Chapter 281

1969 REPLACEMENT PART

Condemnation for Public Use

CONDEMNATION GENERALLY

281.010 Entry on, survey and selection of property to be appropriated by state, county or public corporation; mode of proceeding; deposit of compensation

281.050 Compensation of persons displaced by condemnation

CONDEMNATION BY STATE

281.210 Definitions for ORS 281.210 to 281.260

281.220 Determination of necessity; suit by Attorney General

281.230 Action by district attorney

281.240 Procedure for condemnation

281.250 Payment of expenses of condemnation proceeding, value of property and damages for taking

281.260 Compensation prior to condemning and taking possession

CONDEMNATION BY COUNTY

281.310 Purposes for which condemnation authorized

281.320 Necessity declared and proceedings ordered

281.330 Procedure; compensation; election by county; costs, disbursements and attorney's fee

281.340 Condemnation by counties for certain purposes; right to enter on, survey, examine and select property

281.350 Resolution of intention; suit by district attorney

281.360 Procedure for condemnation

281.370 Payment by warrant of expenses of condemnation proceeding, value of property and damages for taking

281.380 Compensation prior to condemning and taking possession

CONDEMNATION BY MUNICIPAL CORPORATIONS OF PROPERTY ADJOINING PROPOSED BOUNDARIES OF ROADS, STREETS OR HIGHWAYS

281.510 Purchase or condemnation authorized

281.520 Resolution of intention; determination of necessity

281.530 Restrictions on use and occupation of property; sale subject to restrictions; application of proceeds

281.540 Appropriation declared for public use

281.550 Proceedings in case of disagreement as to compensation and damages

CROSS REFERENCES

Abandoned cemeteries may be condemned, 226.530

Compensation required for taking of property, Const. Art. I, § 18; Const. Art. XI, § 4

Eminent domain procedure, Ch. 35

Exemption of cemetery lands from appropriation, 61.755

Filing of lis pendens notice where action or proceeding involves registered land or other real property, 93.740, 94.365, 94.515

Overhead transmission lines, certificate of public convenience and necessity, 785.015

People's utility districts, condemnation by, 261.305

Rights of way for public uses, Ch. 772

Structure, pipeline, ditch, cable or wire on right of way of state highway or county road, 374.305 to 374.325

Taxes on land acquired by eminent domain, 311.412, 311.413

281.010

Condemnation by:

Board of Higher Education, 351.190

Cities and towns, 223.005, 223.105, 226.570 to 226.610

State Board of Forestry, 526.168

State Highway Commission, 366.360 to 366.393

281.050

Financial assistance for persons displaced by county road acquisition, 368.310

CONDEMNATION BY STATE

Title to property acquired by state agency to be taken in the name of the state, 273.005

281.220

Condemnation for federal flood control projects, 549.620

Condemnation to provide public institutions with water and water power, 276.236, 276.240 to 276.248

281.250

Expenditures without allotment prohibited in certain cases, 291.238, 293.340

281.310

Condemnation by county for public highway, 368.275 to 368.290

Condemnation of right of way through city to connect with state highway, 373.110

Condemnation to establish fee simple title to vacated cemetery land, 214.530

281.330

County not required to advance costs and disbursements, 20.140

281.340

Transfer of property by city to county for purposes listed in ORS 281.340, 271.405

CONDEMNATION GENERALLY

281.010 Entry on, survey and selection of property to be appropriated by state, county or public corporation; mode of proceeding; deposit of compensation. Whenever the law authorizes private real property to be appropriated to public uses, the property may be entered upon, examined, surveyed and selected, in the mode prescribed by the statute giving such authority. Thereafter, the state, county or other municipal or public corporation, seeking and authorized to make such appropriation, may proceed as prescribed in ORS chapter 35 to have such property condemned and the compensation therefor determined and paid, and not otherwise unless otherwise provided by law. The compensation in the case of such condemnation by the state, county, municipal or public corporation shall be paid by the deposit in court of an order duly drawn upon the treasurer thereof for the amount of such compensation.

281.050 Compensation of persons displaced by condemnation. Whenever the law authorizes private real property to be appropriated to public uses, and such property is then occupied by any person or persons for residential purposes, the state, county or other municipal or public corporation seeking and authorized to make such appropriation shall:

(1) Compensate the person or persons in possession for the actual and reasonable cost, not exceeding $200 for any one person or family, of moving such person's or family's household goods;

(2) Tender payment of such compensation for the use of such person at the time he is required to move.

[1969 c.437 §2]

CONDEMNATION BY STATE

281.210 Definitions for ORS 281.210 to 281.260. As used in ORS 281.210 to 281.260:

(1) "Property" means real property, water, watercourses, and water and riparian rights, or any right or interest therein.

(2) "Board" means:

(a) The state board of commissioners, trustees, or other state board, having direction of the state department or institution for which the property is desired; or

(b) The Division of State Lands, if there is no other state board for the department or institution for which the property is sought to be acquired.

281.220 Determination of necessity; suit by Attorney General. Whenever the state requires property for any public use, the necessity for the acquisition to be decided and declared in the first instance by the board, if the board and the owner of such property cannot agree upon the price to be paid for the amount of or interest in his property required for such public use, and the damages for the taking thereof, the board may request the Attorney General to, and he shall when so requested, commence and prosecute in any court of competent jurisdiction in the name of the State of Oregon any necessary or appropriate suit, action or proceeding for the condemnation of the amount of or interest in the property required for such purposes and for the assessment of the damages for the taking thereof.

281.230 Action by district attorney. The district attorney of the judicial district in which the property to be condemned lies shall:

(1) Commence and prosecute the suit, action or proceeding in the circuit court of such district, when requested by the board; or

(2) Aid the Attorney General in so doing in any manner requested by him.

281.240 Procedure for condemnation. The procedure in the suit, action or proceeding referred to in ORS 281.220 or 281.230 shall be, as far as applicable, the procedure prescribed by law for the condemnation of lands or rights of way by public corporations or quasi-public corporations for public use or for corporate purposes.

281.250 Payment of expenses of condemnation proceeding, value of property and damages for taking. The expenses of the condemnation proceeding, the value of the property, and the damages for the taking thereof, shall be paid out of the funds provided for the department or institution for which the property is acquired in the same manner as other expenses for like purposes of such department or institution are paid. If no funds have been provided out of which the same can be paid, payment shall be made out of any funds in the treasury not otherwise appropriated, and the Secretary of State is authorized to draw his warrant on the treasurer therefor.

281.260 Compensation prior to condemning and taking possession. ORS 281.210 to 281.250 do not require the state to make or tender compensation prior to condemning and taking possession of the lands or property.

CONDEMNATION BY COUNTY

281.310 Purposes for which condemnation authorized. Each county is authorized and empowered to condemn land and property or any right or interest therein for roads, highways, bridges, approaches, culverts, drains, ditches, public parks and recreational areas, and for the opening, widening, extending, altering or straightening of any such road, highway, bridge, public park or recreational area, and to damage any land or other property for any such purpose; or for the construction of slopes or retaining walls for cuts or fills upon real property abutting on any road, highway, bridge or approach now or hereafter ordered to be opened, extended, altered, straightened or graded; or where necessary for the establishment, alteration, extension or maintenance of any road or highway, for the purpose of diverting water or watercourses, or draining swamps, marshes, tide lands, tide flats or ponds, or filling the same, to condemn land and other property, and damage the same after just compensation having first been made or paid into court for the owner, in the manner prescribed by ORS 281.330.

281.320 Necessity declared and proceedings ordered. Whenever it is necessary that any county shall require or damage any real property, water, watercourses, or any right or interest therein for public uses set forth in ORS 281.310, the necessity for such acquisition shall be declared in the first instance by a resolution of the county court or board of county commissioners. If the owner thereof and the county court or board of county commissioners cannot agree upon the price to be paid for the amount of or interest in such real property, water or watercourses required, and the damages for the taking thereof, the county court or board of county commissioners may request the district attorney for the county to, and he shall when so requested, commence and prosecute in the circuit court of such county, in the name of the county, any necessary or appropriate suit, action or proceeding for the condemnation of the amount of or interest in the real property, water or watercourses required for such purpose and for the assessment of damages for the taking thereof.

281.330 Procedure; compensation; election by county; costs, disbursements and attorney's fee. (1) The procedure in the suit, action or proceeding shall be, as far as applicable, the procedure provided by law for the condemnation of land or right of ways by public or quasi-public corporations for public use or for corporate purposes; but ORS 281.310 to 281.330 do not require the county to make or tender compensation prior to condemning and taking possession of the lands or property and the compensation in the case shall be paid by deposit in court of a county warrant of the county for the amount of the compensation.

(2) The costs and disbursements of the defendant including a reasonable attorney's fee to be set by the court shall be taxed by the clerk and recovered from the county; but if it appears that the county tendered to the defendant before commencing the action an amount equal to or greater than that assessed by the jury, the defendant shall not recover costs or attorney's fee.

(3) Within 20 days after the verdict of the jury is given, the county shall file with the clerk its election to proceed with the taking of the property condemned or its election not to take the same. If the county elects not to take the property condemned, the court shall enter judgment in favor of the defendants for costs and disbursements incurred and for a reasonable attorney's fee to be fixed by the court.

281.340 Condemnation by counties for certain purposes; right to enter on, survey, examine and select property. (1) If unable to agree with the owner for the purchase of any of his land or property, water, watercourses, or water and riparian rights or any right or interest therein, any county may condemn, acquire and appropriate such land, property, right or interest, for rock quarries for road construction, public squares, parks, courthouses, jails, hospitals, or for other public buildings or institutions necessary for the general use and benefit of the county, or to protect the roads, highways, bridges or other public property from overflow by floods or freshets.

(2) Any property or rights referred to in subsection (1) of this section may be entered upon, surveyed, examined and selected for the construction of any ditch, dike, canal, flume, or reservoir, or laying or conducting any pipe or aqueduct, or for any other purpose necessary to carry out ORS 281.340 to 281.380.

281.350 Resolution of intention; suit by district attorney. If the county court or board of county commissioners finds it necessary for any of the purposes mentioned in ORS 281.340 to condemn, acquire or appropriate any land or property, water, watercourses or water and riparian rights to any public use or uses, it shall so declare its intention by a resolution spread on the records of the court or board, setting out the necessity that exists. Should it be unable to agree with the owner for the purchase of such property, the court or board shall request the district attorney for the county to, and he shall when so requested, commence and prosecute in any court of competent jurisdiction in the name of the county, any necessary suit, action or proceeding for the condemnation of such land or property, water, watercourses, or water and riparian rights for such public use or uses.

281.360 Procedure for condemnation. The procedure in the suit, action or proceeding referred to in ORS 281.350 shall be as far as applicable the procedure provided by law for the condemnation of land or rights of way by public or quasi-public corporations for public use or for corporate purposes.

281.370 Payment by warrant of expenses of condemnation proceeding, value of property and damages for taking. The expenses of the condemnation proceedings and the compensation for the property, watercourses or water and riparian rights or interest therein and the damages for the taking thereof shall be paid from funds of the county available for such purpose as directed by the county court or board of county commissioners and shall be paid by deposit in court of a county warrant drawn upon the treasurer thereof for the amount of the compensation.

281.380 Compensation prior to condemning and taking possession. Nothing in ORS 281.340 to 281.370 requires the county to make or tender compensation prior to condemnation and taking possession of the lands or property.

CONDEMNATION BY MUNICIPAL CORPORATIONS OF PROPERTY ADJOINING PROPOSED BOUNDARIES OF ROADS, STREETS OR HIGHWAYS

281.510 Purchase or condemnation authorized. (1) Every municipal corporation having the right to purchase, acquire, enter upon and appropriate land and property for establishing, laying out, widening, enlarging or extending roads, streets or highways, may purchase, acquire, enter upon and appropriate, in or in connection with establishing, laying out, widening, enlarging or extending roads, streets or highways, land and property immediately adjoining the proposed boundaries of such roads, streets or highways.

(2) The authority conferred by subsection (1) of this section does not extend to the purchase, acquisition, entering upon or appropriation of any adjoining land or property situate more than 100 feet distant from or beyond the proposed boundaries of any such road, street or highway, or of any such adjoining land or property which constitutes the whole or any part of a platted lot or tract of rectangular shape and having an area of 5,000 square feet or more and its shorter dimension not less than 50 feet in length, or which constitutes the whole or any part of any tract of land in common ownership of like shape and having like minimum area and dimensions.

281.520 Resolution of intention; determination of necessity. Before the right to purchase, acquire, enter upon and appropriate any adjoining land or property under ORS 281.510 is exercised by any municipal corporation, the municipal authorities thereof shall by appropriate ordinance or resolution, describe the land to be purchased, acquired, entered upon or appropriated, and shall further determine that the appropriation of such land is reasonably necessary to protect the full use and enjoyment by the public of the road, street or highway.

281.530 Restrictions on use and occupation of property; sale subject to restrictions; application of proceeds. After an appropriation of land and property authorized by ORS 281.510 has been made, the land

and property so appropriated adjoining the boundaries of any road, street or highway and not actually occupied by the road, street or highway, may, by appropriate ordinance or resolution, be declared subject to and burdened with the restrictions upon the future use and occupation thereof that are considered necessary for protecting the full use and enjoyment by the public of the road, street or highway. Such land and property may thereafter be sold by the municipal corporation subject to the declared restrictions and the proceeds of the sale applied and accounted for as may be provided by the charter, charter ordinances or ordinances of, or law governing the municipal corporation. The deed or other conveyance of such land and property shall contain the restrictions and all such land and property shall be sold, burdened with and subject to the restrictions.

281.540 Appropriation declared for public use. The purchase, acquisition, entering upon and appropriation of lands and property immediately adjoining the boundaries of roads, streets or highways, as defined and limited in, and to the extent authorized by, ORS 281.510 to 281.550 is declared to be necessary for the development and welfare of the state and its inhabitants and to be a public use.

281.550 Proceedings in case of disagreement as to compensation and damages. If private property is appropriated for the public use, as authorized by ORS 281.510, and the compensation and damages arising from the appropriation cannot be agreed upon, the appropriation shall be made and the compensation and damages shall be considered, ascertained, determined, awarded and paid in the manner provided by the general laws of the state relative to condemnation, or by such means as may be prescribed by the charter, charter ordinances or ordinances of, or law governing such municipal corporation for establishing, laying out, widening, enlarging or extending streets or for acquiring private property for park purposes, at the option of the municipal authorities thereof.

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Robert W. Lundy, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on December 1, 1969.

Robert W. Lundy
Legislative Counsel