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**Bill Summary**


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**Senate**

Senate Counsel &amp; Research

State of Minnesota

## Laws 2006, Chapter 214 - Eminent Domain

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### Overview

This act contains provisions relating to the use of eminent domain power and rights and remedies of property owners. Following are its key features.

- The public benefits of economic development would not by themselves constitute a public use or purpose. Property could be condemned to mitigate blight or remediate environmental contamination, but only under specified circumstances that are subject to court review.
- Property owners who contest condemnation would be entitled to recover attorney fees under certain circumstances. If the court found there was not a proper use or purpose, or if the final damage award was more than 40 percent greater than the last written offer from the condemning authority, an attorney fee award would be mandatory. If the final award was 20 to 40 percent greater, the court could award attorney fees.
- If condemned land is no longer needed for a public purpose, the property owner would have a "right of first refusal" to buy back the property before it could be sold to anyone else.
- Other increases and changes are made in the amount of appraisal fees that may be awarded, relocation expenses, reimbursement for loss of a going business concern, and related provisions.
- Negotiation requirements and related issues requiring potential condemning authorities to share appraisals with property owners are expanded.

### Section-by-Section Summary

**Section 1 (preemption; public use or purpose)** provides that **Minnesota Statutes, chapter 117**, preempts all other laws that govern eminent domain proceedings, unless they do not diminish or deny substantive and procedural rights and protections under **chapter 117**. Eminent domain may only be used for a public use or purpose. An exception is included for the taking of property under special laws relating to drainage or town roads, based on current law.

**Section 2 (definitions)** modifies and clarifies existing definitions. It also defines the terms "condemning authority," "abandoned property," "blighted area," "structurally substandard," "environmentally contaminated area," "public nuisance," "public service corporation," and "public use" or "public purpose." In particular, for purposes of the exercise of eminent domain power, public use or public purpose would mean:

- (1) possession, occupation, ownership, and enjoyment of land by the general public;
- (2) creation or functioning of a public service corporation; or
- (3) mitigation of blight, remediation of an environmentally contaminated area, reduction of abandoned property, or removal of a public nuisance.

The public benefits of economic development would not by themselves constitute a public use or purpose.

**Section 3 (blight mitigation and contamination remediation)** establishes special provisions dealing with the condemnation of land for blight mitigation and contamination remediation.

**Subdivision 1** provides that in taking property to mitigate blight, a condemning authority may not take buildings that are not structurally substandard unless there is no feasible alternative and all possible steps are taken to minimize this taking.

**Subdivision 2** prohibits condemning authorities from taking uncontaminated parcels as part of a taking to remediate environmental contamination under the same circumstances.

**Subdivision 3** provides that if a developer involved in a redevelopment project contributed to the blight or environmental contamination, the condition contributed to by the developer must not be used in determining the existence of blight or environmental contamination.

**Section 4 (attorney fees)** contains new provisions for the award of attorney fees to property owners under certain circumstances. In cases where the final judgment or award for damages is more than 40 percent greater than the last written offer made by the condemning authority before filing the petition, the court must award the owner reasonable attorney fees, litigation expenses, appraisal fees, other expert fees, and other related costs in addition to other compensation and fees authorized under the law. If the final judgment or award is at least 20 percent, but not more than 40 percent, greater than the last written offer, the court may award these fees, expenses, and costs. Attorney fees may not be awarded if the final judgment or award of damages does not exceed \$25,000.

In any case where the court determines that a taking is not for a public use or is unlawful, the court must award the owner reasonable attorney fees and other related expenses, fees, and costs.

**Section 5 (appraisal and negotiation requirements)** amends the statute dealing with appraisal and negotiation requirements applicable to the acquisition of property for transportation purposes to expand it to include all eminent domain proceedings. A definition of "owner" is added, which would include a fee owner, contract purchaser, or business lessee. Amendments are included with respect to the exchange of appraisals and the applicable time periods and negotiation requirements when the acquiring authority is considering both a full and partial taking. The current \$1,500 cap on owner appraisals would be applicable to single-family and two-family residential property, and minimum damage acquisitions, but for other types of property the cap is increased to \$5,000. Upon agreement between the acquiring authority and the owner, the acquiring authority may pay reimbursement for the appraisal directly to the appraiser.

New language is added under which an appraisal must not be used or considered in a condemnation commissioners' hearing, nor may the appraiser be allowed to testify, unless a copy of the appraiser's written report was provided to the opposing party at least five days before the hearing.

**Section 6 (local government public hearings)** adds new requirements relating to local government public hearings that must be held before commencing eminent domain proceedings, if the taking is for mitigation of blight, contamination remediation, reducing abandoned property, or removing a public nuisance.

**Subdivision 1** defines the terms "local government" and "local government agency."

**Subdivision 2** provides that before a local government or local government agency may commence the eminent domain proceeding, a public hearing must be held. Notice requirements are specified. In addition, interested persons must be allowed reasonable time to present relevant testimony at the hearing, proceedings must be recorded and available to the public for review and comment, and the local government must vote on the question of whether to authorize the use of eminent domain to acquire the property at its next regular meeting that is at least 30 days after the public hearing.

**Subdivision 3** contains provisions that must be included in resolutions authorizing eminent domain when the taking is for these purposes.

**Section 7 (petition and notice)** requires the notice of an eminent domain petition to include provisions regarding the procedures for challenging the public purpose, necessity, and authority for the taking and the time for appealing court orders.

**Section 8 (hearing; evidentiary standard)** specifies the showing and evidentiary standard requirements applicable in cases where the taking is for the mitigation of a blighted area, remediation of an environmentally contaminated area, reducing abandoned property, or removing a public nuisance. The condemning authority must show the district court by a preponderance of the evidence that the taking is necessary and for the designated public use. A court order approving the purpose and necessity of a taking is final unless appealed within 60 days of service of the order.

**Section 9 (appraisal fees)** increases the appraisal fees that may be awarded by the commissioners, consistent with the raise in the caps under **section 5**.

**Section 10 (legal nonconforming use)** contains special provisions requiring compensation for removal of a legal nonconforming use under certain circumstances. It would apply to local government actions occurring on or after the effective date that require removal of a legal nonconforming use as a condition or prerequisite for issuance of a license, permit, or other approval.

**Section 11 (loss of going concern)** contains new standards and procedures dealing with compensation for loss of a going concern.

**Subdivision 1** defines "going concern" and "owner." The definition of "owner" includes lessees who operate a business on real property that is the subject of an eminent domain proceeding, which is consistent with current law.

**Subdivision 2** specifies the circumstances under which an owner must be compensated for loss of a going concern. If a business or trade is destroyed by a taking, the owner is entitled to compensation unless the condemning authority establishes by a preponderance of the evidence that the loss was not caused by the taking; the loss can be reasonably prevented by relocating the business or trade; or compensation for the loss will duplicate compensation otherwise awarded to the owner.

**Subdivision 3** specifies the procedure for seeking compensation for loss of a going concern. Damages must be determined in the first instance by the commissioners. The owner must notify the condemning authority of the owner's intent to seek compensation for loss of a going concern within 60 days of the first court hearing under **section 117.075** (which governs the initial determination of the court regarding the necessity of a taking and appointment of the commissioners to determine damages). An award for a loss of a going concern may be appealed in accordance with **section 117.145**, which is the current law dealing with appeals of commissioners' awards.

**Subdivision 4** entitles business owners to reasonable compensation for lost revenues resulting from elimination of driveway access under specified circumstances.

**Subdivision 5** provides that documentation related to a loss of going concern claim must not be used or considered in a condemnation commissioners' hearing unless it is provided to the opposing party at least 14 days before the hearing.

**Section 12 (minimum compensation)** establishes minimum compensation in cases where an owner must relocate.

**Section 13 (limitations)** provides that a condemning authority may not require an owner to accept substitute or replacement property as part of compensation. Also, a condemning authority may not require an owner to accept the return of property.

**Section 14 (exceptions)** exempts public service corporations from provisions of the new law.

**Section 15 (right of first refusal)** adds new provisions governing a right of first refusal in cases where a condemning authority determines that property acquired by eminent domain has not been used and is no longer needed for a public use. The condemning authority must offer to sell the property to the owner from whom it was acquired if the former owner can be located, at the original price determined under the condemnation or current fair market value, whichever is lower. Exceptions are included for other laws. If the former owner cannot be located after a due and diligent search or declines to repurchase, the attorney for the condemning authority must prepare a certificate attesting to this fact and record the certificate in the office of the county recorder or registrar of titles, as appropriate, to evidence the termination of the right of first refusal. A recorded certificate is prima facie evidence that the right of first refusal has terminated.

**Sections 16 to 18 (displaced businesses)** modify provisions dealing with reimbursement for reestablishment expenses of a displaced business. The most significant substantive change from current law is that the acquiring authority would be mandated to reimburse displaced businesses for expenses actually incurred up to a maximum of \$50,000 (current law permits but does not require this).

**Section 19 (determination of relocation assistance)** provides that contested cases regarding the amount of relocation assistance must be determined by an administrative law judge in a contested case proceeding.

**Section 20 (revisor instruction)** instructs the Revisor to change the phrase "right of eminent domain" to "power of eminent domain" wherever it appears in Minnesota Statutes and Rules.

**Section 21 (repealer)** repeals the current statute that is replaced by the new preemption language in **section 1**.

**Section 22 (effective date)** provides that the act is effective the day following final enactment and applies to condemnation or eminent domain proceedings or actions commenced on or after that date. The right of first refusal section would apply to the disposition of property acquired by proceedings and actions commenced on or after the effective date.

Special exemptions are included for certain condemnations already anticipated as part of a tax increment financing plan or abatement resolution. Applicable timelines with respect to when plans must be approved by the municipality, property acquired, bonds sold, and other special provisions are included.

An exception is also included for property acquired as part of 2007 highway projects that receive federal funding. Property acquired for the purpose of providing physical or financial assistance for emergency shelter and services for homeless persons in a first class city would be exempt from the new law, if the action is commenced on or before two years after the effective date.

For purposes of the effective date section, an action would be considered commenced when service of notice of the petition is made.

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