CHAPTER 2

The Eminent Domain Procedure Act

Article 1

General Provisions

**SECTION 28-2-10. Short title.**

 This chapter may be cited as "The South Carolina Eminent Domain Procedure Act" and any references to the term "act", unless the context clearly indicates otherwise, mean the South Carolina Eminent Domain Procedure Act.

HISTORY: 1987 Act No. 173, § 1.

**SECTION 28-2-20. Intent of General Assembly.**

 This act amends the law of this State relating to procedures for acquisitions of property and to the exercise of the power of eminent domain. It is the intention of the General Assembly that this act is designed to create a uniform procedure for all exercise of eminent domain power in this State. It is not intended by the creation of this act to alter the substantive law of condemnation, and any uncertainty as to construction which might arise must be resolved in a manner consistent with this declaration. In the event of conflict between this act and any other law with respect to any subject governed by this act, this act shall prevail.

HISTORY: 1987 Act No. 173, § 1.

**SECTION 28-2-30. Definitions.**

 As used in this act:

 (1) "Action" means condemnation action.

 (2) "Appraisal" means an opinion as to the value of compensation payable for property, prepared by or under the direction of an individual qualified by knowledge, skill, experience, training, or education to express an opinion as to the value of the compensation. An appraisal includes the assessment of general and specific benefits to the owner as offsets against any damages to the property.

 (3) "Clerk of court" or "clerk" means the clerk of court of common pleas of the county in which the real property sought for acquisition by a condemnor, or the major portion of the property, is located.

 (4) "Condemn" means to take property under the power of eminent domain.

 (5) "Condemnation action" includes all acts incident to the process of condemning property after the service of a Condemnation Notice.

 (6) "Condemnee" means a person or other entity who has a record interest in or holds actual possession of property that is the subject of a condemnation action.

 (7) "Condemnor" means a person or other entity empowered to condemn.

 (8) "Court" means a circuit court of this State and includes, when the context requires, any judge of the court.

 (9) "Crops" means any form of vegetation intended to be removed and used or sold for commercial purposes, including without limitation grass, flowers, fruits, vegetables, trees, vines, and nursery stock.

 (10) "Federal agency" means the United States or any agency or instrumentality, corporate, or otherwise of the United States.

 (11) "Improvement" includes any building or structure, and any facility, machinery, or equipment that cannot be removed from the real property on which it is situated without substantial damage to the real property or other substantial economic loss.

 (12) "Landowner" means one or more condemnees having a record fee simple interest in the property condemned or any part thereof, as distinguished from condemnees who possess a lien or other nonownership interest in the property; where there are more than one, the term means the condemnees collectively, unless expressly provided otherwise.

 (13) "Lien" means a security interest in property arising from contract, mortgage, deed of trust, statute, common law, equity, or creditor action.

 (14) "Litigation expenses" means the reasonable fees, charges, disbursements, and expenses necessarily incurred from and after service of the Condemnation Notice, including, but not limited to, reasonable attorney's fees, appraisal fees, engineering fees, deposition costs, and other expert witness fees necessary for preparation or participation in condemnation actions and the actual cost of transporting the court and jury to view the premises.

 (15) "Local public entity" means a public entity other than the State.

 (16) "Person" includes a natural individual, partnership, corporation, association, other legal or fiduciary entity, and a public entity.

 (17) "Property", "real property", or "land" means all lands, including improvements and fixtures thereon, lands under water, easements and hereditaments, corporeal or incorporeal, every estate, interest and right, legal or equitable, in lands or water and all rights, interests, privileges, easements, encumbrances, and franchises relating thereto, including terms for years and liens by way of judgment, mortgage, or otherwise.

 (18) "Public body" means this State or any county, city, town, municipal corporation, municipality, authority or other subdivision, agency or body or instrumentality, corporate or otherwise, authorized by law to exercise the power of eminent domain.

 (19) "Public works project" means any work or undertaking which is financed in whole or in part by a federal agency or a public body, or is administered or supervised or regulated by a federal agency or a public body.

HISTORY: 1987 Act No. 173, § 1.

**SECTION 28-2-40. Compromise or settlement permitted.**

 At any time before or after commencement of an action, the parties may agree to and carry out, according to its terms, a compromise or settlement as to any matter, including all or any part of the compensation or other relief.

HISTORY: 1987 Act No. 173, § 1.

**SECTION 28-2-50. Compliance with federal requirements permitted.**

 A condemnor may comply with any federal statute, regulation, or policy prescribing a condition precedent to the availability or payment of federal financial assistance for any program or project for which the condemnor is authorized to exercise the power of eminent domain.

HISTORY: 1987 Act No. 173, § 1.

**SECTION 28-2-60. Application of act.**

 A condemnor may commence an action under this chapter for the acquisition of an interest in any real property necessary for any public purpose. The provisions of this chapter shall constitute the exclusive procedure whereby condemnation may be undertaken in this State.

HISTORY: 1987 Act No. 173, § 1.

**SECTION 28-2-70. Appraisal of property; necessity of negotiation; condemnor's right to enter upon land for limited purposes.**

 (A) Before initiating a condemnation action, the condemnor shall cause the property to be appraised to determine the amount that would constitute just compensation for its taking and shall make the appraisal available to the landowner.

 (B) The condemnor and landowner shall make reasonable and diligent efforts to negotiate an agreement upon the amount of compensation to be paid. The condemnor shall certify to the court that a negotiated resolution of the conflict was attempted prior to the institution of the condemnation action. A failure of any party to comply with this subsection is not a defense to a condemnation action.

 (C) The condemnor shall have the authority, after reasonable notice to the landowner, to enter upon the real property in which an interest is proposed to be acquired for the purpose of making a survey, determining the location of proposed improvements, or making an appraisal. In the event a landowner refuses to allow entry, the circuit court may issue an ex parte order enforcing this section. A landowner shall have no cause of action for trespass arising out of the exercise of authority pursuant to this section.

HISTORY: 1987 Act No. 173, § 1.

**SECTION 28-2-80. Service of process.**

 Any service required under this chapter may be made by certified mail with return receipt requested or by any other means permitted by law for service of a summons in civil cases. When service is made by certified mail, the date of service must be the date of delivery, refusal, or last attempted delivery as shown on the return receipt.

HISTORY: 1987 Act No. 173, § 1.

**SECTION 28-2-90. When condemnor may take possession of property.**

 A condemnor may take possession of property:

 (1) at any time upon receipt of written consent of the record owner or owners of fee simple title to the property;

 (2) upon payment to the owner of mutually agreed compensation;

 (3) upon deposit with the clerk of court in the county in which the property to be condemned is situated, the amount stated in the Condemnation Notice as just compensation for the property, the amount having been determined by the condemnor pursuant to § 28-2-70(a) before initiating the action;

 (4) upon payment to the owner or deposit with the clerk of court of the amount determined by the appraisal panel or awarded by the judgment in the condemnation action.

HISTORY: 1987 Act No. 173, § 1.

**SECTION 28-2-100. Acquisition of uneconomic remnant or remaining property.**

 (A) If the acquisition of only part of a property would leave its owner with an uneconomic remnant, the condemnor may acquire the remnant concurrently by purchase or condemnation.

 (B) "Uneconomic remnant", as used in this section, means a remainder following a partial taking of property, of that size, shape, or condition as to be of little value or that gives rise to a substantial risk that the condemnor may be required to pay in compensation for the part taken an amount substantially equivalent to the amount that would be required to be paid if it and the remainder were taken as a whole.

HISTORY: 1987 Act No. 173, § 1.

**SECTION 28-2-110. Reimbursement for penalty costs for prepayment of secured debt; payment of taxes on property for year in which taking occurs; payment of interest.**

 (A) As soon as practicable after payment of the purchase price or payment of or deposit in court of funds to satisfy the judgment in a condemnation action, whichever is earlier, the condemnor shall pay or reimburse the owner for any penalty costs for prepayment of any debt secured by a preexisting lien, entered into or created in good faith, encumbering the property, except where preempted by federal law. No prepayment penalty may be imposed on any debt secured by a lien on real property which is subject to condemnation if the lien was recorded subsequent to the effective date of this act.

 (B) The condemnor is allowed a credit against the amount owed the landowner for the tax year in which the compensation is paid allocable to a period between the first day of that year and the date of vesting of title in, or the effective date of possession of the property by the condemnor, whichever is earlier. The condemnor shall pay the taxes on the property taken for that year. This applies only when fee simple title to the property is condemned. If the condemnor is the State or any of its agencies or political subdivisions, taxes on the property must be abated by the county treasurer effective upon the date of possession by, or the date of vesting of title in, the condemnor, whichever is earlier.

 (C) The condemnor shall pay interest as provided in § 28-2-420.

HISTORY: 1987 Act No. 173, § 1.

**SECTION 28-2-120. Eminent Domain Procedure Act to prevail over Rules of Civil Procedure.**

 In the event of conflict between this act and the South Carolina Rules of Civil Procedure, this act shall prevail.

HISTORY: 1987 Act No. 173, § 1.

Article 2

Actions in Condemnation

**SECTION 28-2-210. Right to institute action; exclusive procedures.**

 Any condemnor may institute an action under this chapter for the acquisition of an interest in any real property necessary for any public purpose. The provisions of this act constitute the exclusive procedure whereby condemnation may be undertaken in this State.

HISTORY: 1987 Act No. 173, § 1.

**SECTION 28-2-220. Election between trial and appraisal panel; condemnation notice; acceptance or rejection of offer tendered in notice.**

 (A) Prior to commencing a condemnation action, a condemnor must elect to proceed either under § 28-2-240, in which case the form of Condemnation Notice prescribed by § 28-2-280(C)(8) must be used, or under § 28-2-250, in which case the form of Condemnation Notice prescribed by § 28-2-280(C)(9) must be used.

 (B) In the Condemnation Notice, the condemnor shall set forth the amount it has determined to be just compensation pursuant to § 28-2-70(A) which shall constitute a tender of that amount.

 (C) The landowner has thirty days after service of the Condemnation Notice to give the condemnor written notice either that he rejects the amount tendered, or that he accepts the amount tendered and agrees to execute those instruments as may be necessary to convey to the condemnor the property or interest therein described in the Condemnation Notice. A failure to respond to the tender constitutes a rejection.

HISTORY: 1987 Act No. 173, § 1.

**SECTION 28-2-230. Filing of condemnation notice; deposit of amount of compensation; filing fees; notice of filing; right to take possession; abandonment of action.**

 (A) If the landowner rejects or does not accept the amount tendered as just compensation within the thirty-day period, then the condemnor may file the Condemnation Notice with the clerk of court and deposit with the clerk the amount of just compensation stated in the notice. If the Condemnation Notice is filed with the clerk of court, the clerk shall charge a fee for filing the notice which must be the same as the fee charged for filing a summons and complaint.

 (B) The condemnor then shall serve written notice of the action upon the condemnees and may proceed to take possession of the property or interest in the property described in the Condemnation Notice pursuant to Section 28-2-90. The condemnor may not abandon the condemnation action after taking possession if material alterations have been made in the property, except with consent of the landowner.

HISTORY: 1987 Act No. 173, § 1; 1990 Act No. 575, § 1.

**SECTION 28-2-240. Election to proceed with condemnation by way of trial after rejection of amount tendered.**

 (A) If the condemnor elects to proceed under this section, and the amount tendered in the Condemnation Notice is rejected, the condemnor shall file the Condemnation Notice with the clerk of court, if not already filed, and shall serve upon the landowner and file with the clerk an affidavit stating:

 (1) that the amount tendered in the Condemnation Notice has been rejected;

 (2) that the condemnor demands a trial not earlier than sixty days after the date of service of the affidavit, which date must be certified on the copy filed with the clerk;

 (3) whether the condemnor demands a trial by jury or by the court;

 (4) whether the condemnor demands that the trial be given priority over other cases; and

 (5) the name and known address of each landowner whom the clerk should notify of the call of the case for trial. The affidavit may be executed by the condemnor or by its attorney.

 (B) After the filing of the affidavit, the case shall proceed as provided in Article 3.

HISTORY: 1987 Act No. 173, § 1.

**SECTION 28-2-250. Election to proceed with condemnation by way of appraisal panel after rejection of amount tendered, appointment of panel; time for making appointments; failure to appoint.**

 (A) If the condemnor elects to proceed under this section and if the amount tendered in the Condemnation Notice is rejected, an appraisal panel must be established which shall determine an amount as just compensation for the property taken, as provided in this section. The condemnor shall bear the cost of the appraisal panel which must be a fee of not more than one hundred dollars for each member plus the actual expenses, if any, of the panel incurred in performing its duties.

 (B) The appraisal panel shall consist of one member appointed by the condemnor, one member other than a condemnee in that action appointed by the landowner, and one member who must, as a minimum qualification, possess a South Carolina real estate broker's license, appointed by the first two so appointed.

 (C) The condemnor shall appoint one member in the Condemnation Notice. The condemnor's appointee must not be an employee or former employee of the condemnor. The landowner, acting jointly if there are more than one, shall have until the thirtieth day following service of the Condemnation Notice to appoint one member other than a condemnee in that action by written notice served upon the condemnor. Within five days of the appointment of the landowner's member, the two so appointed shall appoint a disinterested third member who as a minimum qualification must hold a South Carolina real estate broker's license. The third member appointed must be the chairman of the appraisal panel and is responsible for convening the panel and reporting its determination to the condemnor. The chairman of the appraisal panel shall receive additional compensation of fifty dollars for services as chairman.

 (D) If the landowner fails to appoint a member within the times provided above, the clerk of court, upon written request by the condemnor, shall appoint the member. If the first two fail to appoint a qualified third member within the times provided above, the clerk of court, upon written request by the condemnor or the landowner, shall appoint the member.

HISTORY: 1987 Act No. 173, § 1.

**SECTION 28-2-260. Determination by appraisal panel of just compensation; filing of appraisal panel's report; notice requirements; acceptance of or appeal from determination.**

 (A) Within twenty days of the appointment of the third member, the appraisal panel shall determine an amount as just compensation for the property taken and shall report the determination in writing to the condemnor. In making this determination, the appraisal panel shall conduct an informal proceeding and shall consider all relevant evidence and information as may be offered by the condemnor or the landowner.

 (B) Within ten days of receipt of the appraisal panel's report:

 (1) if the Condemnation Notice has not already been filed with the clerk of court and the amount tendered therein deposited with the clerk, the condemnor shall file the Condemnation Notice and a copy of the appraisal panel's report and deposit the amount determined by the appraisal panel with the clerk; or

 (2) if the Condemnation Notice has already been filed and the amount tendered therein deposited with the clerk of court, the condemnor shall file a copy of the appraisal panel's report with the clerk and, if the amount determined by the panel exceeds the amount already deposited, excluding any interest thereon, shall deposit the amount of the excess with the clerk; and

 (3) the condemnor must serve upon the landowner written notice of the amount determined by the appraisal panel and of the filing of the Condemnation Notice and deposit of the amount determined. The notice shall also state whether the condemnor accepts the determination of the appraisal panel or appeals therefrom and must be in the form prescribed by § 28-2-290.

 (C) If the notice required by this section states that the condemnor accepts the determination of the appraisal panel, then within thirty days of receipt of the notice, the landowner must elect in writing served upon the condemnor either to accept the amount determined by the appraisal panel or to appeal from the determination. A failure to elect constitutes an acceptance of the amount so determined.

HISTORY: 1987 Act No. 173, § 1.

**SECTION 28-2-270. Filing requirements upon acceptance of or appeal from report of appraisal panel; recording of acceptance of report; disposition of funds on deposit with clerk of court; extension of time allowed for making report; failure of panel to make determination.**

 (A) If either the condemnor or any landowner appeals from the determination of the appraisal panel, this party shall file a copy of the notice thereof with the clerk of court within the time required for giving the notice to the other party and shall certify on the filed copy the date the notice was served.

 (B) If both condemnor and landowner accept the determination of the appraisal panel, the condemnor shall file with the clerk of court an affidavit that the time for appeal has expired and no notice of appeal has been given by either party. Thereupon, the clerk of court shall note upon a copy of the Condemnation Notice the amount of the determination and the payment thereof by the condemnor and shall cause the copy so annotated to be recorded and indexed in the same manner as is provided by law for recording and indexing of deeds. If there is no register of mesne conveyance, the clerk shall so record and index this copy of the Condemnation Notice.

 (C) If neither the condemnor nor the landowner appeals from the determination of the appraisal panel, and the amount of the determination is less than the amount already deposited by the condemnor, if any, then upon the filing of the affidavit described in the preceding subsection, the clerk of court shall remit to the condemnor the amount of excess deposited funds together with a pro rata portion of the interest earned on the deposited funds.

 (D) The time allowed for the appraisal panel to make and report its determination may be extended by written consent by both condemnor and landowner.

 (E) If the appraisal panel fails to make a determination of just compensation within the time allowed or an extension thereof, if any, the panel chairman shall certify this fact in writing to the condemnor, a copy of which the condemnor shall serve upon the landowner and file with the clerk of court which shall have the same effect as appeal by both the condemnor and the landowner from a determination of the appraisal panel.

HISTORY: 1987 Act No. 173, § 1.

**SECTION 28-2-280. Form and content of condemnation notice.**

 (A) The Condemnation Notice must contain the information and allegations required in this section and may contain any other information relevant to the action.

 (B) The Condemnation Notice must be captioned: CONDEMNATION NOTICE, TENDER OF PAYMENT, and if applicable, AND NOTICE TO APPOINT APPRAISER.

 (C) The Condemnation Notice must:

 (1) designate the condemnor on whose behalf the property is to be taken;

 (2) designate as "landowner" all persons who are record owners of fee simple title and as "other condemnees" all persons who, to condemnor's knowledge, have or claim any record interest in the property to be taken; condemnees whose names are not known, including heirs, infants, persons under disability, and persons who may be in military service, must be made parties by the collective name of "unknown claimants";

 (3) contain an appropriate legal description of the property to be taken or out of which an interest will be taken, and of the interest to be taken;

 (4) allege the basis of the condemnor's right to take the property by eminent domain and maintain the action, including (i) a reference to the condemnor's legal authority to take the property; (ii) a statement of the purpose for which it is to be condemned; (iii) a declaration of whether the action is one under § 28-2-240 or under § 28-2-250; and (iv) a statement that the condemnor has complied with § 28-2-70(A);

 (5) have attached a map, diagram, sketch, or reference to project plans showing, as far as practical, the property to be taken and, if less than all of a whole parcel, the location of the interest taken upon or within the whole parcel;

 (6) specify a location within the county where the property to be taken is situated at which the landowner may inspect the project plans;

 (7) contain at least the following notice:

 THE CONDEMNOR HAS DETERMINED JUST COMPENSATION FOR THE PROPERTY AND RIGHTS TO BE ACQUIRED HEREUNDER TO BE THE SUM OF (insert the amount determined under § 28-2-70(A) in words and numbers) AND HEREBY TENDERS PAYMENT THEREOF TO THE LANDOWNER.

 Payment of this amount will be made to the landowner if within thirty days of service of this Condemnation Notice, the landowner in writing requests payment, and agrees to execute any instruments necessary to convey to the condemnor the property interests and rights described hereinabove. The request and agreement must be sent by first class certified mail with return receipt requested or delivered in person to the condemnor at (insert the address to which the request should be delivered) . If no request and agreement is received by the condemnor within the thirty-day period, the tender is considered rejected.

 If the tender is rejected, the condemnor has the right to file this Condemnation Notice with the clerk of court of the county where the property is situated and deposit the tender amount with the clerk. The condemnor shall give the landowner and other condemnees notice that it has done so and may then proceed to take possession of the property interests and exercise the rights described in this Condemnation Notice.

 "AN ACTION CHALLENGING THE CONDEMNOR'S RIGHT TO ACQUIRE THE PROPERTY AND RIGHTS DESCRIBED HEREIN MUST BE COMMENCED IN A SEPARATE PROCEEDING IN THE COURT OF COMMON PLEAS WITHIN THIRTY DAYS OF THE SERVICE OF THIS CONDEMNATION NOTICE, OR THE LANDOWNER WILL BE CONSIDERED TO HAVE WAIVED THE CHALLENGE."

 (8) if the action is brought under § 28-2-240, contain at least the following notice:

 "THE CONDEMNOR HAS ELECTED NOT TO UTILIZE THE APPRAISAL PANEL PROCEDURE. Therefore, if the tender herein is rejected, the condemnor shall notify the clerk of court and shall demand a trial to determine the amount of just compensation to be paid. A copy of that notice must be served on the landowner. That notice shall state whether the condemnor demands a trial by jury or by the court without a jury. The landowner has the right to demand a trial by jury. The case may not be called for trial before sixty days after the service of that notice, but it may thereafter be given priority for trial over other civil cases. The clerk of court shall give the landowner written notice by mail of the call of the case for trial.

 "THEREFORE, IF THE TENDER HEREIN IS REJECTED, THE LANDOWNER IS ADVISED TO OBTAIN LEGAL COUNSEL AT ONCE, IF NOT ALREADY OBTAINED."

 (9) if the action is brought under § 28-2-250, contain at least the following notice:

 "If the tender is rejected, the landowner has until the thirtieth day after service of the Condemnation Notice within which to appoint a person who is not a party named in this action to serve as a member of an appraisal panel. Notice of appointment giving the name, address, and telephone number of the person appointed must be delivered to the condemnor at (insert the condemnor's address to which the notice of appointment should be delivered) within this period. If the landowner fails to appoint a member within the time allowed, one will be appointed for the landowner by the clerk of court upon the condemnor's request. The condemnor hereby appoints (insert the name of the member appointed by condemnor) , whose address is (insert the member's address) and whose telephone number is (insert the member's telephone number) as a member.

 "The two members so appointed must appoint a disinterested third member who holds at least a South Carolina real estate broker's license. If the two fail to appoint a third, the clerk of court shall appoint the third.

 "The appraisal panel shall determine an amount to be paid as just compensation for the property interest and rights described hereinabove, within twenty days after appointment of the third member. The appraisal panel shall report its determination to the condemnor which shall notify the landowner of the amount thereof. The landowner has thirty days from receipt of that notice in which to either accept the determination of the appraisal panel or to appeal therefrom."

HISTORY: 1987 Act No. 173, § 1.

**SECTION 28-2-290. Form and content of notice of report of appraisal panel.**

 (A) The notice of the determination of the appraisal panel required to be given by the condemnor to the landowner under §§ 28-2-260(B) and (C) must be captioned NOTICE OF DETERMINATION OF APPRAISAL PANEL AND (NOTICE OF APPEAL) or (NOTICE TO ELECT).

 (B) The notice must at least:

 (1) designate the parties to the action in the same manner as the Condemnation Notice;

 (2) state in words and numbers the amount determined by the appraisal panel to be just compensation;

 (3) contain one of the following statements: "THE CONDEMNOR REJECTS AND APPEALS FROM THE DETERMINATION OF THE APPRAISAL PANEL AND DEMANDS A TRIAL DE NOVO;

 (or)

 THE CONDEMNOR ACCEPTS THE DETERMINATION OF THE APPRAISAL PANEL. WITHIN THIRTY DAYS OF RECEIPT OF THIS NOTICE, THE LANDOWNER MUST NOTIFY THE CONDEMNOR IN WRITING, DELIVERED IN PERSON OR BY CERTIFIED MAIL, WITH RETURN RECEIPT REQUESTED, TO CONDEMNOR AT (insert the condemnor's address) THAT THE LANDOWNER ELECTS EITHER TO ACCEPT THE DETERMINATION OF THE APPRAISAL PANEL OR TO APPEAL THEREFROM AND DEMAND A TRIAL DE NOVO. A NOTICE OF APPEAL MUST ALSO BE FILED WITH THE CLERK OF COURT WITH THE DATE OF SERVICE NOTED THEREON.

 A FAILURE TO GIVE NOTICE OF ELECTION WITHIN THE THIRTY-DAY PERIOD WILL CONSTITUTE AN ACCEPTANCE OF THE APPRAISAL PANEL'S DETERMINATION AND A WAIVER OF THE RIGHT TO APPEAL.

 (and in either case)

 A trial to determine just compensation will be by jury unless both parties request trial by the court without a jury. The case may not be called for trial before sixty days after the service of the Notice of Appeal but it may thereafter be given priority for trial over other civil cases. The clerk of court shall give the landowner notice by mail of the call of the case for trial.

 THEREFORE, IF THE DETERMINATION OF THE APPRAISAL PANEL IS REJECTED, THE LANDOWNER IS ADVISED TO OBTAIN LEGAL COUNSEL AT ONCE, IF NOT ALREADY OBTAINED."

 (4) if notice of depositing funds with the clerk has not already been given or possession has not already been taken, contain the following statement:

 "The amount of the determination has been deposited with the clerk of court. The condemnor now has the right to take possession of the property interests and exercise the rights described in the Condemnation Notice.";

 (5) contain the following statement:

 "If the landowner accepts the determination of the appraisal panel, payment of that amount will be made by the clerk of court."

HISTORY: 1987 Act No. 173, § 1.

Article 3

Trial of Condemnation Actions

**SECTION 28-2-310. Application of Article 3; demand for nonjury trial; precedence of action; minimum time between notice and trial.**

 (A) Upon the filing of the affidavit described in § 28-2-240(A) or the filing of a Notice of Appeal under § 28-2-260(B) or (C), the action must be tried as provided in this article.

 (B) If the condemnor and the landowner have demanded trial by the court without a jury, the clerk shall place the action on the nonjury trial roster. Otherwise, the action must be placed on the jury trial roster.

 (C) If either the condemnor or the landowner so demands, the action must be given precedence over other civil cases for trial.

 (D) The case may not, in any event, be called for trial until at least sixty days after the date of service upon the landowner of the Condemnation Notice, in cases brought under § 28-2-240, or the Notice of Appeal, in cases brought under § 28-2-250, unless both the condemnee and the landowner agree to a shorter period.

HISTORY: 1987 Act No. 173, § 1.

**SECTION 28-2-320. Proceedings on appeal.**

 The appellant must be the movant on appeal from the determination of the appraisal panel, shall have the burden of proof, and shall have the right to open and close, except that notwithstanding which party is appellant, the condemnor shall first offer one witness to describe the property being taken and the purpose thereof. In the event both the landowner and the condemnor appeal from the determination of the appraisal panel, the landowner is deemed to be the appellant.

HISTORY: 1987 Act No. 173, § 1.

**SECTION 28-2-330. Rules of evidence.**

 Actions under this act are governed by the rules of evidence applicable in civil actions.

HISTORY: 1987 Act No. 173, § 1.

**SECTION 28-2-340. Evidence which may be admitted in trials of condemnation actions; inspection of property.**

 (A) For the purpose of determining the value of the land sought to be condemned and fixing just compensation in a hearing before a judge or in a trial before a jury, the following evidence (in addition to other evidence which is relevant, material, and competent) is relevant, material, and competent and may be admitted as evidence and considered by the judge or the jury:

 (1) evidence that a building or improvement is unsafe, unsanitary, or a public nuisance or is in a state of disrepair and evidence of the cost to correct the condition, even if no action has been taken by local authorities to remedy the condition;

 (2) evidence that any state public body charged with the duty of abating or requiring the correction of nuisances or like conditions or demolishing unsafe or unsanitary structures issued an order directing the abatement or correction of any conditions existing with respect to the building or improvement or demolition of the building or improvement and of the cost of compliance with an order;

 (3) evidence of the last assessed valuation of the property for purposes of taxation and of any affidavits or tax returns made by the owner in connection with the assessment which state the value of the property and of any income tax returns of the owner showing sums deducted because of obsolescence or depreciation of the property;

 (4) evidence that the property or improvement is being used for illegal purposes or is being so overcrowded as to be dangerous or injurious to the health, safety, morals, or welfare of the occupants and the extent to which the rentals therefrom are enhanced by reason of the use;

 (5) evidence of the price and other terms upon any sale or the rent reserved and other terms of any lease or tenancy relating to the property or to any similar property in the vicinity when the sale or leasing occurred or the tenancy existed within a reasonable time of the hearing.

 (B) Upon motion of either party, the court shall permit the jury to inspect the property which is the subject of the action, and if the trial is without a jury, the court shall make the inspection.

HISTORY: 1987 Act No. 173, § 1.

**SECTION 28-2-350. Increase in value of property by reason of public works project not to be considered.**

 The award of compensation may not be increased by reason of any increases in the value of the property resulting from the placement of a public works project on it.

HISTORY: 1987 Act No. 173, § 1.

**SECTION 28-2-360. Benefits of public works project to landowner to be considered.**

 In any condemnation action, benefits to be derived from the proposed project including the value of any property or rights relinquished or reverting to the landowner as a part or result thereof, must be taken into consideration in determining the amount of compensation and due allowance made for them.

HISTORY: 1987 Act No. 173, § 1.

**SECTION 28-2-370. Just compensation to include only value of property taken, damage to remaining land, and benefits to landowner.**

 In determining just compensation, only the value of the property to be taken, any diminution in the value of the landowner's remaining property, and any benefits as provided in § 28-2-360 may be considered.

HISTORY: 1987 Act No. 173, § 1.

Article 4

Miscellaneous

**SECTION 28-2-410. Interest on and investment of monies deposited with clerk of court.**

 All monies deposited pursuant to this act must be held at interest by the clerk of court after thirty days of receipt. The clerk shall invest the monies for the benefit of the parties as their interests are determined.

HISTORY: 1987 Act No. 173, § 1.

**SECTION 28-2-420. Interest on amount found to be just compensation; return of excess funds deposited with clerk of court.**

 (A) A condemnor shall pay interest at the rate of eight percent a year upon sums found to be just compensation by the appraisal panel or judgment of a court to the condemnee. This interest shall accrue from the date of filing of the Condemnation Notice through the date of verdict or judgment by the court. Interest accruing on funds on deposit with the clerk of court must be offset against the interest computed pursuant to this section. Interest shall not accrue during the twenty-day period commencing upon the date of verdict or order of judgment. If the judgment is not paid within the twenty-day period, interest at the rate provided by law for interest on judgments must be added to the judgment. Thereafter, the entire judgment shall earn interest at the rate provided by law for interest on judgments.

 (B) In the event the court determines that just compensation is due the landowner in an amount less than the funds held by the clerk of court, the clerk of court shall refund to the condemnor the balance of the excess deposit with accrued interest.

HISTORY: 1987 Act No. 173, § 1.

**SECTION 28-2-430. Appointment of guardian ad litem.**

 If an infant, person in military service, or other person under a legal disability has not appeared in the proceedings by his duly authorized legal representative, the court shall appoint an attorney as guardian ad litem to represent those persons' interests.

HISTORY: 1987 Act No. 173, § 1.

**SECTION 28-2-440. Date of valuation; risk of loss.**

 In all condemnation actions, the date of valuation is the date of the filing of the Condemnation Notice. The risk of loss by reason of damage to or destruction of the property subject to condemnation must be borne by the condemnee until the date of possession by, or the date of vesting of title in, the condemnor, whichever is earlier.

HISTORY: 1987 Act No. 173, § 1.

**SECTION 28-2-450. Extent of municipality's right of condemnation.**

 The right of condemnation by a municipality is not limited to the county in which the municipality is located.

HISTORY: 1987 Act No. 173, § 1.

**SECTION 28-2-460. Parties to whom just compensation must be made and paid.**

 Unless the persons served with the Condemnation Notice agree in writing as to whom just compensation must be made and paid, the appraisal panel determination, verdict, or judgment must be made jointly to all the parties and may be paid to the clerk of court. Upon making the payment, the condemnor's obligation to pay interest upon the funds shall terminate. The payment of the funds so awarded must be held by the clerk of court pending the final order of the court of common pleas in an equity proceeding to which all persons served with the Condemnation Notice must be necessary parties. From the order of the court of common pleas there may be an appeal as provided for appeals from the court in equity cases.

HISTORY: 1987 Act No. 173, § 1.

**SECTION 28-2-470. Proceedings to challenge condemnor's right to condemn.**

 An action challenging a condemnor's right to condemn must be commenced in separate proceedings filed in the court of common pleas in the county in which the property or a portion thereof is located. The action must be commenced within thirty days after service of the Condemnation Notice upon the landowner. All proceedings under the Condemnation Notice are automatically stayed until the disposition of the action, if any, unless the landowner and the condemnor consent otherwise. No issues involving the condemnor's right to condemn may be heard in the trial upon the issue of just compensation.

HISTORY: 1987 Act No. 173, § 1.

**SECTION 28-2-480. Condemnees' right to portion of funds on deposit with clerk of court after condemnor has taken possession.**

 Upon written application, in form satisfactory to the clerk of court, by all named condemnees at any time after which the condemnor has taken possession, when the right to take is not contested, the clerk of court shall pay to them the amount applied for up to fifty percent of the funds deposited with the clerk of court by the condemnor in that action.

HISTORY: 1987 Act No. 173, § 1.

**SECTION 28-2-490. Waiver of objections and defenses to taking upon withdrawing portion of funds on deposit with clerk of court.**

 Each condemnee who withdraws money under § 28-2-480 waives all objections and defenses to the action and to the taking of his property, except for any claim to greater compensation.

HISTORY: 1987 Act No. 173, § 1.

**SECTION 28-2-500. Amount deposited with or withdrawn from clerk of court not relevant evidence.**

 The amount deposited, or withdrawn under § 28-2-480, is not admissible in evidence and may not be referred to at the trial.

HISTORY: 1987 Act No. 173, § 1.

**SECTION 28-2-510. Award of costs and litigation expenses; procedures; prevailing landowner defined.**

 (A) If, in the action challenging the condemnor's right to take, the court determines that the condemnor has no right to take all or part of any landowner's property, the landowner's reasonable costs and litigation expenses incurred therein must be awarded to the landowner. If the court determines the right to take issue was not raised and litigated in good faith by the landowner, the court must award the condemnor the reasonable costs and litigation expenses incurred therein.

 (B)(1) A landowner who prevails in the trial of a condemnation action, in addition to his compensation for the property, may recover his reasonable litigation expenses by serving on the condemnor and filing with the clerk of court an application therefor within fifteen days after the entry of the judgment. The application shall show that the landowner has prevailed, state the amount sought, and include an itemized statement from an attorney or expert witness representing or appearing at trial in behalf of the landowner stating the fee charged, the basis therefor, the actual time expended, and all actual expenses for which recovery is sought. If requested by any party or on its own motion, the court shall hear the parties with respect to the matters raised by the application and shall determine the amount of litigation expenses to be awarded, which must be set forth in a written order to be filed with the clerk of court which becomes part of the judgment. The court, in its discretion, may reduce the amount to be awarded pursuant to this section, or deny an award, to the extent that the landowner, during the course of the action, engaged in conduct which unduly and unreasonably protracted the final resolution of the action or to the extent the court finds that the position of the condemnor was substantially justified or that special circumstances make an award unjust.

 (2) For the purpose of this section, "prevails" means that the compensation awarded (other than by settlement) for the property, exclusive of interest, is at least as close to the highest valuation of the property that is attested to at trial on behalf of the landowner as it is to the highest valuation of the property that is attested to at trial on behalf of the condemnor.

 (C) If the condemnor abandons or withdraws the condemnation action in the manner authorized by this chapter, the condemnee is entitled to reasonable attorney fees, litigation expenses, and costs as determined by the court.

HISTORY: 1987 Act No. 173, § 1; 1990 Act No. 575, § 2.