CHAPTER 3

State Authorities Eminent Domain Act

**SECTION 28‑3‑20.** Right of eminent domain conferred on certain state authorities.

All state authorities, commissions, boards, or governing bodies established by the State of South Carolina, (hereinafter referred to as “state authority”) which have been, or may be created in the future, to develop waterways of the State for use in intrastate, interstate, and foreign commerce; to construct, maintain, and operate powerhouses, dams, canals, locks, and reservoirs; to produce, transmit, sell, and distribute electric power; to reclaim and drain swampy and flooded lands; to improve health conditions of the State; and to reforest watersheds, and for which purposes the acquisition of property is necessary, have the right of eminent domain.

HISTORY: 1962 Code Section 25‑52; 1952 Code Section 25‑52; 1942 Code Section 9112; 1939 (41) 265; 1987 Act No. 173, Section 18.

CROSS REFERENCES

Condemnation by Board of Corrections under this chapter for purposes essential to the operation of the prison system, see Section 24‑1‑230.

Condemnation by Department of Transportation of property of public service corporations, see Section 57‑5‑380.

Condemnation by State Development Board for certain waterway projects, see Sections 3‑5‑50, 3‑5‑330.

Condemnation of lands necessary for the proper drainage of the swamp and low lands of the State, see Article I of Amendments to the Constitution of South Carolina.

Condemnation powers of watershed conservation districts under this chapter, see Section 48‑11‑110.

Power of condemnation by Public Service Authority, see Section 58‑31‑50.

Power of condemnation of New Horizons Development Authority, see Section 13‑11‑80.

Power of condemnation of Patriot’s Point Development Authority, see Section 51‑13‑780.

Power of condemnation of State Development Board in regard to housing projects, see Sections 31‑1‑450, 31‑1‑460.

Powers of condemnation of Department, see Section 1‑11‑110.

Powers of condemnation of the University of South Carolina, see Section 59‑117‑70.

Power of public utilities to prevent operation of certain motor vehicles on utility rights‑of‑way, see Section 16‑11‑755.

Procedures for the condemnation of property, see the Eminent Domain Procedure Act Section 28‑2‑10 et seq.

Rights of way, lands and condemnation for the State highway system, see Section 57‑5‑310.

Taking private property, see SC Const Art. I, Section 13.

Library References

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RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Damages Section 55, Eminent Domain.

LAW REVIEW AND JOURNAL COMMENTARIES

Recovery of Attorneys’ Fees as Costs or Damages in South Carolina. 38 S.C. L. Rev. 823.

Attorney General’s Opinions

A State agency may exercise power of condemnation only with permission given by the General Assembly. 1974‑75 Op. Atty Gen, No. 3952, p 27.

Section 59‑123‑90 providing for the power of eminent domain be given to the Board of Trustees of the Medical University of South Carolina is constitutionally valid. 1974‑75 Op. Atty Gen, No 3972, p 44.

NOTES OF DECISIONS

In general 1

1. In general

Former State Authorities Eminent Domain Act did not violate the Fourteenth Amendment of the Constitution of the United States. Oakland Club v. South Carolina Public Service Authority, 1940, 110 F.2d 84.

The rule in this State is that the decision of the question of necessity lies with the one to whom the State has delegated the authority to take property for a public use and is not subject to review by the Supreme Court in the absence of fraud, bad faith, or clear abuse of discretion. South Carolina State Ports Authority v. Kaiser (S.C. 1970) 254 S.C. 600, 176 S.E.2d 532.

Where there is an immediate need and necessity for the condemned property, the mere fact that plans for contemplated future uses of the property were not yet firm or definite would be insufficient to show either bad faith or abuse of discretion in condemnation of property. South Carolina State Ports Authority v. Kaiser (S.C. 1970) 254 S.C. 600, 176 S.E.2d 532.

Stated in Cain v. South Carolina Public Service Authority (S.C. 1952) 222 S.C. 200, 72 S.E.2d 177.

For a general discussion of former State Authorities Eminent Domain Act, see Oakland Club v. South Carolina Public Service Authority, 1939, 30 F.Supp. 334, affirmed 110 F.2d 84.

**SECTION 28‑3‑30.** Estates and area which may be acquired; acquisition of water and flowage rights in lands in vicinity of project.

Any public body exercising the power of eminent domain for purposes set forth in Section 28‑3‑20 shall, in the area determined by the maximum high‑water mark resulting from its activity and a line not exceeding one hundred lineal feet beyond such high‑water mark, arrange to permit the previous owner of the one hundred foot strip, and his heirs and assigns, to pass over and across the strip which may be acquired under this section, and any and all lands of the state authority which are not actually covered with water at convenient places for purposes of ingress and egress to the reservoirs of the state authority, which right must be exercised so that it shall not interfere with any dams, dikes, structures, and buildings of the state authority or the application and use of the state authority of proper health and sanitation measures, and the strip and all of the lands acquired by the authority may be controlled by the authority for health and sanitation measures to the extent of exclusion of the public from the strip and lands at all times as may be necessary. The public bodies may also acquire by condemnation all water and flowage rights in land in the vicinity of the projects specified in Section 28‑3‑20 which it may determine to be necessary, useful, or convenient, or which might be damaged by reason of the construction or operation of the projects, and on those lands the public bodies may establish health control measures as may be necessary.

HISTORY: 1962 Code Section 25‑53; 1952 Code Section 25‑53; 1942 Code Section 9113; 1939 (41) 265; 1987 Act No. 173, Section 19.

CROSS REFERENCES

Procedures for the condemnation of property, see the Eminent Domain Procedure Act Section 28‑2‑10 et seq.

Library References

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LAW REVIEW AND JOURNAL COMMENTARIES

“Takings Reform” and the Process of State Legislative Change in the Context of a “National Movement”. 50 S.C. L. Rev. 93, Fall 1998.

NOTES OF DECISIONS

In general 1

1. In general

Conditions of land sale obligating seller to obtain permission of third party corporation and run 40 foot wide canal from southern boundary of subject property through corporation property for distance of 1 mile were properly construed as requiring procurement of easement prior to closing date, but not requiring actual completion of construction of canal by that time. Sales Intern. Ltd. v. Black River Farms, Inc. (S.C. 1978) 270 S.C. 391, 242 S.E.2d 432. Vendor And Purchaser 79

**SECTION 28‑3‑140.** Public property not exempt from condemnation; exception for public electric utility property.

No lands, rights‑of‑way, easements, or any interests in real or personal property which have been, or may be acquired for schools, churches, graveyards, municipal corporations, or subdivisions of them, or for the construction or use of any highway, railroad, railway, canal, telegraph, power line, telephone, or other public service use are exempt from condemnation. In any condemnation actions affecting properties of railroad, canal, telephone, telegraph, electric power, and other public service companies, where the companies have placed their structures across navigable streams, or canals and waterways built or to be built for purposes of navigation and hydroelectric purposes, the question of compensation and special damages, including the costs of removing, rebuilding, or relocating structures of any kind belonging to the companies on the properties, must be determined in accordance with principles of law now prevailing. No public electric utility property may be condemned unless it is located within the proposed area of any reservoir, or is needed in connection therewith for flowage purposes, or essential for the construction of any dam or reservoir or tail race or navigation channel.

HISTORY: 1962 Code Section 25‑64; 1952 Code Section 25‑64; 1942 Code Section 9124; 1939 (41) 265; 1987 Act No. 173, Section 20.

CROSS REFERENCES

Condemnation by Department of Transportation of property of public service corporations, see Section 57‑5‑380.

Procedures for the condemnation of property, see the Eminent Domain Procedure Act Section 28‑2‑10 et seq.

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