

42-2-1. Declaration of intent. (1959)

The legislature hereby determines and declares that the construction of urgently needed public roads and state highways is being delayed by the inability to enter into timely possession of the condemned property; that the landowner must wait the termination of prolonged litigation before he receives compensation for his property; that the delay in possession and therefore construction of the facility results in increased construction costs and thereby injuriously affects the public. The legislature, recognizing its responsibility, intends to solve these problems by establishing a special procedure whereby the state can enter into possession at the inception of the proceeding, and the interests of the property owner are protected by providing for an adequate bond prior to vesting of title and the taking of possession and also safeguarding the property owners' right to a speedy judicial determination of the total just compensation due. This legislation is necessary for the immediate preservation of the public peace, health, safety, the promotion of the general welfare and to minimize the economic and financial dislocation caused by highway construction.

The special procedure set forth herein shall be in addition to any other condemnation procedure now in effect and shall not be construed as repealing or amending such procedure by implication.

History: 1953 Comp., § 22-9-39, enacted by Laws 1959, ch. 324, § 1.

42-2-2. Definitions. (1959)

As used in this act [[42-2-1](#) to [42-2-16](#) NMSA 1978], "state" includes any commission, department, institution, bureau or agency thereof as well as all political subdivisions of the state.

History: 1953 Comp., § 22-9-40, enacted by Laws 1959, ch. 324, § 2.

42-2-3. Purpose. (1981)

Unless otherwise specifically provided by law:

A. the state may acquire, either temporarily or permanently, public or privately owned lands, real property or any interests therein, including water rights or any easements deemed necessary or desirable for present or future public road, street or highway purposes by gift, agreement, purchase, exchange, condemnation or otherwise. Such lands or interests in real property may be acquired in fee simple;

B. present or future public road, street or highway purposes include the taking of personal property, land or any interest in real property, under the Highway Beautification Act [[67-12-1](#) to [67-12-14](#) NMSA 1978];

C. the state may use the special alternative procedure to acquire lands or any interest therein for any public purpose for which the power of eminent domain may be properly exercised; and

D. for the purposes provided in Subsections A through C of this section, when state-owned property must be taken, the state board of finance shall first determine the greater public need, unless the state defendant in whom title is vested concedes that the purpose for which the property is sought to be taken is the greater public need.

History: 1953 Comp., § 22-9-41, enacted by Laws 1959, ch. 324, § 3; 1966, ch. 65, § 15; 1981, ch. 125, § 49.

42-2-4. Authority to acquire. (1965)

In connection with the acquisition of property or property rights the state may by order of the court acquire an entire lot, block or tract of land if by so doing the interests of the public will be best served.

History: 1953 Comp., § 22-9-41.1, enacted by Laws 1965, ch. 158, § 1.

42-2-5. Petition. (1959)

A. In any case where the state is the moving party to a condemnation action, a petition may be filed in the district court of the county in which such property is situated. Where the property of any defendant sought to be condemned lies partly in one county and partly in an adjoining county, the condemnation proceeding may be brought in either county. The petition shall include but not be limited to the following:

(1) a statement by the petitioner of its authority to bring the action;

(2) a general description of the public purpose for which the property is being condemned;

(3) a statement that the action is brought pursuant to this statute;

(4) an accurate surveyed description of the property to be condemned describing the same by metes and bounds and said description shall be incorporated in the petition with or without reference to maps or plats attached to said petition; the property of each defendant to be condemned shall be described separately, and each tract under separate ownerships shall be consecutively numbered for ease in identification;

(5) the names and addresses of all defendants shall be given if known;

(6) the estate to be taken shall be described;

(7) in the event that title to the property to be taken is vested in the state, a statement that the board of finance has proclaimed that the needs and purposes of the condemnor to be of a greater public need than that of the defendant in whom the title is vested;

(8) the petition shall be signed by any attorney employed by the state duly authorized to sign such pleadings;

(9) the name of such attorney and his address or the post-office box number of the state shall appear below the signature, or both addresses may be given;

(10) an allegation that the petitioner has been unable to agree with one or more of the defendants having an interest in a particular tract as to just compensation;

(11) a statement of the amount offered as just compensation for each tract affected;

(12) the petition shall include or have attached thereto a map, plat or plan of the improvement to be constructed and showing the property to be condemned.

B. Parties defendant. The petition shall name as defendants all the parties who own or occupy the property or have any interest therein as may be ascertained by a search of the county records, and if any such parties are known to the petitioner to be infants, or persons of unsound mind or suffering under any other legal disability, when no legal representative or guardian appears in their behalf, the court shall on motion appoint a guardian ad litem to protect the interest of those under any legal disability.

(1) If any property sought to be condemned belongs to the state, the head of the commission, department, institution, bureau, agency or political subdivision holding either title, or possession, shall be named as well as the commission, department, institution, bureau, agency or political subdivision itself.

(2) If the record owner of the property sought to be condemned is deceased and there has been no recorded legal disposition of the property, the deceased and his known heirs shall be named as defendants, and if the heirs are unknown to the petitioner, they shall be named and designated as defendants under the style of "the unknown heirs of , deceased."

(3) If the estate of any such deceased person is in the process of being administered in any court of the state, the personal representative of such deceased person shall also be named as a defendant.

(4) If the property sought to be condemned is held in trust and the petitioner has knowledge of said trust, the trustee shall be named.

(5) Where the name of the party holding title or any interest therein cannot be determined, such parties shall be designated as "unknown owners or claimants of the property involved."

C. Notice of condemnation. Upon filing of a petition in condemnation in the district court, the clerk shall issue a notice of condemnation which shall contain:

(1) the title of the action;

(2) the name or designation of the court and county in which the action is brought as well as the cause number;

(3) a direction that the defendant appear and answer to the petition within thirty days after service of the notice, and a statement that unless the defendant so appears and answers, the petitioner will apply to the court for the relief demanded in the petition;

(4) the name and address of petitioner's attorney shall appear on every notice;

(5) a general statement of the nature of the action and a general description of the proposed location of such road, street or highway, and that the land involved is more fully described in the petition on file in said cause;

(6) in the event that an ex parte preliminary order of entry is obtained by the petitioner at the time the petition is filed, the notice as required by Section 5 [[42-2-6 NMSA 1978](#)], Preliminary Order of Entry, may be incorporated in the notice of condemnation, both for the purpose of personal service and for constructive service by publication.

History: 1953 Comp., § 22-9-42, enacted by Laws 1959, ch. 324, § 4.

42-2-6. Preliminary order of entry. (1966)

A. A preliminary order permitting the state or any political subdivision thereof to immediately enter and occupy the premises sought to be condemned pending the action and to do such work thereon as may be required, may be obtained by the petitioner, without notice, upon the filing of the surety bond and deposit of money with the court as hereinafter provided, and a copy of such order shall be filed with the clerk of the court and notice thereof shall be served upon any defendant against whom such order is obtained, or upon his attorney of record. Such notice shall advise such defendant of the nature of the order and inform him that, unless objection thereto is filed within ten days after service thereof, the court shall deem such owner in default and shall proceed to make such preliminary order permanent and shall, without further notice, restrain said defendant from hindering or interfering with the occupation of the premises and the doing thereon of the work required, and that subsequent proceedings shall only affect the amount of compensation allowable.

B. With his application for such preliminary order, the petitioner shall submit proof by affidavit, or otherwise, of the reasons for requiring a speedy occupation, and the court shall issue or refuse to issue the preliminary order according to the equity of the case and the relative damages which may accrue to the parties. If the order is granted, the court

may require the petitioner to execute and file in the court a surety bond to the benefit of the defendants, executed by any surety company authorized to do business in the state, in a sum to be fixed by the court, but not less than the value of the premises for which possession is sought after taking into consideration the amount of the deposit, if any, and the damages which will result from such occupation and condemnation, as the same may appear to the court on the hearing, and conditioned to pay the adjudged value of the premises and all damages in case the property is condemned, and to pay all damages arising from the occupation before judgment in case the premises are not condemned. No order of entry to any property being taken from a private property owner for rights-of-way may be granted until there is deposited with the clerk of the district court the amount offered as just compensation. Money from this deposit shall be disbursed under such conditions as the court may deem appropriate, upon the demand of any person having an estate or interest in such property, and the final judgment shall not include interest from the date of said deposit on the amount of such advance deposit. Disbursements may be made only by order of court entered after expiration of the time for the filing of an answer. Any disbursement of money from an advance deposit shall be without prejudice to the right of a defendant landowner to litigate for additional compensation. The court or jury shall not award a lesser sum than that shown by the petitioner's appraised value testified to in court.

C. Upon the filing of a certificate of the clerk of the court that ten days have elapsed since service of the notice of preliminary order on all defendants, the court, upon notice to all defendants who have appeared or their attorneys of record, may proceed to hear all legal objections to the petition and order, and all objections as to the amount of the bond, if any, and all argument as to why said order should not be made permanent, and shall thereupon make such order as it deems necessary. After said order is made permanent, all subsequent proceedings shall only affect the amount of compensation allowable.

History: 1953 Comp., § 22-9-43, enacted by Laws 1959, ch. 324, § 5; 1966, ch. 40, § 1.

42-2-7. Service; personal or by publication. (1959)

A. Personal service, either within or without the state, of the petition, notice of condemnation and the notice of the preliminary order of entry, if any, shall be made and had in the manner as provided in the Rules of Civil Procedure, Rule 4(e), Subsections 1 to 6 inclusive [Rule [1-004](#) F(1) to F(6) NMRA], or as they may be amended.

B. If the name or residence of any owner be unknown, or if the owners or any of them do not reside within the state, or cannot be found therein, and are not served as hereinbefore provided, the required service and notice shall be given by publication of notice thereof for two consecutive weeks, the last publication to be at least three days prior to any default date, in a newspaper published in the county in which the proceedings are pending, if one is published in that county; if no newspaper is published in such county, then a newspaper published in another county, having a general circulation in the county wherein such proceedings are pending. When the address of any defendant who

resides out of state is known to the petitioner, the publication shall be made as aforesaid and in addition, a copy of the petition and required notice thereof and the notice of the preliminary order entered, if any, shall be mailed to said defendant at such address, at least ten days prior to any default date on the preliminary order.

C. Personal service outside the state of any pleading or notice shall be equivalent to publication and mailing, and such personal service of the notice of entry of a preliminary order shall commence the running of the ten-day period within which objections may be made to the granting of a permanent order. Return of such service shall be by affidavit of the person making the same.

History: 1953 Comp., § 22-9-44, enacted by Laws 1959, ch. 324, § 6.

42-2-8. Contents of answer. (1967)

The defendant shall set forth in his answer the following:

A. the estate or interest in each tract or parcel of property taken or described in the petition in which the defendant has any interest;

B. the name and address of anyone claiming any interest in such tract or parcel of property known to the defendant and the amount of such interest;

C. the amount which the defendant claims as just compensation for the property taken or described in the petition and the amount, if any, of the various elements of damage, including damage to any remaining portion of a contiguous tract owned or controlled by the defendant;

D. the highest and best use to which the property is adapted;

E. a description of the total tract owned by the defendant or in which he claims an interest, which has been damaged by the taking or the proposed improvement;

F. any other material or pertinent matter with regard to damages known to the defendant.

History: 1953 Comp., § 22-9-45, enacted by Laws 1959, ch. 324, § 7; 1967, ch. 207, § 1.

42-2-9. Time for answering. (1967)

The defendant or his attorney shall file his answer to the petition within thirty days after service of the petition and notice.

History: 1953 Comp., § 22-9-46, enacted by Laws 1959, ch. 324, § 8; 1967, ch. 207, § 2.

42-2-10. Intervention. (1959)

All persons in occupation of, or having or claiming an interest in, any of the property described in the petition or in the damages, if any, for the taking thereof, though not named, may appear, plead and defend, each in respect to his own property or interest, or that claimed by him, in like manner as if named in the petition, at any time prior to trial.

History: 1953 Comp., § 22-9-47, enacted by Laws 1959, ch. 324, § 9.

42-2-11. Election of trial by court or jury. (1967)

Any party desiring to try the cause before a jury, shall make demand and deposit jury fees pursuant to Rule 38, Rules of Civil Procedure, [Rule [1-038](#) NMRA] and any other applicable rules of civil procedure.

The court with or without a jury may separately try the case involving each tract of land affected which is under different ownership, or separate tracts under the same ownership.

History: 1953 Comp., § 22-9-48, enacted by Laws 1959, ch. 324, § 10; 1967, ch. 207, § 3.

42-2-12. Time of trial. (1959)

A. The court, upon notice by petitioner that the time for an answer has expired as to all defendants served either personally or by publication, shall forthwith set the cause for trial giving the cause preference over all other civil causes in which the public interest is not involved.

B. The court upon such notice shall immediately impanel a special jury, if necessary, in the county in which the cause is to be tried for the sole purpose of trying said cause, unless the court in its discretion desires in the furtherance of justice to allow other matters to be tried before it at that time.

History: 1953 Comp., § 22-9-49, enacted by Laws 1959, ch. 324, § 11.

42-2-13. Argument. (1959)

In any condemnation action brought under the provisions of this act [[42-2-1](#) to [42-2-16](#) NMSA 1978], the defendant shall have the burden of proceeding and the right to commence and conclude the argument.

History: 1953 Comp., § 22-9-50, enacted by Laws 1959, ch. 324, § 12.

42-2-14. Default. (1959)

A. If any defendant who has appeared in the cause shall fail to appear at the time set for trial, whether such trial be set before the court with or without a jury, the court shall direct that his default be entered and shall conduct such hearings as it deems necessary and proper to determine the amount of just compensation due to the defendant.

B. If any defendant has failed to appear or answer within the time allowed, and the clerk has entered his default, then the court shall conduct such hearings as it deems necessary and proper to determine the amount of just compensation due the defendant.

C. For the purpose of the hearing required in Subsection [Subsections] A and B above, the court may consider by affidavit or other proof of the value of the property taken, the damage, if any, which may result from the occupation and condemnation, and the amount offered as set forth in the petition and shall enter such judgment as it deems proper.

History: 1953 Comp., § 22-9-51, enacted by Laws 1959, ch. 324, § 13.

42-2-15. Verdict and judgment. (1972)

Notwithstanding the provisions of the Relocation Assistance Act [[42-3-1](#) to [42-3-15](#) NMSA 1978]:

A. for the purposes of assessing compensation and damages, the right thereto shall be deemed to have accrued as of the date the petition is filed, and its actual value on that date shall be the measure of compensation for all property taken, and also the basis of damages for property not taken but injuriously affected in cases where such damages are legally recoverable; the amount of the award shall be determined from the evidence and not be limited to any amount alleged in the petition or set forth in the answer;

B. whenever just compensation shall be ascertained and awarded in such proceeding and established by judgment, the judgment shall include as a part of the just compensation awarded, interest at the rate of six percent a year from the date of the date the petition is filed to the date of payment or the date when the proceedings are finally abandoned;

C. the court shall have the power to direct the payment of delinquent taxes, special assessments and rental or other charges owed out of the amount determined to be just compensation, and to make such orders with respect to encumbrances, liens, rents, insurance and other just and equitable charges; and

D. when two or more estates or divided interests in any tract are the subject of a trial by a jury, and the court has determined that there shall be no division of the causes, the verdict shall be in one sum and shall be the amount of just compensation for the tract affected as of the date of the filing of the petition, and the court shall thereafter proceed to hear and determine the value of the respective interests or ownerships in said tract, and

shall apportion the amount of the verdict between the defendants according to their various interests therein.

History: 1953 Comp., § 22-9-52, enacted by Laws 1959, ch. 324, § 14; 1972, ch. 41, § 21.

42-2-16. Proof of payment; recording judgment. (1961)

After the petitioner has made payment in full to the clerk of the district court in accordance with the judgment in the condemnation action, the clerk shall certify upon the judgment that payment has been made thereon.

A copy of this judgment showing payment shall be recorded in the office of the county clerk of the county in which the property is situate, and thereupon the title or interest in the property affected shall vest in the petitioner.

History: 1953 Comp., § 22-9-53, enacted by Laws 1959, ch. 324, § 15; 1961, ch. 75, § 1.

42-2-17. Purpose of act. (1963)

The purpose of this act [[42-2-17](#) to [42-2-21](#) NMSA 1978] is to clarify certain matters of practice and procedure in the special alternative procedure in eminent domain.

History: 1953 Comp., § 22-9-55, enacted by Laws 1963, ch. 248, § 1.

42-2-18. Application of Rules of Civil Procedure. (1963)

The Rules of Civil Procedure shall apply to the special alternative procedure in eminent domain except where special provisions are found in the special alternative procedure which conflict with the Rules of Civil Procedure and then the Rules of Civil Procedure shall not apply.

History: 1953 Comp., § 22-9-56, enacted by Laws 1963, ch. 248, § 2.

42-2-19. Disqualification of judge; effect. (1963)

A. Whenever a party or parties to any special alternative proceeding in eminent domain shall make and file an affidavit that the judge before whom the proceeding is pending, whether he be the resident judge or a judge designated by such resident judge, cannot, according to the belief of the party to said proceeding making such affidavit, preside over the same with impartiality, such affidavit shall operate as an automatic severance of the proceedings as to all tracts in which the disqualifying party or parties has an interest. Nothing herein shall be construed to authorize separate trials of different interests in the same tract.

Another judge shall be designated for the trial of the proceeding as to the severed portion thereof by agreement of counsel representing the respective parties. Upon the failure of such counsel to agree, then such facts shall be certified to the chief justice of the supreme court of New Mexico, and the chief justice shall thereupon designate the judge to try the severed portion of such proceeding.

B. Such affidavit shall be filed within the time allowed for filing objections to the preliminary order of entry and not thereafter.

History: 1953 Comp., § 22-9-57, enacted by Laws 1963, ch. 248, § 3.

42-2-20. Waiver of bond. (1963)

The surety bond required to be executed and filed by petitioner to the benefit of the defendants under [Section 42-2-6B](#) NMSA 1978 of the special alternative procedure in eminent domain may be waived by the court in its discretion.

History: 1953 Comp., § 22-9-58, enacted by Laws 1963, ch. 248, § 4.

42-2-21. Costs. (1963)

If the total amount of the final judgment exceeds the total amount offered by petitioner, excluding interest, for the tract or tracts for which the judgment is rendered, the petitioner shall bear all taxable costs or fees as in any other action or proceeding.

History: 1953 Comp., § 22-9-59, enacted by Laws 1963, ch. 248, § 5.

42-2-22. [Flood control; appropriation of land; compensation for immediate use.] (1964)

The state or any political subdivision thereof, may also use the special alternative procedure in eminent domain set forth in [Sections 42-2-1](#) through [42-2-21](#) NMSA 1978 (being Laws 1959, Chapter 324, Sections 1 through 16 and Laws 1963, Chapter 248, Sections 1 through 5) to the extent it is otherwise authorized by law to exercise the power of eminent domain to acquire, either temporarily or permanently, public or privately owned lands, real property or any interests therein for the acquisition, construction, operation or maintenance of facilities for the carrying, channeling, impounding or disposition of storm, flood or surface drainage waters.

Provided, however, that no order of entry to any property being taken under the special alternative procedure for the acquisition, construction, operation and maintenance of facilities for the carrying, channeling, impounding or disposition of storm, flood or surface drainage waters may be granted until there is deposited with the clerk of the district court a warrant for seventy-five percent of the amount offered as just compensation for the immediate use, under such conditions as the court may deem appropriate, of all persons having an estate or interest in such property, and the final

judgment shall not include interest from the date of such deposit on the amount of such advance payment.

History: 1953 Comp., § 22-9-61, enacted by Laws 1964 (1st S.S.), ch. 14, § 2.

42-2-23. Condemnation of property in excess of need; sale to prior owner; price. (1981)

In the event the state, a state agency or other entity condemns property in excess of the dimensions or amount necessary for public use, as determined by the condemnor, if such determination occurs within five years of the date of condemnation, the prior owner from whom the property was taken, or his personal representative or heirs, shall have the option to purchase the property determined to be in excess. Such persons may purchase such property at a price equal to the price paid for such excess property by the condemnor to the prior owner at the time of taking, plus interest at the rate of six percent per year, for the period beginning with the date the prior owner received final payment for the land taken, and ending when the notice of intent to dispose is mailed, less the amount of any liens which attached against the property while it was held by the condemnor.

The notice of intent to dispose shall be mailed to the last known address of the prior owner by certified mail with a return receipt requested. The notice shall notify the prior owner of his right to purchase, specify which portion of the property of the prior owner is available for purchase by him, the number of acres available, the amount of money, both the principal and interest it will require to repurchase it and the amount of any liens which may be deducted from the purchase price. If within thirty days after mailing the notice of intent to dispose, the prior owner or his personal representative or heirs elect to exercise the option to purchase, the condemnor shall enter into an agreement prepared and approved by the attorney general, if the condemnor is a state agency, and by appropriate legal officer of the entity if the condemnor is an entity other than a state agency for the sale of the surplus land to the prior owner, his personal representative or heirs.

If the prior owner, his personal representative or heirs have not elected to exercise the option within thirty days from the date of mailing the notice of intent to dispose, the condemnor shall sell the property at public sale.

History: 1953 Comp., § 22-9-62, enacted by Laws 1967, ch. 206, § 1; 1981, ch. 126, § 1.

42-2-24. Exclusion of certain property. (1967)

This act [[42-2-23](#), [42-2-24](#) NMSA 1978] shall not apply to any land which at the time of condemnation was wholly within the boundary of an incorporated municipality.

History: 1953 Comp., § 22-9-67, enacted by Laws 1967, ch. 206, § 6.