

HOUSE RESEARCH

Bill Summary

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Overview

In general, this bill prohibits the use of eminent domain for economic development purposes alone and raises the burden of proof to show that a taking is for a public use and necessary when it is for blight mitigation, contamination remediation, reducing abandoned buildings, or removing public nuisances. The bill also provides for attorneys fees to property owners, makes changes in allowable or required compensation paid to owners of property taken, and establishes other related causes of action.

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1 Preemption; no implied authority.

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, unless they do not diminish or deny substantive and procedural rights and protections of owners under chapter 117.

Subd. 2. No implied authority. Requires a condemning authority to have an express grant of authority to exercise the power of eminent domain. States that the authority cannot be implied.

Subd. 3. Extraterritorial use prohibited. Prohibits the use of eminent domain outside the condemning authority's jurisdiction unless the jurisdiction in which the

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property is located consents.

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 which the condemning authority cannot locate the owner.

Subd. 6. Blighted area. Defined as an area that at the time condemnation is commenced, is zoned and used for urban use and where more than 50 percent of the buildings are dilapidated (defined below).

Subd. 7. Dilapidated building. Defined to be a building that was inspected and cited for building code violations at least 12 months before the condemnation began, that has not been fixed, and that as of the beginning of the condemnation action is structurally substandard (defined below).

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

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watershed district, or a drainage authority.

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

Subd. 12. Structurally substandard. Defined as building code violations for listed elements. Provides that a building is not structurally substandard if the estimated cost of fixing it does not exceed 50 percent of the estimated market value of the building.

3 **Condemnation for blight mitigation, contamination remediation.**

Subd. 1. Nondilapidated buildings in areas of blight mitigation; absolute necessity. Prohibits a condemning authority from taking buildings that are not dilapidated unless there is no feasible alternative and all possible steps are taken to minimize taking nondilapidated buildings.

Subd. 2. Uncontaminated property in environmental contamination remediation areas; absolute necessity. Prohibits a condemning authority from 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 20 percent or more than the last written offer made before the condemnation petition was filed. Requires the court to award an owner attorneys fees and other costs if the court determines that the taking is not for a public use or is unlawful.

5 **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 clear and convincing evidence that the taking is necessary and for the stated public use.

Under current law, the courts generally defer to the condemning authority's legislative determination of public use and necessity, and will only overrule it if the court finds it "manifestly arbitrary and unreasonable." *See Housing & Redevel. Auth. of Minneapolis v. Minneapolis Metro Co.*, 259 Minn. 1, 15, 104 N.W.2d 864, 874 (1960).

6 **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. Provides that the section does not apply if the permit, license or approval is for construction that cannot be done unless the nonconforming use is removed. Provides that the section does not apply to regulations relating to adult uses.

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- 7 **Other regulatory takings.** Makes historic preservation designation adopted on or after August 1, 2002, that reduces the fair market value of real property or that interferes with its use, a regulatory taking that must be compensated. Allows the state or local government to repeal or amend the designation to eliminate the adverse impact instead of paying damages.
- 8 **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 clear and convincing 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.
- Prohibits use of appraisal information or testimony at the commissioners' hearing on loss of going concern unless the information has been provided to the opposing party at least five days before the hearing.
- 9 **Compensation for loss of access.** Requires compensation if a governmental entity permanently eliminates 51 percent or more of the driveway access to a place of business, resulting in loss of revenues of 51 percent or more. The loss of revenue is based on revenues of year before loss of access. Requires the claim to be made within one year of completion of the project causing loss of access. Provides that compensation cannot exceed the difference between two years of revenues and costs of goods sold.
- 10 **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.
- 11 **Limitations.** Prohibits a condemning authority from requiring an owner to accept as compensation a substitute property or return of property taken.
- 12 **Public service corporation exception.** Provides that the provisions for attorneys' fees (section 0), compensation for loss of going concern (section 0), minimum compensation (section 0), and limitations (section 0), do not apply to public service corporations.
- 13 **Public hearing.** Requires the city council, county board, or board of township supervisors to hold a public hearing on a proposed taking by the local government or agency of the local government after public notice, and specific notice to owners. Requires the governing body to allow public testimony. Requires the city council, county board, or board of township supervisors to vote on the proposed taking at a regularly scheduled meeting of the governing body held after the public hearing. Requires the resolution for a taking to mitigate blight, reduce abandoned property, remediate environmental contamination, or remove a public nuisance to identify and describe the public costs and benefits known or expected from the project, and address how acquisition serves one or more identified public uses or purposes and why the property is needed.
- 14 **First right of refusal.** Requires property acquired by condemnation that is no longer needed by the condemning authority 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.
- 15 **Information on owners rights and procedures.** Directs the attorney general to provide public information on the significant legal rights and obligations of condemning authorities, owners, and tenants, including applicable statutes and case law on the procedures and time

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frames involved in an eminent domain action. Requires annual updating.

16 **Revisor's instruction.** Directs the Revisor to change "right of eminent domain" to "power of eminent domain" in statutes and rules.

17 **Effective date.** Makes the act effective the day after enactment and apply to eminent domain proceedings commenced on or after March 1, 2006.