

CHAPTER 117

EMINENT DOMAIN

117.041 Entry for survey or environmental testing.

117.31 Repealed.

117.57 Authorities; railroad properties.

117.085 Commissioners, powers, duties.

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: 1991 c 224 s 1

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, in all such proceedings, may in their discretion allow and show separately in addition to the award of damages, reasonable appraisal fees not to exceed a total of \$500. 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: 1991 c 224 s 2

117.31 [Repealed, 1991 c 199 art 1 s 32]

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 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