

FINAL REPORT
OF THE
EMINENT DOMAIN STUDY COMMITTEE

The Eminent Domain Study Committee was established in 1969 by House Concurrent Resolution 21 for the purpose of conducting a comprehensive study of the Iowa Code relating to eminent domain and to report to the Legislative Council and the Sixty-third General Assembly, Second Session. Since the Eminent Domain Study Committee was unable to complete its study during the 1969 legislative interim, the Committee requested from the Legislative Council that it be allowed to continue functioning during the 1970 legislative interim. Accordingly in May, 1970 the Legislative Council by motion voted to recreate the Eminent Domain Study Committee to carry out further studies during the 1970 legislative interim. The Legislative Council named Representative Berl Priebe, Algona, to replace Representative William Gannon, Mingo, and added Senator James Griffin, Council Bluffs, and Representative Harold O. Fischer, Wellsburg, Chairmen of the Senate and House Committees on Commerce, respectively, to the Study Committee membership.

Holdover members of the Committee are:

Representative Edgar H. Holden, Davenport,
Chairman
Senator James Briles, Corning, Vice Chairman
Senator Andrew G. Frommelt, Dubuque
Senator Herbert L. Ollenburg, Garner
Representative Delwyn Stromer, Garner
Mr. Ira Delk, Sioux City
Mr. Robert Mickle, Des Moines
Mr. William Pappas, Mason City
Mr. Hugo Schnekloth, Eldredge

The Committee was concerned in 1969 with improving the general condemnation procedures and the procedures by which the right to exercise eminent domain is granted to pipeline companies and electric utility companies by the Iowa State Commerce Commission. The following bills recommended by the Eminent Domain Study Committee were enacted by the Sixty-third General Assembly, Second Session:

1. S.F. 1135 (Chapter 1030), An Act which repealed the power of eminent domain for certain agencies and entities.
2. S.F. 1171 (Chapter 1225), An Act which establishes procedures for selection and operation for compensation commissions.
3. S.F. 1185 (Chapter 1230), An Act which relates to the exercise of eminent domain by electric utilities.

4. S.F. 1184 (Chapter 1231), An Act which relates to the exercise of eminent domain by pipeline companies.
5. S.F. 1136 (Chapter 1226), An Act which requires the enumeration of damages in land acquisition cases for highway purposes upon the request of the landowners.

At meetings held during the 1970 legislative interim a number of persons and organizations appeared before the Committee and presented testimony. Included among them were the Attorney General of Iowa, representatives from the Commerce Commission, the Director of the Iowa Real Estate Commission, representatives from the Iowa State Highway Commission and the Iowa County Engineers Association, a registered surveyor, appraisers, landowners, representatives from the Iowa Farmers Union, the Iowa Farm Bureau Federation, Northern Natural Gas Company, Corn Belt Power Cooperative, Iowa Electric Light and Power Company, and the Iowa Railway Committee.

Prior to the final passage by the General Assembly of Senate Files 1184 and 1185, an Opinion from the Iowa Attorney General regarding the constitutionality of the two bills had been obtained. Attorney General Turner's Opinion, issued April 14, 1970, declared that Senate Files 1184 and 1185 as introduced were unconstitutional. The two bills, which were enacted and signed into law by the Governor, require electric utility and pipeline companies to hold informational meetings in each county affected by a proposed project prior to submitting an application to the Iowa State Commerce Commission for a permit or franchise for the project and prior to negotiations for easements. This procedure is similar to the procedure presently required for federal aid highway projects. The two bills had been amended in both houses but basically retained the Committee recommendations.

At the first meeting of the Eminent Domain Study Committee during the 1970 interim, the viewpoints of the Attorney General's Opinion were questioned because the Opinion was based on the bills as originally introduced and not as finally adopted. Because of this fact the Committee decided that another Opinion should be requested of the Attorney General. The Attorney General indicated in correspondence addressed to Chairman Holden, dated September 18, 1970, that the Acts as they were finally approved are not substantially different from the bills as introduced, and the unconstitutional features remain. After considerable discussion the Committee voted to recommend changes in Senate Files 1184 and 1185 to require that landowners receive written notice of their rights and a description of a proposed project. The informational meetings are no longer required, but the hearing by the Iowa State Commerce Commission, if one is required, must be held in a county affected by the proposed project if requested by 5% of the affected landowners in the county. Copies of Bills XVIII and XIX are attached to the Report. The Legislative Council disapproved Bills XVIII and XIX.

Because grants of the right to exercise eminent domain are distributed throughout the Code, the Eminent Domain Study Committee recommends that all sections relating to condemnation be codified into one chapter of the Code. A copy of Bill XV is attached to the Report.

The Committee had postponed until the 1970 interim discussion concerning the retention of the five special condemnation procedures prescribed in the Code and had agreed that Chapter 472 should be used for all condemnation cases, if possible. The first additional condemnation procedure is set forth in Chapter 306 of the Code and authorizes county boards of supervisors to take land for changes in roads, stream beds, or dry runs. Although some members of the Committee expressed the belief that the use of the special procedure should be restricted to projects involving only one of two parcels of property and less than one mile in length, the Committee recommends that the use of the special procedure should be eliminated. A copy of Bill XIII which requires county boards of supervisors to use the procedures of Chapter 472 is attached to this Report.

The Municipal Laws Review Study Committee was consulted regarding the use of Chapter 397 of the Code, which allows a city or town to condemn existing public utility plants and Chapter 383 of the Code which allows a city to condemn an existing bridge. The Municipal Laws Review Study Committee recommended that cities be given a general grant of the right to exercise eminent domain for any public purpose, and section 20 of Bill XV contains the general grant for cities. The Committee recommends that the special procedure outlined in Chapter 397 of the Code be retained, but be transferred to Chapter 472 and that the special procedure outlined in Chapter 383 of the Code be eliminated. Copies of Bills XXI and XXII are attached to the Report.

The special procedure in Chapter 465 of the Code, which allows landowners to take the land of others for drainage purposes was discussed by the Committee, and the Committee recommends Bill III, a copy of which is attached to this Report, which eliminates the special procedure for determining compensation and specifies the use of Chapter 472.

The Committee recommends that the right of eminent domain granted in Chapter 469 of the Code to any person, firm, corporation or municipality for the purpose of taking lands for construction of a dam, raceway, canal, or other construction necessary to utilize water power, be repealed. A copy of Bill IV is attached to this Report.

The Committee heard testimony which indicated that there appears to be ambiguity in the interpretation of section 490.2 regarding the definition of a pipeline. Pipeline is defined to "include and mean any pipe, pipes or pipelines used for the transportation for transmission of gas, gasoline, oils or motor fuel and/or inflammable fluids within or through this state." Since the number of substances being transported by pipelines is con-

stantly increasing, the Committee determined that in order for such pipelines to be regulated by the Iowa State Commerce Commission, the definition of pipelines should be broadened to include any solid, liquid, or gaseous substance, except water. The Committee recommends Bill XIV, a copy of which is attached to the Report, which broadens the definition of a pipeline.

The Committee heard testimony from representatives of the Iowa State Highway Commission and the County Engineers Association regarding section 472.26 of the Code. Section 472.26 prohibits landowners from being dispossessed of their residences, dwelling houses, outhouses, orchards, or gardens until the damages have been finally determined and paid. Testimony indicated that highway projects and county road projects can be delayed for long periods of time because of one or two landowners. The Committee recommended that if the property is condemned for highway purposes, the condemning authority be allowed to take possession of the property 180 days after the application for condemnation has been filed. A copy of Bill V is attached to this Report. The Legislative Council Disapproved Bill V.

The Committee discussed the present law relating to licensing of real estate brokers and salesmen with Mr. Cecil Galvin, Director, Iowa Real Estate Commission. The Committee had heard testimony from landowners that persons seeking to acquire easements for pipeline companies based in other states did not possess Iowa real estate salesmen's or brokers' licenses. Mr. Galvin indicated that if a person is purchasing real estate on a contract basis for a firm, he should be licensed under present law. The Committee agreed that the present law appears to be clear, but should be enforced and Mr. Galvin was requested to correspond with utility companies operating in Iowa and to inform them that persons purchasing land for them on a contract basis must be licensed by the Iowa Real Estate Commission.

The Committee received copies of a booklet issued by the Iowa State Highway Commission entitled Utility Accommodation Policy of the Iowa State Highway Commission. Since the booklet was never submitted to the Departmental Rules Review Committee for its approval, the Committee directed Chairman Holden to request an Opinion from the Attorney General regarding the legality of the utility accommodation policy of the Highway Commission.

The Committee discussed payment of damages and compensable items of damage with landowners, appraisers, representatives of the Highway Commission, pipeline companies, electric utility companies, the County Engineers Association, the Farm Bureau Federation, and the Farmers Union.

In connection with a study of factors to be considered in compensation and damage awards, the Committee, after studying legislation from other states and a copy of a Model Eminent Domain

Code prepared by the American Bar Association, recommends the following bills:

1. A bill to require that landowners be informed that they may renegotiate damages for a period of three years following the original damage settlement.
2. A bill allowing the county board of supervisors to employ a person for the purpose of insuring that subsurface improvements to property are replaced during the construction period. The inspector must be paid by the utility company.

Copies of Bills IX and XXIII are attached to the Report.

The Eminent Domain Study Committee requested that a bill be prepared to establish a damage commission which would be composed of three members selected from the list of persons eligible to serve as compensation commissioners which could be used to arbitrate disagreements regarding compensation for damages. The bill did not receive the necessary seven votes to recommend it to the Legislative Council.

The Committee also discussed the concept of reimbursing a landowner, whose property is taken for a public use, for any increased interest costs or other costs required in the acquisition of similar property. The recommendation did not receive the necessary seven votes to recommend it to the Legislative Council.

The Committee voted to make no recommendations regarding the constitutional provision which prohibits offsetting benefits to a landowner against damages.

Many persons appearing before the Committee expressed concern about a bill which was enacted during the 1970 legislative session which requires condemnors to furnish landowners with a legal description of the portion of land taken and a legal description of the remainder. Surveyors are concerned that the legal description of the remainder would provide landowners with a survey of their property, and private surveyors will no longer be needed. Testimony was received concerning the types of legal descriptions provided which are a center line description by the Highway Commission and a metes and bounds description by the county engineers. The Committee recommends Bill VI which requires that the description of the remainder be compatible with the existing abstract description of the entire tract of land, and that center line descriptions are compatible only when they contain reference points which are a part of and tied to the abstract description.

The Committee discussed Senate File 1157, enacted during the 1970 legislative session, which requires the board or commission having jurisdiction and control over roads to provide alternative access facilities to landowners whose regular access is no

longer usable. The Committee discussed with representatives from the Highway Commission the manner in which Senate File 1157 is being implemented and discovered that the Highway Commission is not maintaining temporary alternative access facilities. The Committee recommends an amendment to Senate File 1157 to specify that both temporary and permanent access facilities must be maintained by the board or commission having jurisdiction and control over such roads. A copy of Bill XI is attached to this Report.

The Committee heard testimony from representatives of the Iowa Railway Committee and from landowners who were concerned about the reversion of land which has been abandoned by railroads. The Committee does not recommend any changes in the railroad laws at this time. The Committee also discussed payment of damages for underground gas storage facilities, but does not recommend any changes in the laws at this time.

A series of bills are recommended by the Eminent Domain Study Committee which are corrective in nature and relate to the bills enacted during the Sixty-third General Assembly, Second Session. The Committee recommends that Senate Files 1184 and 1185 be amended to exempt short distance, low voltage or low pressure electric lines or pipelines from the additional petition and informational meeting requirements. The Committee recommends an amendment to section 489.6 of the Code, to remove the words "board or". The Committee recommends a change in Senate File 1171, which establishes compensation commissions, to place a dependent clause within the correct sentence. The Committee also recommends that Senate File 1184 be amended to conform with language used in Senate File 1185. Copies of these bills are attached to the Report.

BILL NO. I
Drafted by the Legislative
Service Bureau for the Eminent
Domain Study Committee for
discussion purposes only.
October 20, 1970

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act to remove references to the granting of a franchise to
2 an electric utility company by the county board of super-
3 visors.

4 *Be It Enacted by the General Assembly of the State of Iowa:*

5 Section 1. Section four hundred eighty-nine point six
6 (489.6), Code 1971, is amended as follows:

7 489.6 TAKING UNDER EMINENT DOMAIN. Upon the filing of
8 such objections or when a petition involves the taking of
9 property under the right of eminent domain the board-er com-
10 mission shall set the matter for hearing and fix a time and
11 place therefor. Said hearing shall be not less than thirty
12 days from the date of last publication and at the offices of
13 the board-er commission before which said matter is pending,
14 unless a different place is specified in the notice thereof.
15 Written notice of the time and place of such hearing shall
16 be served by the board-er commission, by ordinary mail, on
17 the applicant, and those having filed objections. If no
18 objections are filed as hereinbefore provided and the peti-
19 tion does not involve the taking of property under the right
20 of eminent domain the board-er commission may grant a fran-
21 chise without hearing thereon, however, nothing hercin shall
22 be construed as prohibiting the board-er commission from con-
23 ducting a hearing if it deems it necessary.

24 Where a petition seeks the use of the right of eminent
25 domain over specific parcels of real property, the commission

1 shall prescribe the notice to be served upon the owners of
2 record and parties in possession of said property over which
3 the use of the right of eminent domain is sought.

4 When the commission grants a franchise to any person,
5 company, or corporation for the construction, erection,
6 maintenance, and operation of transmission lines, wires,
7 and cables for the transmission of electricity, such person,
8 company, or corporation shall be vested with the power of
9 condemnation to such extent as the commission may approve
10 and find necessary for public use.

11 EXPLANATION

12 This bill is corrective legislation to remove the powers
13 to grant a franchise by the county board of supervisors from
14 section 489.6 of the Code. The power has already been
15 removed from other sections of chapter 489.

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BILL NO. II
Drafted by the Legislative
Service Bureau for the Eminent
Domain Study Committee for
discussion purposes only.
October 21, 1970

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act to exempt certain electric utility projects from peti-
2 tion requirements.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

4 Section 1. Section four hundred eighty-nine point three
5 (489.3), Code 1971, is amended as follows:

6 489.3 PETITION--REQUIREMENTS.

7 1. The-petition All petitions shall set forth:

8 1a. The name of the individual, company, or corporation
9 asking for the franchise.

10 2b. The principal office or place of business.

11 3c. The starting points, routes, and termini of the pro-
12 posed lines, accompanied with a map or plat showing such
13 details.

14 4d. A general description of the public or private lands,
15 highways, and streams over, across, or along which any pro-
16 posed line will pass.

17 5e. General specifications as to materials and manner of
18 construction.

19 6f. The maximum voltage to be carried over each line.

20 7g. Whether or not the exercise of the right of eminent
21 domain will be used and, if so, a specific reference to the
22 lands described in subsection 4 which are sought to be subject
23 thereto.

24 8h. An allegation that the proposed construction is neces-
25 sary to serve a public use and.

1 2. Petitions for transmission lines carrying thirty-four
2 point five kilovolts or more and extending a distance of not
3 less than one mile across privately owned real estate shall
4 also set forth an allegation that the proposed construction
5 represents a reasonable relationship to an overall plan of
6 transmitting electricity in the public interest and
7 substantiation of such allegations, including but not
8 limited to, a showing of the following:

9 a. The relationship of the proposed project to present and
10 future economic development of the area.

11 b. The relationship of the proposed project to comprehen-
12 sive electric utility planning.

13 c. The relationship of the proposed project to the needs
14 of the public presently served and future projections based
15 on population trends.

16 d. The relationship of the proposed project to the exist-
17 ing electric utility system and parallel existing utility
18 routes.

19 e. The relationship of the proposed project to any other
20 power system planned for the future.

21 f. The possible use of alternative routes and methods of
22 supply.

23 g. The relationship of the proposed project to the present
24 and future land use and zoning ordinances.

25 h. The inconvenience or undue injury which may result to
26 property owners as a result of the proposed project.

27 The commission may waive the proof required for such alle-
28 gations which are not applicable to a particular proposed
29 project.

30 9.--An The petition shall contain an affidavit stating that
31 informational meetings were held in each county which the pro-
32 posed project will affect and the time and place of each meet-
33 ing.

34 Sec. 2. Section four hundred eighty-nine point thirty-one
35 (489.31), Code 1971, is amended as follows:

1 489.31 TEMPORARY PERMITS FOR LINES LESS THAN ONE MILE.
2 Notwithstanding the provisions of section 489.1 any person,
3 company or corporation proposing to construct an electric
4 transmission line not exceeding one mile in length and which
5 does not involve the taking of property under the right of
6 eminent domain may obtain a temporary construction permit from
7 the state commerce commission by proceeding in the manner
8 hereinafter set forth. Said person, company or corporation
9 shall first file with the state commerce commission a verified
10 petition setting forth all the requirements of section 489.3,
11 subsection one (1), paragraphs a through h, inclusive, with
12 the further allegation that the petitioner is the nearest
13 electric utility to the proposed point of service.

14 The petition shall also state that the filing thereof con-
15 stitutes an application for a temporary construction permit
16 and shall also have endorsed thereon the approval of the appro-
17 priate highway authority or railroad concerned if such line is
18 to be constructed over, across or along a public highway or
19 railroad.

20 Upon receipt of such petition the commission shall consider
21 same and may grant a temporary construction permit in whole
22 or in part or upon such terms, conditions and restrictions,
23 and with such modifications as to location as may seem to it
24 just and proper, however, no finding of public use will be
25 made at the time of the issuance of the permit, such finding
26 to be made, if substantiated by petitioner, at the subsequent
27 consideration of the propriety of granting a franchise for the
28 line subject to the permit. The signature of one commissioner
29 on such permit shall be sufficient. The issuance of such per-
30 mit shall constitute temporary authority for the permit holder
31 to construct the line for which the permit is granted.

32 Upon the granting of such temporary construction permit
33 the commission shall cause the publication of notice required
34 by section 489.5 and all other requirements shall be complied
35 with as in the manner provided for the granting of a franchise.

1 If a hearing is required then the petitioner shall make a suf-
2 ficient and proper showing thereat before a franchise will be
3 issued for the line. Any franchise issued will be subject to
4 all applicable provisions of this chapter.

5 Notwithstanding anything foregoing, if the commission shall
6 determine that a franchise should not be granted, or that
7 further restrictions, conditions or modifications are required,
8 or if the petitioner shall fail to make a sufficient and
9 proper showing of the necessity for the granting of a fran-
10 chise within six months of the granting of the temporary con-
11 struction permit, the permit issued hereunder shall become
12 null and void and the permit holder may be required to take
13 such action deemed necessary by the commission to remove,
14 modify or relocate the construction undertaken by virtue of
15 the temporary permit issued hereunder.

16 EXPLANATION

17 This bill exempts an electric utility company project for
18 lines not exceeding one mile in length and carrying less than
19 34.5 kilovolts from the requirements that the petition contain
20 an allegation that the proposed construction represents a
21 reasonable relationship to an overall plan of transmitting
22 electricity in the public interest and substantiation of the
23 allegations.

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BILL NO. III.
Drafted by the Legislative
Service Bureau for the Eminent
Domain Study Committee for
discussion purposes only.
October 20, 1970

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the use of eminent domain for individual
2 drainage rights.

3 *Be It Enacted by the General Assembly of the State of Iowa:*

4 Section 1. Section four hundred sixty-five point six (465.6),
5 Code 1971, is amended as follows:

6 465.6 HEARING--SUFFICIENCY OF APPLICATION--DAMAGES. At the
7 time set for hearing on the application, if the board shall find
8 that all necessary parties have been served with notice as
9 required, they shall proceed to hear and determine the sufficiency
10 of the application as to form and substance, which application
11 may be amended both as to form and substance before final action
12 thereon. They shall also determine the merits of the applica-
13 tion, all objections thereto, and all claims filed for damages
14 or compensation; and may view the premises. The board may adjourn
15 the proceedings from day to day, but no adjournment shall be for
16 a longer period than ten days.

17 Sec. 2. Section four hundred sixty-five point seven (465.7),
18 Code 1971, is amended as follows:

19 465.7 SHALL LOCATE WHEN--SPECIFICATIONS. If the supervisors
20 find that the levee, ditch, or drain petitioned for will be
21 beneficial for sanitary, agricultural, or mining purposes, they
22 shall locate the same and fix the points of entrance and exit
23 on such land or property, the course of the same through each
24 tract of land, the size, character, and depth thereof, when and,
25 in what manner the same shall be constructed, how kept in repair,

1 what connections may be made therewith, what-compensation; -if-any;
2 shall-be-made-to-the-owners-of-such-land-or-property-for-damages
3 by-reason-of-the-construction-of-any-such-improvements; and any
4 other question arising in connection therewith. The procedure
5 for determining what compensation, if any, shall be made to the
6 owners of the property for damages by reason of the construction
7 of any drainage improvements shall be conducted in the manner
8 provided by chapter 472.

9 Sec. 3. Section four hundred sixty-five point eight (465.8),
10 Code 1971, is amended as follows:

11 465.8 FINDINGS--RECORD. The board shall reduce its findings,
12 decision, and determination to writing, which shall be filed with
13 the auditor, who shall record it in the official record of the
14 board's proceedings, together with the application and all other
15 papers filed in connection therewith, and he shall cause the
16 findings and decision of the board to be recorded in the office
17 of the recorder of the county in which such land is situated and
18 said decision shall be final unless appealed from as provided in
19 section 465.9. The auditor shall distribute a copy of the find-
20 ings, decision, and determination of the board to the sheriff
21 who shall transmit the papers to the compensation commission.

22 Sec. 4. Section four hundred sixty-five point nine (465.9),
23 Code 1971, is amended as follows:

24 465.9 APPEAL--NOTICE. Either party may appeal to the district
25 court from any such decision of the board by causing to be served,
26 within ten days from the time it was filed with the auditor, a
27 notice in writing upon the opposite party of the taking of such
28 appeal, which notice shall be served in the same manner as is
29 provided for the service of original notices. If the appellant
30 is the party petitioning for the drain, he shall also file a
31 bond, conditioned to pay all costs of appeal that may be assessed
32 against him, which bond, if good and sufficient, shall be approved
33 by the auditor.

34 Sec. 5. Section four hundred sixty-five point twelve (465.12),
35 Code 1971, is amended as follows:

1 465.12 PARTIES--JUDGMENT--ORDERS. The party-claiming-damages
2 shall-be-the-plaintiff-and-the applicant shall be the defendant;
3 and the court shall render such judgment as shall be warranted
4 by the verdict, the facts, and the law upon all the matters in-
5 volved, and make such orders as will cause the same to be carried
6 into effect.

7 Sec. 6. Section four hundred sixty-five point fourteen (465.14),
8 Code 1971, is amended as follows:

9 465.14 CONSTRUCTION. Before-entering-on-the-construction-of
10 the-drain;-the-party-applying-therefor-shall-pay-to-the-party
11 through-whose-land-said-drain-is-to-be-constructed-the-damages
12 awarded-to-him;-or-shall-pay-the-same-to-the-board-for-his-use:
13 The applicant may proceed to construct said drain in accordance
14 with the decision of the board, and the taking of an appeal shall
15 not delay such work.

16 Sec. 7. Section four hundred sixty-five point fifteen
17 (465.15), Code 1971, is amended as follows:

18 465.15 CONSTRUCTION THROUGH RAILROAD PROPERTY. If any such
19 ditch or drain shall be located through or across the right of
20 way or other land of a railroad company, the-board-shall-determine
21 the-cost-of-constructing-the-same-and the railroad company shall
22 have the privilege of constructing such improvement through its
23 property in accordance with the specifications made by the board
24 and recover the costs thereof as fixed by the board compensation
25 commission. Such railroad company before it may exercise such
26 privilege shall file its election to that effect with the auditor
27 within five days after the decision of the board is filed.

28 Sec. 8. Section four hundred sixty-five point sixteen
29 (465.16), Code 1971, is amended as follows:

30 465.16 DEPOSIT. In case such election is filed the applicant
31 shall within ten days thereafter pay to the auditor sheriff, for
32 the use of the railroad company, the cost of constructing the
33 drainage improvement through its property, in addition to the
34 amount that may be allowed as damages, and when the railroad
35 company shall have completed the improvement through its