

# MINNESOTA STATUTES 1965

1305

EMINENT DOMAIN 117.015

## EMINENT DOMAIN, DEPOSITORYIES

### CHAPTER 117

#### EMINENT DOMAIN

Sec.		Sec.	
117.01	Right of eminent domain	117.202	Direct purchase by state, its agencies, or political subdivision
117.015	Joint acquisition of land	117.21	Easement to include snow fences
117.02	Definitions	117.31	Sanatorium commissions to have right of eminent domain
117.03	Proceedings, by whom instituted	117.32	Railroad built without right; action
117.04	Entry for surveys	117.33	Answer; ascertainment of damages
117.05	Petition and notice	117.34	Judgment and execution
117.06	Notice of pendency	117.35	Procedure when no answer is made
117.07	Court to appoint commissioners of appraisal	117.36	Validity of railroad condemnation; action
117.08	Appraisers; powers, duties	117.37	Procedure
117.09	Report; notice	117.38	Acquisition of land for certain purposes
117.10	Payment; tender; deposit in court	117.39	Proceedings under right of eminent domain
117.11	Failure to report	117.40	Municipality may contest
117.12	Accruing taxes	117.41	Conveyance, to whom made
117.13	Appeal	117.42	Award in condemnation proceedings in cities of first class
117.133	Jury trial	117.43	Funds from which award payable
117.14	Trial; costs	117.44	Commissioner of conservation to acquire certain lands
117.15	Judgment; possession	117.45	Authority of commissioner of conservation
117.16	Interest; award, when payable; dismissal	117.46	Taconite mining company granted power of eminent domain
117.17	Record, evidence, how perfected	117.461	Semi-taconite mining, eminent domain
117.18	Property taken by state is estate without right of reversion	117.47	Permits; licenses
117.19	Proceedings in certain cases, notice filed	117.471	Easements over tax-forfeited lands, approval
117.20	Proceedings by state, its agencies, or political subdivisions		
117.201	Payment in installments		

**117.01 RIGHT OF EMINENT DOMAIN.** When the taking of private property for any public use shall be authorized by law, it may be acquired under the right of eminent domain in the manner prescribed by this chapter; but nothing herein shall apply to the taking of property under laws relating to roads and drainage, when such laws themselves expressly provide for such taking and specifically prescribe the procedure connected therewith.

The provisions of this chapter shall be considered supplementary to those provided by any municipality operating under a home rule charter and shall be available to all such municipalities even though a different procedure may be provided by local charter.

[R L s 2520; 1921 c 353 s 1; 1955 c 784 s 1] (6537)

**117.015 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 said lands or parts thereof may enter into an agreement each with the other for the joint acquisition of said 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 the 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 said agreement describing the lands each shall acquire but for the purposes of the proceedings and for ascertaining the damages for the taking, the lands so acquired shall be treated as one parcel.

Subd. 4. **Eminent domain.** All eminent domain proceedings as herein authorized shall be exercised and shall be in accordance with Minnesota Statutes 1945, Chapter 117, acts amendatory thereof and as the same may be amended.

# MINNESOTA STATUTES 1965

## 117.02 EMINENT DOMAIN

1306

**Subd. 5. Inconsistent provisions; home rule charter.** This section may be used by the state or any of its agencies or political subdivisions thereof notwithstanding inconsistent provisions of any other statute or home rule charter.

[1949 c 271 s 1-5]

**117.02 DEFINITIONS.** Subdivision 1. **Words, terms, and phrases.** Unless the language or context clearly indicates that a different meaning is intended, the following words, terms, and phrases, for the purposes of this chapter, shall be given the meanings hereinafter subjoined to them.

**Subd. 2. Taking.** The word "taking" and all words and phrases of like import include every interference, under the right of eminent domain, with the ownership, possession, enjoyment, or value of private property.

**Subd. 3. Owner.** The word "owner" extends to all persons interested in such property as proprietors, tenants, encumbrancers, or otherwise.

[R. L. s. 2521] (6538)

**117.03 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 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.

[R. L. s. 2522] (6539)

**117.04 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.

[R. L. s. 2523] (6540)

**117.05 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 ten days before such time of presentation upon all persons named in the petition as owners as defined in Minnesota Statutes, Section 117.02, Subdivision 3 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. No owner not served as herein provided shall be bound by such proceeding unless he voluntarily appears therein.

[R. L. s. 2524; 1961 c 717 s 1] (6541)

**117.06 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.

[R. L. s. 2525] (6542)

**117.07 COURT TO APPOINT COMMISSIONERS OF APPRAISAL.** 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, 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 commissioners and prescribe their compensation. It may, in the discretion of the court, limit the title

# MINNESOTA STATUTES 1965

1307

EMINENT DOMAIN 117.11

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.

[R. L. s. 2526] (6543)

**117.08 APPRAISERS; POWERS, DUTIES.** The commissioners, having 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 issue subpoenas for 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 to furnish for their use maps or plats showing the 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 within 30 days after making such assessment and award report the same to the court under their hands. Whenever the state is acquiring property, 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 other property involved. The amounts awarded to each person shall also be shown separately.

[R. L. s. 2527; 1953 c. 751 s. 1] (6544)

**117.09 REPORT; NOTICE.** The oath subscribed by the commissioners shall be filed with their report and when necessary to the proper understanding of such report it shall be accompanied by a map, showing the route or location of the intended improvement, and the situation of the lands within their county proposed to be taken therefor. The clerk shall attach together with the petition, notice of hearing thereon, proofs of service and publication of the notice, order appointing the commissioners, their oath and report, and all other documents filed in the matter modifying or affecting any of those hereinbefore named. Upon payment by the petitioner of the fees and disbursements of the commissioners, which may be taxed by the court in case of failure to agree upon the amount thereof, they shall sign and deliver to the petitioner a notice that the report has been filed, which notice the petitioner shall cause to be served and published as provided in section 117.05; but if any party shall have appeared in the proceeding by attorney, the notice may be served upon the attorney so appearing.

[R. L. s. 2528] (6545)

**117.10 PAYMENT; TENDER; DEPOSIT IN COURT.** Payment of the damages awarded may be made or tendered at any time after the notice mentioned in section 117.09 is delivered, and acceptance of such payment shall be taken as a waiver of all objections to the award and to the proceedings leading thereto on the part of the payee and of all persons for whom he is lawfully empowered to act. In case any party to whom an award of damages is made be not a resident of the state, or his place of residence be unknown, or he be an infant or other person under legal disability, or, being legally capable, refuses to accept payment, or if for any reason it be doubtful to whom any award should be paid, the petitioner may pay the same to the clerk, to be paid out under the direction of the court; and, unless an appeal be taken, as hereinafter provided, such deposit with the clerk shall be deemed a payment of the award.

[R. L. s. 2529] (6546)

**117.11 FAILURE TO REPORT.** If the commissioners fail to file their report within six months after their appointment, upon motion of any owner, the proceedings shall be set aside as to him; but, for cause shown, the court may extend the time for making their report for not more than six months.

[R. L. s. 2530] (6547)

# MINNESOTA STATUTES 1965

## 117.12 EMINENT DOMAIN

1308

**117.12 ACCRUING TAXES.** All taxes and assessments imposed upon the property after the filing of the petition and paid by the owner before payment of the award shall be added to the amount of such award, and with interest thereon shall be paid therewith; and the receipt of the proper officer for such taxes and assessments shall be conclusive, as between the owner and petitioner, of the amount and validity thereof.

[R. L. s. 2531] (6548)

**117.13 APPEAL.** At any time within 30 days after service of the notice that the report has been filed, the owner of lands taken may appeal to the district court from any award of damages embraced in the report, or from any omission to award damages to the appellant for the taking of lands claimed by him, by filing with the clerk a notice of such appeal. The notice shall specify the particular award or failure to award appealed from, the nature and amount of his claim, the land to which it relates, and the grounds of his appeal. The petitioner may in like manner appeal; but no appeal shall delay the prosecution of the proposed improvement, if the petitioner shall give bond, in amount and with sureties to be fixed and approved by the court, conditioned for the payment of all damages finally awarded and to abide the orders and judgments of the court entered thereon.

[R. L. s. 2532] (6549)

**117.133 JURY TRIAL.** In all eminent domain proceedings wherein an appeal is taken to the district court from the award of the commissioners or from the award of the governing body of any city, county, or political subdivision making the award, the property owner or the condemner shall be entitled to a jury trial in the district court as a matter of right notwithstanding the provisions of any charter or ordinance denying such right.

[1951 c 623 s 1]

**117.14 TRIAL; COSTS.** Such appeal may be noticed for trial 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 cause shall be tried by a jury, unless the parties otherwise agree, and the court or jury trying the same shall reassess the damages and apportion the same as justice may require. Whenever the state is acquiring property, the jury or court shall show in the verdict or order 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 other property involved. The amounts awarded to each person shall also be shown separately. Except as herein otherwise provided, the trial shall be conducted and the cause disposed of according to the rules applicable to ordinary civil actions in the district court. The court in its discretion may award to the prevailing party the costs and disbursements of the appeal.

[R. L. s. 2533; 1953 c 751 s 2] (6550)

**117.15 JUDGMENT; POSSESSION.** 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. Upon the payment of the damages with costs and interest, if any, the petitioner shall be permitted to take possession of the premises and appropriate the same to the public uses for which they were taken, subject to the provisions of such judgment; 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.

[R. L. s. 2534] (6551)

**117.16 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 commissioners report. If the award be not paid within 70 days after such filing, or, in case of an appeal within the like period after the final judgment thereon, the court, on motion of the owner of the land, shall vacate the award and dismiss the proceeding 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 fees of counsel.

[R. L. s. 2535; 1957 c 728 s 2] (6552)

# MINNESOTA STATUTES 1965

1309

EMINENT DOMAIN 117.20

**117.17 RECORD, EVIDENCE, HOW PERFECTED.** Upon the determination of all appeals taken in the proceeding, and the payment of all damages, interest, and costs awarded or recovered therein, and when there has been no appeal from the report of the commissioners, and more than 30 days have expired since the service upon all the parties to the proceeding of the notice referred to in section 117.09, and payment has been made of all damages and interest allowed by the commissioners, the court, upon motion of the petitioner, shall enter a final decree establishing the rights of the petitioner in the whole or any part of the lands so taken. A certified copy of the decree may be filed for record with the register of deeds of the county, and such decree shall be evidence, and the record thereof notice, of the title and rights of the petitioner therein set forth.

[R. L. s. 2536] (6553)

**117.18 PROPERTY TAKEN BY STATE IS ESTATE WITHOUT RIGHT OF REVERSION.** In all cases where proceedings shall hereafter be instituted for the condemnation of property for public use by the State of Minnesota or by any political subdivision thereof, 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.

[1917 c. 419 s. 1] (6554)

**117.19 PROCEEDINGS IN CERTAIN CASES, NOTICE FILED.** When the State of Minnesota or any city, county, village, town, board of park commissioners, or board of public works in this state shall take or acquire, by condemnation proceedings or dedication, any land, or any easement or interest therein, for laying out, opening, widening, extending, or establishing any public street, road, highway, or alley or for public parks, parkways, or other public purposes or shall vacate or abandon any public street, road, highway, alley, park, or public grounds, or any portion thereof, or any easement or interest therein, a notice in writing of the completion of every such condemnation proceeding and of every such dedication, vacation, or abandonment of any public street, road, highway, alley, park, or public grounds, or any portion thereof, shall be forthwith filed for record with the register of deeds of the county within which the lands and premises are located. This notice shall first be presented to the county auditor who shall enter the same in his transfer records and note upon the instrument, over his official signature, the words "entered in the transfer record." This notice shall be prepared and filed by the state department administrator, clerk, auditor, recorder, or other person charged with the duty of keeping the records of the state or such city, county, village, town, board of park commissioners, or board of public works so acquiring any such lands or vacating or abandoning any such street, road, highway, park, or public grounds, and this notice shall contain a statement of the time of the completion of the condemnation proceedings or of the vacation or abandonment, as the case may be, and the name of the state, city, county, village, town, or board by whom the proceedings are prosecuted or the vacation is made, or to whom the dedication is made, and a description of the real estate and lands affected thereby. Any failure to file this notice shall not invalidate or make void any such condemnation proceeding for the vacation or abandonment of any public street, road, highway, park, or public grounds, or any portion thereof.

[1917 c. 416 s. 1; 1941 c. 252] (6555)

**117.20 PROCEEDINGS BY STATE, ITS AGENCIES, OR POLITICAL SUBDIVISIONS.** Subdivision 1. In eminent domain proceedings instituted by the state or by any of its agencies or political subdivisions as petitioners under the provisions of this chapter, the procedure shall be as follows:

Subd. 2. 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.

# MINNESOTA STATUTES 1965

## 117.20 EMINENT DOMAIN

1310

Subd. 3. Within seven days from the date of the filing of the report of commissioners, the petitioner shall notify each respondent or his attorney by mail of the filing of the report of commissioners setting forth the date 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.

Subd. 4. At any time within 40 days from the date of the filing of the report, any party to the proceeding may appeal 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; which 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 the grounds of the appeal; and upon appeal the prevailing party shall recover costs and disbursements.

Subd. 5. 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 public officials 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, provided however that the petitioner may by motion request, and the court may order reduction in the amount of the partial payment for cause shown. Such partial payment may be made in the same manner as other payments are made under this chapter. A partial payment as herein provided shall not draw interest upon the amount thereof from date of payment, and upon final determination of any appeal the total award of damages shall be reduced by the amount of the partial payment. If any partial 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.

Subd. 6. The notice of filing of report provided for in section 117.09 shall be dispensed with; as shall also the final decree provided for in section 117.17, provided the attorney for the petitioner make a certificate describing the land taken and the purpose or purposes for which taken, and reciting the fact of payment of all awards or judgments in relation thereto, which certificate upon approval thereof by the court shall establish the rights of the petitioner in the lands taken and 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 state or of its agency or political subdivision to the lands therein described.

Subd. 7. The petitioner may, except as to lands already devoted to a public use, at any time after the filing of the order appointing commissioners for the condemnation of any land for a trunk highway, road, street, sanitary sewer, or storm sewer, or for material for the construction or improvement thereof, take possession of such land; and may at any time enter upon any lands and make surveys and examinations thereof in the location of trunk highways, roads, streets, sanitary sewer, or storm sewer, or in the acquisition of material for the construction or improvement thereof.

Subd. 8. In all eminent domain proceedings instituted by the state or any of its agencies or political subdivisions or any of its agencies, the following additional provisions shall control:

(a) 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 damage 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 Minnesota Statutes, Section 117.02, Subdivision 3, and upon all oc-

# MINNESOTA STATUTES 1965

cupants 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. No owner not served as herein provided shall 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 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.

(b) The commissioners, having qualified according to law, shall meet as directed by the order of the appointment and hear the allegations and proofs of all persons interested touching upon the matters to them committed in accordance with the procedures set forth in section 117.08, except as hereinafter provided. Except for proceedings instituted by the state to acquire lands for the interstate system of highways, such commissioners may, in addition to their assessment and their award of the damages, in their discretion allow and show separately reasonable expenses for moving personal property which are reasonably expected to be incurred by a person occupying a residence and who is the fee owner, contract for deed vendee or lessee, but such amount shall in no event exceed \$200; where non-residential property or a farm is being acquired, the commissioners may in their discretion allow and show separately the reasonable expenses of moving personal property within the state of Minnesota for a distance not to exceed 50 miles which are reasonably expected to be incurred by a person occupying the property as the fee owner, contract for deed vendee or lessee, but in no event shall this amount exceed \$3,000. In proceedings instituted by the state to acquire lands for the interstate system of highways, the commissioners may, in addition to their assessment and award of damages, in their discretion provide that the state shall pay the actual expenses for moving personal property incurred by a person occupying a residence that is being taken, and who is the fee owner, contract for deed vendee, or lessee, but such amount shall in no event exceed \$200; when nonresidential property or a farm is being acquired the commissioners may, in addition to their assessment and award of damages, in their discretion provide that the state pay the actual expenses for moving personal property within the state of Minnesota for a distance not to exceed 50 miles which are incurred by a person occupying the property as the fee owner, contract for deed vendee, or lessee, but in no event shall this amount exceed \$3,000. In both of the latter two instances when the state is acquiring for the interstate system, the fee owner, contract for deed vendee, or lessee, in order to obtain moving expenses, shall submit to the state on forms provided by the state a written claim supported by receipted bills or other acceptable evidence of the expenses incurred, together with other information required, so that the state may receive federal participation in such moving costs. The commissioners, in all such proceedings including proceedings for the acquisition of lands for the interstate system, may in their discretion allow and show separately in addition to such separate assessment and award of the damages reasonable appraisal fees not to exceed a total of \$150.

(c) Such appeal may be noticed for trial 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 cause shall be tried by a jury unless the parties otherwise agree, and the court or jury trying the same shall reassess the damages and apportion the same as justice may require. Whenever the state is acquiring property, the jury or court shall show in the verdict or order 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 other property involved. The amounts awarded to each person shall also be shown separately. Except as herein otherwise provided, the trial shall be conducted and the cause dis-

# MINNESOTA STATUTES 1965

## 117.201 EMINENT DOMAIN

1312

posed of according to the rules applicable to ordinary civil actions in the district court. A commissioner in a condemnation proceeding may be called by any party as a witness to testify as to the amount of the award of the commissioners.

(d) The court may, in its discretion, after a verdict has been rendered on the trial of an appeal allow as taxable costs reasonable appraisers' fees not to exceed \$150 for each appraiser and not more than two appraisers. The court may, in its discretion, allow as taxable costs reasonable expenses for moving personal property incurred by a person occupying a residence and who is the fee owner, contract for deed vendee or lessee, but such amount shall in no event exceed \$200. Where non residential property or a farm has been acquired, the court may in its discretion allow as taxable costs the reasonable expenses of moving personal property within the state of Minnesota for a distance not to exceed 50 miles if such expenses have been incurred by a person occupying the property as the fee owner, contract for deed vendee or lessee, but in no event shall this amount exceed \$3,000. The court may in its discretion allow such moving costs and appraisers' fees whether or not the parties entitled thereto are the prevailing parties. If moving costs are allowed by the court, in those cases arising out of land acquisition for the interstate system of highways, the person to receive such costs shall submit to the state on forms provided by the state a written claim supported by receipted bills or other acceptable evidence of the expenses incurred, together with other information required, so that the state may receive federal participation in such moving costs. No costs shall be taxed by the state against any other party.

NOTE: Laws 1963, Chapter 554, Section 3 reads:

"Sec. 3. Sections 1 [Section 117.20, Subdivision 8] and 2 [Section 117.201] apply to proceedings in eminent domain and acquisitions by direct purchase commenced on and after final enactment of this act." [1927 c 297 s 1; 1941 c 307 s 1; 1947 c 312 s 1; 1953 c 164 s 1; 1957 c 728 s 1; 1959 c 656 s 1, 2; Ex1959 c 41 s 1; 1961 c 717 s 2; 1963 c 554 s 1] (6557-1)

**117.201 PAYMENT IN INSTALLMENTS.** Subdivision 1. **Option of property owner.** Whenever the state of Minnesota or any of its political subdivisions acquires private property 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 or owners shall receive for said property is finally determined, the owner or all the owners, if there is more than one, 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 state or the political subdivision, shall elect to have the purchase price paid in not more than four annual installments and without interest on the deferred installments.

[1957 c 718 s 1-3]

**117.202 DIRECT PURCHASE BY STATE, ITS AGENCIES, OR POLITICAL SUBDIVISION.** Subdivision 1. In cases where acquisition of private property for public use is accomplished by direct purchase by the state or any of its agencies or political subdivisions, the purchaser shall in the instances as set forth in section 117.20, subdivision 8, include such sums for appraisal fees and moving costs not to exceed the limits in such instances as set forth in said section 117.20, as it deems reasonable and just in the circumstances and shall separately state such costs to the owner.

Subd. 2. In the event the purchaser and owner agree on the fair market value of the real estate but cannot agree on the appraisal fees and moving costs, the purchaser shall have the option to accept the offer for the real estate and reject the offer for the appraisal fees and moving costs. In addition

# MINNESOTA STATUTES 1965

1313

EMINENT DOMAIN 117.34

thereto, the owner may, if he desires, 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.

[1963 c 554 s 2]

NOTE: Laws 1963, Chapter 554, Section 3 reads:

"Sec. 3. Sections 1 [Section 117.20, Subdivision 8] and 2 [Section 117.202] apply to proceedings in eminent domain and acquisitions by direct purchase commenced on and after final enactment of this act."

**117.21 EASEMENT TO INCLUDE SNOW FENCES.** When the right to establish a public road is acquired by the state, or by any of its agencies or political subdivisions, there shall be included in the easement so acquired the power to erect and maintain temporary snow fences as required upon lands adjoining the highway part of which lands have been taken for road purposes. The right to erect and maintain such fences shall be considered in awarding damages, and any award shall be conclusively presumed to include the damages, if any, caused by the right to erect and maintain such fences; provided, that, if the state, or agency or political subdivision thereof, shall file with its petition, or at any time before the question of damages is submitted to a jury, a written disclaimer of its desire and intention to acquire a right to erect and maintain snow fences as to any particular tract of land involved, then no such right shall be acquired in such proceeding and no consideration given to such fences as an element of damage.

[1929 c. 396 s. 1] (6557-4)

117.22 [Renumbered 375.181]

117.23 [Repealed, 1961 c 561 s 17]

117.24 [Repealed, 1961 c 561 s 17]

117.25 [Repealed, 1961 c 561 s 17]

117.26 [Repealed, 1961 c 561 s 17]

117.27 [Repealed, 1961 c 561 s 17]

117.28 [Repealed, 1961 c 561 s 17]

117.29 [Repealed, 1961 c 561 s 17]

117.30 [Repealed, 1961 c 561 s 17]

**117.31 SANATORIUM COMMISSIONS TO HAVE RIGHT OF EMINENT DOMAIN.** The county sanatorium commission of any county or group of counties operating under sections 376.28 to 376.42, may acquire land for a site for a building or buildings, for the enlargement of such site, or for other sanatorium purposes, by gift, purchase, or condemnation, the condemnation proceedings to be conducted as provided by this chapter.

[1921 c. 254 s. 1] (6567)

**117.32 RAILROAD BUILT WITHOUT RIGHT; ACTION.** When a railroad shall have been built across any tract of land no action shall be commenced for the recovery of such land while proceedings are pending under the law to ascertain and assess the damages. Otherwise, any person damaged by such taking and not already compensated may bring an action to recover the land, with or without damages for withholding the same, against the corporation or individual operating or maintaining the railroad, whether the road was constructed upon such land with the acquiescence of the owner or not.

[R. L. s. 2537] (6568)

**117.33 ANSWER; ASCERTAINMENT OF DAMAGES.** The defendant, in the action brought under the provisions of section 117.32, by answer may admit and allege the taking of such land for railroad purposes, that compensation has not been made to plaintiff therefor, and that defendant is ready and willing to pay such compensation and to have the amount thereof assessed by the jury trying such action, if plaintiff's right to recover the land be established. When such answer is made the jury shall find whether the plaintiff is entitled to recover the land; and, if so, the amount of compensation due him for the taking and perpetual use thereof for railroad purposes. If it shall appear that the land was so taken and appropriated with the consent and acquiescence of the owner, such owner shall recover no rents or profits which accrued prior to the demand for compensation.

[R. L. s. 2538] (6569)

**117.34 JUDGMENT AND EXECUTION.** Upon a verdict that plaintiff is entitled to recover the land, and for the amount of compensation due him, as provided in section 117.33, judgment shall be rendered in substance that plaintiff have and recover from the defendant the land in suit or in lieu thereof the compensation fixed by the jury, with costs and disbursements and reasonable attorney's fees as determined by the court. If such amounts be not paid within 30 days after entry of the

# MINNESOTA STATUTES 1965

## 117.35 EMINENT DOMAIN

1314

Judgment, execution shall issue for delivery of the possession of such land to plaintiff, and for the costs, disbursements, and attorney's fees aforesaid out of any property of the defendant.

[R. L. s. 2539] (6570)

**117.35 PROCEDURE WHEN NO ANSWER IS MADE.** If no answer be interposed or if no offer be made by answer to pay the compensation to be so ascertained, the plaintiff, if he establish his right to the land, shall have judgment for the immediate possession thereof and for such damages, rents, and profits as may be alleged and found, with costs and disbursements and reasonable attorney's fees to be allowed by the court, upon which judgment execution shall issue as in the case of other judgments for the possession of real estate. Except as otherwise provided, such action shall be governed by the same rules as to practice, procedure, new trials, and appeals as are other actions for the recovery of land.

[R. L. s. 2540; 1911 c. 319] (6571)

**117.36 VALIDITY OF RAILROAD CONDEMNATION; ACTION.** When an owner refuses or neglects to receive an award made in a proceeding to condemn land for railroad purposes on the ground that any of the proceedings are illegal and no appeal from the award has been taken, the railroad company or its receiver may bring an action to determine the validity of such proceedings. If such validity be denied by the answer and that issue be determined against the defendant, judgment shall be entered accordingly, but he shall not thereby be debarred from his right to such award. If it be determined that such proceedings are invalid and that the defendant is an owner, the present value of his interest in the land shall be ascertained. Thereupon judgment shall be entered that such interest be appropriated for such railroad purposes, if within 60 days thereafter the plaintiff pay to the defendant or into court for the benefit of the parties thereto entitled, the compensation adjudged, with interest, costs, and disbursements, and that in default of such payment the action be dismissed. Such payment shall vest in the company or in the receiver for its benefit all the right, title, and interest of the defendant in such land as fully as if the same had been acquired by the condemnation proceedings; and upon such payment the court may enter final judgment to that effect.

[R. L. s. 2541] (6572)

**117.37 PROCEDURE.** In such action the plaintiff may join as defendants all persons having or claiming any interest in the land and may in the same complaint include several tracts of land owned or claimed by different persons, but the owners of different tracts may demand separate trials. Upon all issues of fact either party shall be entitled to a jury trial and the action shall be governed by the rules applicable to an action to determine adverse claims to real estate, and the plaintiff cannot recover costs or disbursements.

[R. L. s. 2542] (6573)

**117.38 ACQUISITION OF LAND FOR CERTAIN PURPOSES.** When the United States, the State of Minnesota, or other governmental authority having jurisdiction so to do, authorizes change of harbor lines or diversion of channel, or other change in any river, stream, or watercourse in the State of Minnesota, any railway company, terminal company, or depot company incorporated or licensed to engage in the business of transportation of freight or passengers in this state interested in such change by reason of the improvement and enlargement of its property, or otherwise, may acquire the lands and premises needed therefor. Such company may in its own name, either by purchase or by condemnation, obtain the title to such lands and premises or any interest therein, including the lands or any interest therein belonging to any municipal corporation in this state.

[1915 c. 45 s. 1] (6574)

**117.39 PROCEEDINGS UNDER RIGHT OF EMINENT DOMAIN.** Proceedings to condemn lands needed for such change may be commenced and prosecuted by such corporation to final judgment under the statutes of this state in respect to the taking of property by right of eminent domain; and all of the general laws of this state in respect of condemnation of property shall apply thereto and govern and control such proceedings.

[1915 c. 45 s. 2] (6575)

**117.40 MUNICIPALITY MAY CONTEST.** Any municipality interested in the land proposed to be taken in such proceedings may, if its interest seems to so require,

# MINNESOTA STATUTES 1965

1315

EMINENT DOMAIN 117.42

contest the necessity for the condemnation of its interest in the premises proposed to be taken.

[1915 c. 45 s. 3] (6576)

**117.41 CONVEYANCE, TO WHOM MADE.** Upon acquiring title to these lands and premises, whether by purchase or condemnation, such corporation shall make due conveyance thereof to the United States, the State of Minnesota, or other governmental authority mentioned in section 117.38. Likewise, any municipal corporation having any interest in the lands or premises may, upon such terms, as to that municipality, its interests may seem to require, make due conveyance thereof either to the company or to the governmental authority.

[1915 c. 45 s. 4] (6577)

**117.42 AWARD IN CONDEMNATION PROCEEDINGS IN CITIES OF FIRST CLASS.** When an award of compensation and damages shall be confirmed by the city council of any city of the first class in the state existing and governed under a charter adopted pursuant to the Constitution of the State of Minnesota, Article 4, Section 36, in any proceeding for the taking of property under the power of eminent domain, and not appealed from, and when the same, when appealed from, shall not be set aside by the court, the same shall constitute a lawful and sufficient condemnation and appropriation to public use of the land and property and rights in property for which compensation or damages are so awarded, and the city council shall thereupon cause to be paid from the funds of such city to the owner of such property the amount awarded to each severally.

Before payment of such award, the owner of such property or the claimant of the award shall furnish an abstract of title showing himself entitled to all of the compensation and damages claimed. In case of neglect to furnish such abstract or if there shall be any doubt as to who is entitled to such compensation or damages or any part of the same, the amount so awarded shall be by the city council appropriated and set apart in the city treasury for whoever shall show clear right to receive the same. The city council may in its discretion require of such claimant a bond, with good and sufficient sureties, conditioned to indemnify and save the city harmless against all other claims for such compensation or damages, or for the property for which the same was awarded, and all loss, costs, or expenses on account of such claim. When the city attorney shall certify in writing to the city council that he is in doubt as to whom the award shall be paid to the city council may order a warrant to be drawn for the same payable to the clerk of the district court and the city clerk shall deliver the same to the clerk of the district court and take his receipt for the same; which deposit with the clerk of the court shall have the same effect as if set aside in the city treasury, as hereinbefore provided, and in which case the parties entitled to the same shall establish their right to the same by a petition to the district court setting up the facts entitling them thereto and by proving the same to the satisfaction of the court, and when so established the court shall make an order directing to whom the same shall be paid.

Upon the payment of the award or appropriation or the setting apart of the money in the city treasury to pay the same, as aforesaid, the city shall become vested with the title to the property taken and condemned absolutely for all purposes for which the city may ever have occasion to use the same and may forthwith enter upon and use the same. When any such award shall be confirmed by the city council of any such city and an appeal shall be taken therefrom the city council shall by resolution enacted by affirmative vote of a majority of all of its members elected appropriate and set aside in the treasury of the city, in a fund therein to be known as the condemnation and award fund, a sum of money equal in amount to such award, providing for the retention thereof therein during the pendency of the appeal, available at all times for the payment thereof upon demand to whomsoever may be shown to have a clear right thereto, and further pledge the full faith and credit of the city for the payment of any increase of the award allowed upon the appeal; then and in such case, regardless of the appeal, upon the enactment of such resolution by the city council and the setting apart of the amount of the award in the treasury of the city, the city shall be entitled to enter upon and take possession of the property condemned and to put such property to the use for which such condemnation was made.

[1921 c. 219 s. 1; 1931 c. 396] (6578-1)

# MINNESOTA STATUTES 1965

## 117.43 EMINENT DOMAIN

1316

**117.43 FUNDS FROM WHICH AWARD PAYABLE.** If any city of the first class shall in and by its charter have provided for the payment of awards of compensation and damages out of a particular fund, section 117.42 shall not apply thereto so as to change the fund out of which such awards shall be paid, as designated by the charter of any city of the first class.

[1921 c. 219 s. 2] (6578-2)

**117.44 COMMISSIONER OF CONSERVATION TO ACQUIRE CERTAIN LANDS.** Authority is given to the commissioner of conservation to acquire and to use the procedure set forth in Laws 1935, Chapter 52 as far as applicable in acquiring the land necessary for the Talcot lake project in Murray and Cottonwood counties, such land to be paid for from any available funds of the department of conservation or from money provided by the United States government.

[1935 c. 105 s. 1] (6578-3)

**117.45 AUTHORITY OF COMMISSIONER OF CONSERVATION.** Authority is likewise given to the commissioner of conservation to acquire and to use the procedure set forth in Laws 1935, Chapter 52, so far as applicable in acquiring any land necessary for other projects of a similar character in which the United States shall provide the funds for necessary improvements.

[1935 c. 105 s. 2] (6578-4)

**117.46 TACONITE MINING COMPANY GRANTED POWER OF EMINENT DOMAIN.** The business of mining and beneficiating taconite, as defined in Minnesota Statutes 1941, Section 298.23, is declared to be in the public interest and necessary to the public welfare, and the taking of private property therefor is declared to be for a public use and purpose. Any corporation or association engaged in or preparing to engage in the business of mining and beneficiating taconite is authorized to acquire, for the purposes of such business, easements, rights of way, and surface rights over, through, or across any lands, not owned by the state or devoted to a public purpose, for the erection and maintenance of pipe lines, pole lines, conduits, sluiceways, roads, railroads, or tramways. It may also acquire, for the purposes of such business, flowage rights, rights to transport crude ore, concentrates therefrom, or waste materials, and lands upon which to deposit tailings, stripping, and other waste products of such business. It may also acquire necessary sites of grounds for plants and other buildings requisite to the proper carrying on of such business, and lands, easements or private water rights requisite to the construction of wharves, piers, breakwaters, or similar facilities requisite to the carrying on of such business or the shipment of the products thereof. To such end it shall have and enjoy the right of eminent domain to be exercised in accordance with Minnesota Statutes 1941, Chapter 117, and acts amendatory thereof, all of which provisions shall govern in so far as they may be applicable hereto. Nothing herein shall be construed as authorizing the taking of any property owned by the state, or any municipal subdivision thereof, or the acquisition of any rights in public waters except after permit, lease, license, or authorization issued pursuant to law.

[1945 c 275 s 1; 1947 c 320 s 1]

**117.461 SEMI-TACONITE MINING, EMINENT DOMAIN.** Subdivision 1. The business of mining and beneficiating semi-taconite, as defined in Minnesota Statutes, Section 298.34, is declared to be in the public interest and necessary to the public welfare, and the taking of private property therefor is declared to be for a public use and purpose. Any corporation or association engaged in the business of mining iron ore in Minnesota or engaged in the business of or preparing to engage in the business of mining or beneficiating semi-taconite is authorized to acquire, for the purposes of such semi-taconite business, easements, rights of way, and surface rights over, through, or across any lands, not owned by the state or devoted to a public purpose or situated within the corporate limits of any village or city of the first, second, third, or fourth class, for pipe lines, pole lines, conduits, sluiceways, roads, railroads, or tramways. It may also acquire, for the purposes of such semi-taconite business, flowage rights, rights to transport crude ore, concentrates therefrom, or waste materials, and lands upon which to deposit tailings, stripping, and other waste products of such semi-taconite business. It may also acquire necessary sites of grounds for plants and other buildings requisite to the proper carrying on of such semi-taconite business. To such end it shall have and enjoy the right of emi-

# MINNESOTA STATUTES 1965

1317

EMINENT DOMAIN 117.471

uent domain to be exercised in accordance with Minnesota Statutes, Chapter 117, and acts amendatory thereof, all of which provisions shall govern insofar as they may be applicable hereto. Nothing herein shall be construed as authorizing the taking of any property owned by the state, or any municipal subdivision thereof, or the acquisition of any rights in public waters except after permit, lease, license, or authorization issued pursuant to law.

Subd. 2. The commissioner of conservation is authorized to grant permits and licenses or leases on and across lands owned by the state for any of the purposes set forth in subdivision 1, and to lease state owned lands for the depositing of stripping, lean ores, tailings, or waste products of such business. He is also authorized to license the flooding of state lands in connection with any permit or authorization for the use of public waters issued by the legislature or issued by the commissioner pursuant to law. Such permits, licenses, and leases shall be upon such conditions and for such consideration and for such period of time as the commissioner may determine. The county auditor, with the approval of the county board, is authorized to grant permits, licenses, and leases for all such purposes across tax forfeited lands not held by the state free from any trust in favor of any and all taxing districts, upon such conditions and for such considerations and for such period of time as the county board may determine. Any proceeds from the granting of such permits, licenses, or leases shall be apportioned and distributed as other proceeds from the sale or rental of tax forfeited lands.

[1963 c 872 s 1]

**117.47 PERMITS; LICENSES.** The commissioner of conservation is authorized to grant permits and licenses or leases on and across lands owned by the state for any of the purposes set forth in section 117.46, and to lease state owned lands for the depositing of stripping, lean ores, tailings, or waste products of such business. He is also authorized to license the flooding of state lands in connection with any permit or authorization for the use of public waters issued by the legislature or issued by the commissioner pursuant to law. Such permits, licenses, and leases shall be upon such conditions and for such consideration and for such period of time as the commissioner may determine. The county auditor, with the approval of the county board, is authorized to grant permits, licenses and leases for all such purposes across tax-forfeited lands not held by the state free from any trust in favor of any and all taxing districts, upon such conditions and for such consideration and for such period of time as the county board may determine. Any proceeds from the granting of such permits, licenses or leases shall be apportioned and distributed as other proceeds from the sale or rental of tax-forfeited lands.

[1945 c 275 s 2; 1955 c 619 s 1]

**117.471 EASEMENTS OVER TAX-FORFEITED LANDS, APPROVAL.** Any easements over tax-forfeited lands granted by the county board of any county under Minnesota Statutes, Section 117.47, shall be subject to the condition that it be approved by the commissioner of conservation.

[1955 c 814 s 1]