

CHAPTER 595—S.F.No.1763

[Coded]

An act relating to eminent domain proceedings and the acquisition of property for public purposes; amending Minnesota Statutes 1969, Chapter 117, by adding sections; repealing Minnesota Statutes 1969, Sections 117.01 to 117.202; 117.32 to 117.37; 117.42 to 117.45; and 462.445, Subdivision 2.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Minnesota Statutes 1969, Chapter 117, is amended by adding a section to read:

[117.011] EMINENT DOMAIN; PROCEEDINGS. All bodies, public or private, who have the right of eminent domain, when exercising such right, shall do so in the manner prescribed by chapter 117, even though a different procedure may be provided by charter provisions, ordinance or statute, but nothing herein shall apply to the taking of property under laws relating to drainage when such laws themselves expressly provide for such taking and specifically prescribe the procedure connected therewith.

Sec. 2. Minnesota Statutes 1969, Chapter 117, is amended by adding a section to read:

[117.016] JOINT ACQUISITION OF LAND. Subdivision 1. STATE OR ANY OF ITS AGENCIES OR POLITICAL SUBDIVISIONS. Whenever the state or any of its agencies or political subdivisions thereof is acquiring property for a public purpose and it is determined that a portion or a part of a tract of land is necessary for its particular public purpose and that other portions or parts of the same tract of land or the remainder thereof are needed by another agency or political subdivision of the state for a public purpose, the state or its agencies or political subdivisions desiring such lands or parts thereof may enter into an agreement each with the other for the joint acquisition of such lands by eminent domain proceedings.

Subd. 2. AGREEMENT TO STATE PURPOSE AND DESCRIBE LAND. Such agreement shall state the purpose of the land acquisitions and shall describe the particular portion or part of the tract of land desired by each of the public bodies and shall include provisions for the division of the cost of acquisition of such properties and all expenses incurred therein.

Subd. 3. PROCEDURE. The proceedings in eminent domain for the acquisition of the lands so desired shall be instituted and carried to completion in the names of the parties to the agreement describing the lands each shall acquire but for the purposes of the proceedings

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and for ascertaining the damages for the taking, the lands so acquired shall be treated as one parcel.

Sec. 3. Minnesota Statutes 1969, Chapter 117, is amended by adding a section to read:

[117.025] DEFINITIONS. Subdivision 1. WORDS, TERMS, AND PHRASES. Unless the language or context clearly indicates that a different meaning is intended, the words, terms, and phrases defined in this section have the meanings given them.

Subd. 2. TAKING. Taking and all words and phrases of like import include every interference, under the right of eminent domain, with the possession, enjoyment, or value of private property.

Subd. 3. OWNER. "Owner" includes all persons interested in such property as proprietors, tenants, life estate holders, encumbrancers, or otherwise.

Sec. 4. Minnesota Statutes 1969, Chapter 117, is amended by adding a section to read:

[117.035] PROCEEDINGS, BY WHOM INSTITUTED. If such property be required for any authorized purpose of the state, the proceeding shall be taken in the name of the state by the attorney general upon request of the officer, board, or other body charged by law with the execution of such purpose; if by a corporation or other body, public or private, authorized by law to exercise the right of eminent domain, in its corporate or official name and by the governing body thereof; and if by an individual so authorized, in his own name.

Sec. 5. Minnesota Statutes 1969, Chapter 117, is amended by adding a section to read:

[117.041] ENTRY FOR SURVEYS. For the purpose of making surveys and examinations relative to any proceedings under this chapter, it shall be lawful to enter upon any land, doing no unnecessary damage.

Sec. 6. Minnesota Statutes 1969, Chapter 117, is amended by adding a section to read:

[117.042] POSSESSION. Whenever the petitioner shall require title and possession of all or part of the owner's property prior to the filing of an award by the court appointed commissioners, the petitioner shall, at least 90 days prior to the date on which possession is to be taken, notify the owner of the intent to possess by notice served by registered mail and shall pay to the owner or deposit with the court an amount equal to petitioner's approved appraisal of value. If it is deemed necessary to deposit the above amount with the court

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the petitioner may apply to the court for an order transferring title and possession of the property or properties involved from the owner to the petitioner.

Sec. 7. Minnesota Statutes 1969, Chapter 117, is amended by adding a section to read:

[117.045] COMPELLING ACQUISITION IN CERTAIN CASES. If a person successfully brings an action compelling an acquiring authority to initiate eminent domain proceedings relating to his real property which was omitted from any current or completed eminent domain proceeding, such person shall be entitled to petition the court for reimbursement for his reasonable costs and expenses, including reasonable attorney, appraisal and engineering fees, actually incurred in bringing such action. Such costs and expenses shall be allowed only in accordance with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 84 Stat. 1894 (1971), any acts amendatory thereof, any regulations duly adopted pursuant thereto, or regulations duly adopted by the state of Minnesota, its agencies or political subdivisions pursuant to law.

Sec. 8. Minnesota Statutes 1969, Chapter 117, is amended by adding a section to read:

[117.055] PETITION AND NOTICE. In all cases a petition, describing the desired land, stating by whom and for what purposes it is proposed to be taken, and giving the names of all persons appearing of record or known to the petitioner to be the owners thereof shall be presented to the district court of the county in which the land is situated praying for the appointment of commissioners to appraise the damages which may be occasioned by such taking. Notice of the objects of the petition and of the time and place of presenting the same shall be served at least 20 days before such time of presentation upon all persons named in the petition as owners as defined in section 3, subdivision 3 of this act, and upon all occupants of such land in the same manner as a summons in a civil action. If any such owner be not a resident of the state, or his place of residence be unknown to the petitioner, upon the filing of an affidavit of the petitioner, his agent or attorney, stating that he believes that such owner is not a resident of the state, and that he has mailed a copy of the notice to him at his place of residence, or that after diligent inquiry his place of residence cannot be ascertained by the affiant, then service may be made upon such owner by three weeks' published notice. If the state be an owner, the notice shall be served upon the attorney general. Any owner not served as herein provided shall not be bound by such proceeding unless he voluntarily appears therein. Any owner shall be furnished a right of way map or plat of all that part of his land to be taken upon written demand, provided that the petitioner shall have ten days from the receipt of the demand within which to furnish

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the same. Any plans or profiles which the petitioner has shall be made available to the owner for inspection.

Sec. 9. Minnesota Statutes 1969, Chapter 117, is amended by adding a section to read:

[117.065] NOTICE OF PENDENCY. At the time of filing the petition the petitioner may file for record with the register of deeds a notice of the pendency of the proceeding, describing with reasonable certainty the lands affected and for what purpose they are to be taken. If the proceeding be abandoned in whole or in part the petitioner shall within ten days thereafter file with the register of deeds a notice to that effect, describing with reasonable certainty the lands so abandoned.

Sec. 10. Minnesota Statutes 1969, Chapter 117, is amended by adding a section to read:

[117.075] COURT TO APPOINT COMMISSIONERS. Upon proof being filed of the service of such notice, the court, at the time and place therein fixed or to which the hearing may be adjourned, shall hear all competent evidence offered for or against the granting of the petition, regulating the order of proof as it may deem best. If the proposed taking shall appear to be necessary and such as is authorized by law, the court by an order shall appoint three disinterested commissioners, and at least two alternates, residents of the county, to ascertain and report the amount of damages that will be sustained by the several owners on account of such taking. The order shall fix the time and place of the first meeting of the three commissioners and prescribe their compensation. It may, in the discretion of the court, limit the title or easement to be acquired by the petitioner by defining the rights and privileges which the owner of any of the lands may exercise therein in subordination to the public uses to which it is appropriated. In case any of the commissioners fail to act, the court without further notice may appoint another in his place.

Sec. 11. Minnesota Statutes 1969, Chapter 117, is amended by adding a section to read:

[117.085] COMMISSIONERS, POWERS, DUTIES. The commissioners, having been duly sworn and qualified according to law, shall meet as directed by the order of appointment and hear the allegations and proofs of all persons interested touching the matters to them committed. They may adjourn from time to time and from place to place within the county, giving oral notice to those present of the time and place of their next meeting. All testimony taken by them shall be given publicly, under oath, and in their presence. They shall view the premises, and any of them may subpoena witnesses, which shall be served as subpoenas in civil actions are served, and at the cost

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of the parties applying therefor. If deemed necessary, they may require the petitioner or owner to furnish for their use maps, plats and other information which the petitioner or owner may have showing the nature, character and extent of the proposed undertaking and the situation of lands desired therefor. In proper cases they may reserve to the owner a right of way or other privilege in or over the land taken, or attach reasonable conditions to such taking in addition to the damages given or they may make an alternative award, conditioned upon the granting or withholding of the right specified. Without unreasonable delay they shall make a separate assessment and award of the damages which in their judgment will result to each of the owners of the land by reason of such taking and report the same to the court. The commissioners, in all such proceedings, may in their discretion allow and show separately in addition to the award of damages, reasonable appraisal fees not to exceed a total of \$300. Upon request of an owner the commissioners shall show in their report the amount of the award of damages which is to reimburse the owner and tenant or lessee for the value of the land taken, and the amount of the award of damages, if any, which is to reimburse the owner and tenant or lessee for damages to the remainder involved, whether or not described in the petition. The amounts awarded to each person shall also be shown separately.

Sec. 12. Minnesota Statutes 1969, Chapter 117, is amended by adding a section to read:

[117.095] RELOCATION ASSISTANCE. In all acquisitions, whether by eminent domain or by negotiation, instituted by any acquiring authority, irrespective of federal financial participation in any phase thereof, the acquiring authority, as a cost of land acquisition, is authorized to provide relocation assistance and any payments to those individuals and businesses eligible for such assistance and payments by virtue of the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 84 Stat. 1894 (1971), any acts amendatory thereof, any regulations adopted pursuant thereto, or regulations adopted by the state of Minnesota, or other acquiring authority pursuant to law. All acquiring authorities are authorized to cooperate to the fullest extent with federal authorities, and they shall take all necessary action in order to insure that the relocation assistance and payments are provided in such manner so as to insure federal financial participation, including the right of the acquiring authority to construct new housing, acquire existing housing, rehabilitate existing housing and relocate existing housing, in accordance with the provisions of the Federal-Aid Highway Act of 1970, 84 Stat. 1713 (1971), where projects cannot proceed to construction because replacement housing cannot be made available. Nothing in this section shall be construed as creating in any condemnation proceedings brought by any acquiring authority under the power of eminent domain any element of damages not

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recognized on August 22, 1968. The provisions of this section shall create no rights or liabilities in any property acquisition by purchase or condemnation.

Sec. 13. Minnesota Statutes 1969, Chapter 117, is amended by adding a section to read:

[117.105] FILING OF REPORT, TIME, FAILURE TO REPORT. Subdivision 1. The report of the commissioners shall be filed with the clerk of district court within 90 days from the date of the order appointing the commissioners, unless such order otherwise prescribes, but for cause shown upon written motion of the petitioner and not less than three days notice thereof duly served by mail or otherwise upon such respondents, or their attorneys who entered an appearance at the hearing on the petition or notified the petitioner of their formal appearance, the court may extend the time for making and filing the report. If the petitioner serves such motion and notice thereof by mail, such service shall be at least six days prior to the date of the hearing on the motion.

Subd. 2. If the commissioners fail to file their report within the time provided by the order appointing the commissioners, or within any extension of time to file granted by the court, any owner may upon motion, after due notice to the petitioner, have the proceedings set aside as to him; but, for cause shown, the court may extend the time for making their report. If the proceedings are set aside as to any individual owner, he shall be entitled to reimbursement for reasonable costs and disbursements including attorney's fees.

Sec. 14. Minnesota Statutes 1969, Chapter 117, is amended by adding a section to read:

[117.115] REPORT, NOTICE. Subdivision 1. The commissioners shall, after notice to the petitioner, file their report with the clerk of district court and the petitioner shall pay the commissioners their fees and disbursements. The court shall determine any dispute concerning the fees and disbursements.

Subd. 2. Within ten days after the date of the filing of the report of commissioners, the petitioner shall notify each respondent and his attorney by mail of the filing of the report of commissioners setting forth the date of filing of the report, the amount of the award, and all the terms and conditions thereof as the same pertain to such respondent. Such notification shall be addressed to the last known post office address of each respondent and his attorney.

Sec. 15. Minnesota Statutes 1969, Chapter 117, is amended by adding a section to read:

[117.125] DEPOSIT IN COURT. Where the residence of a party is unknown, or he is an infant or other person under legal disability,

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or being legally capable, refuses to accept payment, or if for any reason it is doubtful to whom any award should be paid, the petitioner may pay the same to the clerk of district court, to be paid out under the direction of the district court; and unless an appeal is taken, as hereinafter provided, such deposit with the clerk shall be deemed a payment of the award. The award when deposited shall not draw interest from the date of deposit.

Sec. 16. Minnesota Statutes 1969, Chapter 117, is amended by adding a section to read:

[117.135] TAXES AND ASSESSMENTS. In all eminent domain proceedings taxes and assessments imposed upon the acquired property shall be compensated for as provided by Minnesota Statutes, Section 272.68.

Sec. 17. Minnesota Statutes 1969, Chapter 117, is amended by adding a section to read:

[117.086] NONCONTIGUOUS TRACTS; TREATMENT AS UNIT. Subdivision 1. In all eminent domain proceedings brought under this chapter noncontiguous tracts of land may be considered as a unit for the purpose of the assessment of the damages for a taking from only one of such tracts, provided that the use to which the tracts are applied is so connected, that the taking from one in fact damages the other.

Subd. 2. In the event that an appeal is taken, a party claiming a unity in noncontiguous tracts shall give notice thereof in his notice of appeal as provided in section 18 of this act.

Subd. 3. The petitioner, after receiving notice that the landowner claims a unity in noncontiguous tracts, may upon 10 days' written notice to the landowner, move the court for its order determining whether, as a matter of law, the landowner has suffered a taking of, or damage to, noncontiguous tracts by reason of the eminent domain proceedings brought under this chapter.

Sec. 18. Minnesota Statutes 1969, Chapter 117, is amended by adding a section to read:

[117.145] APPEAL. At any time within 40 days from the date that the report has been filed, any party to the proceedings may appeal to the district court from any award of damages embraced in the report, or from any omission to award damages, by filing with the clerk a notice of such appeal and mailing a copy of such notice to all parties of record having an interest in lands described in the appeal. Within ten days of the date of mailing any other party may appeal. The notice shall specify the particular award or failure to award appealed from, the nature and amount of the claim, the land to which it relates, and grounds of the appeal, and if applicable, the notice required in section 17 of this act.

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Sec. 19. Minnesota Statutes 1969, Chapter 117, is amended by adding a section to read:

[117.155] PAYMENTS; PARTIAL PAYMENT PENDING APPEAL. Except as otherwise provided herein payment of damages awarded may be made or tendered at any time after the filing of the report; and the duty of the petitioner to pay the amount of any award or final judgment upon appeal shall, for all purposes, be held and construed to be full and just compensation to the respective owners or the persons interested in the lands. If either the petitioner or any respondent appeals from an award, the respondent or respondents, if there is more than one, except encumbrancers having an interest in the award which has been appealed, may demand of the petitioner a partial payment of the award pending the final determination thereof, and it shall be the duty of the petitioner to comply with such demand and to promptly pay the amount demanded but not in excess of an amount equal to three fourths of the award of damages for the parcel which has been appealed, less any payments made by petitioner pursuant to section 6; provided, however, that the petitioner may by motion after due notice to all interested parties request, and the court may order, reduction in the amount of the partial payment for cause shown. If an appeal is taken from an award the petitioner may, but it cannot be compelled to, pay the entire amount of the award pending the final determination thereof. If any respondent or respondents having an interest in the award refuses to accept such payment the petitioner may pay the amount thereof to the clerk of district court to be paid out under direction of the court. A partial or full payment as herein provided shall not draw interest from the date of payment or deposit, and upon final determination of any appeal the total award of damages shall be reduced by the amount of the partial or full payment. If any partial or full payment exceeds the amount of the award of compensation as finally determined, the petitioner shall have a claim against the respondents receiving such payment for the amount thereof, to be recoverable in the same manner as in any civil action.

Sec. 20. Minnesota Statutes 1969, Chapter 117, is amended by adding a section to read:

[117.165] JURY TRIALS; DISCLOSURE. Subdivision 1. In all eminent domain proceedings where an appeal is taken to the district court from the award of commissioners, the owner or the petitioner shall be entitled to a jury trial.

Subd. 2. In the event of an appeal from the award of commissioners, and upon written demand by a party, the other party shall disclose under oath in writing within 15 days the appraisal witnesses the disclosing party proposes to call on its behalf at trial, and the amount of their appraisals of the damages. The demand shall be deemed continuing.

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Subd. 3. A party shall not be permitted at the trial, except for just cause shown, to use any expert witness on the matter of damages whose name, address and appraisal was not disclosed to the other party following a written demand.

Sec. 21. Minnesota Statutes 1969, Chapter 117, is amended by adding a section to read:

[117.175] TRIAL, BURDEN OF PROOF, COSTS. Subdivision 1. Such appeal may be noticed for trial and tried except as herein otherwise provided as in the case of a civil action and the court may direct that issues be framed, and require other parties to be joined and to plead therein when necessary for the proper determination of the questions involved. The owners shall go forward with the evidence and have the burden of proof as in any other civil action, with the right to open and close. The court or jury trying the case shall reassess the damages de novo and apportion the same as the evidence and justice may require. Upon request of a party to such appeal, the jury or court shall show in the verdict or order the amount of the award of damages which is to reimburse the owner for the land taken and the amount of the award of damages, if any, which is to reimburse the owner for damages to the remainder tract not taken whether or not described in the petition. The amounts awarded to each person shall also be shown separately. A commissioner in a condemnation proceeding may be called by any party as a witness to testify as to the amount and the basis of the award of commissioners and may be examined and qualified as any other witness.

Subd. 2. The court may, in its discretion, after a verdict has been rendered on the trial of an appeal, allow as taxable costs reasonable expert witness and appraisal fees of the owner, together with the owner's reasonable costs and disbursements. No expert witness fees, costs or disbursements shall be awarded to the petitioner regardless of who is the prevailing party.

Sec. 22. Minnesota Statutes 1969, Chapter 117, is amended by adding a section to read:

[117.185] JUDGMENT. Judgment shall be entered upon the verdict or decision, fixing the amount of damages payable to the several parties concerned and the terms and conditions of the taking and, until reversed or modified in a direct proceeding begun for that purpose, the judgment shall be binding upon the petitioner and all other parties thereto and upon their respective successors and assigns. The parties may stipulate in lieu of entry of judgment.

Sec. 23. Minnesota Statutes 1969, Chapter 117, is amended by adding a section to read:

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[117.195] INTEREST; AWARD, WHEN PAYABLE; DISMISSAL. All damages allowed under this chapter, whether by the commissioners or upon appeal, shall bear interest from the time of the filing of the commissioner's report or from the date of the petitioner's possession whichever occurs first. If the award is not paid within 70 days after such filing, or, in case of an appeal within 45 days after final judgment, or within 45 days after a stipulation of settlement, the court, on motion of the owner of the land, shall vacate the award and dismiss the proceedings as against such land. When the proceeding is so dismissed or the same is discontinued by the petitioner, the owner may recover from the petitioner reasonable costs and expenses including attorneys' fees.

Sec. 24. Minnesota Statutes 1969, Chapter 117, is amended by adding a section to read:

[117.205] FINAL CERTIFICATE. Upon completion of the proceedings the attorney for the petitioner shall make a certificate describing the land taken and the purpose or purposes for which taken, and reciting the fact of final payment of all awards or judgments in relation thereto, which certificate upon approval thereof by the court shall be filed with the clerk and a certified copy thereof filed for record with the register of deeds; which record shall be notice to all parties of the title of the petitioner to the lands therein described.

Sec. 25. Minnesota Statutes 1969, Chapter 117, is amended by adding a section to read:

[117.215] ESTATE ACQUIRED. In all cases for the condemnation of property for public use, the right, interest, or estate in the property proposed to be taken, if greater than an easement, shall be specifically described in the proceedings, and, if the right, interest, or estate so described shall be a fee simple absolute, the fee simple absolute shall be an estate without any right of reversion under any circumstances.

Sec. 26. Minnesota Statutes 1969, Chapter 117, is amended by adding a section to read:

[117.225] EASEMENT DISCHARGE. Whenever the underlying fee owner claims that an easement acquired by condemnation is not being used for the purposes for which it was acquired, he may apply to the district court of the county in which the land is situated for an order discharging the easement, upon such terms as are just and equitable. Due notice of said application shall be given to all interested parties. Provided, however, this section shall not apply to easements acquired by condemnation by a public service corporation now or hereafter doing business in the state of Minnesota.

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Sec. 27. Minnesota Statutes 1969, Chapter 117, is amended by adding a section to read:

[117.231] PAYMENT IN INSTALLMENTS. Subdivision 1. OPTION OF PROPERTY OWNER. Whenever private property is acquired for public purposes by purchase or eminent domain proceedings, the property owner shall have the option of receiving the purchase price or the award as finally adjudicated, either in a lump sum or in not more than four annual installments.

Subd. 2. EMINENT DOMAIN; PROCEDURE. When the property is acquired by eminent domain proceedings and the amount the owner shall receive for said property is finally determined, the owner is entitled to payment thereof, and before payment is made, may elect, by making written request thereof to the petitioner, to have the amount paid in not more than four annual installments, and without interest on the deferred installments. After the first installment is paid the petitioner may make its final certificate, as provided by law, in the same manner as though the entire amount had been paid.

Subd. 3. PURCHASE OF PROPERTY; PROCEDURE. When the property is purchased from the private owner, the amount of the purchase price shall be paid in a lump sum, unless the property owner at the time he delivers the conveyance to the condemning authority shall elect to have the purchase price paid in not more than four annual installments and without interest on the deferred installments.

Sec. 28. Minnesota Statutes 1969, Chapter 117, is amended by adding a section to read:

[117.232] DIRECT PURCHASE. Subdivision 1. When acquisition of private property is by direct purchase the purchaser in all instances shall inform the owner of his right to reimbursement for appraisal fees, relocation costs, moving costs and all other related expenses to which an owner is entitled by law.

Subd. 2. In the event the purchaser and owner agree on the fair market value of the property but cannot agree on the appraisal fees and moving costs, the owner shall have the option to accept the offer for the property and reject the offer for the appraisal fees and moving costs. In addition thereto, the owner may, after due notice to all interested parties, bring a motion at a special term of the district court in the county in which the property is located for a determination of such moving costs and appraisal fees by the court.

Sec. 29. **REPEALS.** Minnesota Statutes 1969, Sections 117.01, 117.015, 117.02, 117.03, 117.04, 117.05, 117.06, 117.07, 117.08, 117.09, 117.10, 117.11, 117.12, 117.13, 117.133, 117.14, 117.15, 117.16, 117.17,

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117.18, 117.19, 117.20, 117.201, 117.202, 117.32, 117.33, 117.34, 117.35, 117.36, 117.37, 117.42, 117.43, 117.44, and 117.45, and 462.445, Subdivision 2, are repealed.

Sec. 30. EFFECTIVE DATE. This act takes effect September 1, 1971, and applies to eminent domain proceedings commenced on and after this date; provided, however, that the provisions of this act which allow life estate holders to receive moving or relocation expense payments are effective immediately upon the passage of this act and apply to any trial of an appeal in which a verdict has not been rendered, and to any proceeding in which a commissioners' award has not been entered as of the date of passage.

Approved May 27, 1971.

CHAPTER 596—S.F.No.1781

An act relating to taxation; revising the computation of unrefunded tax paid on gasoline for motor boat purposes; amending Minnesota Statutes 1969, Section 296.421, Subdivision 5.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Minnesota Statutes 1969, Section 296.421, Subdivision 5, is amended to read:

Subd. 5. **TAXATION; GASOLINE TAX; UNREFUNDED TAX; COMPUTATION.** The amount of unrefunded tax shall be a sum equal to three fourths of one percent of all revenues derived from the excise taxes on gasoline, except on gasoline used for aviation purposes, together with interest thereon and penalties for delinquency in payment, paid or collected pursuant to the provisions of sections 296.02 to 296.17, ~~or the sum of \$500,000, whichever is the lesser amount,~~ from which shall be subtracted the total amount of money refunded for motor boat use pursuant to section 296.18. The amount of such tax shall be computed for each six-month period commencing January 1, 1961, and shall be paid into the state treasury on November 1 and June 1 following each six-month period.

Approved May 27, 1971.

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