

## Eminent Domain, Depositories

## CHAPTER 117

## EMINENT DOMAIN

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|--|---|
| 117.011 Right of eminent domain.                         | 117.205 Final certificate.  |
| 117.016 Joint acquisition of land.                       | 117.21 Easement to include snow fences.                                   |
| 117.025 Definitions.                                     | 117.215 Estate acquired.  |
| 117.035 Proceedings, by whom instituted.                 | 117.225 Easement discharge.   |
| 117.041 Entry for survey or environmental testing.       | 117.231 Payment in installments.  |
| 117.042 Possession.                                      | 117.232 Direct purchase.  |
| 117.043 Compelling delivery of possession.               | 117.38 Acquisition of land for certain purposes.                          |
| 117.045 Compelling acquisition in certain cases.         | 117.39 Proceedings under right of eminent domain.                         |
| 117.055 Petition and notice.                             | 117.40 Municipality may contest.  |
| 117.065 Notice of pendency.                              | 117.41 Conveyance, to whom made.  |
| 117.075 Court to appoint commissioners.                  | 117.47 Permits; licenses.   |
| 117.085 Commissioners, powers, duties.                   | 117.471 Easements over tax-forfeited lands, approval.                     |
| 117.086 Noncontiguous tracts, treatment as unit.         | 117.48 Crude oil pipeline companies, eminent domain.                      |
| 117.087 Prepayment penalties; damages.                   | 117.50 Definitions.   |
| 117.105 Filing of report, time, failure to report.       | 117.51 Cooperation with federal authorities.                              |
| 117.115 Report, notice.                                  | 117.52 Uniform relocation assistance.                                     |
| 117.125 Deposit in court.                                | 117.521 Waiver of relocation benefits.                                    |
| 117.135 Taxes and assessments.                           | 117.53 Authorization.   |
| 117.145 Appeal.  | 117.54 No additional damages created.                                     |
| 117.155 Payments; partial payment pending appeal.        | 117.55 Payments not considered for public assistance purposes.            |
| 117.165 Jury trials; disclosure.                         | 117.56 Inapplicability to hazardous and substandard building proceedings. |
| 117.175 Trial, burden of proof, costs.                   | 117.57 Authorities; railroad properties.                                  |
| 117.185 Judgment.  |   |
| 117.195 Interest; award, when payable; dismissal; costs. |   |

**117.01** [Repealed, 1971 c 595 s 29]

**117.011 RIGHT OF EMINENT DOMAIN.**

All bodies, public or private, who have the right of eminent domain, when exercising the right, shall do so in the manner prescribed by this chapter, even though a different procedure may be provided by charter provisions, ordinance or statute, but nothing herein shall 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.

**History:** 1971 c 595 s 1; 1984 c 562 s 3

**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.** Unless the language or context clearly indicates that a different meaning is intended, the words, terms, and phrases defined in this section have the meanings given them.

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

**Subd. 3. Owner.** "Owner" includes all persons interested in such property as proprietors, tenants, life estate holders, encumbrancers, or otherwise.

**History:** 1971 c 595 s 3

**117.03** [Repealed, 1971 c 595 s 29]

**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 right 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

**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 sub-

division 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

#### 117.042 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.**

In all cases a petition, describing the desired land, stating by whom and for what purposes it is proposed to be taken, and giving the names of all persons appearing of record or known to the petitioner to be the owners thereof shall be presented to the district court of the county in which the land is situated praying for the appointment of commissioners to appraise the damages which may be occasioned by such taking. Notice of the objects of the petition and of the time and place of presenting the same shall be served at least 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. 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

**117.06** [Repealed, 1971 c 595 s 29]

**117.065 NOTICE OF PENDENCY.**

At the time of filing the petition the petitioner may file for record with the county recorder a notice of the pendency of the proceeding, describing with reasonable certainty the lands affected and for what purpose they are to be taken. If the proceeding be abandoned in whole or in part the petitioner shall within ten days thereafter file with the county recorder a notice to that effect, describing with reasonable certainty the lands so abandoned.

*History: 1971 c 595 s 9; 1976 c 181 s 2*

**117.07 [Repealed, 1971 c 595 s 29]**

**117.075 COURT TO APPOINT COMMISSIONERS.**

Upon proof being filed of the service of such notice, the court, at the time and place therein fixed or to which the hearing may be adjourned, shall hear all competent evidence offered for or against the granting of the petition, regulating the order of proof as it may deem best. If the proposed taking shall appear to be necessary and such as is authorized by law, the court by an order shall appoint three disinterested commissioners, and at least two alternates, residents of the county, to ascertain and report the amount of damages that will be sustained by the several owners on account of such taking.

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. 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 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.

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. 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.

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

**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, 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:** 1971 c 595 s 11; 1987 c 339 s 1; 1991 c 224 s 2

### **117.086 NONCONTIGUOUS TRACTS, TREATMENT AS UNIT.**

Subdivision 1. 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. 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. 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 right 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

**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. 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. 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. 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. Within ten days after the date of the filing of the report of commissioners, the petitioner shall notify each respondent and each respondent's attorney 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 such respondent. Such notification shall be addressed to the last known post office address of each respondent and each respondent's attorney.

**History:** 1971 c 595 s 14; 1986 c 444; 1Sp1986 c 3 art 1 s 82

**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. 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. When the state transportation department acquires a fee interest in property 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 or the state treasurer 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. 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

**117.14** [Repealed, 1971 c 595 s 29]

**117.145 APPEAL.**

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 filing with the court administrator a notice of such appeal and mailing a copy of such notice to all parties of record having an interest in lands described in the appeal. Within ten days of the date of mailing any other party may appeal. The notice 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

**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, the petitioner shall have a claim against the respondents receiving such payment for the amount thereof, to be recoverable in the same manner as in any civil action.

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

**117.16** [Repealed, 1971 c 595 s 29]

**117.165 JURY TRIALS; DISCLOSURE.**

Subdivision 1. 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. 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. 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. 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. 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]

**117.185 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

**117.19** [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 including 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 sections 116C.51 to 116C.69, 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 TO INCLUDE SNOW FENCES.**

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

**History:** (6557-4) 1929 c 396 s 1

**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

**117.23** [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. 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 \$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 \$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 \$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 300.03 or electric cooperative associations organized pursuant to chapter 308A.

Subd. 2. 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

- 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 RIGHT OF EMINENT DOMAIN.**

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

**History:** (6575) 1915 c 45 s 2

**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 298.23, 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

#### **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 right 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

**117.49** [Repealed, 1992 c 374 s 1]

#### **117.50 DEFINITIONS.**

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

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

Subd. 3. "Displaced person" means any person who moves from real property, or moves personal property from real property, as a result of acquisition undertaken by an acquiring authority or as a result of voluntary rehabilitation carried out by a person pursuant to acquisition or as a consequence thereof.

Subd. 4. "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" 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

### 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

### 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 acquisition or as a consequence thereof, in which, due to the lack of federal financial participation, relocation assistance, services, payments and benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, United States Code, title 42, sections 4601 to 4655, as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Statutes at Large, volume 101, pages 246 to 256 (1987), are not available, the acquiring authority, as a cost of acquisition, shall provide all relocation assistance, services, payments and benefits required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and those regulations adopted pursuant thereto, and either (1) in effect as of July 1, 1988, or (2) becoming effective after July 1, 1988, 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. 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.

**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

**117.521 WAIVER OF RELOCATION BENEFITS.**

Subdivision 1. 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. 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. 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. 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; ISp1986 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).

# MINNESOTA STATUTES 1994

1293

EMINENT DOMAIN 117.57

**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