

COUNTY DEPARTMENT AND BOARD OF PUBLIC WORKS (EXCERPT)
Act 185 of 1957

CHAPTER 3
CONDEMNATION PROCEDURE

123.771 Condemnation; authority.

Sec. 41. A county operating under this act is hereby authorized to take private property necessary for any purpose within the scope of its powers under this act, for the use or benefit of the public and to institute and prosecute proceedings for that purpose.

History: 1957, Act 185, Imd. Eff. June 4, 1957.

123.772 Condemnation; declaration of necessity.

Sec. 42. Proceedings may be commenced and prosecuted under this chapter whenever the board of public works, acting as the agency of the county, shall have declared by resolution that it deems it necessary to take certain private property for a designated public improvement, and that such improvement is for the use or benefit of the public. It shall by resolution direct its attorney to institute the necessary proceedings in its behalf in the circuit court of the county where the private property sought to be taken is located.

History: 1957, Act 185, Imd. Eff. June 4, 1957.

123.773 Petition; contents.

Sec. 43. The board of public works shall make and deliver to its attorney a certified copy of the resolution and it shall be the duty of the attorney to prepare and file in the name of the county in the court having jurisdiction of the proceedings, a petition signed by him in his official capacity and duly verified by him, to which petition a certified copy of the resolution of the board of public works shall be annexed. The petition shall state among other things that it is made and filed pursuant to this chapter and the resolution as commencement of judicial proceedings by the county acting through its board of public works, to acquire the right to take the private property therein described for the use or benefit of the public, without the consent of the owners, for the designated public improvement, for a just compensation to be made. The petition shall set forth the names of all persons interested in said property insofar as they can be ascertained. The petition may state any other pertinent matter or matters and shall pray for the appointment of 3 special court commissioners to determine the necessity of taking for public use or benefit the property described in the petition and to appraise the damages to be paid as compensation for the taking of each piece or parcel of property.

History: 1957, Act 185, Imd. Eff. June 4, 1957.

123.774 Petition; court order for hearing.

Sec. 44. Upon filing of the petition the court shall make an order fixing a day for hearing on such petition which shall be not less than 25 days thereafter. The order shall recite the purpose of the petition and the description of the property to be taken and the names of the persons mentioned in the petition as parties interested therein. It shall order the persons to appear before the court at the time fixed therein for the hearing and show cause, if any they have, why the prayer in the petition should not be granted. If any person named in such petition shall be a minor or an insane or incompetent person who has no general guardian, then the court shall appoint a guardian ad litem for him.

History: 1957, Act 185, Imd. Eff. June 4, 1957.

123.775 Petition; publication of order; service on named defendants.

Sec. 45. A copy of the order shall be published once in each week for 3 weeks in some newspaper circulated in the county, to be designated by the court, the first publication to be not less than 3 weeks before the hearing. A copy of the order shall also be served on each person named in the petition interested in the land described therein in the manner provided in section 54. The publication shall constitute service of the order upon all non-residents of the county and upon all persons who are absent from the county or are unknown or are evading service or who for any other reason cannot be found. Proof of publication and service may be made by affidavit of any person having knowledge of the facts. The proof shall be filed with the court on or before the day of hearing and thereupon the court shall have jurisdiction of the subject matter involved in the proceedings and of the parties interested therein. Service of the order in any mode herein prescribed shall be sufficient notice of the proceeding to bind the parties in interest named therein and the property represented by them as described in the petition.

History: 1957, Act 185, Imd. Eff. June 4, 1957.

123.776 Court commissioners; appointment; discontinuance of proceedings.

Sec. 46. On the day fixed, the court shall enter the default of all persons interested in the property described who have not appeared; and unless sufficient cause to the contrary be shown, shall appoint 3 disinterested persons as court commissioners whose duty it shall be to determine whether it is necessary to take for public use or benefit the property described in the petition and, if so, to appraise the damages to be paid as compensation for such taking. The commissioners shall not be residents of the area to be served by the improvement for which the property is to be taken. The court shall fix the time and place for the first meeting of the court commissioners and require their attendance; it may also authorize the court commissioners to adjourn their meeting from time to time not later than a day to be named, and shall fix the time for filing their report. After the appointment of court commissioners, no discontinuance shall be filed and no order of discontinuance may be entered, except upon payment by the county of the expenses of the proceeding and reasonable attorney fees of all parties in interest who have appeared in the proceedings under the order of the court.

History: 1957, Act 185, Imd. Eff. June 4, 1957.

123.777 Court commissioners; meetings; conducting business at public meeting; notice of meeting; adjournment; subpoenas; oaths; viewing premises; hearing proofs and allegations; availability of report and other writings to public.

Sec. 47. The court commissioners shall meet at the time and place ordered by the court and shall be sworn to faithfully discharge their duties. The business which the commissioners may perform shall be conducted at a public meeting of the commissioners held in compliance with Act No. 267 of the Public Acts of 1976. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976. If all commissioners do not then appear, a smaller number may adjourn to a time certain, but an adjournment shall not be made to a day later than the time allowed by the court. An adjournment shall be publicly announced. The court or the clerk of the court may issue subpoenas to compel the attendance of witnesses before the court or before the court commissioners. A court commissioner may administer oaths to witnesses. The court commissioners shall view the premises described in the petition and shall hear the proofs and allegations of the parties. The report and any other writing prepared, owned, used, in the possession of, or retained by the commissioners in the performance of an official function shall be made available to the public in compliance with Act No. 442 of the Public Acts of 1976.

History: 1957, Act 185, Imd. Eff. June 4, 1957;—Am. 1977, Act 176, Imd. Eff. Nov. 17, 1977.

123.778 Court commissioners; determination of necessity, damages, report.

Sec. 48. The court commissioners shall determine whether it is necessary to take for public use or benefit the property described in the petition, and if so, shall appraise the damages to be paid as compensation for each piece or parcel of property, and shall report such decision in writing, signed by them or a majority of them, at or before the time fixed for that purpose, but it shall not be necessary for the court commissioners to report on all of the property at one time.

History: 1957, Act 185, Imd. Eff. June 4, 1957.

123.779 Multiple petitions; descriptions.

Sec. 49. It shall not be necessary for the board of public works to include in 1 determination the descriptions of all of the property necessary to be taken for any single project or to include in 1 petition the descriptions of all of the property described in the determination upon which such petition is based.

History: 1957, Act 185, Imd. Eff. June 4, 1957.

123.780 Report of court commissioners; court orders.

Sec. 50. Upon the filing of the report of the court commissioners, the court shall set a time for the consideration thereof and shall cause notice thereof to be given in the manner required by court rule in respect to the hearing of motions. At such time or at such other time to which it may adjourn the proceedings, the court on cause shown may set aside the report and refer it back to the court commissioners or appoint other commissioners to re-try the questions involved, whereupon such proceedings shall be had as are hereinbefore provided for. The court may permit the amendment of any determination, petition, affidavit, order, report or proceeding filed or had in the premises in such manner as shall be just and proper; it may fill any vacancy that shall occur among the court commissioners, by reason of death, resignation, removal or inability to act; at any time, in its discretion, it may remove any or all of the commissioners for cause and fill the vacancy thereby created; it may permit a defective proceeding to be set aside and other proceedings in compliance with law to be had in place thereof; it may determine the division of any award among the several claimants thereto; it

may adjourn the proceedings or any part thereof from time to time, and may make all such orders in the premises as may be just and proper to further accomplish the purpose thereof.

History: 1957, Act 185, Imd. Eff. June 4, 1957.

123.781 Report of court commissioners; confirmation, orders for payment of witness fees, attorney fees, damages.

Sec. 51. After the court shall confirm the report of the court commissioners, it shall enter an order authorizing the county to pay the several sums awarded for damages and it shall pay the same accordingly. The court may determine and include in the order an allowance to the persons, partnership or corporation from whom property is taken, for attorney fees and witness fees in an amount to be fixed by the court; such attorney fees and witness fees shall be paid in the same manner and at the same time as sums awarded for damages in such proceeding. It shall not be lawful for the court to make such order allowing witness and attorney fees to more than 1 title interest and such lien interests as are adverse thereto and to each other in any single parcel of real estate as set up and described in the determination of necessity on file. The payment shall be made in money or by an order drawn on the county treasurer to the several persons entitled thereto, and if refused, or if there is no person properly authorized to receive the same, or if the person entitled thereto is a non-resident of the county or cannot be found, it shall be deposited as directed by the court.

History: 1957, Act 185, Imd. Eff. June 4, 1957.

123.782 Compensation of court commissioners; expenses.

Sec. 52. The court shall fix the compensation of the court commissioners and determine the amount of their necessary expenses incurred in connection with such proceeding.

History: 1957, Act 185, Imd. Eff. June 4, 1957.

123.783 Review by certiorari; procedure; time limitation.

Sec. 53. Any proceeding taken under the provisions of this act shall be subject to review upon certiorari. The procedure therefor shall be the same as is required in case of certiorari to review judgment rendered by judges of the circuit courts. The application for certiorari must be filed within 20 days after the report of the court commissioners shall have been confirmed.

History: 1957, Act 185, Imd. Eff. June 4, 1957.

123.784 Court orders; service.

Sec. 54. All court orders heretofore mentioned in this act, unless otherwise provided, may be served as follows:

- (a) By delivery of a true copy thereof to the person to be served; or
- (b) By leaving a true copy thereof at the residence of the person to be served; or
- (c) By mailing a true copy thereof by certified or registered mail to the last known post office address of the person to be served, so far as is known; or
- (d) If service upon any person is impossible by any of the above methods, then by posting a true copy thereof on the property of such person, which is sought to be taken in the proceedings.

History: 1957, Act 185, Imd. Eff. June 4, 1957.

123.785 Repealed. 2018, Act 200, Eff. Sept. 18, 2018.

Compiler's note: The repealed section pertained to prima facie evidence of ownership.

123.786 Lis pendens; filing.

Sec. 56. It shall be the duty of any attorney filing a petition under this chapter to file a lis pendens in the office of the register of deeds.

History: 1957, Act 185, Imd. Eff. June 4, 1957.