

CHAPTER 214—S.F.No. 2750

An act relating to eminent domain; making changes to and regulating the exercise of eminent domain; providing for public use or purpose and providing other definitions; providing for notice, hearing, and other procedural requirements; providing for attorney fees and additional forms of compensation; amending Minnesota Statutes 2004, sections 117.025; 117.036; 117.055; 117.075, subdivision 1; 117.085; 117.51; 117.52, subdivision 1, by adding subdivisions; proposing coding for new law in Minnesota Statutes, chapter 117; repealing Minnesota Statutes 2004, section 117.011.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **[117.012] PREEMPTION; PUBLIC USE OR PURPOSE.**

Subdivision 1. **Preemption.** Notwithstanding any other provision of law, including any charter provision, ordinance, statute, or special law, all condemning authorities, including home rule charter cities and all other political subdivisions of the state, must exercise the power of eminent domain in accordance with the provisions of this chapter, including all procedures, definitions, remedies, and limitations. Additional procedures, remedies, or limitations that do not deny or diminish the substantive and procedural rights and protections of owners under this chapter may be provided by other law, ordinance, or charter.

Subd. 2. **Requirement of public use or public purpose.** Eminent domain may only be used for a public use or public purpose.

Subd. 3. **Exceptions.** This chapter does not apply to the taking of property under laws relating to drainage or to town roads when those laws themselves expressly provide for the taking and specifically prescribe the procedure. The taking of property for a project undertaken by a watershed district under chapter 103D or for a project undertaken by a drainage authority under chapter 103E may be carried out under the procedure provided by those chapters.

Sec. 2. Minnesota Statutes 2004, section 117.025, is amended to read:

117.025 DEFINITIONS.

Subdivision 1. **Words, terms, and phrases.** ~~Unless the language or context clearly indicates that a different meaning is intended,~~ For the purposes of this chapter and any other general or special law authorizing the exercise of the power of eminent domain, 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~~ with any interest in the property subject to a taking, whether as proprietors, tenants, life estate holders, encumbrancers, beneficial interest holders, or otherwise.

Subd. 4. **Condemning authority.** "Condemning authority" means a person or entity with the power of eminent domain.

Subd. 5. **Abandoned property.** "Abandoned property" means property that: (1) has been substantially unoccupied or unused for any commercial or residential purpose for at least one year by a person with a legal or equitable right to occupy the property; (2) has not been maintained; and (3) for which taxes have not been paid for at least two previous years.

Subd. 6. **Blighted area.** "Blighted area" means an area:

(1) that is in urban use; and

(2) where more than 50 percent of the buildings are structurally substandard.

Subd. 7. **Structurally substandard.** "Structurally substandard" means a building:

(1) that was inspected by the appropriate local government and cited for one or more enforceable housing, maintenance, or building code violations;

(2) in which the cited building code violations involve one or more of the following:

(i) a roof and roof framing element;

(ii) support walls, beams, and headers;

(iii) foundation, footings, and subgrade conditions;

(iv) light and ventilation;

(v) fire protection, including egress;

(vi) internal utilities, including electricity, gas, and water;

(vii) flooring and flooring elements; or

(viii) walls, insulation, and exterior envelope;

(3) in which the cited housing, maintenance, or building code violations have not been remedied after two notices to cure the noncompliance; and

(4) has uncured housing, maintenance, and building code violations, satisfaction of which would cost more than 50 percent of the assessor's taxable market value for the building, excluding land value, as determined under section 273.11 for property taxes payable in the year in which the condemnation is commenced.

A local government is authorized to seek from a judge or magistrate an administrative warrant to gain access to inspect a specific building in a proposed development or redevelopment area upon showing of probable cause that a specific code violation has occurred and that the violation has not been cured, and that the owner has denied the local government access to the property. Items of evidence that may support a conclusion of probable cause may include recent fire or police inspections, housing inspection, exterior evidence of deterioration, or other similar reliable evidence of deterioration in the specific building.

Subd. 8. **Environmentally contaminated area.** "Environmentally contaminated area" means an area:

(1) in which more than 50 percent of the parcels contain any substance defined, regulated, or listed as a hazardous substance, hazardous material, hazardous waste, toxic waste, pollutant, contaminant, or toxic substance, or identified as hazardous to human health or the environment under state or federal law or regulation; and

(2) for which the estimated costs of investigation, monitoring and testing, and remedial action or removal, as defined in section 115B.02, subdivisions 16 and 17, respectively, including any state costs of remedial actions, exceed 100 percent of the assessor's estimated market value for the contaminated parcel,

as determined under section 273.11, for property taxes payable in the year in which the condemnation commenced, or for which a court of competent jurisdiction has issued an order under law or regulations adopted by Minnesota or the United States, that clean up or remediation of a contaminated site occur and the property owner has failed to comply with the court's order within a reasonable time.

Subd. 9. **Public nuisance.** "Public nuisance" means a public nuisance under section 609.74.

Subd. 10. **Public service corporation.** "Public service corporation" means a utility, as defined by section 116C.52, subdivision 10; gas, electric, telephone, or cable communications company; cooperative association; natural gas pipeline company; crude oil, or petroleum products pipeline company; municipal utility; municipality when operating its municipally owned utilities; joint venture created pursuant to section 452.25 or 452.26; or municipal power or gas agency. Public service corporation also means a municipality or public corporation when operating an airport under chapter 360 or 473, a common carrier, a watershed district, or a drainage authority. Public service corporation also means an entity operating a regional distribution center within an international economic development zone designated under section 469.322.

Subd. 11. **Public use; public purpose.** (a) "Public use" or "public purpose" means, exclusively:

(1) the possession, occupation, ownership, and enjoyment of the land by the general public, or by public agencies;

(2) the creation or functioning of a public service corporation; or

(3) mitigation of a blighted area, remediation of an environmentally contaminated area, reduction of abandoned property, or removal of a public nuisance.

(b) The public benefits of economic development, including an increase in tax base, tax revenues, employment, or general economic health, do not by themselves constitute a public use or public purpose.

Sec. 3. **[117.027] CONDEMNATION FOR BLIGHT MITIGATION AND CONTAMINATION REMEDIATION.**

Subdivision 1. **Buildings that are not structurally substandard in areas of blight mitigation; feasible alternatives.** In taking property to mitigate blight, a condemning authority must not take buildings that are not structurally substandard unless there is no feasible alternative to the taking of the parcels on which the buildings are located in order to remediate the blight and all possible steps are taken to minimize the taking of buildings that are not structurally substandard.

Subd. 2. **Uncontaminated property in environmental contamination remediation areas; feasible alternatives.** In taking property to remediate environmental contamination, a condemning authority must not take uncontaminated parcels in the area unless there is no feasible alternative to the taking of the uncontaminated parcels in order to complete remediation of the contaminated parcels and all possible steps are taken to minimize the taking of the uncontaminated parcels.

Subd. 3. **Contribution to condition by developer disallowed.** If a developer involved in the redevelopment of the project area contributed to the blight or environmental contamination within the project area, the condition contributed to by the developer must not be used in the determination of blight or environmental contamination.

Sec. 4. **[117.031] ATTORNEY FEES.**

(a) If the final judgment or award for damages, as determined at any level in the eminent domain process, is more than 40 percent greater than the last written offer of compensation made by the condemning authority prior to the filing of the petition, the court shall award the owner reasonable attorney fees, litigation expenses, appraisal fees, other experts fees, and other related costs in addition to other compensation and

fees authorized by this chapter. If the final judgment or award is at least 20 percent, but not more than 40 percent, greater than the last written offer, the court may award reasonable attorney fees, expenses, and other costs and fees as provided in this paragraph. The final judgment or award of damages shall be determined as of the date of taking. No attorney fees shall be awarded under this paragraph if the final judgment or award of damages does not exceed \$25,000. For the purposes of this section, the "final judgment or award for damages" does not include any amount for loss of a going concern unless that was included in the last written offer by the condemning authority.

(b) In any case where the court determines that a taking is not for a public use or is unlawful, the court shall award the owner reasonable attorney fees and other related expenses, fees, and costs in addition to other compensation and fees authorized by this chapter.

Sec. 5. Minnesota Statutes 2004, section 117.036, is amended to read:

117.036 APPRAISAL AND NEGOTIATION REQUIREMENTS ~~APPLICABLE TO ACQUISITION OF PROPERTY FOR TRANSPORTATION PURPOSES.~~

Subdivision 1. **Application.** This section applies to the acquisition of property for public highways, streets, roads, alleys, airports, mass transit facilities, or for other transportation facilities or purposes under this chapter.

Subd. 1a. **Definition of owner.** For the purposes of this section, "owner" means fee owner, contract purchaser, or business lessee who is entitled to condemnation compensation under a lease.

Subd. 2. **Appraisal.** (a) Before commencing an eminent domain proceeding under this chapter, the acquiring authority must obtain at least one appraisal for the property proposed to be acquired. In making the appraisal, the appraiser must confer with one or more of the owners of the property, if reasonably possible. ~~At least 20~~ Notwithstanding section 13.44, the acquiring authority must provide the owner with a copy of each appraisal the acquiring authority has obtained for the property at the time an offer is made, but no later than 60 days before presenting a petition under section 117.055, ~~the acquiring authority must provide the owner with a copy of the appraisal and inform the owner of the owner's~~ owner of the right to obtain an appraisal under this section. Upon request, the acquiring authority must make available to the owner all appraisals of the property. If the acquiring authority is considering both a full and partial taking of the property, the acquiring authority shall obtain and provide the owner with appraisals for both types of takings.

(b) The owner may obtain an appraisal by a qualified appraiser of the property proposed to be acquired. The owner is entitled to reimbursement for the reasonable costs of the appraisal from the acquiring authority up to a maximum of \$1,500 ~~within 30 days after the~~ for single family and two-family residential property and minimum damage acquisitions and \$5,000 for other types of property, provided that the owner submits to the acquiring authority the information necessary for reimbursement, ~~provided that the owner does so within 60 days after the owner receives the appraisal from the authority under paragraph (a) including a copy of the owner's appraisal, at least five days before a condemnation commissioners' hearing.~~ For purposes of this paragraph, a "minimum damage acquisition" means an interest in property that a qualified person with appraisal knowledge indicates can be acquired for a cost of \$10,000 or less.

(c) The acquiring authority must pay the reimbursement to the owner within 30 days after receiving a copy of the appraisal and the reimbursement information. Upon agreement between the acquiring authority and the owner, the acquiring authority may pay the reimbursement directly to the appraiser.

Subd. 3. **Negotiation.** In addition to the appraisal requirements under subdivision 2, before commencing an eminent domain proceeding, the acquiring authority must make a good faith attempt to negotiate personally with the owner of the property in order to acquire the property by direct purchase instead of the use of eminent domain proceedings. In making this negotiation, the acquiring authority must consider the appraisals in its possession, including any appraisal obtained and furnished by the owner if

available, and other information that may be relevant to a determination of damages under this chapter. If the acquiring authority is considering both a full and partial taking of the property, the acquiring authority must make a good-faith attempt to negotiate with respect to both types of takings.

Subd. 4. **Use of appraisal at commissioners' hearing.** An appraisal must not be used or considered in a condemnation commissioners' hearing, nor may the appraiser who prepared the appraisal testify, unless a copy of the appraiser's written report is provided to the opposing party at least five days before the hearing.

Subd. 5. **Documentation of business loss.** Documentation related to a loss of going concern claim made under section 117.186, must not be used or considered in a condemnation commissioners' hearing unless the documentation is provided to the opposing party at least 14 days before the hearing.

Sec. 6. **[117.0412] LOCAL GOVERNMENT PUBLIC HEARING REQUIREMENTS.**

Subdivision 1. **Definitions.** For the purposes of this section:

(1) "local government" means the elected governing body of a statutory or home rule charter city, county, or township; and

(2) "local government agency" means a subdivision, agency, authority, or other entity created by or whose members are appointed by the local government, including a port authority, economic development authority, housing and redevelopment authority, or other similar entity established under law.

Subd. 2. **Public hearing; vote by local government governing body.** (a) If the taking is for the mitigation of a blighted area, remediation of an environmentally contaminated area, reducing abandoned property, or removing a public nuisance, a public hearing must be held before a local government or local government agency commences an eminent domain proceeding under section 117.055. The local government must notify each owner of property that may be acquired in writing by certified mail of the public hearing on the proposed taking, post the public hearing information on the local government's Web site, if any, and publish notice of the public hearing in a newspaper of general circulation in the local government's jurisdiction. Notice must be provided at least 30 days but not more than 60 days before the hearing.

(b) Any interested person must be allowed reasonable time to present relevant testimony at the public hearing. The proceedings of the hearing must be recorded and available to the public for review and comment at reasonable times and a reasonable place. At the next regular meeting of the local government that is at least 30 days after the public hearing, the local government must vote on the question of whether to authorize the local government or local government agency to use eminent domain to acquire the property.

Subd. 3. **Resolution.** If the taking is for the mitigation of a blighted area, remediation of an environmentally contaminated area, reducing abandoned property, or removing a public nuisance, then the resolution of a local government or local government agency authorizing the use of eminent domain must:

(1) identify and describe the public costs and benefits that are known or expected to result from the program or project for which the property interest is proposed to be acquired; and

(2) address how the acquisition of the property interest serves one or more identified public uses or public purposes and why the acquisition of the property is needed to accomplish those public uses or public purposes.

Sec. 7. Minnesota Statutes 2004, section 117.055, is amended to read:

117.055 PETITION AND NOTICE.

Subdivision 1. **Petition.** 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.

Subd. 2. Notice. (a) 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 117.025, subdivision 3, and upon all occupants of such land in the same manner as a summons in a civil action.

(b) The notice must state that:

(1) a party wishing to challenge the public use or public purpose, necessity, or authority for a taking must appear at the court hearing and state the objection or must appeal within 60 days of a court order; and

(2) a court order approving the public use or public purpose, necessity, and authority for the taking is final unless an appeal is brought within 60 days after service of the order on the party.

(c) If any such owner be not a resident of the state, or the owner's place of residence be unknown to the petitioner, upon the filing of an affidavit of the petitioner or the petitioner's agent or attorney, stating that the petitioner believes that such owner is not a resident of the state, and that the petitioner has mailed a copy of the notice to the owner at the owner's place of residence, or that after diligent inquiry the owner's 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 except upon voluntarily appearing therein. Any owner shall be furnished a right-of-way map or plat of all that part of 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 the same. Any plans or profiles which the petitioner has shall be made available to the owner for inspection.

Sec. 8. Minnesota Statutes 2004, section 117.075, subdivision 1, is amended to read:

Subdivision 1. **Hearing on taking; evidentiary standard.** (a) 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.

(b) If the taking is for the mitigation of a blighted area, remediation of an environmentally contaminated area, reducing abandoned property, or removing a public nuisance, then, notwithstanding any other provision of general or special law, a condemning authority must show the district court by preponderance of the evidence that the taking is necessary and for the designated public use.

(c) A court order approving the public use or public purpose, necessity, and authority for the taking is final unless an appeal is brought within 60 days after service of the order on the party.

Sec. 9. Minnesota Statutes 2004, section 117.085, is amended 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 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 shall not reduce the amount of the damages awarded because the land being taken is, at the time of the taking, valued under section 273.111, designated as an agricultural preserve under chapter 473H. 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 ~~\$500~~ \$1,500 for single family and two-family residential property and minimum damage acquisitions and \$5,000 for other types of property, unless the appraised fee was reimbursed under section 117.036. 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. The commissioners shall, if requested by any party, make an express finding of the estimated cost of removal and remedial actions that will be necessary on the taken property because of existing environmental contamination.

Sec. 10. **[117.184] COMPENSATION FOR REMOVAL OF LEGAL NONCONFORMING USE.**

(a) Notwithstanding any law to the contrary, an ordinance or regulation of a political subdivision of the state or local zoning authority that requires the removal of a legal nonconforming use as a condition or prerequisite for the issuance of a permit, license, or other approval for any use, structure, development, or activity constitutes a taking and is prohibited without the payment of just compensation. This section does not apply if the permit, license, or other approval is requested for the construction of a building or structure that cannot be built without physically moving the nonconforming use.

(b) This section applies to an action of a political subdivision of the state or a local zoning authority occurring on or after the effective date of this act that requires removal of a legal nonconforming use as a condition or prerequisite for the issuance of a permit, license, or other approval.

Sec. 11. **[117.186] COMPENSATION FOR LOSS OF GOING CONCERN.**

Subdivision 1. Definitions. For purposes of this section:

(1) "going concern" means the benefits that accrue to a business or trade as a result of its location, reputation for dependability, skill or quality, customer base, good will, or any other circumstances resulting in the probable retention of old or acquisition of new patronage; and

(2) "owner" has the meaning given in section 117.025 and includes a lessee who operates a business on real property that is the subject of an eminent domain proceeding.

Subd. 2. Compensation for loss of going concern. If a business or trade is destroyed by a taking, the owner shall be compensated for loss of going concern, unless the condemning authority establishes any of the following by a preponderance of the evidence:

(1) the loss is not caused by the taking of the property or the injury to the remainder;

(2) the loss can be reasonably prevented by relocating the business or trade in the same or a similar and reasonably suitable location as the property that was taken, or by taking steps and adopting procedures that a reasonably prudent person of a similar age and under similar conditions as the owner, would take and adopt in preserving the going concern of the business or trade; or

(3) compensation for the loss of going concern will be duplicated in the compensation otherwise awarded to the owner.

Subd. 3. **Procedure.** In all cases where an owner will seek compensation for loss of a going concern, the damages, if any, shall in the first instance be determined by the commissioners under section 117.105 as part of the compensation due to the owner. The owner shall notify the condemning authority of the owner's intent to claim compensation for loss of going concern within 60 days of the first hearing before the court, as provided in section 117.075. The commissioner's decision regarding any award for loss of going concern may be appealed by any party, in accordance with section 117.145.

Subd. 4. **Driveway access.** A business owner is entitled to reasonable compensation, not to exceed the three previous years' revenues minus the cost of goods sold, if the owner establishes that the actions of a government entity permanently eliminated 51 percent or greater of the driveway access into and out of a business and as a result of the loss of driveway access, revenue at the business was reduced by 51 percent or greater. Determination of whether the revenue at the business was reduced by 51 percent or greater must be based on a comparison of the average revenues minus the average costs of goods sold for the three years prior to commencement of the project, with the revenues minus the costs of goods sold for the year following completion of the project. A claim for compensation under this section must be made no later than one year after completion of the project which eliminated the driveway access. The installation of a median does not constitute elimination of driveway access.

Sec. 12. **[117.187] MINIMUM COMPENSATION.**

When an owner must relocate, the amount of damages payable, at a minimum, must be sufficient for an owner to purchase a comparable property in the community and not less than the condemning authority's payment or deposit under section 117.042, to the extent that the damages will not be duplicated in the compensation otherwise awarded to the owner of the property. For the purposes of this section, "owner" is defined as the person or entity that holds fee title to the property.

Sec. 13. **[117.188] LIMITATIONS.**

The condemning authority must not require the owner to accept as part of the compensation due any substitute or replacement property. The condemning authority must not require the owner to accept the return of property acquired or any portion of the property.

Sec. 14. **[117.189] PUBLIC SERVICE CORPORATION EXCEPTIONS.**

Sections 117.031; 117.036; 117.055, subdivision 2, paragraph (b); 117.186; 117.187; 117.188; and 117.52, subdivisions 1a and 4, do not apply to public service corporations. For purposes of an award of appraisal fees under section 117.085, the fees awarded may not exceed \$500 for all types of property.

Sec. 15. **[117.226] RIGHT OF FIRST REFUSAL.**

(a) Except as provided in sections 15.16, 160.85, 161.16, 161.20, 161.202, 161.23, 161.24, 161.241, 161.43, 161.46, and 222.63, if the governing body of the condemning authority determines that publicly owned property acquired under this chapter has not been used and is no longer needed for a public use, the authority must offer to sell the property to the owner from whom it was acquired, if the former owner can be located. The offer must be at the original price determined by the condemnation process or the current fair market value of the property, whichever is lower, except to the extent that a different value is required for a property interest obtained with federal highway funding under United States Code, title 23. Before offering surplus property to local governments or for public sale under section 16B.282 or 94.10, the commissioner of administration or natural resources must offer to sell the property to the former owner as provided in this section.

(b) If the former owner cannot be located after a due and diligent search or declines to repurchase the property, the attorney for the condemning authority shall prepare a certificate attesting to the same and record the certificate in the office of the county recorder or county registrar of titles, as appropriate, to evidence the termination of the right of first refusal. A recorded certificate to that effect is prima facie evidence that the right of first refusal has terminated.

Sec. 16. Minnesota Statutes 2004, section 117.51, is amended to read:

117.51 COOPERATION WITH FEDERAL AUTHORITIES.

In all acquisitions undertaken by any acquiring authority and in all voluntary rehabilitation carried out by a person pursuant to acquisition or as a consequence thereof, the acquiring authority shall cooperate to the fullest extent with federal departments and agencies, and it shall take all necessary action in order to insure, to the maximum extent possible, federal financial participation in any and all phases of acquisition, including the provision of relocation assistance, services, payments and benefits to displaced persons. ~~An acquiring authority may consider reimbursing up to \$50,000 in reestablishment expenses of a displaced business.~~

Sec. 17. Minnesota Statutes 2004, section 117.52, subdivision 1, is amended to read:

Subdivision 1. **Lack of federal funding.** In all acquisitions undertaken by any acquiring authority and in all voluntary rehabilitation carried out by a person pursuant to acquisition or as a consequence thereof, in which, due to the lack of federal financial participation, relocation assistance, services, payments and benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, United States Code, title 42, sections 4601 to 4655, as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Statutes at Large, volume 101, pages 246 to 256 (1987), are not available, the acquiring authority, as a cost of acquisition, shall provide all relocation assistance, services, payments and benefits required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and those regulations adopted pursuant thereto, and either (1) in effect as of ~~July 1, 1988~~ January 1, 2006, or (2) becoming effective after ~~July 1, 1988~~ January 1, 2006, following a public hearing and comment. Comments received by an acquiring authority within 30 days after the public hearing must be reviewed and a written response provided to the individual or organization who initiated the comment. The response and comments may be addressed in another public hearing by the acquiring authority before approval.

Sec. 18. Minnesota Statutes 2004, section 117.52, is amended by adding a subdivision to read:

Subd. 1a. **Reestablishment costs limit.** For purposes of relocation benefits paid by the acquiring authority in accordance with this section, the provisions of Code of Federal Regulations, title 49, section 24.304, with respect to reimbursement of reestablishment expenses for nonresidential moves are applicable, except that the acquiring authority shall reimburse the displaced business for expenses actually incurred up to a maximum of \$50,000.

Sec. 19. Minnesota Statutes 2004, section 117.52, is amended by adding a subdivision to read:

Subd. 4. **Relocation assistance amount determined by administrative law judge.** Notwithstanding any law or rule to the contrary, if a person entitled to relocation assistance under this section does not accept the acquiring authority's offer, the acquiring authority must initiate contested case proceedings under sections 14.57 to 14.66 for a determination of the relocation assistance that must be provided by the acquiring authority. The administrative law judge's determination of relocation assistance that the acquiring authority must provide constitutes a final decision in the case, as provided in section 14.62, subdivision 4. The acquiring authority must pay all costs of the proceedings. "Costs" is defined in

section 15.471, subdivision 4, and also includes charges billed by the Office of Administrative Hearings for the proceedings.

Sec. 20. **REVISOR'S INSTRUCTION.**

The revisor shall change the phrase "right of eminent domain" where found in Minnesota Statutes and Minnesota Rules to "power of eminent domain."

Sec. 21. **REPEALER.**

Minnesota Statutes 2004, section 117.011, is repealed.

Sec. 22. **EFFECTIVE DATE.**

(a) This act is effective the day following final enactment and applies to actions commenced on or after that date. Section 15 applies to the disposition of property acquired by actions commenced on or after that date.

(b) Notwithstanding paragraph (a), the provisions of this act do not apply to actions commenced on or before February 1, 2008, for a project that satisfies one of the following conditions:

(1) with respect to property identified as intended to be acquired in a tax increment financing plan, as approved by the municipality by February 1, 2006, if the condemning authority has satisfied one or more of the following conditions in connection with the tax increment financing plan:

(i) the developer has acquired property by May 1, 2006, in reliance on the condemning authority's contractual obligation to condemn property; or

(ii) by May 1, 2006, the condemning authority has issued, sold, or entered into a binding agreement to issue or sell bonds or other obligations to finance the costs of the tax increment financing plan and has commenced the action within two years after the bonds were issued;

(2) the tax increment financing district was certified before February 1, 2006; a tax increment financing plan, adopted before February 1, 2006, identified the property as intended to be acquired; and the condemning authority has commenced the action within five years after certification of the district;

(3) creation of the tax increment financing district was authorized under a special law that received local approval or became effective without local approval before February 1, 2006, and the condemning authority commences the action within the time period permitted under the applicable general or special law for making expenditures to comply with Minnesota Statutes, section 469.1763, subdivision 3, but not to exceed a ten-year period; or

(4) the condemning authority commences the action before February 1, 2011, to complete land assembly for a project, financed in whole or in part with abatement under Minnesota Statutes, sections 469.1813 to 469.1815, and the abatement resolution was adopted by one of the participating political subdivisions before February 1, 2006.

(c) Notwithstanding paragraphs (a) and (b), actions commenced after February 1, 2008, that satisfy the requirements of paragraph (b), clauses (1) to (4), are not subject to the definition of "public use" and "public purpose" under Minnesota Statutes, section 117.025, as amended by this act. The rest of the act applies to the actions.

(d) The definitions under Minnesota Statutes, section 469.174, apply for purposes of paragraphs (b) and (c).

(e) The provisions of this act do not apply to:

(1) property acquired for a highway project that, by the effective date, has been selected to receive federal funding by the area transportation partnership or metropolitan planning organization as part of the state transportation improvement program, if the action is commenced on or before January 15, 2007; or

(2) property acquired for the purpose of providing physical or financial assistance for emergency shelter and services for homeless persons in a first class city by a governmental unit or nonprofit organization, if the action is commenced on or before two years after the effective date.

(f) For purposes of this section, the following terms have the meanings given:

(1) "action" means a condemnation or eminent domain proceeding or action; and

(2) "commence" means when service of notice of the petition under Minnesota Statutes, section 117.055, is made.

Presented to the governor May 17, 2006

Signed by the governor May 19, 2006, 11:04 a.m.