

House Research Act Summary

CHAPTER: 214

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TOPIC: Eminent domain

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Overview

Effective May 20, 2006, private property may not be taken for economic development alone. In addition, attorney fees must be awarded to property owners if the final award is more than 40 percent greater than the last offer by the government and may be awarded if more than 20 percent and less than 40 percent greater. The new law limits takings related to redevelopment, provides for or increases the other elements of compensation, and imposes additional procedures intended to protect property owners.

Section

1 Preemption; public use.

Subd. 1. Preemption. Provides that Minnesota Statutes, chapter 117, preempts all other laws, including special laws, home rule charters, and other statutes, that provide for eminent domain procedures, definitions, remedies, or limitations. Allows additional procedures, remedies, and limitations if they do not diminish or deny substantive and procedural rights and protections of owners under chapter 117.

Subd. 2. Requirement of public use or public purpose. Requires eminent domain to be used only for public use or public purpose.

Subd. 3. Exceptions. Maintains the existing exemptions for town roads, watershed districts, and drainage authorities and allows them to follow procedures in other laws.

2 Definitions.

Subd. 1. Words, terms, and phrases (definitions). Provides that the definitions

in Minnesota Statutes, section 117.025 (the definition section for the chapter of statutes governing eminent domain procedures) apply to any general or special law authorizing the exercise of the power of eminent domain.

Subd. 3. Owner. Technical, clarification.

Subd. 4. Condemning authority. Defined as any person or entity with the power of eminent domain.

Subd. 5. Abandoned property. Defined as property not legally occupied or used for any commercial or residential purpose for at least one year, that has not been maintained, and for which taxes have not been paid for at least two years.

Subd. 6. Blighted area. Defined as an area that is in urban use and where more than 50 percent of the buildings are structurally substandard (defined below).

Subd. 7. Structurally substandard. Defined to be a building that was inspected and cited for code violations that have not been fixed after two notices and for which it would cost more than 50 percent of the taxable market value of the building to fix. Permits a local government to get an administrative warrant to do an interior inspection.

Subd. 8. Environmentally contaminated area. Defined as an area where more than 50 percent of the parcels contain contamination and for which the estimated costs of investigation, monitoring, testing, and clean-up are more than the estimated market value of the parcel, or where a court has issued a clean up order and the owner has not complied within a reasonable time.

Subd. 9. Public nuisance. Applies Minnesota Statutes, section 609.74, as the definition of public nuisance for eminent domain purposes. Section 609.74 provides:

“Whoever by an act or failure to perform a legal duty intentionally does any of the following is guilty of maintaining a public nuisance, which is a misdemeanor:

- (1) maintains or permits a condition which unreasonably annoys, injures or endangers the safety, health, morals, comfort, or repose of any considerable number of members of the public; or
- (2) interferes with, obstructs, or renders dangerous for passage, any public highway or right of way, or waters used by the public; or
- (3) is guilty of any other act or omission declared by law to be a public nuisance and for which no sentence is specifically provided.”

Subd. 10. Public service corporation. Defined as a public utility, gas, electric, telephone, or cable communications company, and other listed utilities, and also as a municipality or public corporation when operating an airport, a common carrier, a watershed district, or a drainage authority, and an entity operating a regional distribution center within an international economic development zone.

Subd. 11. Public use, public purpose. Defines these terms to mean ownership and use of the land by the public or public agencies, creation or functioning of public service corporations, or to mitigate blighted areas, remediate environmentally contaminated areas, reduce abandoned property, or remove a public nuisance.

Provides that the public benefits of economic development alone do not constitute a

public use.

3 Condemnation for blight mitigation, contamination remediation.

Subd. 1. Buildings that are not structurally substandard in areas of blight mitigation; feasible alternatives. Prohibits taking buildings that are not structurally substandard unless there is no feasible alternative and all possible steps are taken to minimize taking buildings that are not structurally substandard.

Subd. 2. Uncontaminated property in environmental contamination remediation areas; feasible alternatives. Prohibits taking uncontaminated property unless there is no feasible alternative and all possible steps are taken to minimize taking noncontaminated parcels.

Subd. 3. Contribution to condition by developer disallowed. Prohibits considering blight or environmental contamination caused by a developer involved in the redevelopment of a blighted or contaminated area in determining whether an area is blighted or contaminated.

4 Attorney fees. Requires the court to award an owner attorneys fees and other costs of litigation if the final compensation award is 40 percent or more than the last written offer made before the condemnation petition was filed or if the court determines that the taking is not for a public use or is unlawful. Permits the court to award attorneys fees and other fees and costs if the final award is at least 20 percent, but not more than 40 percent, greater than the last written offer. Prohibits an award of attorney fees if the judgment or award is not more than \$25,000.

5 Appraisal and negotiation requirements. Expands the statute relating to exchange of appraisal information in transportation-related takings to include all eminent domain proceedings. Defines "owner" to mean a fee owner, contract purchaser, or business lessee. Requires the acquiring authority to provide the owner appraisal information at least 60 days before filing the petition, up from 20 days. Makes the prior \$1,500 cap on reimbursements to an owner for owner appraisals applicable to single-family and two-family residential property, and minimum damage acquisitions (under \$10,000). Increases the cap to \$5,000 for other types of property. Prohibits use of an appraisal or appraiser testimony in a condemnation commissioners' hearing unless a copy of the appraiser's written report was provided to the opposing party at least five days before the hearing. Prohibits use of documentation of loss of a going concern unless the documentation was provided to the opposing party at least 14 days before the hearing. Requires reimbursement to the owner within 30 days of getting a copy of the appraisal and reimbursement information.

6 Local government public hearing requirements. Requires a public hearing after notice by a local government if a taking is for blight mitigation, environmental contamination remediation, abandoned property reduction, or public nuisance removal. Requires the hearing to be held before the petition is filed. Requires a vote on the question of using eminent domain by the elected governing body at the next regular meeting after the hearing that is at least 30 days later. Requires a resolution authorizing use of eminent domain to identify costs and benefits and interests served.

7 Petition and notice. Provides that a party wishing to challenge the public use, necessity or authority for a taking must appear at the court hearing and state the objection or appeal within 60 days of a court order.

8 Hearing on taking; evidentiary standard. Requires a condemning authority at the hearing in district court on the petition for condemnation for mitigation of a blighted area, remediation of a contaminated area, reducing abandoned property, or removing a public nuisance to show by a preponderance of the evidence that the taking is necessary and for the

stated public use. Provides that the court order is final unless appealed within 60 days.

- 9 **Commissioners, powers, duties.** Conforming amendment related to appraisal fees.
- 10 **Compensation for removal of legal nonconforming use.** Requires a local government to compensate the owner of a nonconforming use if the local government requires its removal as a condition of granting a permit, license, or other approval for a use, structure, development or activity. This section does not apply if the permit, license or approval is for construction that cannot be done unless the nonconforming use is removed. Applies to actions on or after the effective date to require removal of the nonconforming use as a condition or prerequisite.
- 11 **Compensation for loss of going concern.** Provides the owner of a business or trade compensation for loss of going concern related to taking of real property. Provides that the claim can be avoid by the condemning authority upon a showing by a preponderance of the evidence that the loss is not due to the taking, the loss could have been avoid with reasonable measures, or that the going concern compensation would duplicate compensation otherwise being awarded. Requires the owner to give the condemning authority notice of intent to seek compensation for loss of going concern within 60 days of the first court hearing on whether the proposed taking is for a public use and necessary.
- Provides for compensation to a business owner for a permanent loss of a majority of the businesses driveway access that results in revenue losses. Provides for how revenue losses are to be calculated.
- 12 **Minimum compensation.** Requires compensation to allow the owner to purchase a comparable property in the community and not less than the quick take payment or deposit, as long as it does not duplicate compensation otherwise awarded.
- 13 **Limitations.** Prohibits a condemning authority from requiring an owner to accept as compensation a substitute property or return of property taken.
- 14 **Public service corporation exceptions.** Provides that the provisions for attorneys' fees (section 0), appraisals (section 5), requirements to challenge the public use, necessity or authority for a taking (section 7), compensation for loss of going concern (section 0), minimum compensation (section 0), limitations (section 0), and reestablishment and relocation benefits (sections 18 and 19) do not apply to public service corporations. Caps appraisal fee reimbursement at \$500.
- 15 **First right of refusal.** Requires property acquired by condemnation that was not used and is no longer needed to be offered back to the person from whom it was acquired, if the person can be located, at the lower of the original price or the current fair market value. Applies to property acquired in an eminent domain action commenced on or after May 20, 2006 (see section 22). Exempts various transportation-related statutes from this section.
- 16 **Cooperation with federal authorities.** Strikes authority to provide up to \$50,000 to reimburse a business for reestablishment expenses for federally funded projects. This limits reimbursement to \$10,000, as provided in federal law.
- 17 **Lack of federal funding.** Technical.
- 18 **Reestablishment costs limits.** Requires the acquiring authority to reimburse a displaced business for expenses actually incurred in reestablishing the business, up to a maximum of \$50,000 (prior law permitted but did not require this).
- 19 **Relocation assistance amount determined by administrative law judge.** Requires relocation assistance to be determined by an administrative law judge under a contested case proceeding if the displaced person does not accept the condemning authority's offer. Requires the acquiring authority to pay costs of the proceedings (does not include attorney fees).
- 20 **Revisor's instruction.** Directs the Revisor to change "right of eminent domain" to "power of eminent domain" in statutes and rules.

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Repealer. Repeals statute that is replaced by section 1.

Effective date. In general, effective May 20, 2006, and applies to eminent domain proceedings commenced on or after that date. Right of first refusal applies to disposition of property acquired by eminent domain on or after May 20, 2006. Exceptions:

- (1) Certain acquisitions in tax increment financing or abatement areas as described below;
- (2) A highway project selected for federal funding by an area transportation partnership or metropolitan planning organization if the taking is begun on or before January 15, 2007; and
- (3) A planned shelter for homeless persons in Minneapolis, if the taking is begun by May 20, 2008.

TIF and abatement area effective dates:

For qualifying condemnation actions (described below), the effective date phases-in the new eminent domain rules as follows:

- Takings begun by February 1, 2008, are exempt from all of the new rules.
- Takings begun after February 1, 2008, are exempt from the new restrictions on public use, but are subject to the other changes in the act (e.g., the potential to pay compensation for going concern value, attorneys fees, etc.).

TIF projects. To be grandfathered in, a TIF plan must be approved by the city by February 1, 2008 and must identify the property as intended to be acquired. (Under Minnesota Statutes, section 469.175, subdivision 1, clause (2), a TIF plan must list the properties that development authority intends to acquire.) In addition, one of three conditions must be satisfied:

- The developer acquired property by May 1, 2006 in reliance on a contract with the condemning authority to condemn other property for the project. Note: There is no specific time limit on when these actions must be brought, aside from those listed above.
- The condemning authority issued bonds (or entered a contract to issue bonds) to finance the project and begins the condemnation action within 2 years after issuing the bonds.
- The TIF district was certified by February 1, 2006 and the condemnation action is begun within 5 years after certification of the TIF district. Certification occurs after the TIF approval process by filing a request for certification with the county auditor. It can occur as soon as a few months after plan approval or a year or more later, depending upon when the authority requested certification and how quickly the county processed the request. This 5-year period corresponds to the rule under the TIF Act that allows the same period for completing in-district expenditures. Minn. Stat. § 469.1763, subd. 3.

TIF districts authorized by special laws (paragraph (b), clause (3)). A special law authorizing creation of a TIF district must have received local approval or become effective before February 1, 2006. The condemning authority must start the eminent domain action by the time period permitted under the 5-year rule, but not to exceed 10 years if the special

law allows a longer period.

Economic development abatement projects (paragraph (b), clause (4)). Similar to the TIF exemption under clause (3), the condemnation action must be started by February 1, 2011 and at least one of the political subdivisions must adopt the abatement resolution before February 1, 2006.