, and appropriate properties, facilities, and franchises sought to be condemned hereunder, or tender or file its bond as hereinafter provided, the city shall first present its petition to the court of common pleas of the county in which such city is situated, praying for a determination, in the manner provided by law, whether the indebtedness about to be incurred is so deductible from its total debt in calculating its borrowing capacity. The final decision of the right of the city, in such cases, to deduct such indebtedness about to be incurred shall be a condition precedent to the consummation of the condemnation. Such petition shall be presented by the city to said court within three months after the final determination of the amount of compensation or damages for the taking of any or all of the properties, facilities, and franchises to be acquired hereunder, or within three months after the assent of the electors shall be given to the taking or condemnation thereof, as hereinabove provided. The proceedings required under this section eight may precede or follow those provided for in the foregoing section as the city may determine.

Calculation of borrowing power.

Petition to court of common pleas.

Time of presentation of petition.

Order of proceedings.

Passage of title to city.

Section 9. Title to the aforesaid properties, facilities, and franchises, and the right of entry thereon, shall pass to the city only upon payment by it of the amount of compensation or damages finally de-

terminated as herein provided, unless, prior to such payment, the city shall tender its bond as security therefor, the condition of which shall be the payment by the city of the compensation or damages finally determined, as herein provided. Should any party claiming compensation or damages be dissatisfied with the amount of the bond so tendered, or refuse to accept the same, the city shall give written notice of the time when said bond will be presented to the court of common pleas of said county for approval and, upon approval of said court, such bond shall be duly filed and, upon the filing thereof as herein provided, the city shall have the right to enter upon, take, use, occupy, and appropriate said properties, facilities, and franchises.

Presentation of bond for approval.

Operation of properties.

Section 10. Any city of the first class which shall have taken and appropriated any properties, facilities, and franchises hereunder, shall have the power to own, maintain, use, operate, and lease the same, or to grant licenses for the operation thereof, or to enter into operating agreements therefor.

Upon failure of proceedings, costs to be paid by city.

Section 11. Should such city fail to consummate any determination begun hereunder, either by reason of the refusal of the electors to assent thereto, or by reason of an adverse determination of the court upon the question of the deductibility of its indebtedness sought to be incurred, or for any other reason, then and in such event the city shall pay all the costs of proceedings had in the matter and shall reimburse all the parties to the proceedings for their reasonable costs and expenses, the amounts of such reimbursement to be determined by the court of common pleas of the county in which such city is situated.

Constitutionality of act.

Section 12. It is hereby declared that the various sections, clauses, and provisions of this act shall be severable, and that, if any of the powers conferred on any city of the first class by this act or any of the other provisions hereof shall be held to be unconstitutional, the decision holding the same unconstitutional shall not affect the validity of any or all of the remaining provisions of the act, it being the intention of this statute that every power conferred upon any city of the first class herein is a separate and distinct power, and every section, clause, or provision herein is to be taken and regarded as separate, severable, and apart from each and all of the other sections; clauses, and provisions hereof.

Act of July 19, 1917 (P. L. 1086), repealed.

Section 13. The act, approved the nineteenth day of July, one thousand nine hundred and seventeen (Pamphlet Laws, ten hundred and ninety-six), entitled "An act authorizing any city of the first class to acquire street railway transit facilities within such city or adjacent thereto, and the franchises for operating

the same, by the exercise of the power of eminent domain; providing for the determination by the Public Service Commission, subject to appeal, of the amount of compensation to be paid for the properties and franchises taken; and empowering such city to operate, maintain, use, lease, license, or contract for the operation of the facilities so acquired," and all other acts or parts of acts inconsistent herewith or supplied hereby be and the same are hereby repealed.

Other inconsistent acts repealed.

APPROVED—The 3d day of May, A. D. 1927.

JOHN S. FISHER

No. 331

AN ACT

Granting additional equity powers to courts of common pleas to prevent, restrain, and abate encroachments on public sidewalks in front of residences, churches, hotels, apartment houses, or retail stores contrary to law.

Section 1. Be it enacted, &c., That the courts of common pleas of the several counties of this Commonwealth, in addition to the powers and jurisdictions heretofore possessed and exercised, shall have the jurisdiction and powers of a court of chancery, so far as relates to the prevention, restraint, and abatement of encroachments on public sidewalks in front of residences, churches, hotels, apartment houses, or retail stores contrary to law and prejudicial to the interests of the community, upon the complaint of any municipality, or any citizen thereof, alleging injury thereby, without regard to whether or not such citizen has suffered damage or injury which is special to himself, where the said municipality has failed or refused to institute action for the prevention or restraint of such encroachments in front of residences, churches, hotels, apartment houses, or retail stores contrary to law, within thirty days after written notice thereof to such municipality by or on behalf of such citizen.

Court of common pleas.

Additional equity powers to abate encroachments on public sidewalks.

Complaint of municipality or a citizen.

Section 2. That where any municipality has heretofore proceeded by suit for the prevention, restraint, and abatement of encroachments on public sidewalks contrary to law, and an injunction or restraining order has been made and entered by the court of common pleas of the proper county, and said municipality has failed or refused to take appropriate action to enforce the same, it shall and may be lawful for any citizen of such municipality alleging injury thereby, without regard to whether or not such citizen has suffered damage or injury which is special to himself, to present his petition to said court, setting forth the facts, and praying for

Enforcement of injunction on application of a citizen.

Petition.