

1934 Supplement  
To  
**Mason's Minnesota Statutes**  
1927

(1927 to 1934)  
(Superseding Mason's 1931 Supplement)

Containing the text of the acts of the 1929, 1931, 1933 and 1933-34 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state, federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota



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land and property and rights in property for which compensation or damages are so awarded, and the city council shall thereupon cause to be paid from the funds of such city, to the owner of such property, the amount awarded to each severally.

Before payment of such award, the owner of such property or the claimant of the award shall furnish an abstract of title showing himself entitled to all of the compensation and damage claimed. In case of neglect to furnish such abstract, or if there shall be any doubt as to who is entitled to such compensation or damage or any part of the same, the amount so awarded shall be by the city council appropriated and set apart in the city treasury for whoever shall show clear right to receive the same. The city council may in its discretion require of such claimant a bond with good and sufficient sureties, conditioned to indemnify and save the city harmless against all other claims for such compensation or damages, or for the property for which the same was awarded and all loss, costs of expenses on account of such claim. Provided, that whenever the city attorney shall certify in writing to the city council that he is in doubt as to whom the said award shall be paid, said city council may order a warrant to be drawn for the same, payable to the clerk of the district court, and the city clerk shall deliver the same to said clerk of the same court, and take his receipt for the same; which deposit with said clerk of the court shall have the same effect as if set aside in the city treasury, as hereinbefore provided, and in which case the parties entitled to the same shall establish their right to the same by a petition to the said District Court, setting up the facts entitling them thereto, and by proving the same to the satisfaction of the court, and when so established the court shall make an order directing to whom the same shall be paid.

Upon the payment of said award or appropriation or the setting apart of the money in the city treasury to pay the same as aforesaid, the city shall become vested with the title to the property taken and condemned absolutely for all purposes for which the city may ever have occasion to use the same, and may forthwith enter upon and use the same. Provided that whenever any such award shall be con-

firmed by the city council of any such city and an appeal shall be taken therefrom, the city council shall be and hereby is authorized and empowered, by resolution enacted by affirmative vote of a majority of all of its members elected, to appropriate and set aside in the treasury of the city, in a fund therein to be known as the "Condemnation and Award Fund," a sum of money equal in amount to such award providing for the retention thereof therein, during the pendency of the appeal, available at all times for the payment thereof upon demand to whomsoever may be shown to have a clear right thereto, and further pledge the full faith and credit of the city for the payment of any increase of the award allowed upon the appeal; then in such case, regardless of the appeal, upon the enactment of such resolution by the city council and the setting apart of the amount of the award in the treasury of the city, the city shall be entitled to enter upon and take possession of the property condemned and to put such property to the use or uses for which such condemnation was made. ('21, c. 219, §1; Apr. 25, 1931, c. 396.)

This section is not violative of the 14th amendment, in that it does not afford a fair tribunal to a property owner. 32F(2d)748.

Fixing of amount of damages is a step in condemnation proceedings and is at most only quasi judicial. 177M146, 225NW86.

This section sufficiently protects the landowner against any taking of his property without compensation first paid or secured. 177M146, 225NW86.

Proceedings held to sufficiently show purpose for which land was taken and that it was taken for a public purpose. 177M146, 225NW86.

In street widening proceeding, landowner is entitled to damages at least to the extent of market value of the land taken in the condition and situation it then occupied, not an isolated tract, but as a part of the whole. Improvement of Third St., 177M159, 225NW92.

Landowner cannot claim damages on theory that at some future time there may be a change of the grade of the street, his right to receive damages at any such time not being affected. Improvement of Third St., 177M159, 225NW92.

Lease was not terminated by condemnation by city of part of building so as to exclude lessee from asserting right to share in compensation, notwithstanding covenant in lease that in case building should become untenable, lessee shall be relieved of rent and lease shall terminate unless lessor rebuilds within reasonable time. *Siggelkow v. A.*, 187M395, 245NW629. See *Dun. Dig.* 5412.

## CHAPTER 42

### Water Powers

#### UNIFORM STAGE OF WATER IN LAKES AND STREAMS

**6602-2. Control of shore lines.**—That in order to preserve shore lines, rapids, waterfalls, beaches, and other natural features in an unmodified state of nature, no dam and no addition to any existing dam shall hereafter be constructed in or across any public stream or body of water within or bordering upon those portions of the area of Cook, Lake, and St. Louis Counties designated in the Act of Congress of July 10, 1930 (Chapter 880), and no alteration of the natural water level or volume of flowage of any such stream or body of water shall be made and no easement for flooding or overflowing or otherwise affecting lands of the State of Minnesota adjacent thereto shall be granted, unless and until specific authority shall have first been obtained by Act of the Legislature of the State of Minnesota: Provided, that with the written approval and consent of the Department of Conservation, together with the signed authority of the Executive Council of the State of Minnesota, dams for public recreational uses or dams essential for logging or for logging reservoirs that do not exceed 100 acres in extent may be constructed to maintain temporarily water levels not higher than the normal

high water mark: Provided, however, that every such approval shall be subject to suitable charges, time limitation, and other conditions designed fully to protect the public interest in the intent of this Act. Provided further, that the provisions of this Act shall not apply to that portion of any proposed development for water power purposes now or heretofore actually occupied and maintained by any applicant for license to make such development under the terms of the Federal Water Power Act if the application for such license was pending on or before January 1, 1928. Such occupancy is hereby legalized and confirmed and such occupant is hereby granted the right to occupy and use for water power purposes, and so long as required and used for such purposes, the state lands and waters now or heretofore so occupied and used up to an elevation not exceeding 2 feet above the lowest crest of the spillway or overflow dam of such occupant as now constructed; provided that no water control structures shall be used higher than those now or heretofore used. The occupant shall pay to the state annually reasonable compensation for the use of the state lands affected, to be determined by the Commissioner of Conservation after investigation. The occupant shall comply with the following requirements: (1) to pay the State within ninety days after the passage

of this Act for all merchantable timber heretofore killed by such development at treble prevailing stumpage prices at the time such timber was killed; (2) to pay the State promptly reasonable compensation for any further damage to state lands or timber heretofore or hereafter caused by such development, other than such as is covered by the compensation paid for the use of the lands as hereinbefore provided; (3) within one year after the passage of this Act to clear all state lands subject to

flooding of all timber and brush so far as not already cleared. (Act Apr. 22, 1933, c. 412, §1.)

Provision permitting perpetual lease of land for dam purposes is invalid. Op. Atty. Gen., Aug. 7, 1933.

**6602-3. Violations a misdemeanor.**—Any person who shall wilfully or knowingly violate any of the provisions of this Act or of any order made thereunder by the Department of Conservation shall be guilty of a gross misdemeanor. (Act Apr. 22, 1933, c. 412, §2.)

## CHAPTER 43

### 6604. Duty of surveyor general.

Authority to scale state timber is still vested in the surveyor general of logs and lumber, but is now subject to supervision of commissioner of conservation and director of division of forestry instead of state auditor. Op. Atty. Gen., June 27, 1933.

## CHAPTER 44

### Drainage

#### STATE DRAINAGE COMMISSION [DEPARTMENT OF DRAINAGE AND WATERS]

##### 6634. Department of drainage and waters.

Laws 1931, c. 186, ante, §§53-23a to 53-231, creates the Department of Conservation and transfers to it the powers of the Department of Drainage and Waters.

**6635. Powers of commissioner of drainage and waters.**—Subd. (a). The commissioner of drainage and waters established by this act, shall have power to construct as hereinafter provided, any ditch, drain or other watercourse within the State of Minnesota, and such ditch, drain or other watercourse may in whole or in part follow and consist of the bed of any creek, stream or river, whether meandered or not, and he may widen, deepen, straighten, change, lower or drain the channel or bed of any creek, river, lake or other natural watercourse, whether navigable or whether meandered or not, and may construct new and additional outlets to any marshy, shallow or meandered lake for the purpose of draining the same, and may follow and extend the same into or, through any city or village within the state far enough to secure a sufficient fall and flow of water to reasonably effectuate the purpose for which the work is extended, and may confine any such creek, river or other natural watercourse by means of dykes, levees and embankments to its natural or artificial bed, as laid out, and shall also, whenever it shall appear to his satisfaction that the drainage of any territory may be made more effective by the construction and maintenance of dams, or other works, for retaining and controlling the flood waters, tributary to such territory, have the power to construct or acquire such dams or other work, and flowage rights therefor, and to maintain and operate the same.

Provided, that when in any such proceedings, the waters of any creek, river or other watercourse are diverted from their natural bed by such artificial ditch or drain, such ditch or drain shall as nearly as practicable, follow the general direction of such creek, river or watercourse, and terminate therein.

And, provided further, that no meandered lake shall be drained under the authority of this act, except in case such lake is normally shallow and grassy and of a marshy character or except in case such meandered lake is no longer of sufficient depth and volume to be capable of any beneficial public use of a substantial character for fishing, boating or public water supply.

Provided further, that no meandered lake shall be drained or lowered under the authority of this act unless petitioned for by at least sixty per cent of the legal voters residing within four miles of such lake, who are freeholders, whose lands are affected as shown

by the viewers' report and filed in the office of the clerk of the district court of the county in which such proceedings are had.

Subd. (b). Said commissioner of drainage and waters in addition to the authorities now granted under the provisions of said Chapter 44 of the General Statutes of 1913 [same chapter in Mason's Minn. St. 1927], is hereby authorized to make all necessary investigations to ascertain and determine the topographical features of the various watersheds of the state, viz.: the several tributaries of the Minnesota and Mississippi Rivers and other rivers in the state, and ascertain and determine the works necessary to secure proper drainage outlet for the lands in each basin, and the construction of the necessary works to improve such outlet and control flood waters therein, including as near as can be ascertained, the probable run-off waters of each of said basins and the important streams entering therein and shall ascertain and secure the necessary facts to determine what streams have natural facilities adapted to the creation of water power and the extent of the horsepower that can be secured, or other information that said commissioner shall deem necessary and essential to the proper planning of the work of each basin to supply proper drainage outlet and control of flood waters, including the conservation and use of such waters.

Subd. (c). Said commissioner is also authorized to investigate into the methods employed in the manufacture of drain tile, to make research and experimentation with a view to improving the quality of drain tile; to make investigations into the cause or causes of failure that may occur in tile drains after construction, and whenever requested by the courts, county boards, or engineers in public drainage proceedings, said commissioner shall make tests for the presence of elements in the soil and soil waters destructive to drain tile and such other tests and investigations as may be requested by the said courts, county boards or engineers, said tests to be requested, made and reported in accordance with regulations to be furnished by said commissioner.

Subd. (d). All drain tile to be used in the construction of drains established in public drainage proceedings within the state shall comply with the requirements of the American Society for Testing Materials Standard Specifications For Drain Tile except where the depths to which the drains are to be laid or conditions of the soil, in the opinion of the engineer, requires tile of a special and higher quality. The commissioner shall cause said specifications to be published and made available to officials, contractors and manufacturers concerned with public drainage proceedings for their information and guidance. It shall