

**68-2006. Same; acquisition of property; eminent domain; plans and specifications, when.** The authority is hereby authorized and empowered to acquire by purchase, whenever it shall deem such purchase expedient, solely from funds provided under the authority of this act, such lands, structures, property, rights, rights-of-way, franchises, easements and other interests in lands, including lands lying under water and riparian rights, which are located within this state, as it may deem necessary or convenient for the construction and operation of any project, upon such terms and at such prices as may be considered by it to be reasonable and can be agreed upon between it and the owner thereof, and to take title thereto in the name of the state.

Whenever a reasonable price cannot be agreed upon, or whenever the owner is legally incapacitated or is absent, unknown or unable to convey valid title, the authority is hereby authorized and empowered to acquire by condemnation or by the exercise of the power of eminent domain any lands, property, rights, rights-of-way, franchises, easements and other property, including public lands, parks, playgrounds, reservations, highways or parkways, or parts thereof or rights therein, of any person, copartnership, association, railroad, public service, public utility or other corporation, municipality or political subdivision deemed necessary or convenient for the construction or the efficient operation of any project, or necessary in the restoration of public or private property damaged or destroyed. Any such proceedings shall be conducted, and the compensation to be paid shall be ascertained and paid, in the manner provided by the laws of the state then applicable which relate to condemnation or the exercise of the power of eminent domain by the secretary of transportation: *Provided, however,* That title to any property condemned by the authority shall immediately vest in the authority and the authority shall be entitled to the immediate possession of such property upon the deposit with the clerk of the court in which such condemnation proceedings were originated, of the total amount of the appraised price of the property and court costs and fees as provided by said laws, notwithstanding that any of the parties to such proceedings shall appeal from such appraisement. Whenever the authority shall make such deposit in connection with any condemnation proceeding, the making of said deposit shall not preclude the authority from appealing any decision rendered in such proceeding. The said clerk of the court shall hold any such deposit made by the authority until the period within which an appeal may be taken from such appraisement has expired or if an appeal is taken, until judgment has been rendered on such appeal. If the appraisement is increased or decreased as the result of an appeal, the amount of the increase or decrease shall be paid by or refunded to the authority. Title to any property acquired by the authority shall be taken in the name of the state.

If the owner, lessee or occupier of any property to be condemned shall refuse to remove his or her personal property therefrom or give up possession thereof, the authority may proceed to obtain possession in any manner now or hereafter provided by law.

With respect to any railroad property or right-of-way upon which railroad tracks are located, any powers of condemnation or of eminent domain may be exercised to acquire only an easement interest therein which shall be located either sufficiently far above or sufficiently far below the grade of any railroad track or tracks upon such railroad property so that neither the proposed project nor any part thereof, including any bridges, abutments, columns, supporting structures and appurtenances, nor any traffic upon it shall interfere in any manner with the use, operation or maintenance of the trains, tracks, works or appurtenances or other property of the railroad nor endanger the movement of the trains or traffic upon the tracks of the railroad. Prior to the institution of condemnation proceedings of such easement over or under such railroad property or right-of-way, plans and specifications of the proposed project showing compliance with the above-mentioned above or below grade requirements and showing sufficient and safe plans and specification of such overhead or undergrade structure and appurtenances shall be submitted to the railroad for examination and approval. If the railroad fails or refuses within thirty days to approve the plans and specifications so submitted, the matter shall be submitted to the state corporation commission whose decision, arrived at after due consideration in accordance with its usual procedure, shall be final as to the sufficiency and safety of such plans and specifications and as to such elevations or distances above or below the tracks. Such overhead or undergrade structure and appurtenances shall be constructed only in accordance with such plans and specifications and in accordance with such elevations or distances above or below the tracks so approved by the railroad or the state corporation commission as the case may be. A copy of the plans and specifications approved by the railroad or the state corporation commission shall be filed as an exhibit with the petition for condemnation.

**History:** L. 1953, ch. 308, § 6; L. 1975, ch. 427, §172; Aug. 15.