

Eminent Domain; Local Depositories and Investments

CHAPTER 117

EMINENT DOMAIN

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117.01 [Repealed, 1971 c 595 s 29]

117.011 [Repealed, 2006 c 214 s 21]

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 under-

taken 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.

History: 2006 c 214 s 1

117.015 [Repealed, 1971 c 595 s 29]

117.016 JOINT ACQUISITION OF LAND.

Subdivision 1. State or any of its agencies or political subdivisions. Whenever the state or any of its agencies or political subdivisions thereof is acquiring property for a public purpose and it is determined that a portion or a part of a tract of land is necessary for its particular public purpose and that other portions or parts of the same tract of land or the remainder thereof are needed by another agency or political subdivision of the state for a public purpose, the state or its agencies or political subdivisions desiring such lands or parts thereof may enter into an agreement each with the other for the joint acquisition of such lands by eminent domain proceedings.

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

Subd. 3. Procedure. The proceedings in eminent domain for the acquisition of the lands so desired shall be instituted and carried to completion in the names of the parties to the agreement describing the lands each shall acquire but for the purposes of the proceedings and for ascertaining the damages for the taking, the lands so acquired shall be treated as one parcel.

History: 1971 c 595 s 2

117.02 [Repealed, 1971 c 595 s 29]

117.025 DEFINITIONS.

Subdivision 1. Words, terms, and phrases. 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 power of eminent domain, with the possession, enjoyment, or value of private property.

Subd. 3. Owner. "Owner" includes all persons 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 216E.01, 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.

History: 1971 c 595 s 3; 2006 c 214 s 2; 2006 c 214 s 20

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.

History: 2006 c 214 s 3

117.03 [Repealed, 1971 c 595 s 29]

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.

History: 2006 c 214 s 4

117.035 PROCEEDINGS, BY WHOM INSTITUTED.

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

History: 1971 c 595 s 4; 1986 c 444; 2006 c 214 s 20

117.036 APPRAISAL AND NEGOTIATION REQUIREMENTS.

Subdivision 1. **Application.** This section applies to the acquisition of property 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. 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, and inform the 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 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, 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.

History: *1Sp2003 c 19 art 2 s 3; 2006 c 214 s 5*

117.04 [Repealed, 1971 c 595 s 29]

117.041 ENTRY FOR SURVEY OR ENVIRONMENTAL TESTING.

Subdivision 1. **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.

Subd. 2. **Environmental testing before eminent domain proceedings.** (a) A state agency by order of the commissioner or a political subdivision by resolution may enter property for purposes of investigation, monitoring, testing, surveying, boring, or other similar activities necessary or appropriate to identify the existence and extent of a release or threat of release of a hazardous substance, pollutant, or contaminant if:

(1) the state agency or political subdivision has reason to believe that acquisition of the property may be required pursuant to eminent domain proceedings;

(2) the state agency or political subdivision has reason to believe that a hazardous substance, pollutant, or contaminant is present on the property or the release of a hazardous substance, pollutant, or contaminant may have occurred or is likely to occur on the property; and

(3) entry on the property for environmental testing is rationally related to health, safety, or welfare concerns of the state agency or political subdivision in connection with possible eminent domain proceedings.

(b) At least ten days before entering the property, the state agency or political subdivision must serve notice on the property owner requesting permission to enter the property, stating the approximate time and purpose of the entry, and giving the owner the option of refusing entry. The notice shall also give the owner the option of requesting an equal amount of any sample or portion taken from the property and a copy of any data obtained or report issued. If the property owner refuses to consent to the entry, the state agency or political subdivision must apply for a court order authorizing the entry and the removal of any sample or portion from the property, giving notice of the court order to the property owner. The court shall issue an order if the state agency or political subdivision meets the standards in paragraph (a). Notices under this paragraph must be served in the same manner as a summons in a civil action.

(c) The state agency or political subdivision must do no unnecessary damage to the property and shall restore the property to substantially the same condition in which it was found. If the state agency or political subdivision removes a sample or portion of the property for investigation, monitoring, or testing, or obtains any data or issues any report, it must give the property owner an equal amount of the sample or portion and a copy of any data or report, if requested by the property owner, and must permit the property owner to perform independent investigation, monitoring, or testing of the sample or portion.

(d) The results of testing performed under paragraph (a) must be included in any environmental assessment worksheet or environmental impact statement that the state agency or political subdivision is required to prepare under chapter 116D.

History: 1971 c 595 s 5; 1991 c 224 s 1

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.

History: 2006 c 214 s 6

117.042 POSSESSION.

Whenever the petitioner shall require title and possession of all or part of the owner's property prior to the filing of an award by the court appointed commissioners, the petitioner shall, at least 90 days prior to the date on which possession is to be taken, notify the owner of the intent to possess by notice served by certified mail and before taking title and possession shall pay to the owner or deposit with the court an amount equal to petitioner's approved appraisal of value. Amounts deposited with the court shall be paid out under the direction of the court. If it is deemed necessary to deposit the above amount with the court the petitioner may apply to the court for an order transferring title and possession of the property or properties involved from the owner to the petitioner. In all other cases, petitioner has the right to the title and possession after the filing of the award by the court appointed commissioners as follows:

(a) if appeal is waived by the parties upon payment of the award;

(b) if appeal is not waived by the parties upon payment or deposit of three-fourths of the award. The amount deposited shall be deposited by the court administrator in an interest bearing account no later than the business day next following the day on which the amount was deposited with the court. All interest credited to the amount deposited from the date of deposit shall be paid to the ultimate recipient of the amount deposited.

Nothing in this section shall limit rights granted in section 117.155.

History: 1971 c 595 s 6; 1975 c 218 s 1; 1976 c 72 s 1; 1978 c 674 s 60; 1981 c 8 s 1; 1Sp1986 c 3 art 1 s 82

117.043 COMPELLING DELIVERY OF POSSESSION.

Subdivision 1. Conditions required for court to issue relief. A court having jurisdiction over an eminent domain proceeding may issue an order compelling delivery of possession of the property under any of the following conditions:

(1) the court has issued an order authorizing transfer of title and possession and the petitioner has paid or deposited its approved appraisal value under section 117.042; or

(2) the petitioner has acquired title of the real estate.

If one of these conditions is met, the court may issue an order compelling delivery of possession of the property upon: (1) the affidavit of the petitioner; (2) notice to the occupants of the acquired real estate and others claiming a right to remain in possession of it; and (3) a hearing. Notice of the hearing must be given in the same way as notice of a motion under the

Rules of Civil Procedure. In case of hardship the court may delay enforcement of an order compelling delivery of possession for a period not to exceed seven days. Unless otherwise allowed by the court, the matter must be considered solely on the basis of arguments of counsel and affidavits.

Subd. 2. **Award of fees and costs.** Following notice and hearing, if the occupant, in bad faith, has failed to deliver possession of the real estate in accordance with either an order issued under section 117.042 or an order issued under this section, the court, upon application by the petitioner, may award to the petitioner, and against the occupant, the attorney fees, costs, and disbursements that were actually incurred by the petitioner in getting possession of the real estate.

History: 1987 c 287 s 1

117.045 COMPELLING ACQUISITION IN CERTAIN CASES.

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

History: 1971 c 595 s 7; 1985 c 248 s 70; 1986 c 444

117.05 [Repealed, 1971 c 595 s 29]

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.

History: 1971 c 595 s 8; 1986 c 444; 2006 c 214 s 7

117.06 [Repealed, 1971 c 595 s 29]

117.065 NOTICES OF PENDENCY AND ABANDONMENT; REQUIRED RECORDINGS.

At the time of filing the petition the petitioner shall record a notice of the pendency of the proceeding, describing with reasonable certainty the lands affected and for what purpose they are to be taken. The notice shall be recorded as follows:

- (1) if the lands are registered lands, with the registrar of titles;
- (2) if the lands are nonregistered, with the county recorder;
- (3) if the lands are both registered and nonregistered, with both the registrar and the county recorder.

If the proceeding be abandoned in whole or in part the petitioner shall within ten days thereafter record a notice to that effect, describing with reasonable certainty the lands so abandoned. The notice of abandonment shall be recorded in the same places as the notice of the pendency of the proceeding.

History: 1971 c 595 s 9; 1976 c 181 s 2; 1995 c 106 s 1; 2005 c 4 s 29

117.07 [Repealed, 1971 c 595 s 29]

117.075 HEARING; COMMISSIONERS; ORDER FOR TAKING.

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.

Subd. 2. **Appoint commissioners for damages.** If the proposed taking shall appear to be necessary and such as is authorized by law, the court by an order shall appoint three disinterested commissioners, and at least two alternates, to ascertain and report the amount of damages that will be sustained by the several owners on account of such taking.

Subd. 3. **Commissioner qualifications.** Before appointing a commissioner, the court shall inquire whether each prospective commissioner has any relationship, business or otherwise, to any of the parties in the proceeding, or any interest in the proceeding which may constitute a conflict of interest, or which may create the appearance of impropriety should that person be appointed. Responses to this inquiry must be either written or on the record and made available by the court to any party in the proceeding before and after appointment. No person who might have difficulty in rendering an unbiased decision may be appointed to serve. The court, in its discretion, may appoint one registered, practicing attorney to the commission who is knowledgeable in eminent domain matters. All other commissioners appointed must be persons actively engaged in the occupation of real estate sales or real estate appraising or persons knowledgeable in real estate values.

Subd. 4. **First meeting; pay; oath.** The order shall fix the time and place of the first meeting of the three commissioners and prescribe their compensation. At the first meeting at

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the office of the court administrator of district court the appointees must be sworn by the court administrator or an authorized deputy and shall take and sign the following oath before assuming their duties as commissioners:

(TITLE OF PROCEEDING)

..... does swear under penalty of perjury as follows:

I will faithfully and justly perform to the best of my ability, all the duties of the office and trust which I now assume as commissioner in the above entitled proceeding. I further swear that, except as disclosed in writing or on the record, I have no interest in any of the lands in the above proceeding or any present or past relationship, business or personal, with any of the parties to the above proceeding or any other actual or potential conflict of interest, and that I will render fair and impartial decisions, so help me God.

Subd. 5. Court may limit taker's ownership. The order may, in the discretion of the court, limit the title or easement to be acquired by the petitioner by defining the rights and privileges which the owner of any of the lands may exercise therein in subordination to the public uses to which it is appropriated.

Subd. 6. Replacement commissioner. In case any commissioner fails to act or fails to meet the qualifications required by this section, the court without further notice may appoint another in that commissioner's place.

Subd. 7. Post list of would be commissioners. The court administrator of court in each county shall post in the courthouse in a prominent place a notice that a qualified person may apply to have the person's name placed upon a list of potential commission appointees for eminent domain proceedings. The notice must contain the language of the oath which the commissioners are required to take upon appointment and shall list the other qualifications set forth in this section. The court shall give due consideration to the names appearing on the list, but is not bound to make appointments from the list.

History: 1971 c 595 s 10; 1985 c 299 s 1; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 2002 c 390 s 1; 2006 c 214 s 8

117.08 [Repealed, 1971 c 595 s 29]

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 \$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.

History: 1971 c 595 s 11; 1987 c 339 s 1; 1991 c 224 s 2; 1999 c 161 s 1; 2006 c 214 s 9

117.086 NONCONTIGUOUS TRACTS, TREATMENT AS UNIT.

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

Subd. 2. **Notice of appeal.** In the event that an appeal is taken, a party claiming a unity in noncontiguous tracts shall give notice thereof in the notice of appeal as provided in section 117.145.

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

History: 1971 c 595 s 17; 1986 c 444

117.087 PREPAYMENT PENALTIES; DAMAGES.

When property is taken pursuant to this chapter and it is security for a loan or advance of credit with a provision requiring or permitting the imposition of a penalty if the loan or advance of credit is prepaid, the cost of the penalty is an item of damages which shall be separately stated.

When property is purchased by a body having the power of eminent domain the buyer shall inquire whether it is security for a loan or advance of credit with a provision requiring or permitting the imposition of a penalty if the loan or advance of credit is prepaid and, if so, the penalty shall be an item considered by the parties in the negotiation of the price.

History: 1978 c 623 s 1; 2006 c 214 s 20

117.09 [Repealed, 1971 c 595 s 29]

117.095 [Repealed, 1973 c 604 s 8]

117.10 [Repealed, 1971 c 595 s 29]

117.105 FILING OF REPORT, TIME, FAILURE TO REPORT.

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

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

History: 1971 c 595 s 13; 1986 c 444; 1Sp1986 c 3 art 1 s 82

117.11 [Repealed, 1971 c 595 s 29]

117.115 REPORT, NOTICE.

Subdivision 1. **Fees and disbursements.** The commissioners shall, after notice to the petitioner, file their report with the court administrator of district court and the petitioner shall pay the commissioners their fees and disbursements. The court shall determine any dispute concerning the fees and disbursements.

Subd. 2. **Notification.** Within ten days after the date of the filing of the report of commissioners, the petitioner shall notify the following listed persons, by mail, of the filing of the report of commissioners setting forth the date of filing of the report, the amount of the award, and all the terms and conditions thereof as the same pertain to the respondent or party listed:

(1) each respondent listed in the petition as having an interest in any parcel described in the report;

(2) each other party to the proceeding whose appearance has been noted by the court in its order approving the petition under section 117.075; and

(3) each respondent's attorney.

Such notification shall be addressed to the last known post office address of each person notified. Notice of the filing of the report need not be given to parties initially served by publication under section 117.055. The petitioner shall file with the court administrator an affidavit of mailing of the notice, setting forth the names and addresses of all the persons so notified.

History: 1971 c 595 s 14; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 1995 c 106 s 2

117.12 [Repealed, 1971 c 595 s 29]

117.125 DEPOSIT IN COURT.

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

History: 1971 c 595 s 15; 1986 c 444; 1Sp1986 c 3 art 1 s 82

117.13 [Repealed, 1971 c 595 s 29]

117.133 [Repealed, 1971 c 595 s 29]

117.135 TAXES AND ASSESSMENTS.

Subdivision 1. **Payment of taxes and assessments on acquired property.** In all eminent domain proceedings taxes and assessments imposed upon the acquired property shall be compensated for as provided by section 272.68, except the state Transportation Department, as the acquiring authority, shall pay all taxes, including all unpaid special assessments and future installments thereof, as provided in subdivision 2.

Subd. 2. **Payment of taxes and assessments on property acquired by Department of Transportation.** When the state Transportation Department acquires a fee interest in prop-

erty before forfeiture, by any means, provision must be made to pay all taxes, including all unpaid special assessments and future installments thereof, unpaid on the property at the date of acquisition. For the purpose of this section, the date of acquisition shall be either the date on which the department enters into a written agreement to purchase the property or, in cases of condemnation, the date of acquisition shall be the date of the award of the court-appointed commissioners; except where the provisions of section 117.042 are exercised and apply, in which case the date of acquisition will be the date on which the state Transportation Department is entitled to take possession. Taxes lawfully levied shall not be abated. This subdivision shall not be construed to require the payment of accrued taxes and unpaid assessments on the acquired property which exceed the fair market value thereof. The state Transportation Department in acquiring property may make provisions for the apportionment of the taxes and unpaid assessments if less than a complete parcel or tract is acquired.

If such accrued taxes and unpaid assessments are not paid as hereinabove required, then the county auditor of the county in which the acquired property is located shall notify the commissioner of finance of the pertinent facts, and the commissioner of finance shall divert an amount equal to such accrued taxes and unpaid assessments from any funds which are thereafter to be distributed by the commissioner of finance to the state Transportation Department from the trunk highway fund, and shall pay over such diverted funds to the county treasurer of the county in which the acquired property is located in payment of such accrued taxes and unpaid assessments.

Subd. 3. Occupation of property after acquisition; leasing. If the state Transportation Department permits a person or business to occupy a property for a period of more than 120 days after the date of acquisition, the department shall thereafter charge a reasonable rental therefor in accordance with the provisions of section 161.23, subdivision 3.

History: 1971 c 595 s 16; 1973 c 492 s 14; 1973 c 543 s 1; 1976 c 166 s 7; 2003 c 112 art 2 s 50

117.14 [Repealed, 1971 c 595 s 29]

117.145 APPEAL: DEADLINE, NOTICE, SERVICE, CONTENTS; BY OTHER PARTIES.

At any time within 40 days from the date that the report has been filed, any party to the proceedings may appeal to the district court from any award of damages embraced in the report, or from any omission to award damages, by: (1) filing with the court administrator a notice of such appeal, and (2) serving by mail a copy of such notice on all respondents and all other parties to the proceedings having an interest in any parcel described in the appeal who are shown in the petitioner's affidavit of mailing, required by section 117.115, subdivision 2, as having been mailed a notice of the report of the commissioners.

If any notice of appeal is filed, any other party may appeal within 50 days from the date that the report was filed by: (1) filing with the court administrator a notice of the appeal; and (2) serving the notice of appeal by mail, as provided in this section. Service by mail is deemed effective upon deposit of the notice in the United States mail, by first class mail, with postage prepaid, and addressed to each person served at the address shown in the petitioner's affidavit of mailing required by section 117.115, subdivision 2. Proof of service by mail of a notice of appeal shall be filed with the court administrator promptly following the mailing of any notice of appeal. The notice of appeal shall specify the particular award or failure to award appealed from, the nature and amount of the claim, the land to which it relates, and grounds of the appeal, and if applicable, the notice required in section 117.086.

History: 1971 c 595 s 18; 1Sp1986 c 3 art 1 s 82; 1995 c 106 s 3

117.15 [Repealed, 1971 c 595 s 29]

117.155 PAYMENTS; PARTIAL PAYMENT PENDING APPEAL.

Except as otherwise provided herein payment of damages awarded may be made or tendered at any time after the filing of the report; and the duty of the petitioner to pay the amount

of any award or final judgment upon appeal shall, for all purposes, be held and construed to be full and just compensation to the respective owners or the persons interested in the lands. If either the petitioner or any respondent appeals from an award, the respondent or respondents, if there is more than one, except encumbrancers having an interest in the award which has been appealed, may demand of the petitioner a partial payment of the award pending the final determination thereof, and it shall be the duty of the petitioner to comply with such demand and to promptly pay the amount demanded but not in excess of an amount equal to three-fourths of the award of damages for the parcel which has been appealed, less any payments made by petitioner pursuant to section 117.042; provided, however, that the petitioner may by motion after due notice to all interested parties request, and the court may order, reduction in the amount of the partial payment for cause shown. If an appeal is taken from an award the petitioner may, but it cannot be compelled to, pay the entire amount of the award pending the final determination thereof. If any respondent or respondents having an interest in the award refuses to accept such payment the petitioner may pay the amount thereof to the court administrator of district court to be paid out under direction of the court. A partial or full payment as herein provided shall not draw interest from the condemner from the date of payment or deposit, and upon final determination of any appeal the total award of damages shall be reduced by the amount of the partial or full payment. If any partial or full payment exceeds the amount of the award of compensation as finally determined, upon petitioner's motion, final judgment must be entered in the condemnation action in favor of the petitioner in the amount of the balance owed to the petitioner and is recoverable within the original condemnation action.

History: 1971 c 595 s 19; 1980 c 607 art 19 s 2; 1Sp1986 c 3 art 1 s 82; 1997 c 231 art 16 s 3

117.16 [Repealed, 1971 c 595 s 29]

117.165 JURY TRIALS; DISCLOSURE.

Subdivision 1. **Appeal.** In all eminent domain proceedings where an appeal is taken to the district court from the award of commissioners, the owner or the petitioner shall be entitled to a jury trial.

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

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

History: 1971 c 595 s 20

117.17 [Repealed, 1971 c 595 s 29]

117.175 TRIAL, BURDEN OF PROOF, COSTS.

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

commissioner in a condemnation proceeding may be called by any party as a witness to testify as to the amount and the basis of the award of commissioners and may be examined and qualified as any other witness.

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

History: 1971 c 595 s 21

117.18 [Repealed, 1971 c 595 s 29]

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 May 20, 2006, that requires removal of a legal nonconforming use as a condition or prerequisite for the issuance of a permit, license, or other approval.

History: 2006 c 214 s 10

117.185 JUDGMENT.

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

History: 1971 c 595 s 22

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.

History: 2006 c 214 s 11

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.

History: 2006 c 214 s 12

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.

History: 2006 c 214 s 13

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.

History: 2006 c 214 s 14

117.19 [Repealed, 1971 c 595 s 29]

117.195 INTEREST; AWARD, WHEN PAYABLE; DISMISSAL; COSTS.

Subdivision 1. **Award; interest.** All damages allowed under this chapter, whether by the commissioners or upon appeal, shall bear interest from the time of the filing of the commissioner's report or from the date of the petitioner's possession whichever occurs first. The rate of interest shall be determined according to section 549.09. If the award is not paid within 70 days after the filing, or, in case of an appeal within 45 days after final judgment, or within 45 days after a stipulation of settlement, the court, on motion of the owner of the land, shall vacate the award and dismiss the proceedings against the land.

Subd. 2. **Costs.** When the proceeding is dismissed for nonpayment or discontinued by the petitioner, the owner may recover from the petitioner reasonable costs and expenses in-

cluding attorneys' fees. In the discretion of the court, the owner may also recover from the petitioner reasonable costs and expenses, including attorneys' fees, if a condemnation proceeding is dismissed because a court has held that condemnation shall not lie based on a challenge made under the Minnesota Environmental Rights Act. If the court awards costs and expenses, including attorneys' fees, and if the condemnation proceeding is part of a project or proposal which has received an environmental review pursuant to the Minnesota Environmental Policy Act, or siting or routing selection pursuant to chapter 216E, the costs and expenses, including attorney fees, shall be paid by the governmental unit responsible for the review or selection.

History: 1971 c 595 s 23; 1982 c 601 s 1; 1984 c 654 art 3 s 49

117.20 [Repealed, 1971 c 595 s 29]

117.201 [Repealed, 1971 c 595 s 29]

117.202 [Repealed, 1971 c 595 s 29]

117.205 FINAL CERTIFICATE.

Upon completion of the proceedings the attorney for the petitioner shall make a certificate describing the land taken and the purpose or purposes for which taken, and reciting the fact of final payment of all awards or judgments in relation thereto, which certificate shall be filed with the court administrator and a certified copy thereof filed for record with the county recorder; which record shall be notice to all parties of the title of the petitioner to the lands therein described.

History: 1971 c 595 s 24; 1975 c 175 s 1; 1976 c 181 s 2; 1Sp1986 c 3 art 1 s 82

117.21 EASEMENT MAY 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 may 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. If included, 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.

History: (6557-4) 1929 c 396 s 1; 1998 c 403 s 3

117.215 ESTATE ACQUIRED.

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

History: 1971 c 595 s 25

117.22 [Renumbered 375.181]

117.225 EASEMENT DISCHARGE.

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

History: 1971 c 595 s 26; 1986 c 444

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.

History: 2006 c 214 s 15

117.23 [Repealed, 1961 c 561 s 17]

117.231 PAYMENT IN INSTALLMENTS.

Subdivision 1. **Option of property owner.** Whenever private property is acquired for public purposes by purchase or eminent domain proceedings, the property owner shall have the option of receiving the purchase price or the award as finally adjudicated, either in a lump sum or in not more than four annual installments.

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

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

History: 1971 c 595 s 27; 1986 c 444

117.232 DIRECT PURCHASE.

Subdivision 1. **Reimbursement for appraisal fees; moving costs.** When acquisition of private property is accomplished by the state Department of Transportation by direct purchase the owner shall be entitled to reimbursement for appraisal fees, not to exceed a total of \$1,500. When acquisition of private property is accomplished by any other acquiring authority, the owner is entitled to reimbursement for appraisal fees, not to exceed \$1,500, if the owner is otherwise entitled to reimbursement under sections 117.50 to 117.56. The purchaser in all instances shall inform the owner of the right, if any, to reimbursement for appraisal fees reasonably incurred, in an amount not to exceed \$1,500, together with relocation costs, moving costs and any other related expenses to which an owner is entitled by sections 117.50 to 117.56. This subdivision does not apply to acquisition for utility purposes made by a public service corporation organized pursuant to section 301B.01 or electric cooperative associations organized pursuant to chapter 308A.

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

History: 1971 c 595 s 28; 1975 c 175 s 2; 1976 c 166 s 7; 1984 c 654 art 3 s 50; 1986 c 444; 1989 c 144 art 2 s 2; 1Sp2003 c 19 art 2 s 4; 2005 c 69 art 3 s 16

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 [Repealed, 1991 c 199 art 1 s 32]

117.32 [Repealed, 1971 c 595 s 29]

117.33 [Repealed, 1971 c 595 s 29]

117.34 [Repealed, 1971 c 595 s 29]

117.35 [Repealed, 1971 c 595 s 29]

117.36 [Repealed, 1971 c 595 s 29]

117.37 [Repealed, 1971 c 595 s 29]

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.

History: (6574) 1915 c 45 s 1

117.39 PROCEEDINGS UNDER POWER 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 power 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.

History: (6575) 1915 c 45 s 2; 2006 c 214 s 20

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

History: (6576) 1915 c 45 s 3

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.

History: (6577) 1915 c 45 s 4

117.42 [Repealed, 1971 c 595 s 29]

117.43 [Repealed, 1971 c 595 s 29]

117.44 [Repealed, 1971 c 595 s 29]

117.45 [Repealed, 1971 c 595 s 29]

117.46 [Repealed, 1979 c 145 s 2]

117.461 [Repealed, 1979 c 145 s 2]

117.47 PERMITS; LICENSES.

The commissioner of natural resources may grant permits and licenses or leases on and across lands owned by the state to any corporation or association engaged in or preparing to engage in the business of mining and beneficiating taconite as defined in section 298.001, subdivision 4, or semitaconite as defined in section 298.34, for the purpose of providing the corporation or association necessary easements, rights-of-way and surface rights over, through and across such lands for the erection and maintenance of pipe lines, pole lines, conduits, sluiceways, roads, railroads and tramways. The commissioner may grant permits and licenses or leases for flowage rights, rights to transport crude ore, concentrates or waste materials over such state-owned lands, and may lease state-owned lands for the depositing of stripping, lean ores, tailings, or waste products of such business. Such permits, licenses or leases, may also authorize the use of state-owned lands by such corporation or association for plants and other buildings necessary to the proper carrying on of such business and may grant water rights and other rights requisite to the construction of wharves, piers, breakwaters, or similar facilities necessary to the carrying on of such business or the shipment of the products thereof. The commissioner may also 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.

History: 1945 c 275 s 2; 1955 c 619 s 1; 1969 c 1129 art 3 s 1; 1979 c 145 s 1; 1999 c 86 art 1 s 26

117.471 EASEMENTS OVER TAX-FORFEITED LANDS, APPROVAL.

Any easements over tax-forfeited lands granted by the county board of any county under section 117.47, shall be subject to the condition that it be approved by the commissioner of natural resources.

History: 1955 c 814 s 1; 1969 c 1129 art 3 s 1

117.48 CRUDE OIL PIPELINE COMPANIES, EMINENT DOMAIN.

The business of transporting crude petroleum, oil, their related products and derivatives including liquefied hydrocarbons, or natural gas by pipeline as a common carrier, 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 qualified to do business in the state of Minnesota engaged in or preparing to engage in the business of transporting crude petroleum, oil, their related products and derivatives including liquefied hydrocarbons, or natural gas by pipeline as a common carrier, is authorized to acquire, for the purpose of such business, easements or rights-of-way, over, through, under or across any lands, not owned by the state or devoted to a public purpose for the construction, erection, laying, maintaining, operating, altering, repairing, renewing and removing in whole or in part, a pipeline for the transportation of crude petroleum, oil, their related products and derivatives including liquefied hydrocarbons, or natural gas. To such end it shall have and enjoy the power of eminent domain to be exercised in accordance with this chapter, 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.

History: 1971 c 322 s 1; 1987 c 353 s 4; 2006 c 214 s 20

117.49 [Repealed, 1992 c 374 s 1]

117.50 DEFINITIONS.

Subdivision 1. **Scope.** As used in sections 117.50 to 117.56, the terms defined in this section shall have the meanings given them.

Subd. 2. **Person.** "Person" means any individual, partnership, corporation, or association.

Subd. 3. **Displaced person.** "Displaced person" means any person who, notwithstanding the lack of federal financial participation, meets the definition of a displaced person under United States Code, title 42, sections 4601 to 4655, and regulations adopted under those sections.

Subd. 4. **Acquisition.** "Acquisition" includes:

- (a) acquisition by eminent domain;
- (b) acquisition by negotiation;
- (c) programs of areawide systematic housing code enforcement; and
- (d) demolition.

Subd. 5. **Acquiring authority.** "Acquiring authority" includes:

- (a) the state and every public and private body and agency thereof which has the power of eminent domain; and
- (b) any acquiring authority carrying out an areawide systematic housing code enforcement program.

History: 1973 c 604 s 1; 1986 c 444; 2003 c 117 s 1

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.

History: 1973 c 604 s 2; 1Sp2001 c 8 art 2 s 13; 2002 c 364 s 1; 2006 c 214 s 16

117.52 UNIFORM RELOCATION ASSISTANCE.

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 acquisi-

tion 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 January 1, 2006, or (2) becoming effective after 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.

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.

Subd. 2. **Acquisitions for highway purposes.** Despite subdivision 1, with respect to acquisitions for highway purposes or acquisitions for which the state Department of Transportation performs relocation assistance services for the Department of Administration, the regulations of the United States Department of Transportation may be applied to all displaced persons who would otherwise be eligible for such relocation assistance, services, payments and benefits thereunder but for the lack of federal financial participation.

Subd. 3. **Exception.** This section shall not apply in the case where federal financial participation for provision of relocation assistance, services, payments and benefits in connection with an acquisition has been procured or committed pursuant to section 117.51 and has then been withdrawn by the United States, unless the acquiring authority subsequently determines to proceed with the acquisition in question using nonfederal funds.

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.

History: 1973 c 604 s 3; 1976 c 166 s 7; 1984 c 633 s 1; 1987 c 80 s 1; 1988 c 698 s 1; 1989 c 83 s 1; 2006 c 214 s 17-19

117.521 WAIVER OF RELOCATION BENEFITS.

Subdivision 1. **Waiver.** Any owner-occupant of property who (a) prior to any action by the acquiring authority indicating an intent to acquire the property whether or not the owner-occupant is willing to sell, requests that the property be acquired through negotiation, or (b) has clearly shown an intent to sell the property on the public market prior to any inquiry or action by the acquiring authority, may voluntarily waive any relocation assistance, services, payments and benefits, for which eligible under this chapter by signing a waiver agreement specifically describing the type and amounts of relocation assistance, services, payments and benefits for which eligible, separately listing those being waived, and stating that the agreement is voluntary and not made under any threat of acquisition by eminent domain by the

acquiring authority. Prior to execution of the waiver agreement by the owner-occupant, the acquiring authority shall explain the contents thereof to the owner-occupant.

Any waiver not voluntarily agreed to is invalid, and the burden of proof shall be upon the acquiring authority to show that the agreement was entered into voluntarily. A statement at trial by a witness not involved in the acquisition of the property, that the contents of the waiver agreement were explained to the owner-occupant in a manner understandable to the owner-occupant, describing the method of explanation, that the owner-occupant appeared to understand the terms and conditions of the waiver agreement, that no express or implied threats of taking the property by eminent domain, or any other threats intended to induce the owner-occupant to waive relocation assistance benefits, were made to the owner-occupant by any employee or official of the acquiring authority throughout the entire process of acquisition of the property, and that the owner-occupant appeared to voluntarily enter into the agreement, shall, unless decided otherwise by the court, shift the burden of proof to the person claiming that the agreement was not entered into voluntarily.

Subd. 2. Owner of rental property. The owner of a rental property whose property is being acquired through negotiation as a result of either subdivision 1, clause (a) or (b), may waive only the right to relocation assistance, services, payments and benefits as outlined in subdivision 1, and nonowner occupants of the property being acquired shall receive all relocation assistance, services, payments and benefits for which they are eligible, notwithstanding the provision of subdivision 1.

Subd. 3. District for development. The provisions of subdivisions 1 and 2 shall not apply to the acquisition of properties situated wholly or in part within any district for development authorized under Laws 1971, chapter 548 or 677; or Laws 1973, chapter 196, 761, or 764; or Laws 1974, chapter 485; or Minnesota Statutes, chapter 462, 458, or 458C.

Subd. 4. Construction. The provisions of this section shall not limit any existing rights to waive relocation benefits.

History: 1976 c 10 s 1; 1986 c 399 art 2 s 2; 1986 c 400 s 2; 1986 c 444; 1Sp1986 c 3 art 2 s 41

117.53 AUTHORIZATION.

All acquiring authorities are hereby authorized to do any acts and take all actions necessary to carry out the provisions of sections 117.50 to 117.56, including the acquisition, rehabilitation and relocation of existing housing and the construction of new housing in accordance with the provisions of the Federal Aid Highway Act of 1970, Statutes at Large, volume 84, page 1713 (1971), United States Code, title 23, section 101, et seq., and any other federal and state laws, where projects cannot proceed to construction because replacement housing cannot be made available.

History: 1973 c 604 s 4

117.54 NO ADDITIONAL DAMAGES CREATED.

Nothing in sections 117.50 to 117.56 shall be construed as creating in any condemnation proceedings brought by any acquiring authority under the power of eminent domain, any element of damages not recognized on August 22, 1968.

History: 1973 c 604 s 5

117.55 PAYMENTS NOT CONSIDERED FOR PUBLIC ASSISTANCE PURPOSES.

No payments received under sections 117.50 to 117.56 shall be considered for purposes of determining the eligibility or the extent of eligibility of any person for public assistance based on need under the laws of the state of Minnesota.

History: 1973 c 604 s 6; 1Sp1985 c 14 art 1 s 5

117.56 INAPPLICABILITY TO HAZARDOUS AND SUBSTANDARD BUILDING PROCEEDINGS.

The provisions of sections 117.50 to 117.56 shall not apply to any proceedings brought by a governmental subdivision under sections 463.15 to 463.26.

History: 1973 c 604 s 7

117.57 AUTHORITIES; RAILROAD PROPERTIES.

Subdivision 1. **Eminent domain.** The power of eminent domain of an authority, as defined in section 469.174, subdivision 2, extends to railroad properties located within the authority's limits, provided:

(1) the railroad property is not a line of track for which abandonment is required under federal law, or if it is a line of track for which abandonment is required under federal law, abandonment has been approved;

(2) the railroad property is not currently used for the following activities of the railroad, not including storage, maintenance, and repair activities:

(i) switching;

(ii) loading or unloading; or

(iii) classification activities;

(3) some part of the property contains land pollution as defined in section 116.06, or contains a release or threatened release of petroleum, as provided in chapter 115C, or contains a release or threatened release of a pollutant, contaminant, hazardous substance, or hazardous waste, as provided in chapter 115B; and

(4) the authority intends to develop the property and has a plan for its cleanup and development within five years in order to maximize its market value.

Property in current use under clause (2) includes only that area which is reasonably necessary for current operation.

Upon a showing by the petitioner in condemnation proceedings that the conditions described in clauses (1) to (3) exist, then the public use to which the authority would put the property is presumed a superior public use to railroad use or any other past, present, or proposed future use. A railroad may rebut the presumption by clear and convincing evidence that the railroad use is a superior use.

Subd. 2. **Relation to state rail bank.** Nothing in this section shall supersede the provisions of section 222.63.

Subd. 3. **Relation to regional railroad authorities.** An authority shall not be adjudged to have a superior public use to that of a regional railroad authority as defined in section 398A.01, a railroad property which has been identified and approved as a light rail corridor by the Metropolitan Council under chapter 473, or a state trail covered by section 85.015.

Subd. 4. **Line of track for agricultural use.** (a) Except as provided in paragraph (b), subdivision 1 does not apply to railroad property that is in a county outside of the metropolitan area as defined in section 473.121, subdivision 2, if:

(1) the property is a line of track in actual use; and

(2) the line of track is the principal means of transportation for an agricultural use, as defined in section 17.81, subdivision 4, by an owner or lessee of real estate abutting the line of track.

(b) The line of track may be acquired under subdivision 1 with the written consent of all the owners or lessees described in paragraph (a), clause (2).

Subd. 5. **Relocation costs.** No property with ongoing railroad use at the time of acquisition may be acquired under this section without payment of the costs of relocation under section 117.52.

Subd. 6. **Quick take limited.** In a condemnation under this section, where the authority seeks title and possession under section 117.042, the time provided in that section must be

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extended by the court for a period, not to exceed 150 days, if reasonably required for the relocation of any ongoing railroad use at the time of the acquisition.

Subd. 7. **Coal slurry pipelines.** No property may be acquired under this section for use as a coal slurry pipeline or other related facility.

History: 1991 c 291 art 1 s 4