CONDEMNATION BY STATE

Act 236 of 1911

AN ACT to authorize proceedings by the state to condemn private property for public use.

History: 1911, Act 236, Eff. Aug. 1, 1911

The People of the State of Michigan enact:

213.1 Condemnation of private property for state use; authority delegated; jurisdiction.

Sec. 1.

It shall be lawful for the governor or any other person or persons, or any board of regents, board of control or other governing body of any state educational, penal or reformatory institution, when by law authorized to secure for the state or such institution, land as a site for any state building or buildings, state institution or public use, and for the board of regents, board of control or other governing body of any state institution desirous of obtaining the right of way over lands for the benefit of such state institution, when such persons, board of regents, board of control or other governing body, or a majority thereof shall have by resolution declared the taking thereof necessary for the public use of such state institution, to institute or cause to be instituted proceedings in the name and behalf of the state of Michigan against the land sought to be acquired, and against the owners and persons interested therein, in the circuit court of the county where the land is situated, for the purpose of acquiring by the state title to such land by judicial condemnation. And the said court in which such proceeding may be instituted, shall have and possess full jurisdiction of the subject matter of such proceedings, and power to hear, adjudge, and determine all matters touching the proceedings, and the rights and interests of all concerned.

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History: 1911, Act 236, Eff. Aug. 1, 1911 ;-- CL 1915, 349 ;-- CL 1929, 3759 ;-- CL 1948, 213.1
Compiler's Notes: This act undoubtedly supersedes Sections 1-4 of Act 3 of 1874, being How. 5196-5199, as Am. 1897, Act 128, Eff. Aug. 30, 1897;—CL 1897, 1253-1256, which act was expressly repealed 1915, Act 240, Eff. Aug. 24, 1915. See CL 1929, 120.

213.2 Attorney general; duty; petition; contents; summons; issuance and return; incompetents; non-residents; service; notice by publication.

Sec. 2.

Upon request of the governor, board of regents, board of control or other governing body of any state institution, or other person or persons authorized as aforesaid, it shall be the duty of the attorney general of the state, or when directed by the attorney general, the prosecuting attorney of the county where the land is situated, on behalf of the board of regents, board of control or other governing body, if a body corporate under the law of its creation, and in behalf of the people of the state of Michigan if such governing body is not a body corporate, of any state institution, to cause a petition to be made in the name of the people of the state of Michigan and filed in the proper court, signed by the attorney general, or prosecuting attorney of the county, and by the secretary of such governing board, if a body corporate, and if not a majority of such trustees, board of control or other governing body, or other properly

authorized person, as the case may be, addressed to the court setting forth, with reasonable certainty a description of the land sought to be acquired, the names of all persons owning or having an interest therein, so far as disclosed by the records of titles of the county in which the land is situated, or can be ascertained from actual occupants; that the petition is made and presented for the purpose of acquiring the title and ownership of the land described in the petition, to and for the use of the state of Michigan, and specifying generally the purpose for which it is to be used. And the petition shall ask that all persons interested in the premises, or any part thereof, be summoned to appear and answer the petition, and show cause, if any they have, against the same. Upon filing the petition, summons shall issue in accordance with the prayer thereof, against the persons named therein, returnable on a day to be named, which shall not be less than 5 days from the issuing and test thereof, and shall be served at least 3 days before the return day, by the sheriff or other officer authorized to serve process of summons according to the rules and practice of the circuit court in other cases at law. If there are minors or persons of unsound mind interested in the premises, service may be made upon the guardian of any such person or the court may appoint a guardian ad litem for any such person, who may appear and defend for the person he represents. If there are non-resident or absent persons upon whom service cannot be obtained within the county, the court may order service upon any such person wherever he may be found, and in such manner as may be directed. The person serving any such process on such non-resident or absent person shall make proof of service by affidavit, stating the place, time, and manner of service. Or the court may order and cause notice to be given to such absent or non-resident person, by publication in such newspaper printed and published in the county as the court shall designate, and for such length of time as the court may think proper, not less than 3 weeks, once in each week; and any such service out of the county, or notice by publication, shall be as effectual for all the purposes of such proceeding and in the condemnation of the land as though the persons had been personally served within the county.

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History: 1911, Act 236, Eff. Aug. 1, 1911 ;-- CL 1915, 350 ;-- CL 1929, 3760 ;-- CL 1948, 213.2

213.3 Petition; hearing on necessity and compensation; commissioners procedure; jury, procedure.

Sec. 3.

When all the parties named in the petition have been summoned or notified, in the manner provided, and the time for their appearance shall have expired, the court shall hear any and all persons who shall have appeared and interposed objections to the petition or proceedings, and proceed to decide the questions raised, and may vacate the petition, or any part of the proceedings for cause, and may allow amendments of the petition, in form or substance, as the right of the matter shall demand. If any person having an interest in the land has been overlooked, or not summoned or notified, the court may continue the proceedings and cause such person to be served or notified. If the petition and proceedings are sustained, the court shall appoint 3 commissioners, residents and freeholders within the county, not interested or of kin to any of the persons interested in the land to ascertain and determine the necessity of the proposed public use, the necessity for using such property and the just compensation to be paid therefor by the state, which ought to be paid by the state to each of the owners and persons interested in the premises, as and for his, her or their just compensation for the land sought to be taken. Such commissioners before entering upon their duties as such shall take an oath in substantially the following form: "We do each of us solemnly swear that we will faithfully and justly determine the public necessity of the proposed use, the necessity of taking

the property described in the petition filed in this cause and the amount of compensation which ought to be paid to each of the owners and persons interested in the premises described in said petition according to our best ability." They shall visit the land sought to be acquired, shall ascertain the separate interest of each person owning or interested in any part of the premises, and the description of his or her separate interest in the parcel; shall hear, in the presence and under direction of the court, evidence touching the matters they are to find, brought forward by any person having an interest, and shall find all necessary facts to possess the court with the truth and right of the matter, but shall not be required to find what evidence was offered or given, and shall report to the court, in writing, their findings. Instead of commissioners, the court, with or without the request of any person interested in any portion of the premises described in the petition, may, and upon the request of any such person shall, order a venire to issue to the sheriff, to summon 12 jurors who shall be residents and freeholders of the county where the land is situated, to attend at a time to be named, before the court, to serve as a jury. Any person interested in any part of the premises may object for cause to any of the jurors, but there shall be no peremptory challenge allowed. In case any juror fails to appear, is excused, or set aside from the panel, the court may order the sheriff, or other proper officer in attendance, to summon forthwith the requisite number of talesmen to form the jury. The jury shall be sworn, as is required of commissioners, and they shall view the premises, hear evidence if offered, determine the necessity of the public use, the necessity for taking such property and the amount of compensation to be paid therefor and the same proceedings be had as near as may be, as hereinbefore required in reference to commissioners.

History: 1911, Act 236, Eff. Aug. 1, 1911 ;-- CL 1915, 351 ;-- CL 1929, 3761 ;-- CL 1948, 213.3

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213.4 Objections to report filed; confirmation; deposit; vesting of title; payment of compensation; dismissal; expenses; record.

Sec. 4.

The court shall hear objections, if any, to the report of the commissioners or jury, as the case may be, and may set aside the report and finding, or confirm the same, and if confirmed, shall enter a judgment of confirmation, and that all right, title and interest of, in, and to the land and premises, vest in the state of Michigan: Provided, That the state, within such time as shall be therein prescribed, shall deposit in the court the amount found by the report of the commissioners or jury, as the just compensation and damages to be paid to the owners and persons interested. If, within the time so prescribed, the state shall cause to be deposited the sum so found, the court shall thereupon enter an order and judgment that the title of the state in and to said land and every part thereof is perfect, and has become absolute, and may issue the necessary writ of assistance, commanding the sheriff to deliver the possession of such land to the state; and thereupon the title and right of the state to such land shall be absolute and binding against all persons whomsoever. The persons owning and interested in said land according to the report and finding aforesaid, shall be entitled, on applying to the court, to be paid on the order of the court the amount or sum to which they are respectively entitled, according to such report or finding; for the sum received they shall respectively give to the clerk their receipt, in writing, to be by the clerk forwarded to the state treasurer. In case the state does not, within the time so prescribed, deposit in court the amount of compensation and damages awarded, the court shall order the proceedings dismissed, and the state take nothing thereby. In the proceedings authorized by this act the court shall, as to the practice and mode of proceedings, be governed by the rules applicable in cases at law, except as is in this act otherwise expressly provided. The expense of the proceedings shall be paid by the state, and a

certified copy of the record of the proceedings and judgment of the court shall, together with the record thereof in the office of the register of deeds of the county, be evidence in all courts and places.

History: 1911, Act 236, Eff. Aug. 1, 1911 ;-- CL 1915, 352 ;-- CL 1929, 3762 ;-- CL 1948, 213.4

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