

# REVISED LAWS

# MINNESOTA

## 1905

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CHAPTER 41

EMINENT DOMAIN

**2520. Scope of chapter**—Whenever the taking of private property for any public use shall be authorized by law, it may be acquired, under the right of eminent domain, in the manner prescribed by this chapter; but nothing herein shall apply to the condemnation of property by any incorporated place whose charter provides a different mode of exercising the rights of eminent domain by it possessed, or to the taking of property under the chapters relating to roads and drainage.

See 1905 cc. 7, 43

**2521. Definitions**—For all the purposes of this chapter, the word “taking,” and all words and phrases of like import used herein, shall include every interference, under the right of eminent domain, with the ownership, possession, enjoyment, or value of private property. And the word “owner,” as so used, shall extend to all persons interested in such property as proprietors, tenants, incumbrancers, or otherwise.

**2522. Proceedings, by whom instituted**—If such property be required for any authorized purpose of the state, the proceeding shall be taken in the name of the state, by the attorney general, upon request of the officer, board, or other body charged by law with the execution of such purpose; if by a corporation or other body authorized by law to exercise the right of eminent domain, in its corporate or official name and by the governing body thereof; and if by an individual so authorized, in his own name. (4085)

**2523. Entry for surveys, etc.**—For the purpose of making surveys and examinations relative to any proceedings under this chapter, it shall be lawful to enter upon any land, doing no unnecessary damage. (2373, 2623, 2643)

**2524. Petition and notice**—In all cases a petition, describing the desired land, stating by whom and for what purposes it is proposed to be taken, and giving the names of all persons appearing of record or known to the petitioner to be the owners thereof, shall be presented to the district court of the county in which said land is situated, praying for the appointment of commissioners to appraise the damages which may be occasioned by such taking. Notice of the objects of said petition, and of the time and place of presenting the same, shall be served, at least ten days before such time of presentation, upon all persons named in the petition as owners, and upon all occupants of such land, in the same manner as a summons in a civil action: Provided, that if any such owner be not a resident of the state, or his place of residence be unknown to the petitioner, upon the filing of an affidavit of the petitioner, his agent or attorney, stating that he believes that such owner is not a resident of the state, and that he has mailed a copy of the notice to him at his place of residence, or that after diligent inquiry his place of residence cannot be ascertained by the affiant, then service may be made upon such owner by three weeks' published notice. If the state be an owner, said notice shall be served upon the attorney general. No owner not served as herein provided shall be bound by such proceeding unless he voluntarily appears therein. (2354, 2358, 2605, 2606, 2623-2625, 4086)

**1. Proceedings generally**—Mode of exercising right of eminent domain subject to legislative control (16-271, 244; 16-375, 333; 18-155, 139; 18-384, 345; 42-262, 44+59; 83-464, 466, 86+455). Proceedings are special and quasi judicial (30-140, 143, 14+581; 39-65, 67, 38+926). They are in rem (35-141, 145, 27+500; 82-497, 503, 85+525). So far as they are in invitum statutory requirements must be strictly followed (30-140, 142, 14+581).

**2. Petition**—Jurisdictional (10-30, 15; 31-289, 17+623; 38-523, 525, 38+753; 67-339, 69+1085). General allegation of purposes for which land sought sufficient (16-271, 244; 67-339, 69+1085). Description of land sought (46-540, 49+325; 85-234, 239, 88+749; 24-25; 43-104, 122, 42+596, 44+1144; 45-225, 47+786). Effect of including several tracts in one petition (43-104, 122, 42+596, 44+1144). Naming owners an admission of ownership (16-341, 303; 22-173; 35-439, 29+148). Petition held sufficient (10-30, 15; 76-334, 343, 79+315). Allowable amendment (67-339, 69+1085; 24-25; 31-289, 293, 17+623). Damages assessable not limited to lands described in petition (29-242, 13+39; 29-318, 13+134).

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**3. Notice**—Statutory notice jurisdictional (31-289, 294, 17+623; 67-339, 342, 69+1085. See 18-174, 157; 24-25; 32-174, 19+975; 33-419, 23+854). Constitutional right to notice (16-375, 333; 42-262, 44+59). Constructive notice sufficient (35-141, 145, 27+500; 45-225, 47+786; 56-321, 326, 57+928). Service by publication (38-506, 38+698). Waiver of notice by appealing (31-289, 17+623).

**2525. Notice of pendency**—At the time of filing the petition the petitioner may file for record with the register of deeds a notice of the pendency of the proceeding, describing with reasonable certainty the lands affected and for what purpose they are to be taken. If the proceeding be abandoned, in whole or in part, the petitioner shall within ten days thereafter file with the register a notice to that effect, describing with reasonable certainty the lands so abandoned. ('95 c. 246 s. 2)

**2526. Order made thereon—Commissioners**—Upon proof being filed of the service of such notice, the court, at the time and place therein fixed, or to which said hearing may be adjourned, shall hear all competent evidence offered for or against the granting of said petition, regulating the order of proof as it may deem best. If the proposed taking shall appear to be necessary, and such as is authorized by law, the court, by an order, shall appoint three disinterested commissioners, residents of said county, to ascertain and report the amount of damages that will be sustained by the several owners on account of such taking. Said order shall fix the time and place of the first meeting of the commissioners and prescribe their compensation. It may also, in the discretion of the court, limit the title or easement to be acquired by the petitioner, by defining the rights and privileges which the owner of any of said lands may exercise therein in subordination to the public uses to which it is appropriated. In case any of said commissioners shall fail to act, the court, without further notice, may appoint another in his place. (2355, 2608, 2626, 2647, 4086)

Court must determine whether the use for which the lands are sought is a public use and whether they are reasonably required or necessary therefor (34-227, 25+345). Duty of court to determine owners of land and specify them in order appointing commissioners (16-341, 303). Order appointing commissioners determines necessity of taking the land for public purposes (76-70, 74, 78+969). Statute does not impose legislative power on judiciary (84-472, 88+6). Burden of proof on petitioner (43-527, 531, 46+75; 85-76, 78, 88+423). Owner may consent to appraisal by two commissioners (30-140, 14+581). Irregularity as to place of hearing held waived (38-523, 525, 38+753). Disqualification of commissioners (50-114, 52+222; 87-268, 91+1111). Order held not to fix place of first meeting sufficiently (32-174, 19+975). Vacation of order (38-157, 36+105; 81-265, 83+1086, 84+101, 742). Order not appealable (81-62, 83+497).

**2527. Powers and duties of commissioners**—Said commissioners having qualified according to law, shall meet as directed by the order of appointment, and hear the allegations and proofs of all persons interested touching the matters to them committed. They may adjourn from time to time and from place to place within the county, giving oral notice to those present of the time and place of their next meeting. All testimony taken by them shall be given publicly, under oath, and in their presence. They shall view the premises, and any of them may issue subpoenas for witnesses, which shall be served as subpoenas in civil actions are served, and at the cost of the parties applying therefor. If deemed necessary, they may require the petitioner to furnish for their use maps or plats showing the character and extent of the proposed undertaking and the situation of lands desired therefor. In proper cases they may reserve to the owner a right of way or other privilege in or over the land taken, or attach reasonable conditions to such taking in addition to the damages given, or they may make an alternative award, conditioned upon the granting or withholding of the right specified. And without unreasonable delay they shall make a separate assessment and award of the damages which, in their judgment, will result to each of the owners of said land by reason of such taking, and within thirty days after making such assessment and award report the same to the court under their hands. (2359, 2360, 2609, 2627, 4086)

First meeting must be at time specified in order (31-289, 17+623). Cannot assess past damages (46-118, 48+558; 17-163, 136). Not restricted in assessing damages to lands described in petition (16-341, 303), but cannot enlarge tract to be acquired (28-326, 9+879; 86-218, 90+393, 1133). Proceedings before commissioners quasi judicial (39-65, 67, 38+926; 30-140, 143, 14+581). Damages to be assessed with reference to the value

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and condition of the land at the time of the award (21-122). Damages may be assessed in gross for taking several contiguous lots (21-122; 21-127). Under former statute questions of ownership might be determined by commissioners (23-114). Property is taken as of the date of the filing of the award and interest runs from such time (30-145, 15+668. See § 2535). Error as to tract to be taken (42-467, 44+529). Conclusiveness of award (22-198).

**2528. Report, etc.—Notice—**The oath subscribed by the commissioners shall be filed with their report, and, whenever necessary to the proper understanding of such report, it shall be accompanied by a map showing the route or location of the intended improvement, and the situation of the lands within their county proposed to be taken therefor. The clerk shall attach together the petition, notice of hearing thereon, proofs of service and publication of said notice, order appointing the commissioners, their oath and report, and all other documents filed in said matter modifying or affecting any of those hereinbefore named. Upon payment by the petitioner of the fees and disbursements of said commissioners, which may be taxed by the court in case of failure to agree upon the amount thereof, they shall sign and deliver to the petitioner a notice that said report has been filed, which notice said petitioner shall cause to be served and published as provided in § 2524; but if any party shall have appeared in said proceeding by attorney, said notice may be served upon the attorney so appearing. (2360, 2610, 2628, 4086)

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**2529. Payment—Tender—Deposit in court—**Payment of the damages awarded may be made or tendered at any time after the notice mentioned in § 2528 is delivered, and acceptance of such payment shall be taken as a waiver of all objections to the award, and to the proceedings leading thereto, on the part of the payee and of all persons for whom he is lawfully empowered to act. In case any party to whom an award of damages is made be not a resident of the state, or his place of residence be unknown, or he be an infant or other person under legal disability, or, being legally capable, refuse to accept payment, or if for any reason it be doubtful to whom any award should be paid, the petitioner may pay the same to the clerk, to be paid out under the direction of the court; and, unless an appeal be taken as hereinafter provided, such deposit with the clerk shall be deemed a payment of said award. (2361, 2611, 2629, 2630, 2649)

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Tender (21-322). Conditional deposit held unavailing (30-423, 15+871). Cited as to deposit in court (86-188, 194, 90+371). Who entitled to receive damages (52-409, 54+370; 59-493, 61+554; 82-497, 85+525; 16-260, 234; 93-30, 100+650).

**2530. Failure to report—**If the commissioners fail to file their report within six months after their appointment, upon motion of any owner the proceedings shall be set aside as to him; but for cause shown the court may extend the time for making said report for not more than six months. (2654; '95 c. 42)

**2531. Accruing taxes—**All taxes and assessments imposed upon the property after the filing of the petition, and paid by the owner before payment of the award, shall be added to the amount of such award, and, with interest thereon, shall be paid therewith; and the receipt of the proper officer for such taxes and assessments shall be conclusive, as between the owner and petitioner, of the amount and validity thereof. (2652)

**2532. Appeal—**At any time within thirty days after service of the notice that the report has been filed, the owner of lands taken may appeal to said district court from any award of damages embraced in said report, or from any omission to award damages to the appellant for the taking of lands claimed by him, by filing with the clerk a notice of such appeal. Said notice shall specify the particular award or failure to award appealed from, the nature and amount of his claim, the land to which it relates, and the grounds of his appeal. The petitioner may also in like manner appeal; but no appeal shall delay the prosecution of the proposed improvement if the petitioner shall give bond, in amount and with sureties to be fixed and approved by the court, conditioned for the payment of all damages finally awarded, and to abide the orders and judgments of the court entered thereon. (2362, 2363, 2612, 2613, 2631, 4087)

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Who may appeal (16-260, 234; 16-506, 457; 22-173; 22-177). Form of notice of appeal (19-500, 433). Duty of prosecuting appeal (38-234, 36+345). Specification of land

in notice of appeal does not limit damages (29-318, 13+134). Failure to file notice within thirty days fatal (30-451, 16+265. See 46-141, 48+686). Appealing gives jurisdiction over the person (31-289, 17+623; 38-523, 526, 38+753). Appeal not inconsistent with motion to vacate appointment of commissioners (38-157, 36+105). Dismissal of appeal (22-44; 22-173; 18-384, 345; 30-451, 16+265; 32-452, 21+476). Order dismissing appeal appealable (18-384, 345). Order refusing to dismiss appeal not appealable (11-253, 168; 31-42, 16+456). Bond to permit progress of work (18-155, 139; 21-497; 22-44; 24-191; 32-452, 21+476; 35-404, 29+161; 35-439, 29+148).

**2533. Trial—Costs—**Such appeal may be noticed for trial as in the case of a civil action, and the court may direct that issues be framed, and may require other parties to be joined, and to plead therein when necessary for the proper determination of the questions involved. The cause shall be tried by a jury, unless the parties otherwise agree, and the court or jury trying the same shall reassess the damages and apportion the same as justice may require. And, except as herein otherwise provided, the trial shall be conducted and the cause disposed of according to the rules applicable to ordinary civil actions in the district court. The court, in its discretion, may award to the prevailing party costs and the disbursements of the appeal. (2365, 2614, 2631, 4087)

Issues to be tried in district court same as issues before commissioners (11-253, 168; 16-506, 457; 18-384, 345; 20-187, 166; 22-198; 23-18; 21-424; 24-311; 30-227, 15+239). No question as to regularity in proceedings anterior to award can be raised. Jurisdiction of court on appeal statutory. Objection may be raised that commissioners exceeded their authority (28-326, 9+879). Damages may be increased or diminished (19-500, 433). Proof of ownership unnecessary (16-341, 303; 22-173; 22-177; 35-439, 29+148). Admissibility of award (30-227, 15+239; 87-91, 91+271). Assessment must be made as of the time of the filing of the award (21-122; 21-424; 24-311). Damages for several lots may be assessed in gross (21-122; 21-127). Amendment on appeal of description of land (24-25). Effect of change of ownership pending appeal (22-198). Form of oath to be administered to jury (22-173; 22-177). Change of venue (18-184, 168; 19-464, 406; 20-28, 19). Court may limit number of witnesses to value (29-318, 13+134). View by jury (22-173, 176; 41-223, 43+2). Landowner has right to open and close (17-188, 162). Sufficiency of verdict (16-341, 303; 21-127; 24-311; 17-322, 299). Interest on verdict (21-424; 24-311). Costs (21-122).

**2534. Judgment—Possession—**Judgment shall be entered upon the verdict or decision, fixing the amount of damages payable to the several parties concerned, and the terms and conditions of the taking. Upon payment of said damages, with costs and interest, if any, the petitioner shall be permitted to take possession of the premises, and appropriate the same to the public uses for which they were taken, subject to the provisions of such judgment; and until reversed or modified in a direct proceeding begun for that purpose, said judgment shall be binding upon the petitioner and all other parties thereto, and upon their respective successors and assigns. (2367, 2615, 2632, 4087)

Judgment passes the title and determines the rights of the parties (16-341, 303; 21-127; 35-404, 29+161). Owner entitled to personal judgment (24-191; 21-497). Judgment for gross sum sufficient (21-127). Judgment to include interest from time of filing the report (21-424; 24-311. See § 2535). Remedy for defective judgment appeal, not certiorari (19-500, 433). Judgment appealable (35-404, 29+161). Abandonment of proceedings after judgment (35-404, 29+161; 35-439, 29+148). When title vests (93-30, 100+650; 85-416, 89+1; 16-260, 234; 21-424).

**2535. Interest—Award, when payable—Dismissal—**All damages allowed under this chapter, whether by the commissioners or upon appeal, shall bear interest from the time of the filing of the commissioners' report. If the award be not paid within sixty days after such filing, or, in case of an appeal within the like period, after final judgment thereon, the court, on motion of the owner of the land, shall vacate the award and dismiss the proceeding as against such land. And when the proceeding is so dismissed, or the same is discontinued by the petitioner, the owner may recover from the petitioner reasonable costs and expenses, including fees of counsel. (2632, 2651, 2653, 2655)

Interest (21-424; 22-173; 24-311). Recovery of expenses, etc. on dismissal (21-533; 32-452, 21+476).

**2536. Record evidence, how perfected—**Upon the determination of all appeals taken in said proceeding, and the payment of all damages, interest, and costs awarded or recovered therein, and when there has been no appeal from the report of the commissioners, and more than thirty days have expired since

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the service upon all the parties to said proceeding of the notice referred to in § 2528, and payment has been made of all damages and interest allowed by said commissioners, the court, upon motion of the petitioner, shall enter a final decree establishing the rights of said petitioner in the whole or any part of the lands so taken. A certified copy of said decree may be filed for record with the register of deeds of said county, and such decree shall be evidence, and the record thereof notice, of the title and rights of the petitioner therein set forth. (2616)

**2537. Railroad built without right—Action—**Whenever a railroad shall have been built across any tract of land, no action shall be commenced for the recovery of such land while proceedings are pending under the law to ascertain and assess the damages. Otherwise, any person damaged by such taking, and not already compensated, may bring an action to recover the land, with or without damages for withholding the same, against the corporation or individual operating or maintaining said railroad, whether the road was constructed upon such land with the acquiescence of the owner or not. (2657)

28-503, 11+73; 33-419, 421, 23+854; 45-366, 48+191; 46-321, 329, 48+1129; 51-15, 52+977; 61-502, 506, 63+1035; 63-384, 65+652.

**2538. Answer—Ascertainment of damages—**The defendant in such action, by answer, may admit and allege the taking of such land for railroad purposes, that compensation has not been made to plaintiff therefor, and that defendant is ready and willing to pay such compensation, and to have the amount thereof assessed by the jury trying such action, if plaintiff's right to recover the land be established. And, when such answer is made, the jury shall find whether the plaintiff is entitled to recover the land, and, if so, the amount of compensation due him for the taking and perpetual use thereof for railroad purposes: Provided, that, if it appear that the land was so taken and appropriated with the consent and acquiescence of the owner, such owner shall recover no rents or profits which accrued prior to demand for compensation. (2658, 2659)

28-503, 11+73; 30-100, 14+460; 35-404, 407, 29+161; 40-132, 41+156; 42-170, 43+848; 42-245, 44+10; 54-157, 55+928; 84-179, 87+606.

**2539. Judgment and execution—**Upon a verdict that plaintiff is entitled to recover the land, and for the amount of compensation due him as provided in § 2538, judgment shall be rendered, in substance, that plaintiff have and recover from the defendant the land in suit, or, in lieu thereof, the compensation fixed by the jury, with costs and disbursements and reasonable attorney's fees as determined by the court. If such amounts be not paid within thirty days after entry of the judgment, execution shall issue for delivery of the possession of such land to plaintiff, and for the costs, disbursements, and attorney's fees aforesaid out of any property of the defendant. (2660)

42-179, 43+966; 63-384, 65+652; 86-218, 90+393, 1133.

**2540. Procedure when no answer is made, etc.—**If no answer be interposed, or if no offer be made by answer to pay the compensation to be so ascertained, the plaintiff, if he establish his right to the land, shall have judgment for the immediate possession thereof, and for such damages, rents, and profits as may be alleged and found, with costs and disbursements, and reasonable attorney's fees to be allowed by the court, upon which judgment execution shall issue as in the case of other judgments for the possession of real estate. Except as herein otherwise provided, such action shall be governed by the same rules as to practice, procedure, new trials, and appeals as are other actions for the recovery of land; but §§ 4430, 4431 shall not apply thereto. (2661, 2662; '95 c. 52)

63-384, 65+652; 86-218, 90+393, 1133.

**2541. Validity of railroad condemnation—Action—**When an owner refuses or neglects to receive an award made in a proceeding to condemn land for railroad purposes, on the ground that any of the proceedings are illegal, and no appeal from the award has been taken, the railroad company or its receiver may bring an action to determine the validity of such proceedings. If such validity be denied by the answer, and that issue be determined against the

defendant, judgment shall be entered accordingly, but he shall not thereby be debarred from his right to such award. If it be determined that such proceedings are invalid, and that the defendant is an owner, the present value of his interest in the land shall be ascertained. Thereupon judgment shall be entered that such interest be appropriated for such railroad purposes, if within sixty days thereafter the plaintiff pay to the defendant, or into court, for the benefit of the parties thereto entitled, the compensation adjudged, with interest, costs, and disbursements, and that in default of such payment the action be dismissed. Such payment shall vest in the company, or in the receiver for its benefit, all the right, title, and interest of the defendant in such land, as fully as if the same had been acquired by the condemnation proceedings; and upon such payment the court may enter final judgment to that effect. (2663-2665)

**2542. Same—Procedure, etc.**—In such action the plaintiff may join as defendants all persons having or claiming any interest in the land, and may in the same complaint include several tracts of land owned or claimed by different persons, but the owners of different tracts may demand separate trials. Upon all issues of fact either party shall be entitled to a jury trial, and the action shall be governed by the rules applicable to an action to determine adverse claims to real estate, except that §§ 4430, 4431 shall not apply thereto, and the plaintiff cannot recover costs or disbursements. (2664, 2666, 2667; '95.c. 60)

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## CHAPTER 42

### MILLS AND DAMS

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#### WATER POWERS

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**2543. Dams—For what purposes—Eminent domain**—Whenever any person, in order to create or improve a water power for milling or manufacturing purposes, shall desire to erect and maintain upon his own land a dam across any stream or other watercourse not navigable, or to raise or extend any such dam already erected, whereby lands owned by other persons shall be overflowed or otherwise damaged, he may acquire the right so to do by causing such damages to be ascertained and paid as prescribed in chapter 41. But no such dam shall be erected, raised, or maintained to the injury of any water power previously improved. (2353, 2368, 2370)

10-30, 15; 14-365, 282; 18-155, 139; 24-25.

**2544. Nonuser—Forfeiture—Exceptions**—Whenever the right to erect, raise, or extend any such dam shall have been acquired hereunder, the improvement shall be commenced within one year, and completed and the water power applied to the purpose stated in the petition within three years, after such acquisition; and if any such dam, or the machinery connected therewith, be destroyed, the rebuilding thereof shall be commenced and completed within the same periods after such destruction. Failure to comply with the foregoing requirements shall work a forfeiture of all rights so acquired, and a like forfeiture shall result from a failure to operate such mill or machinery, after the same is erected, for one consecutive year: Provided, that if the owner be an infant, or be otherwise legally disabled, the periods herein named shall be allowed after the disability is removed. (2374)

**2545. Highways—Overflow, etc.**—Whenever it shall be necessary, in creating, improving, or operating any water power, to overflow, obstruct, or impair any public street or other highway, or to dig any raceway therein, the right so to do may be granted by the town board or common council, as the case may be, of the town or municipality in which the part of such highway to be affected lies. Such grant shall be made upon petition, and by an order, defining all the terms and conditions thereof, passed at a meeting of the board or council called to consider said petition, of which meeting, and the purpose