

# REVISED LAWS OF MINNESOTA 94

## SUPPLEMENT 1909

CONTAINING

THE AMENDMENTS TO THE REVISED LAWS,  
AND OTHER LAWS OF A GENERAL AND  
PERMANENT NATURE, ENACTED  
BY THE LEGISLATURE IN  
1905, 1907, AND 1909

WITH HISTORICAL AND EXPLANATORY NOTES TO PRIOR STATUTES  
AND FULL AND COMPLETE NOTES OF ALL  
APPLICABLE DECISIONS

COMPILED AND ANNOTATED BY  
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animals or birds protected at any time by law. The killing or having in possession of each such protected animal or bird shall constitute a separate offense. Provided, that this act shall not prohibit the killing or destroying of wolves or other noxious animals by or under the supervision of the state game and fish commission or the state forestry board. (Laws 1907, c. 45, § 1, as amended by Laws 1909, c. 171, § 1.)

**Historical.**—"An act to amend section 1 of chapter 45 of the General Laws of 1907, to prevent the killing of wild animals or birds upon the Minnesota state forest reserve lands and parks and within national forests." Approved April 13, 1909.

See section next following.

**[2515—]2. Same.**—No person shall kill, or pursue with intent to kill, take, snare or have in possession, by any means, upon the Minnesota state forest reserve lands or parks, national forest lands, or upon any lands lying north of the Superior national reserve, established Feb. 13, 1909, located in the counties of St. Louis, Lake and Cook, that may be designated by the state game and fish commission as game propagating and breeding grounds, any wild animals or birds protected at any time by law. The killing or having in possession of each such protected animal or bird shall constitute a separate offense. Provided, that this act shall not prohibit the killing or destroying of wolves or other noxious animals by or under the supervision of the state game and fish commission or the state forestry board. (Laws 1907, c. 45, § 1, as amended by Laws 1909, c. 320, § 1.)

**Historical.**—"An act to amend section 1 of chapter 45 of the General Laws of 1907, to prevent the killing of wild animals or birds upon the Minnesota state forest reserve lands and parks and within national forests." Approved April 21, 1909.

See section next preceding.

**[2515—]3. Penalty.**—Any person violating the provisions of this act shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars or by imprisonment in the county jail for not less than thirty days or more than ninety days or both. ('07 c. 45 § 2)

## CHAPTER 41.

### EMINENT DOMAIN.

This chapter is cited in *Minnesota Canal & Power Co. v. Pratt*, 101 Minn. 197, 112 N. W. 395, 11 L. R. A. (N. S.) 105.

#### 2524. Petition and notice.

See section [2536—] 1, and note thereunder.

#### 2526. Order made thereon—Commissioners.

See section [2536—] 1, and note thereunder.

**In general.**—The power of eminent domain can be exercised by a private individual or corporation only by express legislative authority. Every reasonable doubt as to the authority must be resolved in favor of the landowner. When the purposes stated in the petition are part public and part private, the right to proceed must be denied. *Minnesota Canal & Power Co. v. Koochiching Co.*, 97 Minn. 429, 107 N. W. 405, 5 L. R. A. (N. S.) 638.

See, also, *Minnesota Canal & Power Co. v. Pratt*, 101 Minn. 197, 112 N. W. 395, 11 L. R. A. (N. S.) 105.

#### 2527. Powers and duties of commissioners.

See section [2536—] 1, and note thereunder.

**Damages—Special benefits.**—Special benefits may be set off in proceedings to condemn a railway right of way against the value of land taken and damages shown to have accrued to the remainder. *Mantorville R. & Transfer Co.*

Minnesota for the use of the state" and all amendments thereto shall be applicable to all such proceedings, and all other provisions of law properly applicable, shall also be applicable to such proceedings. ('05 c. 297 § 4)

**[2503—]6. Same—Trespasses.**—Any person who shall willfully cut, destroy or mutilate, or cause to be willfully cut, destroyed or mutilated, any tree, shrub, timber, evergreen or plants of any kind, shall be guilty of a misdemeanor, and upon conviction thereof by any court having competent jurisdiction, shall be punished by a fine of not less than ten dollars, and not more than one hundred dollars for each offense, or be imprisoned in the county jail of Blue Earth county, Minnesota, for not less than ten days or more than ninety days for each and every such offense. ('05 c. 297 § 5)

See sections [2515—] 1 to [2515—] 3.

### STATE FOREST RESERVES.

**2505.** [Repealed in part.]

See note under section next following.

**[2505—]1. Members—Terms.**—The governor shall be a member, ex-officio, of the Minnesota State forestry board. Inasmuch as the terms of all of the present members of said board, appointed by the governor, expire at the same time, the terms respectively of three of said members, to be determined by lot, are hereby extended two years. At the next full meeting of the said forestry board after the passage of this act, the members appointed by the governor shall draw lots to determine which three members are to serve two years in addition to their present terms; and a certified record of proceedings, with the names of such members, shall be communicated to the governor. ('07 c. 171 § 1)

**Historical.**—"An act to perfect the organization of the Minnesota State Forestry Board." Approved April 12, 1907.

By section 2 so much of R. L. § 2505, as is inconsistent with this act is repealed.

**[2505—]2. Same—Determination by lot.**—The determination by lot of the expiration of the terms of the members of the Minnesota State Forestry Board, as provided by Section 1 of Chapter 171, General Laws of Minnesota, 1907, may take place at the first meeting of said board when a quorum is present, and the lot of any absent member may be drawn by the president or secretary of the board. ('09 c. 86 § 1)

**[2508—]1. Additional funds.**—The sum of one thousand dollars appropriated by Section 2513, Revised Laws of Minnesota, 1905, for paying the expenses incurred in bringing actions, together with any money which the forestry board may turn into the state treasury is hereby constituted a part of the forest reserves fund, provided by Section 2508 of said Revised Laws, and the proper and necessary expenses of the forestry board shall be paid out of said fund. ('09 c. 87 § 1)

**Historical.**—"An act relating to the forest reserves fund and the forestry board's expenses." Approved March 19, 1909.

Section 2 repeals inconsistent acts.

**2513. Tax title lands, how set apart.**

See section [2508—] 1.

**[2515—]1. Animals and birds in forest reserves, parks, state and national.**—No person shall kill, or pursue with intent to kill, take, snare, or have in possession, by any means, upon the Minnesota state forest reserve lands or parks, national forest lands, or upon any lands that may be designated by the state game and fish commission as game propagating and breeding grounds, any wild

v. Slingerland, 101 Minn. 488, 112 N. W. 1033, 11 L. R. A. (N. S.) 277, 118 Am. St. Rep. 647.

**2528. Report, etc.—Notice.**

See section [2536—] 1, and note thereunder.

**2532. Appeal.**

**In general.**—A notice of appeal, served after notice of filing of report, perfected the appeal, although a prior notice of appeal had been served before notice of filing had been given. *Ellering v. Minneapolis, St. P. & S. S. M. R. Co.*, 119 N. W. 507.

**2533. Trial—Costs.**

**In general.**—On appeal from an award the landowner is entitled to open and close. *Ellering v. Minneapolis, St. P. & S. S. M. R. Co.*, 119 N. W. 507.

**2534. Judgment—Possession.**

**Condemnation by United States.**—Act Cong. Aug. 1, 1888, c. 728, 25 Stat. 357 (U. S. Comp. St. 1901, p. 2516), authorizes condemnation of land for public use by the United States, and section 2 declares that the practice, pleadings, forms, and modes of proceeding shall conform to those existing in courts of record in like cases in the state. Held, that an order in proceedings in the United States District Court for the District of Minnesota, confirming a report of commissioners in condemnation proceedings by the United States, properly awarded interest on the damages assessed for the land taken from the date of the commissioners' report. *United States v. Sargent*, 162 Fed. 81, 89 C. C. A. 81.

**2535. Interest—Award, when payable—Dismissal.**

See *United States v. Sargent*, 162 Fed. 81, 89 C. C. A. 81, cited in note under section 2534.

[2536—]1. **Condemnation for state institutions—Powers of attorney general—Procedure—Award.**—The attorney general may, on behalf of the state, and for the use of any institution requiring for its uses such lands, give notice of his intention to apply for the appointment of three commissioners to appraise said real estate, and the damage for taking the same, to the district court in and for the county where such lands shall be situated, or to a judge of said court, giving a general description of the lands to be appraised or taken, and specifying the time and place of such application; which notice shall be served at least ten days before the time of such application 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, in said court; provided, that if such owner be not a resident of the state or his place of residence be unknown to the attorney general, upon the filing of an affidavit by the attorney general 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 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 in any newspaper published in the county in which the land is situate. At the time and place named in said notice, the attorney general, for and on behalf of the state, may present an application to said district court or to a judge thereof, setting forth the name of the institution requiring said lands, and the general purposes for which the same are desired to be taken and particularly describing said lands, for the appointment of such commissioners, and thereupon the court, or judge thereof, may proceed to appoint three commissioners, who shall have cognizance of all cases named in such application, and shall have power to appraise the value of all such land, and the damages for the taking of the same; and said commissioners, before entering upon the duties of their office, shall severally take and subscribe an oath to the effect that they will faithfully perform their duty as such appraisers, without partiality, and to the best of their knowledge and ability, which oath shall be filed in the office of the clerk of the dis-

strict court of the county in which the lands to be appraised shall be situate; and thereupon such commissioners shall proceed to examine the premises, in each lot or parcel of land separately, having given such notice as they may deem reasonable to the owner, owners or persons interested in said lands, and to the guardian of any minor or insane person, which notice shall be in writing, and shall be served on such owner, interested person or guardian, if such person shall be a resident of the county where such lands are situate; and if such person or persons shall not reside in said county, then by publishing such notice in such newspaper as such commissioners may select, and for such time as they may choose; and at the time and place named in notice, the commissioners shall proceed, or a majority of them shall proceed, in each case or parcel of land, to an appraisement thereof, and of the damages sustained by reason of the taking and use of such land, and shall make award in writing of such damages and shall deliver one copy of such award, signed by the commissioners, or a majority of them, to the clerk of the district court in and for such county, to be by him filed in his office, and shall deliver another copy of such award to the attorney general, to be by him filed in his office. Upon the filing of such award it is hereby made the duty of the proper officers of said state to pay to the said parties in interest the amount thereof and in the event of appeal from such award, to pay to the said parties in interest the full amount of the final judgment that shall be rendered in said proceedings; provided, however, that upon the filing of said award of such commissioners with the said clerk of the district court of the county in which said premises are situate, the state, by its proper officers, may thereafter enter upon and take full and absolute possession of said property and appropriate the same to the use and purposes named in the application. The duty of the state officials to pay the amount of such award and final judgment to said parties in interest shall for all purposes be held and construed to be full and just compensation to the respective owners or the persons interested in the lands so acquired by such condemnation proceedings. In the event that no specific moneys are set apart in the state treasury for the payment of such award or said final judgment, it shall be and hereby is made the duty of the state treasurer to honor the requisition of the proper officials for the payment of said amount at the time of the entry of the final judgment in such proceedings. (G. S. 1894, § 4086, as amended by Laws 1905, c. 43, § 1.)

**Historical.**—"An act to amend section 4086 and section 4089 of title 7 of chapter 38 of the General Statutes of 1894 relating to condemnation of land for the use of the state." Approved March 15, 1905.

Section 3 repeals inconsistent acts.

G. S. 1894, §§ 4086, 4089, were Laws 1874, c. 36, §§ 2, 5, which act was repealed by R. L. § 5527; the provisions of said section 4086 being incorporated in part in R. L. §§ 2524, 2526-2528. So far as the provisions of said amended sections differ from the Revised Laws, they are to be construed, by virtue of section 5504, as amendatory or supplementary.

[2536—]2. **Same—Payment of award or judgment.**—The award or the judgment rendered in case of appeal, shall be and remain a claim against the state; and shall be paid out of any money in the treasury not otherwise appropriated or pursuant to a special appropriation therefor, and in all cases such award if not appealed from, or the judgment rendered therein in case of appeal, shall be and the same is hereby declared sufficient security for value and damage by reason of taking such property for public use within the true meaning and intent of the constitution, and in the event of appeal from such award, the provision herein made for payment of the final judgment to be rendered in said action shall be taken and con-

strued as full and just compensation to such owners of said lands, (G. S. 1894, § 4089, as amended by Laws 1905, c. 43, § 2.)

See note under section next preceding.

**[2536—]3. Sites for county buildings—Resolution.**—Whenever the board of county commissioners of any county in this state at any regular or extra meeting shall adopt and enter in the minutes of its proceedings a resolution declaring that it is necessary to acquire for the use of said county any land, describing it, to be used as a site for a court house or other public building or for the purpose of enlarging the site of any such building already owned by said county, and said board of county commissioners is unable to purchase said lands at a reasonable price the title to any such land may be acquired by condemnation as hereinafter provided. ('05 c. 7 § 1)

**Historical.**—"An act to provide for obtaining title to land by the several counties of the state, to be used as a site for a court house, or other public building." Approved February 9, 1905.

See note under section 5504.

**[2536—]4. Same—Duty of county attorney—Appraisers.**—Forthwith upon the adoption of such resolution the county auditor shall deliver a certified copy thereof to the county attorney whose duty it shall be, within ten days from the receipt thereof by him, to present to the district court of said county, or to a judge thereof, a petition signed by himself on behalf of said county setting out said action of said board of county commissioners and describing and setting forth in said petition the lands proposed to be taken by said county and in a general way the purposes for which the same are desired and praying for the appointment of three appraisers to appraise said lands and the damage for the taking of the same, and thereupon said court shall have jurisdiction therein for all purposes, and shall then and there, or at any time within fifteen days thereafter, by order filed in the office of the clerk of the district court of said county appoint three appraisers, who shall be residents of said county, fix their compensation, which shall be paid by the county, and who shall have cognizance of the subject matter of said petition and power to appraise the value of all such land and damages for the taking of the same. ('05 c. 7 § 2)

**[2536—]5. Same—Duty of appraisers—Notice—Award.**—Said appraisers, before entering upon the duties of their office, shall severally take and subscribe an oath to the effect that they will faithfully and impartially and to the best of their knowledge and ability, perform their duty as such appraisers, which oath shall then and there be filed in the office of the clerk of said district court. Thereupon said appraisers shall organize by electing a chairman and clerk and fix a time and place when and where they will meet and proceed to examine said real estate, which said time shall not be less than ten nor more than twenty days after the date of the order appointing said appraisers. Said chairman shall preside at, and said clerk shall keep minutes of the meetings of said appraisers. Said appraisers shall give or cause to be given to each owner or other person having an interest in said real estate, or their guardian or custodian, as the case may be, at least five days prior to the day of meeting named therein, a notice in writing signed by said appraisers of the time and place when and where said appraisers will meet and a general statement of the purposes thereof. Such notice shall be served personally on such owner, guardian or custodian if found at their usual place of abode, otherwise by delivering to and leaving with a person of suitable age and discretion at the usual place of abode of such owner, guardian or custodian, a copy thereof. If such owner, guardian or custodian shall not reside in said county,

of which fact the certificate on information and belief under the seal of his office of the auditor of said county, shall be prima facie evidence; then in such case, service thereof shall be made by publishing such notice once in the official newspaper of such county at least seven days before the time fixed therein for said meeting. An affidavit of personal service or publication shall be prima facie evidence of the service of said notice. At the time and place named in such notice said appraisers shall, and a majority thereof may, proceed in the case of each parcel of real estate desire to be taken to an appraisal thereof and of the damage sustained by reason of the taking thereof by said county and shall make and sign in duplicate within sixty days from the date of the filing of the order appointing them an award in writing of such damages, and within said last mentioned time shall deliver the same to the clerk of the said district court and to the county auditor, respectively, to be filed by them in their respective offices. ('05 c. 7 § 3)

**[2536—]6. Same—Appeal—Trial—Costs—Bond.**—Either party may appeal to the district court from such award at any time within thirty days from the date of the filing thereof in the office of the clerk of said court by filing with said clerk a notice of appeal signed by the party claiming the damage, or by the county auditor on behalf of the county, and in case of appeal by either party the clerk shall enter the appeal as an action in such court naming the owner of such land as plaintiff and the county auditor as defendant and thereafter said appeal shall be tried as other causes in said court are tried and judgment rendered thereon, except that the only question to be submitted to the jury, if the parties do not agree to try the whole cause to the court alone, shall be the question of damages. In case such an appeal shall be taken by the property owner and upon trial the award of the appraisers shall be raised, then said property owner shall recover costs and disbursements from the county, otherwise, such property owner shall pay costs and disbursements to the county. If such appeal shall be taken on behalf of the county and upon trial the award shall be decreased then the property owner shall pay costs and disbursements to the county, otherwise said property owner shall recover costs and disbursements from the county. As a condition precedent to an appeal by a property owner, such property owner shall make, execute and file in the office of the clerk of said court a bond to said county in the penal sum of one hundred dollars with sufficient sureties to be approved by the clerk of said court, conditioned that said property owner shall prosecute his appeal with effect, pay all costs and disbursements adjudged against him and abide the order of the court therein, but no bond shall be required of any county on any appeal by it hereunder. ('05 c. 7 § 4)

**[2536—]7. Same—Power of county board—Payment of award.**—At any time after the filing of the award of the appraisers, as hereinbefore provided, the board of county commissioners of said county may set aside by resolution entered upon its minutes, from the general revenue fund of said county a sum equal to the total amount assessed as damages by said appraisers and make the same payable on demand to the persons entitled thereto, which action by the said board of county commissioners is hereby declared to be sufficient security for the taking of such property for public use within the meaning of the constitution; and thereupon the taking of such land and the erection thereon of any building by said county shall not be delayed or prevented by the prosecution of any appeal, and said county and its officers and agents may at once thereafter enter upon and take possession of said property and appropriate the same to the use of said county. ('05 c. 7 § 5)

[2536—]8. **Same—Award and judgment—How payable.**—The award of said appraisers if not appeared from, and the judgment rendered on appeal, shall be an absolute claim against said county and shall be paid from the general revenue fund thereof, on the warrant of the county auditor without further action by the board of county commissioners, and upon such payment the land involved shall become the absolute property of the county. ('05 c. 7 § 6)

[2536—]9. **Same—Judgment roll.**—When judgment is rendered on appeal, the clerk of said court shall attach the application, all notices and proof of publication or service thereof, the oaths of said appraisers and the award, the notice of appeal, and the final judgments in the case, and the same shall constitute the judgment roll to be filed in the office of the clerk. ('05 c. 7 § 7)

[2536—]10. **Same—Notice of lis pendens.**—At any time after the adoption of the resolution mentioned in section 1[2536—3] of this act, said county, by the county attorney or county auditor, is hereby authorized to file in the office of the register of deeds of said county a notice of lis pendens, which said notice shall contain the names of the parties, the object of the proceeding and a description of the land involved, and it shall have the same effect and may be released in the same manner as is now provided by statute for the filing and relief of lis pendens in actions affecting the title of real property between private individuals. ('05 c. 7 § 8)

[2536—]11. **Same—Certificate of payment—Record.**—Upon the payment of any award or judgment, the county attorney may make a certificate under the seal of his office as to such fact, expressly describing the land and reciting the fact of payment of the award or judgment in relation thereto and may file the same in the office of the register of deeds of said county for record. Said register of deeds shall record the same at the expense of the county, and such record shall be notice to all parties of the title of the county thereto, and may be read as evidence of such title in all the courts of this state, and the title to land acquired under this act shall be absolute in fee simple in the county instituting proceedings thereunder. ('05 c. 7 § 9)

## CHAPTER 42.

### MILLS AND DAMS.

#### WATER POWERS.

##### 2543. Dams—For what purposes—Eminent domain.

Cited in *Minnesota Canal & Power Co. v. Pratt*, 101 Minn. 197, 112 N. W. 395, 11 L. R. A. (N. S.) 105.

#### LOGGING DAMS.

##### 2547. County board may license.

**In general.**—Laws 1861, c. 50, authorizing county commissioners to grant licenses for construction of dams for sluicing logs and lumber, held not to limit the right acquired by the owner of the dam to the purpose of sluicing logs and lumber, as against the owners of land submerged by the dam. *Simons v. Munch*, 120 N. W. 373.

Cited in *Minnesota Canal & Power Co. v. Pratt*, 101 Minn. 197, 112 N. W. 395, 11 L. R. A. (N. S.) 105.

##### 2549. Tolls—Lien.

See section [2934—] 1.