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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 3659

03/29/2016 Authored by Drazkowski

The bill was read for the first time and referred to the Committee on Transportation Policy and Finance

1.1 A bill for an act
1.2 relating to transportation; governing passenger rail; establishing certain passenger
1.3 rail requirements on project development process, use of state funds, eminent
1.4 domain, and land use and acquisition; making technical changes; amending
1.5 Minnesota Statutes 2014, sections 117.189; 174.634; 174.636, subdivision 4,
1.6 by adding subdivisions; proposing coding for new law in Minnesota Statutes,
1.7 chapter 174.

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

1.9 Section 1. Minnesota Statutes 2014, section 117.189, is amended to read:

1.10 **117.189 PUBLIC SERVICE CORPORATION EXCEPTIONS.**

1.11 Sections 117.031; 117.036; 117.055, subdivision 2, paragraph (b); 117.186; 117.187;
1.12 117.188; and 117.52, subdivisions 1a and 4, do not apply to the use of eminent domain
1.13 authority by public service corporations for any purpose other than construction or
1.14 expansion of:

1.15 (1) a high-voltage transmission line of 100 kilovolts or more, or ancillary
1.16 substations; ~~or~~

1.17 (2) a natural gas, petroleum, or petroleum products pipeline, or ancillary compressor
1.18 stations or pumping stations; or

1.19 (3) a passenger rail line, as provided in sections 174.631 to 174.636.

1.20 For purposes of an award of appraisal fees under section 117.085, the fees awarded
1.21 may not exceed \$1,500 for all types of property except for a public service corporation's
1.22 use of eminent domain for a high-voltage transmission line, where the award may not
1.23 exceed \$3,000.

1.24 For purposes of this section, "pipeline" does not include a natural gas distribution
1.25 line transporting gas to an end user.

2.1 Sec. 2. **[174.631] PASSENGER RAIL; DEFINITIONS.**

2.2 Subdivision 1. **Scope.** For the purposes of sections 174.631 to 174.636, the terms
2.3 defined in this section have the meanings given them.

2.4 Subd. 2. **Commissioner.** "Commissioner" means the commissioner of
2.5 transportation.

2.6 Subd. 3. **Responsible authority.** "Responsible authority" means the commissioner
2.7 or a public or private entity as provided under section 174.632, subdivision 2, having
2.8 primary responsibility for development of a particular passenger rail project, including
2.9 a passenger rail facility.

2.10 Sec. 3. **[174.6325] PASSENGER RAIL; PROJECT DEVELOPMENT.**

2.11 Subdivision 1. **Corridor capacity analysis.** (a) As part of passenger rail project
2.12 development and prior to initiating an alternatives analysis, the responsible authority
2.13 must perform a corridor capacity analysis.

2.14 (b) At a minimum, the corridor capacity analysis must:

2.15 (1) examine current transportation capacity within the proposed passenger rail
2.16 corridor, taking into account programmed and planned transportation projects; and

2.17 (2) evaluate the adequacy of transportation capacity based on both current
2.18 information and projections of demand, growth, and other relevant factors.

2.19 (c) Nothing in this subdivision prevents inclusion of the corridor capacity analysis
2.20 in other corridor investment plans or evaluations, including a feasibility study or
2.21 environmental analysis.

2.22 Subd. 2. **Alternatives analysis.** (a) As part of passenger rail project development
2.23 and prior to initiating an environmental analysis or preliminary engineering, the
2.24 responsible authority must perform an alternatives analysis.

2.25 (b) In addition to any other information or requirements, the alternatives analysis
2.26 must:

2.27 (1) take into account corridor capacity analysis findings and projections;

2.28 (2) include (i) a no-build option, and (ii) options for each applicable transportation
2.29 mode;

2.30 (3) evaluate capacity adequacy under each option;

2.31 (4) identify the most cost-effective option; and

2.32 (5) review conformity with (i) the comprehensive statewide freight and passenger
2.33 rail plan under section 174.03, subdivision 1b; (ii) the statewide multimodal transportation
2.34 plan; and (iii) the 20-year statewide highway capital investment plan under section
2.35 174.03, subdivision 1c.

3.1 (c) Nothing in this subdivision prevents inclusion of the alternatives analysis in a
 3.2 subsequently undertaken environmental analysis.

3.3 Subd. 3. **Alternatives analysis; public hearing and comment.** (a) An
 3.4 alternatives analysis for a passenger rail project, and any associated alignment or
 3.5 mode recommendations, may not be finalized until after (1) public hearings under this
 3.6 subdivision, and (2) review and due consideration of any public comment.

3.7 (b) The commissioner, in consultation with the responsible authority, must hold
 3.8 hearings on a draft alternatives analysis. Hearings must be held within each of the cities
 3.9 (1) located along the proposed corridor or route, and (2) in which a rail stop is reasonably
 3.10 anticipated. The commissioner must provide adequate public notice of each hearing
 3.11 and provide publicity to ensure that affected parties have an opportunity to present their
 3.12 views at the hearings.

3.13 (c) For purposes of this subdivision, "adequate public notice" includes, at a
 3.14 minimum: (1) publishing notice in at least two editions of each newspaper and regular
 3.15 news periodical in circulation along the proposed route, through any legal notice section
 3.16 and by press release; and (2) providing the notice no sooner than two weeks prior to
 3.17 the date of the hearing.

3.18 (d) The commissioner must summarize the proceedings and testimony and maintain
 3.19 on its Web site the record of each hearing held under this subdivision. The commissioner
 3.20 must also maintain a Web-based docket system where public comments on the project can
 3.21 be submitted and retained on an ongoing basis.

3.22 Sec. 4. Minnesota Statutes 2014, section 174.634, is amended to read:

3.23 **174.634 PASSENGER RAIL; FUNDING.**

3.24 Subdivision 1. **Sources of funding.** (a) The commissioner may apply for funding
 3.25 from federal, state, regional, local, and private sources to carry out the commissioner's
 3.26 duties ~~responsibilities~~ in section 174.632.

3.27 (b) ~~Section 174.88, subdivision 2, does not apply to the commissioner's performance~~
 3.28 ~~of duties and exercise of powers under sections 174.632 to 174.636.~~

3.29 Subd. 2. **Expenditure of state funds; study and analysis.** The commissioner and
 3.30 any political subdivision is prohibited from spending state funds for (1) a passenger rail
 3.31 project study or planning, including a corridor investment plan, or (2) a corridor capacity
 3.32 analysis or alternatives analysis under section 174.6325.

3.33 Subd. 3. **Expenditure of state funds; project development and construction.** The
 3.34 commissioner and any political subdivision are prohibited from spending state funds for

4.1 a passenger rail project, including environmental analysis, design, preliminary or final
 4.2 engineering, construction, equipment, or property acquisition, unless:

4.3 (1) either (i) the funds have been appropriated by a law that specifically identifies
 4.4 the route and the expenditure purposes; or (ii) the passenger rail project is specifically
 4.5 authorized by law; and

4.6 (2) the governor finds that the project serves a public purpose, is a matter of public
 4.7 necessity, and is the preferred alternative to meet transportation needs in the corridor.

4.8 Sec. 5. Minnesota Statutes 2014, section 174.636, subdivision 4, is amended to read:

4.9 Subd. 4. **Public hearings.** The commissioner shall hold public hearings as provided
 4.10 under section 174.6325 and as required by federal requirements.

4.11 Sec. 6. Minnesota Statutes 2014, section 174.636, is amended by adding a subdivision
 4.12 to read:

4.13 Subd. 5. **Public property.** Unless a passenger rail project is approved as
 4.14 provided under section 174.634, subdivision 3, clauses (1) and (2), the commissioner,
 4.15 notwithstanding section 174.636, subdivision 1, and any political subdivision, may not:

4.16 (1) acquire property for the purposes of the passenger rail project or primarily to
 4.17 support passenger rail service; or

4.18 (2) enter into an agreement providing for use of property for the purposes of the
 4.19 passenger rail project or primarily to support passenger rail service.

4.20 Sec. 7. Minnesota Statutes 2014, section 174.636, is amended by adding a subdivision
 4.21 to read:

4.22 Subd. 6. **Eminent domain; contiguous land.** (a) For purposes of this subdivision,
 4.23 "owner" means the fee owner, or when applicable, the fee owner with the written consent
 4.24 of the contract for deed vendee or the contract for deed vendee with the written consent of
 4.25 the fee owner.

4.26 (b) This subdivision applies if a responsible authority or a railroad company
 4.27 exercises the power of eminent domain to acquire property for a passenger rail line.

4.28 (c) When private real property classified as an agricultural or nonagricultural
 4.29 homestead, nonhomestead agricultural land, rental residential property, and both
 4.30 commercial and noncommercial seasonal residential recreational property, as those terms
 4.31 are defined in section 273.13, is proposed to be acquired to construct a passenger rail by
 4.32 eminent domain proceedings, the owner has the option to require the responsible authority
 4.33 or railroad company to condemn a fee interest in any amount of contiguous, commercially

5.1 viable land which the owner wholly owns in undivided fee and to elect in writing to
5.2 transfer to the responsible authority or railroad company within 60 days after receipt of
5.3 the notice of the objects of the petition filed under section 117.055. Commercial viability
5.4 must be determined without regard to the presence of passenger rail. Within 60 days
5.5 after receipt by the responsible authority or railroad company of an owner's election to
5.6 exercise this option, the responsible authority or railroad company must provide written
5.7 notice to the owner of any objection the responsible authority or railroad company has to
5.8 the owner's election. If no objection is made within the 60 days, any objection is deemed
5.9 waived. Within 120 days of the service of an objection by the responsible authority
5.10 or railroad company, the district court having jurisdiction over the eminent domain
5.11 proceeding must hold a hearing to determine whether the responsible authority's or
5.12 railroad company's objection is upheld or rejected. The responsible authority or railroad
5.13 company has the burden of proof to prove by a preponderance of the evidence that the
5.14 property elected by the owner is not commercially viable. The owner has only one such
5.15 option and may not expand or otherwise modify an election without the consent of the
5.16 responsible authority or railroad company. The required acquisition of land under this
5.17 subdivision must be considered an acquisition for a public purpose and for use in the
5.18 responsible authority's or railroad company's public purpose, for purposes of chapter
5.19 117 and section 500.24, respectively; provided that the responsible authority or railroad
5.20 company divests itself completely of all lands used for farming or capable of being used
5.21 for farming no later than the time it can receive the market value paid at the time the land
5.22 was acquired less any diminution in value by reason of the presence of passenger rail.
5.23 Upon the owner's election under this subdivision, the easement interest over and adjacent
5.24 to the lands designated by the owner to be acquired in fee and sought in the condemnation
5.25 petition for a right-of-way for passenger rail automatically converts into a fee taking.

5.26 (d) All rights and protections provided to an owner under chapter 117 apply to
5.27 acquisition of land or an interest in land under this section.

5.28 (e) Within 120 days of an owner's election under this subdivision to require a
5.29 responsible authority or railroad company to acquire land, or 120 days after a district
5.30 court decision overruling the responsible authority's or railroad company's objection to
5.31 an election made under paragraph (c), the responsible authority or railroad company
5.32 must make a written offer to acquire that land and amend its condemnation petition to
5.33 include the additional land.

5.34 **Sec. 8. REVISOR'S INSTRUCTION; RECODIFICATION.**

6.1 The revisor of statutes shall recodify (1) Minnesota Statutes, section 174.632,
6.2 subdivision 1, as Minnesota Statutes, section 174.631, subdivision 2; and (2) Minnesota
6.3 Statutes, section 174.632, subdivision 2, as Minnesota Statutes, section 174.636,
6.4 subdivision 1a. The revisor shall revise the headnote and correct any cross-references
6.5 made necessary by this recodification.

6.6 **EFFECTIVE DATE.** This section is effective the day following final enactment.

6.7 Sec. 9. **EFFECTIVE DATE.**

6.8 Sections 1 to 7 are effective the day following final enactment, and apply to any
6.9 project that has not commenced preliminary engineering or a subsequent project phase as
6.10 of the effective date of this section.