

**1572.0030 RECAPTURE OF LARGE CAPITAL INVESTMENT.**

Subpart 1. **Provision required; definitions.** A producer may recover damages under Minnesota Statutes, section 17.92, subdivision 1, clause (2), only if the producer has a written contractual obligation to provide a capital improvement of \$100,000 or more.

If a contract states in writing that a producer must make a large capital investment in order to fulfill the contract, the contract must contain a provision allowing the producer to recover through mutual agreement, litigation, or other legal process a portion of that investment if the contract is terminated or canceled prematurely. "Termination" and "cancellation" do not include expiration of the contract. "Large capital investment" means a capital investment that costs \$100,000 or more and has a useful life of five years or more. Minnesota Statutes, section 17.92, applies only to contracts that are signed after August 1, 1990.

Producers receiving notice under Minnesota Statutes, section 17.92, subdivision 2, are not eligible for recaptured damages if the producer has committed a material breach of the contract. The damages to be determined under Minnesota Statutes, section 17.92, subdivision 1, do not include payment for the reasonable useful life of an asset that extends beyond the term of the contract.

Subp. 2. **Bond or letter of credit.** A contractor may terminate a contract if the contractor secures a bond or irrevocable letter of credit in a sufficient amount to cover the probable claim if the damages the producer is entitled to under Minnesota Statutes, section 17.92, subdivision 1, clause (2), have not been received within 180 days after notice of intent to terminate has been given.

Subp. 3. **Relationship to production cycle.** If the 180- or 90-day notice periods expire before the end of a production cycle, the contract will not terminate until the end of that production cycle. A contractor may terminate a contract at the end of a production cycle that occurs before the end of the 180- or 90-day notice period has expired if the producer agrees to the termination.

**Statutory Authority:** *MS s 17.945*

**History:** *15 SR 1924*

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